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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 32

[Docket No. 04–15]

RIN 1557–AC83

Lending Limits Pilot Program

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing this interim rule extending for three months, until September 11, 2004, an OCC lending limits pilot program (pilot program) that authorizes special lending limits for 1–4 family residential real estate loans and small business loans. Under the pilot program, which originated in 2001, eligible national banks with main offices located in states that prescribe a higher lending limit for residential real estate loans or small business loans than the current Federal limit may apply to take part in the program and use the higher limits. This interim rule allows the program to continue uninterrupted while the OCC reviews comments received on a proposal to extend the program for three years, until June 11, 2007.

EFFECTIVE DATE: June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Tom O'Dea, National Bank Examiner, Credit Risk, (202) 874–5170); Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090, Mitchell Plave, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090, or Jonathan Fink, Senior Attorney, Bank Activities and Structure, (202) 874–5300.

SUPPLEMENTARY INFORMATION:

Background

Federal law permits a national bank to make loans to one borrower in an amount up to 15 percent of its unimpaired capital and surplus.[1] A national bank may extend credit up to an additional 10 percent of unimpaired capital and surplus to the same borrower if the amount of the loan that exceeds the 15 percent limit is secured by "readily marketable collateral."[2] Together, the 15 percent and 10 percent provisions comprise the "combined general limit." The statute and regulation also provide exemptions from the combined general limit for various types of loans and extensions of credit.

Federal law at 12 U.S.C. 84 authorizes the OCC to establish lending limits "for particular classes or categories of loans" that are different from those expressly provided by the statute's terms.[3] In 2001, the OCC established a pilot program, using this authority, with special lending limits for residential real estate loans and small business loans.[4] These special limits are separate from amounts that banks may lend to a single borrower under the existing combined general limit and the special limits authorized by other provisions of part 32.[5] The purpose of the program is to enable community banks to remain competitive in states that provide their state-chartered institutions with a higher lending limit for these types of loans while, at the same time, maintaining the safety and soundness of national banks.

Temporary Extension of the Pilot Program

On April 23, 2004, the OCC proposed to extend the pilot program for three years beyond its current expiration date of June 11, 2004.[6] The comment period for the proposal closed on May 24, 2004. We received a number of comments that not only addressed the proposed program, but also recommended various modifications to it. In order to allow adequate time to evaluate these comments without causing unnecessary disruption in the operation of the program in its current form, we are issuing this interim rule. The interim rule extends the duration of the lending limits pilot program for three months, until September 11, 2004. The OCC will issue a final rule addressing the continuation of the program before that date.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) requires Federal agencies either to certify that a proposed rule would not, if adopted in final form, have a significant impact on a substantial number of small entities or to prepare an initial regulatory flexibility analysis (IRFA) of the proposal and publish the analysis for comment. *See* 5 U.S.C. 603, 605. On the basis of the information currently available, the OCC certifies that this interim rule will not have a significant impact on a substantial number of small entities within the meaning of those terms as used in the RFA.

Executive Order 12866

The OCC has determined that this interim rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC has determined that this interim rule will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Administrative Procedure Act

The OCC finds that there is good cause to dispense with prior notice and

[1] 12 U.S.C. 84; 12 CFR 32 (implementing section 84).

[2] 12 U.S.C 84(a)(2); 12 CFR 32.3(a).

[3] 12 U.S.C. 84(d)(1).

[4] 66 FR 31114 (June 11, 2001); 12 CFR 32.7.

[5] *See, e.g.*, 12 CFR 32.3(b).

[6] 69 FR 21978 (April 23, 2004).

public comment on this interim rule and with the 30-day delay of effective date generally prescribed by the Administrative Procedure Act (APA). 5 U.S.C 553.

Under section 553(b) of the APA, the OCC is not required to provide notice and an opportunity for public comment on a rule if we find, for good cause, that notice and comment are "impracticable, unnecessary or contrary to the public interest." The OCC finds that notice and public comment on this interim rule are unnecessary because we have already given the public an opportunity to comment on whether to extend the lending limits pilot program, through the rule we proposed on April 23, 2004. All commenters favored extending the program. This extension of the effective date of the pilot program merely provides additional time for the OCC to consider the comments and reach a decision on whether to extend, modify, or terminate the program. Further, the OCC finds that further notice and public comment are not in the public interest because a failure to extend the June 11, 2004 sunset date for the pilot program would cause unnecessary disruption in the operation of the program in its current form.

Under section 553(d) of the APA, the OCC must generally provide a 30-day delayed effective date for final rules. The OCC may dispense with the 30-day delayed effective date requirement "for good cause found and published with the rule." Similarly, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), requires a banking agency to make a rule effective on the first day of the calendar quarter that begins on or after the date on which the regulations are published in final form, unless the agency finds good cause for an earlier effective date. 12 U.S.C. 4802(b)(1). The OCC finds that there is good cause to dispense with the two effective date requirements because a failure to extend the June 11, 2004 sunset date would cause unnecessary disruption in the operation of the program in its current form. In addition, the purpose of the APA and CDRI delayed effective date provisions is to afford affected persons a reasonable time to comply with rule changes. The interim rule makes no substantive changes to the existing lending limits pilot program.

Paperwork Reduction Act

The Office of Management and Budget (OMB) has reviewed and approved the collection of information requirements contained in the pilot program under control number 1557–0221, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, part 32 of chapter I of title 12 of the Code of Federal Regulations is amended to read as follows:

PART 32—LENDING LIMITS

■ 1. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 84, and 93a.

■ 2. In § 32.7, paragraph (e) is revised to read as follows:

§ 32.7 Pilot program for residential real estate and small business loans.

* * * * *

(e) Duration of pilot program. The pilot program will terminate on September 11, 2004, unless it is terminated sooner by the OCC.

* * * * *

Dated: June 8, 2004.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 04–13314 Filed 6–9–04; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 1b, 4, 11, 12, 33, 34, 35, 36, 154, 157, 292, 300, 365, 375, 385, 388

[Docket No. RM04–10–000; Order No. 647]

Notice Format and Technical Corrections

June 3, 2004.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations to simplify the formats it requires for various types of notices. This change will make it easier for the Commission to take advantage of technological upgrades without the necessity of revising its regulations repeatedly. In addition, this Final Rule revises a number of outdated informational references in the Commission's regulations.

EFFECTIVE DATE: The rule will become effective July 12, 2004.

FOR FURTHER INFORMATION CONTACT: Wilbur Miller, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8953.

SUPPLEMENTARY INFORMATION:

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

1. This Final Rule revises the Federal Energy Regulatory Commission's (Commission's) regulations to simplify the format requirements specified for various notices that are submitted to the Commission. It also contains a number of corrections to information references in various regulations.

2. Currently, several of the Commission's regulations require the inclusion of a form of notice with the filing and require that such forms of notice employ specified formats. These formats include headings, informational content, and similar, non-substantive matters. As the Commission continues to rely more heavily on electronic systems for document submission, detailed format requirements may interfere with its ability to employ upgrades and other improvements. Consequently, the Commission is deleting the format requirements listed below and replacing them with a reference to a new subsection, 18 CFR 385.203(d). That provision, in turn, refers to the Commission's Web site or Public Reference Room for instructions on form of notice formats. The Secretary will issue instructions that will be placed in both locations. This revision will provide for more uniform formatting and make it easier for the Commission to update form of notice formatting by eliminating the need for a rulemaking with every change.

3. The affected provisions of Title 18 of the Code of Federal Regulations are as follows:

- § 33.6—Notices of applications to authorize disposition of jurisdictional facilities.
- § 34.3(k)—Applications for issuance of securities.
- § 35.8(b)—Protests or interventions relating to electric service tariff filings.
- § 36.1(b)(1)—Applications for transmission service under section 211 of the Federal Power Act.
- § 154.209—Notice of proposed changes in gas tariff or of compliance filing.
- § 157.6(b)(7)—Applications for certificates of public convenience and necessity and for orders approving abandonment.
- § 157.205(b)(5)—Prior notice of activity pursuant to blanket certificate under section 7 of the Natural Gas Act.

• § 292.207(b)(4)—Applications for qualifying facility status.
• § 300.10(a)(1)—Applications for confirmation and approval of rates of Federal Power Marketing Administrations.
• § 365.3(c)—Applications for exempt wholesale generator status.
• § 385.206(b)(10)—Complaints.
• § 385.1104(a)(5)—Petitions for adjustments under the Natural Gas Policy Act. All of these provisions except §§ 157.6(b)(7), 157.205(b)(5) and 385.1104(a)(5) currently contain requirements that notices be provided on diskette. In order to retain these requirements, the revisions provide that the Secretary will specify electronic media.

4. In addition to notice format provisions, the Commission is revising various information references, such as addresses and URLs, that are out of date. Finally, this Final Rule deletes two provisions from the rules governing filings. Section 385.2003(c)(3) currently provides that confidential documents may not be filed via the internet. Section 385.2003(c)(4) provides that documents qualified for electronic filings may not be combined with other documents. These provisions are inconsistent with the Commission's decision, in section 385.2003(c)(2), to delegate to the Secretary the authority to determine what documents may be filed via the internet. They are therefore being deleted.

Information Collection Statement

5. The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule. 5 CFR part 1320. This Final Rule contains no information reporting requirements, and is not subject to OMB approval.

Environmental Analysis

6. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[1] Issuance of this Final Rule does not represent a major Federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[2] Part 380 of the Commission's regulations lists exemptions to the requirement that an Environmental Analysis or Environmental Impact Statement be done. Included is an exemption for procedural, ministerial or internal administrative actions. 18 CFR § 380.4(1) and (5). This rulemaking is exempt under that provision.

Regulatory Flexibility Act Certification

7. The Regulatory Flexibility Act of 1980 (RFA)[3] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This final rule concerns a matter of internal agency procedure and the Commission therefore certifies that it will not have such an impact. An analysis under the RFA is not required.

Document Availability

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

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

10. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Effective Date

11. These regulations are effective July 12, 2004.

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

13. The Commission is issuing this as a Final Rule without a period for public comment. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only matters of agency procedure and will not significantly affect regulated entities or the general public.

List of Subjects

18 CFR Part 1b

Investigations.

18 CFR Part 4

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 12

Electric power, Reporting and recordkeeping requirements.

188 CFR Part 33

Electric utilities, Reporting and recordkeeping requirements, Securities.

18 CFR Part 34

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 35

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18 CFR Part 36

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 154

Alaska, Natural gas, Natural gas companies, Pipelines, Rate schedules and tariffs, Reporting and recordkeeping requirements.

18 CFR Part 157

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

18 CFR Part 292

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 300

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 365

Exempt wholesale generators.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

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

[2] Order No. 486, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,783 (Dec. 10, 1984) (*codified at* 18 CFR Part 380).

[3] 5 U.S.C. 601–612.

18 CFR Part 385

Administrative practice and procedure, Electric utilities, Penalties, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 388

Confidential business information, Freedom of information.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends parts 1b, 4, 11, 12. 33, 34, 35, 36, 154, 157, 292, 300, 365, 375, 385, and 388, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 1b—RULES RELATING TO INVESTIGATIONS

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

Authority: 15 U.S.C. 717 *et seq.*; 16 U.S.C. 792 *et seq.*; 49 U.S.C. 60502; 49 App. U.S.C. 1–85; 42 U.S.C. 7101–7352; E.O. 12009, 42 FR 46267.

■ 2. Section 1b.21 is amended by revising paragraph (f) to read as follows:

§ 1b.21 Enforcement hotline.

* * * * *

(f) The Hotline may be reached by calling (202) 502–8390 or 1–888–889–8030 (toll free), by e-mail at *hotline@ferc.gov,* or writing to: Enforcement Hotline, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

■ 3. The authority citation for part 4 continues to read as follows:

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

§ 4.303 [Amended]

■ 4. Section 4.303 is amended in paragraphs (a)(2) and (e)(2) by removing the phrase "Hydropower Licensing" and adding its place the phrase "Energy Projects."

PART 11—ANNUAL CHARGES UNDER PART I OF THE FEDERAL POWER ACT

■ 5. The authority citation for part 11 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

§ 11.3 [Amended]

■ 6. Section 11.3 is amended in paragraph (d) by removing the phrase "Hydropower Licensing" and adding in its place the phrase "Energy Projects."

PART 12—SAFETY OF WATER POWER PROJECTS AND PROJECT WORKS

■ 7. The authority citation for part 12 is revised to read as follows:

Authority: 16 U.S.C. 792–828c; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 142 (1978).

PART 12—[AMENDED]

■ 8. Part 12 is amended throughout the part by removing the phrase "Hydropower Licensing" wherever it appears and adding in its place the phrase "Energy Projects."

§ 12.3 [Amended]

■ 9. Section 12.3(b)(10) is amended by removing the phrase "Fort Worth" and adding in its place the phrase "Portland."

PART 33—APPLICATION FOR ACQUISITION, SALE, LEASE, OR OTHER DISPOSITION, MERGER OR CONSOLIDATION OF FACILITIES, OR FOR PURCHASE OR ACQUISITION OF SECURITIES OF A PUBLIC UTILITY

■ 10. The authority citation for part 33 continues to read as follows:

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

■ 11. Section 33.6 is revised to read as follows:

§ 33.6 Form of Notice.

The applicant must include a form of notice of the application suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this chapter. The form of notice shall be on electronic media as specified by the Secretary.

PART 34—APPLICATION FOR AUTHORIZATION OF THE ISSUANCE OF SECURITIES OR THE ASSUMPTION OF LIABILITIES

■ 12. The authority citation for part 34 continues to read as follows:

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

■ 13. Section 34.3 is amended by revising paragraph (k) to read as follows:

§ 34.3 Contents of application for issuance of securities.

* * * * *

(k) The applicant must include a form of notice of the application suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this chapter. The form of notice shall be on electronic media as specified by the Secretary.

* * * * *

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

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

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

■ 15. Section 35.8 is amended by revising paragraph (b) to read as follows:

§ 35.8 Protests and interventions by interested parties and form for Federal Register notice.

* * * * *

(b) *Form of notice.* The applicant must include a form of notice of the application suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this chapter. The form of notice shall be on electronic media as specified by the Secretary.

PART 36—RULES CONCERNING APPLICATIONS FOR TRANSMISSION SERVICES UNDER SECTION 211 OF THE FEDERAL POWER ACT

■ 16. The authority citation for part 36 continues to read as follows:

Authority: 5 U.S.C. 551–557; 16 U.S.C. 791a–825r; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 17. Section 36.1 is amended by revising paragraph (b)(1) to read as follows:

§ 36.1 Notice provisions applicable to applications for transmission services under section 211 of the Federal Power Act.

* * * * *

(b) * * *

(1) The applicant must include a form of notice of the application suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this chapter. The form of notice shall be on electronic media as specified by the Secretary.

* * * * *

PART 154—RATE SCHEDULES AND TARIFFS

■ 18. The authority citation for part 154 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 31 U.S.C. 9701; 42 U.S.C. 7102–7352.

■ 19. Section 154.209 is revised to read as follows:

§ 154.209 Form of notice for Federal Register.

The applicant must include a form of notice of the application suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this chapter. The form of

notice shall be on electronic media as specified by the Secretary.

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

■ 20. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

■ 21. Section 157.6 is amended by revising paragraph (b)(7) to read as follows:

§ 157.6 Applications; general requirements.

* * * * *

(b) * * *

(7) A form of notice of the application suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this chapter.

* * * * *

■ 22. Section 157.205 is amended by revising paragraph (b)(5) to read as follows:

§ 157.205 Notice procedure.

* * * * *

(b) * * *

(5) A form of notice of the application suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this chapter; and

* * * * *

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

■ 23. The authority citation for part 292 continues to read as follows:

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

■ 24. Section 292.207 is amended by revising paragraph (b)(4) to read as follows:

§ 292.207 Procedures for obtaining qualifying status.

* * * * *

(b) * * *

(4) *Notice.* The applicant must include a form of notice of the application suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this chapter. The form of notice shall be on electronic media as specified by the Secretary.

* * * * *

PART 300—CONFIRMATION AND APPROVAL OF THE RATES OF FEDERAL POWER MARKETING ADMINISTRATIONS

■ 25. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 825s, 832–8321, 838–838k, 839–839h; 42 U.S.C. 7101–7352; 43 U.S.C. 485–485k.

■ 26. Section 300.10 is amended by revising paragraph (a)(1) to read as follows:

§ 300.10 Application for confirmation and approval.

(a) *General provisions*—(1) *Contents of filing.* Any application under this subpart for confirmation and approval of rate schedules must include, as described in this section a letter of request for rate approval, a form of notice suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this chapter, the rate schedule, a statement of revenue and related costs, the order, if any, placing the rates into effect on an interim basis, the Administrator's Record of Decision or explanation of the rate development process, supporting documents, a certification, and technical supporting information and analysis. The form of notice shall be on electronic media as specified by the Secretary.

* * * * *

PART 365—FILING REQUIREMENTS AND MINISTERIAL PROCEDURES FOR PERSONS SEEKING EXEMPT WHOLESALE GENERATOR STATUS

■ 27. The authority citation for part 365 continues to read as follows:

Authority: 15 U.S.C. 79.

■ 28. Section 365.3 is amended by revising paragraph (c) to read as follows:

§ 365.3 Contents of Application and procedure for filing.

* * * * *

(c) Applications for exempt wholesale generator status must also include a copy of a notice of the application suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this chapter. The notice must state the applicant's name, the date of the application, and a brief description of the applicant and the facility or facilities which are or will be eligible facilities owned and/or operated by the applicant. The notice shall be on electronic media as specified by the Secretary.

PART 375—THE COMMISSION

■ 29. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 30. Section 375.101 is amended by revising paragraph (b) to read as follows:

§ 375.101 The Commission.

* * * * *

(b) *Offices.* The principal office of the Commission is at 888 First Street, NE., Washington, DC 20426. Regional offices are maintained at Atlanta, GA, Chicago, IL, Portland, OR, New York, NY, and San Francisco, CA.

* * * * *

■ 31. Section 375.105 is amended by revising paragraph (c) to read as follows:

§ 375.105 Filings.

* * * * *

(c) *Where to make filings.* All filings of documents with the Commission shall be made with the Secretary. The address for filings to be made with the Secretary is: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426. Where a document to be filed with the Secretary is hand-delivered, it shall be submitted to Room 1A, 888 First St., NE., Washington, DC 20426. Documents received after regular business hours are deemed to have been filed on the next regular business day.

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 32. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

■ 33. Section 385.203 is revised by adding paragraph (d) as follows:

§ 385.203 Contents of pleadings and tariff or rate filings (Rule 203).

* * * * *

(d) *Form of notice.* If a pleading or tariff or rate filing must include a form of notice suitable for publication in the **Federal Register**, the company shall submit the draft notice in accordance with the form of notice specifications prescribed by the Secretary and posted under the Filing Procedures link at *http://www.ferc.gov* and available in the Commission's Public Reference Room.

■ 34. Section 385.206 is amended by revising paragraph (b)(10) to read as follows:

§ 385.205 Complaints (Rule 206).

* * * * *

(b) * * *

(10) Include a form of notice of the complaint suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this part. The form of notice shall be on electronic media as specified by the Secretary.

* * * * *

■ 35. Section 385.1104 is amended by revising paragraph (a)(5) to read as follows:

§ 385.1104 Initial petition (Rule 1104).

(a) * * *

(5) The petition must include a form of notice suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this part.

* * * * *

■ 36. Section 385.2001 is amended by revising paragraph (a)(1)(iii) and the following note to read as follows:

§ 385.2001 Filings (Rule 2001).

(a) * * *

(1) * * *

(iii) In the case of qualified documents as defined in Rule 2003(c)(2), by filing via the Internet pursuant to Rule 2003(c) using the FERC Online links at *http://www.ferc.gov.*

Note to paragraph (a)(1):

Assistance for filing via the Internet is available by calling (202) 502–6652 or 1–866–208–3676 (toll free), or by e-mail to *FERCOnlineSupport@ferc.gov.*

* * * * *

■ 37. Section 385.2003 is amended by removing paragraphs (c)(3) and (c)(4), redesignating paragraph (c)(5) as (c)(3), and revising paragraph (c)(1)(ii) to read as follows:

§ 385.2003 Specifications (Rule 2003).

* * * * *

(c) * * *

(1) * * *

(ii) Be filed in accordance with instructions issued by the Secretary and made available via the FERC Online links at *http://www.ferc.gov.*

* * * * *

§ 385.2010 [Amended]

■ 38. Section 385.2010 is amended in paragraph (i)(3) by removing the term "*http://www.ferc.fed.us*" and adding in its place the term "*http://www.ferc.gov.*"

PART 388—INFORMATION AND REQUESTS

■ 39. The authority citation for part 388 continues to read as follows:

Authority: 5 U.S.C. 301–305, 551, 552 (as amended), 553–557; 42 U.S.C. 7101–7352.

■ 40. Section 388.106 is amended by revising the section heading and paragraph (a) to read as follows:

§ 388.106 Requests for Commission records available in the Public Reference Room and from the Commission's web site, http://www.ferc.gov.

(a)(1) A Public Reference Room is maintained at the Commission's headquarters and is open during regular business hours as provided in § 375.101(c) of this chapter. Publicly available documents may be obtained in person or in writing from the Public Reference Room by reasonably describing the records sought. Additional information on charges and services is available on the Web site and in the Public Reference Room.

(2) Documents created by or received by FERC on or after November 1981 also are available on the Commission's Web site through its document management system. These may also be accessed in person using a personal computer in the Public Reference Room.

* * * * *

[FR Doc. 04–13017 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 141, 260 and 357

[Docket No. RM03–8–001; Order No. 646–A]

Quarterly Financial Reporting and Revisions to the Annual Reports

Issued: June 2, 2004.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) reaffirms its determinations in Order No. 646 and clarifies certain provisions in this order on rehearing. Order No. 646 establishes quarterly financial reporting requirements for respondents that file FERC Annual Reports and modifies certain filing requirements contained in the FERC Annual Report Form Nos. 1, 1–F, 2, 2–A and 6.

EFFECTIVE DATE: The revisions made in this order on rehearing are effective July 12, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Klose (Project Manager), Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8283.

Julie Kuhns (Technical Information), Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6287.

Christopher Bublitz (Technical Information), Office of Administrative Litigation, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 502–8542.

Julia Lake (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 502–8370.

SUPPLEMENTARY INFORMATION:

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

I. Introduction

1. On February 11, 2004, the Commission issued a Final Rule (Order No. 646)[1] amending its financial reporting regulations by establishing new quarterly financial reporting for respondents that file FERC Annual Reports. Order No. 646 requires all FERC jurisdictional entities filing a FERC Annual Report Form No. 1, 1–F, 2, 2–A or 6 to file supplemental quarterly financial reports. These quarterly financial reports are the FERC Form No. 3–Q, Quarterly Financial Report of Electric Companies, Licensees, and Natural Gas Companies, and the FERC Form No. 6–Q, Quarterly Financial Report of Oil Pipeline Companies. Additionally, Order No. 646 made certain changes to the FERC Annual Reports including adding new reporting schedules for monthly transmission peak load data and ancillary services, updating the corporate officer's certification requirements, and accelerating the filing dates for the FERC Annual Reports.

2. Financial accounting and reporting provides needed information concerning a company's past performance and its future prospects. Without reliable financial information prepared in accordance with the Commission's Uniform Systems of Accounts and related regulations, the

[1] Quarterly Financial Reporting and Revisions to the Annual Reports, Order No. 646, 69 FR 9030 (Feb. 26, 2004), III FERC Stats. & Regs. ¶31,158 (Feb. 11, 2004).

Commission would be unable to accurately determine the costs that relate to a particular time period, service, or line of business.[2] Additionally, it would be difficult to determine whether a FERC jurisdictional entity has previously been given the opportunity to recover its costs through rates, or to compare how the financial performance and results of operations of one regulated entity relates to that of another.

3. The Commission concluded in Order No. 646 that there is a pressing need for reporting more timely, relevant and reliable financial information to the Commission. Adoption of quarterly financial reporting and the other modifications to the FERC Annual Reports will provide more transparent financial information for this Commission and other users of the data. The information contained in these financial reports filed with the Commission identifies the economic effects of significant transactions and events, allows staff to evaluate the adequacy of existing cost-based rates, and aids in the development of needed changes to existing regulatory initiatives. Additionally, instituting quarterly financial reporting strengthens the Commission's ongoing activities by identifying emerging trends, identifying changes in existing accounting standards, and identifying the impacts of new accounting standards on a more frequent basis.

4. In summary, we reaffirm here the legal and policy conclusions on which Order No. 646 is based. Therefore, the Commission denies the requests for rehearing or blanket exemptions from certain filing requirements contained in Order No. 646. However, we will provide clarifications and corrections on certain matters raised as discussed below.

II. Discussion

A. Ancillary Services Schedule

5. Order No. 646 adds a new Ancillary Services Schedule in the FERC Annual Report Form Nos. 1 and 1–F that details the amount of ancillary services purchased and sold during the year. The new Ancillary Services Schedule also collects information concerning the amount of services internally used by the respondent. The new schedule is included in the FERC Annual Reports to be filed with the Commission beginning with the calendar year ending December 31, 2004.

6. Arizona Public Service Company (APS) seeks clarification, or in the alternative, rehearing regarding the reporting of purchases and sales of ancillary services when the respondent is a vertically integrated utility that has separate divisions or units providing merchant or transmission functions. APS claims it is possible for the same megawatt hour of ancillary service to be reported more than once. It questions how a respondent should report ancillary service activity between units or divisions within a reporting entity and between a wholesale merchant unit and a third-party supplier. Additionally, APS seeks clarification regarding the reporting of transactions outside APS's service territory that do not use APS's generation or transmission facilities. Further, APS asks how the Commission would use such data for ratemaking purposes. Finally, APS requests that the Commission clarify Instruction No. 1 of the Ancillary Services Schedule to specify that companies report the amount of scheduling, system control and dispatch services.

Commission Conclusion

7. The Commission clarifies that the activity reported in this schedule should be reported from the respondent's point of view as a whole, without regard to interdepartmental activity. All purchases and sales of ancillary services by the utility associated with the provision of transmission service should be reported, including service to native load. Therefore, in addition to reporting purchases and sales of ancillary services, the respondent should report on this schedule the volumes for ancillary services that it self-provides from its own facilities together with the related dollar values imputed as if the respondent took these services under its own tariff. The primary purpose of this data is to reflect the ancillary services related to the use of the respondent's generation or transmission facilities. Therefore, on this schedule, APS should not report transactions with entities located on third-party systems that do not involve use of APS's generation or transmission facilities.

8. Finally, the Commission agrees with APS that Instruction No. 1 to the Ancillary Services Schedule should specify that companies report the amount of scheduling, system control and dispatch services and is making conforming changes as needed to the Ancillary Services Schedule.

B. Monthly Transmission Peak Load Schedule

9. Order No. 646 adds a new Monthly Transmission Peak Load Schedule to the FERC Annual Report Form Nos. 1 and 1–F, and also requires this information to be reported in the quarterly financial reports. This new schedule collects information concerning the respondent's transmission system including the respondent's own use of its transmission system. The Commission noted in Order No. 646 that the peak load is the monthly transmission peak as defined in the *pro forma* Open Access Transmission Tariff (OATT) and respondents may use estimates to complete the schedule as long as that fact is noted on the schedule and the respondent fully describes the estimation method in a footnote.

10. Southern California Edison Company (SCE) seeks an exemption, clarification, or in the alternative, rehearing concerning the reporting requirements contained in the Monthly Transmission Peak Load Schedule. Specifically, SCE states that, with the restructuring of the energy market in California and SCE's transfer of operational control of its transmission system to the California Independent System Operator Corporation, SCE no longer operates under its own *pro forma* OATT. SCE states it does not have access to the type of transmission system information sought in the new schedule. SCE, therefore requests an exemption from the Monthly Transmission System Peak Load Schedule or clarification as to how utilities in California, such as SCE, are to comply with this reporting requirement.

Commission Conclusion

11. We are not persuaded that SCE is unable to obtain the information to be reported in the Monthly Transmission Peak Load Schedule. The monthly peak load data is useful in analyzing SCE's usage of transmission facilities under the control of the California ISO, and in analyzing the transmission revenues SCE reports in the annual and quarterly financial reports. Pursuant to section 17, Records and Information Sharing of the California ISO Transmission Control Agreement, the California ISO shall keep records relevant to the efficient operation of the ISO controlled grid and make appropriate records available to a participating transmission owner upon request. Therefore, if SCE does not have direct access to the required information, it should obtain the data from the California ISO. In the event

[2] Part 101 Uniform System of Accounts Prescribed for Public Utilities Subject to the Provisions of the Federal Power Act. *See* 18 CFR Part 101 (2003). Part 201 Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act. *See* 18 CFR Part 201 (2003). Part 352 Uniform System of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act. *See* 18 CFR Part 352 (2003).

SCE and the California ISO working together are unsuccessful in obtaining the information required by the new schedule, SCE may file a request for a waiver of the requirement to report information required on the Monthly Transmission Peak Load Schedule with the Commission providing full details and particulars as to why it is unable to obtain and report the data.

C. Changes to the FERC Annual Report Form No. 2

12. The Industry Coalition requests rehearing on its proposed changes to the FERC Annual Report Form No. 2. The Industry Coalition requested that the Annual Report Form No. 2 be modified to obtain additional detailed cost-of-service rate information. For example the Industry Coalition requests that natural gas pipelines provide information concerning its rate base, its earned return on equity investment based on a predetermined formula rate of return calculation, its revenues and expenses associated with at-risk facilities, its revenues associated with negotiated rate contracts, and other details for various other items included in cost-of-service accounts. The Industry Coalition requests that its changes, at a minimum, be incorporated into the Commission's Information Assessment Team's current, on-going review of information necessary to understand and oversee energy markets. In the alternative, the Industry Coalition requests the Commission establish a new rulemaking proceeding to address its proposed changes to the FERC Annual Report Form No. 2.

Commission Conclusion

13. As stated in Order No. 646, the changes proposed by the Industry Coalition to the FERC Annual Report Form No. 2 are outside the scope of this rulemaking. The Commission finds that the Industry Coalition has not provided any new additional arguments to reverse our decision on these changes in the context of this quarterly financial reporting rulemaking. The changes proposed by the Industry Coalition would require additional input and comment before the changes may be implemented. While the Commission declines to consider Industry Coalition's request for additional changes to the FERC Annual Report Form No. 2 at this time, the Industry Coalition, as well as all other interested parties, will be given the opportunity to provide input and comment on improvements to the quarterly and annual financial reporting requirements after a full reporting cycle as provided in Order No. 646.[3]

D. Blanket Reporting Exemption for Electric Cooperatives

14. The National Rural Electric Cooperative Association (NRECA) requests rehearing of the Commission's decision in Order No. 646 not to provide a blanket exemption or waiver for electric distribution cooperatives that are classified as "small utilities" from the reporting requirements of Order No. 646.[4] NRECA also requests that the Commission clarify what an entity seeking a waiver may request a wavier of, and what it must show in order to satisfy the waiver requirement.

15. NRECA argues that the reporting requirements in Order No. 646 will pose a hardship on small electric cooperatives. NRECA notes that, as it explained in its comments to the NOPR, thirty-four of the forty FERC-jurisdictional electric cooperatives are capitalized without publicly traded securities and are not subject to the Securities and Exchange Commission's periodic reporting requirements. NRECA argues that, since these cooperatives do not prepare and submit filings to the SEC, the Commission's imposition of such a periodic reporting requirement will add a new compliance burden on these cooperatives. According to the NRECA, the Commission did not address why the quarterly financial reporting requirements needed for electric cooperatives which are different from large publicly traded, investor-owned utility companies.

Commission Conclusion

16. As NRECA points out, there are nearly forty rural electric cooperatives that are public utilities subject to the Commission's ratemaking and accounting jurisdiction because they sell power at wholesale and/or provide transmission service. It is, therefore, important for the Commission to obtain timely and relevant financial information from these jurisdictional entities in order to make informed ratemaking and accounting decisions affecting these entities. However, as provided in Order No. 646, if the reporting requirements of this order represent an undue burden, individual electric cooperatives may seek a waiver from the Commission. Each respondent requesting a waiver from the reporting requirements must establish undue burden based on its individual fact situation. Any Commission decision to grant a waiver from all or part of the reporting requirements contained in Order No. 646 will depend on the particular facts and circumstances affecting a respondent's operations. Since the particular facts and circumstances may be unique to each electric cooperative, the Commission declines to provide a predetermined set of conditions that must be met to obtain a waiver.

E. Miscellaneous

17. Order No. 646 provides for a phase-in period for respondents to file their FERC quarterly financial reports. The phase-in filing dates for the 2005 quarterly financial reports, however, were not included in the regulatory text in §§ 141.400, 260.300 and 357.4 of the Commission's regulations. Therefore, the Commission will make the necessary conforming changes to its quarterly financial reporting filing regulations to include the phase-in periods contained in Order No. 646 for quarterly financial report filings made during 2005.

III. Regulatory Flexibility Act Certification

18. The Regulatory Flexibility Act (RFA) requires rulemakings to contain either (1) a description and analysis of the effect that the proposed or Final Rule will have on small entities or (2) a certification that the rule will not have a significant economic effect on a substantial number of small entities.[5] In Order No. 646, the Commission certified that the Final Rule would not have a significant economic effect on a substantial number of small entities.

Rehearing Request

19. NRECA challenges this certification. According to NRECA, there are nearly forty rural electric cooperatives that are public utilities subject to the Commission's ratemaking and accounting jurisdiction because they sell power at wholesale and/or provide transmission service. NRECA argues that, approximately thirty of the jurisdictional electric cooperatives are distribution cooperatives with very limited Federal Power Act (FPA) regulation. NRECA argues, further, that all but about six of these electric cooperatives meet the definition of a "small utility" set out by the Small Business Administration. To avoid undue burden, NRECA recommends that the Commission provide a blanket waiver of quarterly financial reporting

[3] *See* Order No. 646, III FERC Stats. & Regs. ¶ 31,158 at P 105.

[4] A small utility as defined by the Small Business Association is one "that disposes of 4 million MWh or less per year."

[5] *See* 5 U.S.C. 601–612 (2000).

to all electric cooperatives that are "small" public utilities.

Commission Conclusion

20. We disagree with NRECA. The question is whether Order No. 646 has a significant economic effect on a substantial number of small entities. The Commission correctly determined in Order No. 646 that the number of such entities is not substantial. The thirty-four electric cooperatives are only a small subset of the entities considered in determining a significant impact on a substantial number of small entities. Additionally, these electric cooperatives already maintain the necessary accounting records under the Commission's Uniform System of Accounts and report this financial information on an annual basis through the filing of a FERC Annual Report. Therefore, quarterly financial reporting from accounting records that already exist should not as a whole pose an undue burden or have a significant economic effect on the electric cooperatives. However, as stated in Order No. 646 and earlier in the order, any respondents, including an electric cooperative, may file a request for a waiver of all or part of the reporting requirements based upon individual facts and circumstances.

IV. Document Availability

21. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to obtain this document from the Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern Time) at 888 First Street, NE., Room 2A, Washington, DC 20426. The full text of this document is also available electronically from the Commission's eLibrary system in PDF and Microsoft Word format for viewing, printing, and downloading. ELibrary may be accessed through the Commission's Web page at *http://www.ferc.gov*. To access this document in eLibrary, type "RM03–8–001" in the docket number field and specify a date range that includes this document's issuance date. User assistance is available by contacting FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY (202) 502–8659.

VI. Effective Date

22. Revisions to Order No. 646 made in this order on rehearing will become effective on July 12, 2004.

List of Subjects

18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 260

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 357

Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Linda Mitry,

Acting Secretary.

■ In consideration of the foregoing, the Commission amends parts 141, 260, and 357, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

■ 1. The authority citation for part 141 continues to read as follows:

Authority: 15 U.S.C. 79; 16 U.S.C. 791a–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. In § 141.400, paragraph (b)(2)(iv) is redesignated as paragraph (b)(2)(vii) and new paragraphs (b)(2)(iv), (b)(2)(v), (b)(2)(vi) are added to read as follows:

§ 141.400 FERC Form No. 3–Q, Quarterly financial report of electric utilities, licensees, and natural gas companies.

* * * * *

(b) * * *

(2) * * *

(iv) The quarterly financial report for the period January 1 through March 31, 2005, must be filed on or before May 31, 2005.

(v) The quarterly financial report for the period April 1 through June 30, 2005, must be filed on or before August 29, 2005.

(vi) The quarterly financial report for the period July 1 through September 30, 2005 must be filed on or before November 29, 2005.

* * * * *

■ 3. In § 141.400, paragraph (b)(3)(iv) is redesignated as paragraph (b)(3)(vii) and new paragraphs (b)(3)(iv), (b)(3)(v), (b)(3)(vi) are added to read as follows:

§ 141.400 FERC Form No. 3–Q, Quarterly financial report of electric utilities, licensees, and natural gas companies.

* * * * *

(b) * * *

(3) * * *

(iv) The quarterly financial report for the period January 1 through March 31, 2005, must be filed on or before June 13, 2005.

(v) The quarterly financial report for the period April 1 through June 30, 2005, must be filed on or before September 12, 2005.

(vi) The quarterly financial report for the period July 1 through September 30, 2005 must be filed on or before December 13, 2005.

* * * * *

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

■ 4. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

■ 5. In § 260.300, paragraph (b)(2)(iv) is redesignated as paragraph (b)(2)(vii) and new paragraphs (b)(2)(iv), (b)(2)(v), (b)(2)(vi) are added to read as follows:

§ 260.300 FERC Form No. 3–Q, Quarterly financial report of electric utilities, licensees, and natural gas companies.

* * * * *

(b) * * *

(2) * * *

(iv) The quarterly financial report for the period January 1 through March 31, 2005, must be filed on or before May 31, 2005.

(v) The quarterly financial report for the period April 1 through June 30, 2005, must be filed on or before August 29, 2005.

(vi) The quarterly financial report for the period July 1 through September 30, 2005 must be filed on or before November 29, 2005.

* * * * *

■ 6. In § 260.300, paragraph (b)(3)(iv) is redesignated as paragraph (b)(3)(vii) and new paragraphs (b)(3)(iv), (b)(3)(v), (b)(3)(vi) are added to read as follows:

§ 260.300 FERC Form No. 3–Q, Quarterly financial report of electric utilities, licensees, and natural gas companies.

* * * * *

(b) * * *

(3) * * *

(iv) The quarterly financial report for the period January 1 through March 31, 2005, must be filed on or before June 13, 2005.

(v) The quarterly financial report for the period April 1 through June 30, 2005, must be filed on or before September 12, 2005.

(vi) The quarterly financial report for the period July 1 through September 30, 2005 must be filed on or before December 13, 2005.

* * * * *

PART 357—ANNUAL SPECIAL OR PERIODIC REPORTS: CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

■ 7. The authority citation for part 357 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

■ 8. In § 357.4, paragraph (b)(2)(iv) is redesignated as paragraph (b)(2)(vii) and new paragraphs (b)(2)(iv), (b)(2)(vi), (b)(2)(viii) are added to read as follows:

* * * * *

(b) * * *

(2) * * *

(iv) The quarterly financial report for the period January 1 through March 31, 2005, must be filed on or before June 13, 2005.

(v) * * *

(vi) The quarterly financial report for the period April 1 through June 30, 2005, must be filed on or before September 12, 2005.

(vii) * * *

(viii) The quarterly financial report for the period July 1 through September 30, 2005 must be filed on or before December 13, 2005.

* * * * *

[FR Doc. 04–12919 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD09–03–284]

RIN 2115–AA01

Special Anchorage Area; Madeline Island, WI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is enlarging the existing special anchorage area in Madeline, Wisconsin. This action is taken at the request of the La Pointe Yacht Club, which, due to low water levels, has lost usable anchorage space. This rule will make additional space available within the special anchorage area.

DATES: This rule is effective July 12, 2004.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–03–284] and are available for inspection or copying at the Ninth Coast Guard District, Room 2069, 1240 E. Ninth Street, Cleveland, OH, between 8 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander Michael Gardiner, Chief, Marine Safety Analysis and Policy Branch, Ninth Coast Guard District Marine Safety Office, at (216) 902–6056.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 24, 2003, we published a notice of proposed rulemaking (NPRM) entitled Special Anchorage Area; Madeline Island, WI in the **Federal Register** (68 FR 74536). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

This rule is in response to a request from the La Pointe Yacht Club to increase the size of the Madeline Island, Wisconsin special anchorage area as described in 33 CFR § 110.77b. This regulation will alleviate crowding of boats outside the anchorage area boundaries due to years of low water levels, and accommodate boats with drafts deeper than three feet.

Discussion of Comments and Changes

No comments were received.

Regulatory Evaluation

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

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard.

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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035, and 2071; 33 CFR 1.05–1(g). Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 110.77b to read as follows:

§ 110.77b Madeline Island, Wisconsin

The waters off of La Pointe Harbor, Madeline Island, Wisconsin, encompassed by the following: starting at 46°46′44.8″ N, 090°47′14.0″ W; then south southwesterly to 46°46′35.5″ N, 090°47′17.0″ W; then south southeasterly to 46°46′27″ N, 090°47′12.8″ W; then east southeasterly to 46°46′22.6″ N, 090°46′58.8″ W; then following the shoreline back to the starting point (NAD 83).

Dated: June 2, 2004.

R.J. Papp, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 04–13075 Filed 6–9–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–00–228]

RIN 1625–AA09 [Formerly 2115–AE47]

Drawbridge Operation Regulations: Mianus River, CT

AGENCY: Coast Guard, DHS.

ACTION: Interim final rule; request for comments.

SUMMARY: The Coast Guard is changing the drawbridge operation regulations for the Metro-North Bridge, at mile 1.0, across the Mianus River at Greenwich, Connecticut. This rule will require the bridge to open on signal from 9 p.m. to 5 a.m., after advance notice is given. The bridge presently does not open for vessel traffic between 9 p.m. and 5 a.m., daily. This action will better meet the reasonable needs of navigation.

DATES: This rule is effective July 12, 2004. Comments must reach the Coast Guard on or before August 9, 2004.

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 (CGD01–00–228) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory History

The Coast Guard published at 65 FR 24640 a temporary 90-day deviation and request for comments from the drawbridge operation regulations on April 27, 2000, to provide immediate relief to navigation and to obtain comments from the public concerning this rule. The deviation was in effect from June 7, 2000, through September 4, 2000, during which time, the Metro-North Bridge was required to open on signal, from 9 p.m. to 5 a.m., after a four-hour advance notice was given. No comments were received during the comment period that ended on September 30, 2000.

On January 8, 2001, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Mianus River, Connecticut,

in the **Federal Register** (66 FR 1281). In March 2001, we received one comment in response to the notice of proposed rulemaking from Metro-North Railroad, the owner of the Bridge. The bridge owner objected to the additional crewing of the bridge based upon the additional cost that would result and suggested a meeting with the Coast Guard to discuss the proposed changes to the regulations. No public hearing was requested and none was held.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–00–228), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Background and Purpose

The Metro-North Bridge, mile 1.0, across the Mianus River has a vertical clearance of 20 feet at mean high water and 27 feet at mean low water in the closed position.

The existing operating regulations in 33 CFR 117.209 require the bridge to open on signal from 5 a.m. to 9 p.m., immediately for commercial vessels and as soon as practicable, but no later than 20 minutes after the signal to open is given, for the passage of all other vessel traffic. When a train scheduled to cross the bridge without stopping has passed the Greenwich or Riverside stations and is in motion toward the bridge, the draw must open as soon as the train has crossed the bridge. From 9 p.m. to 5 a.m., the draw need not be opened for the passage of vessels.

The Coast Guard received a request from a commercial vessel operator requesting a change to the operating regulations for the Metro-North Bridge. The commercial operator requested that the bridge open for vessel traffic during the 9 p.m. to 5 a.m. time period when the bridge is normally closed.

The Coast Guard published a temporary 90-day deviation from the drawbridge operation regulations on April 27, 2000, to provide immediate relief to navigation and to obtain comments from the public concerning this rule. The deviation was in effect from June 7, 2000, through September 4, 2000, during which time, the Metro-North Bridge was required to open on signal, from 9 p.m. to 5 a.m., after a four-hour advance notice was given. No comments were received during the comment period, which ended on September 30, 2000. A late comment letter was received from the commercial mariner that requested the rule change. The mariner indicated that his vessel utilized the additional opening time provided by the test deviation and made about 40 transits after 9 p.m. during the test period. The commercial mariner has added additional vessels which will also require bridge openings after 9 p.m., daily.

The Coast Guard believes that in the case of the Metro-North Bridge, that changing the bridge operating regulations to require openings between 9 p.m. and 5 a.m. with a four-hour notice from April 1 through October 31 and with a twenty four hour notice from November 1 through March 31 is reasonable because it provides for the needs of navigation, as demonstrated by the demand for bridge openings during the test deviation, and has no effect on rail traffic over the bridge.

Discussion of Comments and Changes

The Coast Guard received one comment letter from the bridge owner, Metro North, in March 2001 which requested that this rule not be implemented on the basis of the financial burden it will impose on the bridge owner to crew the bridge for requested bridge openings between 9 p.m. and 5 a.m. and that the rule violated the Unfunded Mandates Reform Act ("UMRA") of 1995 (2 U.S.C. 1531–1538).

The mariner that requested this rule change did require bridge openings between 9 p.m. and 5 a.m. as documented by the number of openings recorded during the test deviation. Additionally, the mariner indicated that he added additional vessels to his operating fleet which will also require the bridge to open after 9 p.m. for their passage.

The Coast Guard's policy concerning regulatory changes to the operating hours at bridges requires that bridges shall operate in accordance with the reasonable needs of navigation. We believe that it is a reasonable request to crew the bridge additional hours at night during the summer months to allow commercial tour boats to return to their docks after evening cruses. Additionally, there is no requirement under this interim rule for the bridge owner to crew the bridge after 9 p.m. in an other than on-call status. The twenty four hour notice during the winter months along with the four-hour notice during the summer months will allow the Bridge Owner sufficient time to respond to requests for opening without maintaining a crew on-site, at all times, between 9 p.m. and 5 a.m. In addition, our policy requires that no regulations shall be drafted solely for the purpose of saving the cost of crewing a bridge or to save wear and tear on the structure. Additionally, this rule does not impose a financial burden upon the Bridge Owner, a non-federal entity, of over $100 million dollars, the UMRA's economic threshold.

No public hearing was requested and none was held because the bridge owner's request to meet with the Coast Guard would not provide for public comment. The Coast Guard believes no new additional information could be obtained by conducting a public hearing because there is documented evidence that there is a navigational need during the time period this final will require the bridge to be on call.

The Coast Guard believes that this rule will better meet the present needs of navigation; therefore, no changes were made as a result of the comments received.

Discussion of Rule

The Coast Guard is revising the operating regulation in 33 CFR 117.209(b) for the Metro-North Bridge by requiring the bridge to open during the 9 p.m. to 5 a.m. time period.

The rule requires the draw to open on signal from April 1 through October 31, from 9 p.m. to 5 a.m., after at least a four-hour advance notice is given and then from November 1 through March 30, from 9 p.m. to 5 a.m., after at least a twenty-four hours advance notice is given.

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).

This conclusion is based on the fact that this bridge will only be required to be crewed between 9 p.m. and 5 a.m., and only when a request to open the bridge is given with a four-hour notice and twenty four hour notice is given

from April 1 through October 31 and November 1 and March 31, respectively.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations 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 conclusion is based on the fact that this bridge will only be required to be crewed between 9 p.m. and 5 a.m., and only when a request to open the bridge is given with a four-hour notice and twenty four hour notice is given from April 1 through October 31 and November 1 and March 31, respectively.

Assistance for Small Entities

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

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

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 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 does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Assistance

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

Environment

We have analyzed this final rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. It has been determined that this final rule does not significantly impact the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. Section 117.209(b) is revised to read as follows:

§ 117.209 Mianus River.

* * * * *

(b) The draw shall open on signal from April 1 through October 31, from 9 p.m. to 5 a.m., after at least a four-hour advance notice is given and from November 1 through March 30, from 9 p.m. to 5 a.m., after at least a twenty-four-hour advance notice is given by calling the number posted at the bridge.

Dated: May 28, 2004.

Vivien S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 04–13076 Filed 6–9–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–04–001]

RIN 1625–AA00

Security Zone; Professional Golfer's Association Championship Tour, Sheboygan, WI; Lake Michigan

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for a portion of Lake Michigan in Sheboygan, WI during the Professional Golfers' Association (PGA) Championship Event. This action is part of a comprehensive security plan designed to maximize the safety of the numerous high-profile spectators and athletes expected at this event. This action is intended to restrict vessel traffic for a portion of Lake Michigan off of Sheboygan, WI.

DATES: This rule is effective from 7 a.m. (local) August 9, 2004, until 8 p.m. (local) August 17, 2004.

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 [CGD09–04–001], are available for inspection or copying at MSO Milwaukee between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Mike Schmidtke, MSO Milwaukee, at (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 29, 2004, we published a notice of proposed rulemaking (NPRM) entitled "Security Zone; Professional Golfer's Association Championship Tour, Sheboygan, WI; Lake Michigan" in the **Federal Register** (69 FR 16186). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

This security zone is necessary to safeguard the PGA Championship Tour players and attendees from potential waterborne threats and hazards. Due to the intense public interest in, and extensive media coverage of this event, the Captain of the Port (COTP) expects a significantly large number of spectators in confined areas adjacent to Lake Michigan.

The security zone coordinates have changed from what was previously published in the **Federal Register**. These coordinates have changed to increase the safety of the public as well as the Coast Guard vessels patrolling the security zone due to underwater obstructions around and on the previous perimeter of the security zone. The changes made to these coordinates are not significant and still encompass the area as previously discussed. As modified, the COTP is implementing this security zone to ensure the safety and security of both participants and spectators in these areas beginning on August 9, 2004, and concluding on August 17, 2004. Security zone enforcement will occur daily between 7 a.m. and 8 p.m.

Discussion of Comments and Changes

We received no comments in response to this rulemaking and no changes, other than those for safety reasons mentioned in the *Background and Purpose* section, were made.

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 determination is based on the minimal time that vessels will be restricted from the zone.

Small Entities

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

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

This rule will affect the following entities, some of which might be small entities: the owners or operators of commercial vessels intending to transit, moor or anchor in a portion of the activated security zone.

This security zone does not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be in effect for only the 9 days of the event and vessel traffic can safely pass outside of the security zone during the event.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed

this rule under that Order and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping 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 7 a.m. (local) August 9, 2004, until 8 p.m. (local) August 17, 2004, add § 165.T09–001 to read as follows:

§ 165.T09–001 Security Zone; Professional Golfer's Association Championship Tour, Sheboygan, WI; Lake Michigan.

(a) *Location.* The following area is a security zone: All waters and adjacent shoreline encompassed by the following coordinates starting at 43°52.385′ N, 087°44.211′ W; then east to 43°52.405′ N, 087°43.205′ W; then south to 43°49.601′ N, 087°42.702′ W; then west to 43°49.604′ N, 087°43.773′ W; then following the shoreline north back to point of origin (NAD 83).

(b) *Effective period.* This section is effective from 7 a.m. (local) August 9, 2004, until 8 p.m. (local) August 17, 2004.

(c) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by Captain of the Port Milwaukee.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number (414) 747–7155 or on VHF channel 16 or VHF channel 21A to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

Dated: June 2, 2004.

H.M. Hamilton,

Commander, U.S. Coast Guard, Captain of the Port Milwaukee.

[FR Doc. 04–13074 Filed 6–9–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AJ60

Schedule for Rating Disabilities; The Spine; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correction.

SUMMARY: In a document published in the **Federal Register** on August 27, 2003 (68 FR 51454), we amended a portion of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities that addresses the spine. The document inadvertently omitted text that previously appeared in the table of the proposed rule published in the **Federal Register** on September 4, 2002 (67 FR 56509). This document corrects that omission by reinserting the two missing notes (pertaining to code 5243) into the table.

DATES: *Effective Date:* This correction is effective September 26, 2003.

FOR FURTHER INFORMATION CONTACT: Audrey Tomlinson, Medical Officer, Policy and Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: A final rule, RIN 2900–AJ60; Schedule for Rating Disabilities; The Spine, was published on August 27, 2003 (68 FR 51454) (to be codified at 38 CFR 4.71a). Two notes that provide guidance with regard to rating intervertebral disc syndrome (diagnostic code 5243) that were published in the proposed rule in the **Federal Register** on September 4, 2002, (67 FR 56509) were inadvertently omitted from the final rule. As noted in the proposed rule, the amendments made editorial changes to the evaluation criteria for intervertebral disc syndrome to make them compatible with the new

general rating formula and did not represent any substantive change.

Administrative Procedure Act

The change that this final rule makes merely corrects the omission of two notes ("Note (1)" and "Note (2)") from the Spine Table. Accordingly, there is good cause for dispensing with the notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

■ For the reasons set out in the preamble, 38 CFR part 4, subpart B, is amended as set forth below:

Subpart B—[Amended]

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

■ 2. In § 4.71a, the table titled "The Spine" is amended by adding Notes 1 and 2 at the end of the entries under the heading "Formula for Rating Intervertebral Disc Syndrome Based on Incapacitating Episodes" to read as follows:

§ 4.71a Schedule of ratings—musculoskeletal system.

* * * * *

Note (1): For purposes of evaluations under diagnostic code 5243, an incapacitating episode is a period of acute signs and symptoms due to intervertebral disc syndrome that requires bed rest prescribed by a physician and treatment by a physician.

Note (2): If intervertebral disc syndrome is present in more than one spinal segment, provided that the effects in each spinal segment are clearly distinct, evaluate each segment on the basis of incapacitating episodes or under the General Rating Formula for Diseases and Injuries of the Spine, whichever method results in a higher evaluation for that segment.

Dated: May 27, 2004.

Robert C. McFetridge,

Director, Regulations Management.

[FR Doc. 04–12723 Filed 6–9–04; 8:45 am]

BILLING CODE 8320–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–70–2–7347a; FRL–7672–7]

Approval and Promulgation of Implementation Plans for Texas; Approval of Section 179B Demonstration of Attainment, Volatile Organic Compounds and Nitrogen Oxides Motor Vehicle Emissions Budgets for Conformity for the El Paso Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final approval.

SUMMARY: The EPA is approving, through direct final action, a revision to the Texas State Implementation Plan (SIP), submitted to show attainment of the one-hour ozone National Ambient Air Quality Standard (NAAQS) in the El Paso ozone nonattainment area, but for emissions emanating from outside of the United States. The EPA is also approving the El Paso area's Volatile Organic Compounds (VOCs) and Nitrogen Oxides (NO_X) emissions budgets. The State submitted the revisions to satisfy sections 179B and other Part D requirements of the Federal Clean Air Act (CAA).

DATES: This rule is effective on August 9, 2004, without further notice, unless EPA receives adverse comment by July 12, 2004. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by File ID No. TX–70–2–7347, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- U.S. EPA Region 6 "Contact Us" Web site: *http://epa.gov/region6/r6coment.htm*. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.
- E-mail: Mr Thomas Diggs at *diggs.thomas@epa.gov*. Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at 214–665–7263.
- Mail: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- Hand or Courier Delivery: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Please include the text "Public comment on File ID No. TX–70–2–7347" in the subject line of the first page of your comments. EPA's policy is that all comments received will be included in the public file without change, 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 regulations.gov, or e-mail. The federal regulations.gov Web site is an "anonymous access" system, 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Official File: Copies of the documents relevant to this action are in the official file which is available at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA

Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

Copies of any State submittals and EPA's technical support document are also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quailty, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Joe Kordzi, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7186; fax number 214–665–7263; E-Mail address *kordzi.joe@epa.gov.*

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

Outline

I. What Is the Background for This Action?

El Paso, Texas, was designated nonattainment for ozone and classified as serious under sections 107(d)(4)(A) and 181(a) of the CAA. The El Paso nonattainment area consists of El Paso County. Under section 181(a), serious areas must attain the ozone NAAQS by November 15, 1999.

The CAA requires that ozone nonattainment areas designated moderate and above demonstrate attainment through air quality modeling or any other analytical method determined by the Administrator to be at least as effective. Section 179B of the CAA contains special provisions for nonattainment areas that are affected by emissions emanating from outside the United States. Under section 179B, the EPA will approve a SIP if the area meets all other CAA requirements, and establishes that implementation of the plan would achieve attainment of the ozone standard by the CAA statutory deadline "but for emissions emanating from outside the United States." This is the type of demonstration made by the State of Texas.

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

A. Modeling

The Governor of the State of Texas submitted a revision to the Texas SIP for the El Paso ozone nonattainment area via a letter dated October 3, 1994. This included air quality modeling, under section 179B of the CAA, that demonstrates that El Paso would attain the ozone NAAQS, but for emissions emanating from outside of the United States. The State of Texas submitted a revision via a letter dated August 9, 1996, showing that the revised inspection and maintenance program, and delay in implementation, would have no significant effect on the validity of the attainment demonstration submitted in 1994.

El Paso and Juarez, Mexico, share a common airshed. However, emission inventory data was not available for Juarez, so modeling of the entire airshed was not possible. In such an instance, section 179B allows an area such as El Paso to perform modeling using only U.S. pollutant emission data in performing the attainment demonstration.

In its demonstration, the Texas Commission on Environmental Quality (TCEQ) used the Urban Airshed Model (UAM) version IV, an EPA-approved photochemical grid model, to develop the attainment demonstration for the El Paso area. Texas performed its ozone modeling analyses for El Paso, according to EPA guidance. For further details, see the Technical Support Document.

The State had previously submitted to the EPA the 15 percent VOC Reasonable Further Progress (RFP) SIP for the El Paso area (63 FR 62943, November 10, 1998), as required by section 182(b)(1) of the CAA. The 15 percent RFP SIPs contain regulations that are estimated to reduce VOC emissions in each area by 15 percent from 1990 baseline levels. The modeling results indicate that with the 15 percent RFP reductions, the area would attain the 1-hour ozone standard, but for emissions emanating from outside the United States, by November 15, 1996, which is before the area's applicable attainment deadline of November 15, 1999. The predicted domain-wide maximum ozone concentration for 1996 was significantly below the NAAQS of 120 ppb.

B. Additional Basin-Wide Modeling

Section 182(c)(2) of the CAA requires each serious and above ozone nonattainment area to submit a SIP revision by November 15, 1994, which describes, in part, how the area will achieve an actual VOC emission reduction from the baseline emissions of at least 3 percent of baseline emissions per year averaged over each consecutive 3-year period beginning 6 years after enactment (*i.e.*, November 15, 1996), until the area's attainment date.

Via a letter from A. Stanley Meiburg of EPA Region 6 to Ms. Beverly Hartsock of the then Texas Natural Resource Conservation Commission, dated August 9, 1994, EPA stated its position that if the section 179B attainment demonstration SIP showed the El Paso area would attain by November 15, 1996, the attainment deadline for moderate areas, the additional 9 percent in emission reductions required in the post-96 Rate of Progress (ROP) would be deferred. This deferral was effective until Juarez monitoring data and emission inventory data became available to perform basin-wide modeling of the El Paso/Jurez airshed.

Annex V of the 1983 La Paz Agreement between the United States and Mexico, which addressed environmental concerns along the border, calls for basin-wide modeling to be accomplished for the El Paso/Juarez airshed. This modeling was performed during the 1998–2000 period, but was not deemed to be valid to ascertain the types of controls necessary throughout the airshed in order to meet ozone air quality standards on both the U.S. and the Mexico side of the border. The main problem with model performance was believed to be an inadequate VOC emission inventory for Juarez.

However, subsequent to the submission of this attainment demonstration, the El Paso area has now attained the 1-hour ozone standard by the accumulation of three consecutive years of quality-assured ambient air data that show no violations of the standard. The most recent data provided by the State of Texas, available through the EPA Aerometric Information and Retrieval Service, demonstrate the area continues to attain the 1-hour standard. Therefore, EPA does not anticipate a need to trigger the commitment for basin-wide modeling.

Based on EPA's "Clean Data Policy", if EPA made an attainment finding, we would no longer require the 9 percent ROP plan. Therefore, since the El Paso area has data showing attainment of the ozone standard without the 9 percent ROP plan, we believe that it is reasonable to defer that ROP requirement. Complete details of EPA's rationale are included in the Clean Data Policy. If the area violates the 1-hour ozone standard before a future redesignation, EPA will review the

conclusion to defer the 9 percent ROP requirement.

C. How Close Is El Paso to Attainment of the Ozone Standard?

Data from the El Paso monitoring network from 1999 to the end of 2002 indicate that the area is in attainment of the ozone standard. The State has informed EPA that it may request redesignation in the near future.

D. Motor Vehicle Emissions Budget

The Governor of Texas submitted the 1996 motor vehicle emissions budgets of 36.23 tons/day for VOCs and 39.76 tons/day for NO_X on December 11, 1997. These budgets were found to be adequate for transportation conformity purposes on January 12, 1998 (see 64 FR 31217, June 10, 1999). It is EPA's conclusion that the SIP demonstrates attainment with these budgets and contains the measures necessary to support them. Today, we are approving these budgets, under section 176(c) of the CAA.

E. Has the EPA Approved Other Parts of the SIP Before Now?

Below is a table describing the elements that the El Paso ozone SIP must have, and the references to their EPA approvals.

Description	Section of CAA	Codified at 40 CFR part 52, subpart SS
An inventory of all actual emissions of VOC and NO_X sources in the area.	172(c)(3) and 182(a)(1)	52.2309(a).
A revised inventory every three years	182(a)(3)(A)	Most recent submitted 1996.
A permit program for the construction and operation of new and modified major stationary sources of VOC and NO_X ozone in nonattainment areas.	172(c)(5) and 182(a)(2)(C); 182(c)(6); 182(c)(7); 182(c)(8).	52.2270(c)(88).
A regulation that requires sources to legally certify their emissions each year.	182(a)(3)(B)	52.2270(c)(88).
A regulation requiring reductions in current emissions to offset new emissions from new and modified sources.	182(c)(10)	52.2270(c)(97).
Reasonably available control technology on major sources of VOC's.	182(b)(2)	52.2270(c)(88).
A fuels program to reduce evaporative emissions from vehicle fuel tanks.	211(h)	52.2270(c)(88).
Contingency measures to be implemented if the area fails to attain the standard by the deadline.	182(c)(9); 172(c)(9)	63 FR 62943, Nov. 10, 1998.
A vehicle inspection and maintenance program	182(c)(3)	52.2270(c)(87).
Vapor recovery systems on fuel pumps	182(b)(3)	52.2270(c)(81).
A clean fuel fleet program	182(c)(4)	52.2270(c).
Enhanced monitoring of ozone, NO_X, VOC's, and NO_X and VOC emissions.	182(c)(1)	52.2270(c)(90).
Transportation control measures	182(c)(5)	52.2308(b) (waiver of NO_X provisions, and 63 FR 62943, Nov. 10, 1998).
A SIP revision to achieve 15 percent reductions in overall VOC emissions.	182(b)(1)	63 FR 62943, Nov. 10, 1998.
A SIP revision to achieve 3 percent reductions per year in 1997, 1998, and 1999 [9 percent ROP].	182(c)(2)(B)	Deferred, based on EPA's Clean Data Policy and monitored attainment.

III. What Is Our Final Action?

The EPA is approving a revision to the Texas SIP, which was submitted to show attainment of the one-hour ozone standard in the El Paso ozone nonattainment area by the applicable attainment date, but for emissions from Mexico. The revision satisfies section 179B of the CAA. The EPA is electing to defer the post-1996 RFP requirement. In so doing, the EPA is finding that, based on the States's section 179B attainment demonstration the El Paso area would attain by November 15, 1996, the State's enforceable commitment to perform basin-wide modeling when the necessary Juarez information becomes available, and monitoring data now showing attainment, a post-1996 plan with an additional 9 percent of reductions from November 1996 through November 1999, is not necessary for attainment in the El Paso area.

The EPA believes that all section 179B approvals should be on a contingency basis. Therefore, this section 179B modeling-based approval is valid only as long as the area's modeling data continue to show that the El Paso ozone area would be in attainment, but for emissions from outside the United States. If El Paso again experiences one-hour ozone violations, or if future successful basin-wide modeling demonstrates the El Paso area could achieve attainment of the one-hour standard through reduction measures typically employed by serious nonattainment areas, the EPA will review the decision to defer the 9 percent ROP requirement, and Texas may be required to submit a new post-1996 ROP plan for El Paso.

The EPA is also approving El Paso's VOC and NO_X motor vehicle emissions budgets, under section 176(c) of the CAA.

IV. Why Is This a "Final Action?"

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on August 9, 2004, without further notice unless we receive adverse comment by July 12, 2004. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. 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 (Public Law 104–4).

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

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

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 August 9, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: May 27, 2004.

Richard E. Greene,

Regional Administrator, Region 6.

■ 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. 7402 *et seq.*

Subchapter SS—Texas

■ 2. The table in § 52.2270(e) entitled "EPA approved nonregulatory provisions and quasi-regulatory measures in the Texas SIP" is amended by adding two entries to the end of the table to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

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

Name of SIP Provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Comments
*	*	*	*	*
Section 179B Attainment Demonstration Report.	El Paso ozone nonattainment area	10/03/94	6/10/04	Approval includes a revision submitted 08/09/96.
Deferral of the post 1996 RFP	El Paso ozone nonattainment area	.....	6/10/04	
Enforceable commitment to conduct additional modeling for the area as new data become available. This modeling effort will be conducted under the auspices of the 1983 La Paz Agreement between the United States and Mexico.	El Paso ozone nonattainment area	10/03/94	6/10/04	

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

Name of SIP Provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Comments
VOC and NO_X Motor Vehicle Emissions Budget for Conformity.	El Paso ozone nonattainment area	12/11/97	6/10/04	

[FR Doc. 04–13175 Filed 6–9–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R07–OAR–2004–IA–0001; FRL–7672–3]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the state of Iowa. This revision pertains to orders and permits issued by the state to control particulate matter (PM_{10}) emissions from Blackhawk Foundry and Machine Company in Davenport (Scott County), Iowa. This approval will make the order and permits Federally enforceable.

DATES: This direct final rule will be effective August 9, 2004, unless EPA receives adverse comments by July 12, 2004. 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 R07–OAR–2004–IA–0001, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the online 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 online instructions for submitting comments.

3. E-mail: *Jones.Harriett@epa.gov*.

4. Mail: Harriett Jones, Environmental Protection Agency, Air Permitting and Compliance Branch, 901 North 5th Street, Kansas City, Kansas 66101.

5. Hand Delivery or Courier. Deliver your comments to Harriett Jones, Environmental Protection Agency, Air Permitting and Compliance Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to RME ID No. R07–OAR–2004–IA–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 website and the Federal regulations.gov website 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 Environmental Protection Agency, Air Permitting and Compliance Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. Interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Harriett Jones at (913) 551–7730, or at *jones.harriett@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards (NAAQS) established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation (this can also include state orders and permits) before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

From 1995 to 1997, there were several exceedances of the 24-hour PM_{10} (*i.e.*, particulate matter with an aerodynamic diameter of equal to or less than ten micrometers) National Ambient Air Quality Standard (NAAQS) at the ambient air monitors located in Davenport, Iowa. The measured exceedances ranged from 160 to 161 (micrograms per cubic meter) µg/m3. The 24-hour standard is 150 µg/m3.

The only significant stationary facility identified as a contributor to the monitored exceedances was Blackhawk Foundry and Machine Company. This company operates a gray and ductile iron foundry and secondary aluminum production facility in the vicinity of the PM_{10} ambient air monitors which recorded the exceedances of the NAAQS.

The Iowa Department of Natural Resources (IDNR), Air Quality Bureau, over the course of several years, developed a control strategy for this company which requires emission controls on numerous sources of emissions at the installation. These requirements were incorporated into an Administrative Consent Order (A.C.O.) for the company. Additionally, permit conditions were developed or revised to reflect the A.C.O. control requirements.

The order and permits establish enforceable emission rates and limitations on daily and annual process rates (throughput). The order required that certain areas be fenced to preclude public access.

We are approving the A.C.O. No. 03–AQ–51 between the IDNR and Blackhawk Foundry and Machine Company signed by the state on December 4, 2003. We are also approving the construction permits related to the A.C.O.

Air quality modeling results demonstrate that the control measures contained in the A.C.O. and permits will ensure attainment and maintenance of the PM_{10} NAAQS. Additional information concerning the state submittal is contained in the technical support document for this action which is available from the EPA contact identified above.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are approving as a revision to the Iowa SIP, the A.C.O. for Blackhawk Foundry and Machine Company in Davenport, Iowa. We are also approving the related construction permits for this company. We are processing this action as a final action because we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

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 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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 CAA. 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 CAA. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 9, 2004. 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, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 3, 2004.

James B. Gulliford,

Regional Administrator, Region 7.

■ 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 Q—Iowa

■ 2. In § 52.820, paragraph (d) is amended by adding entries at the end of the table for Blackhawk Foundry and Machine Company in Davenport, Iowa, to read as follows:

§ 52.820 Identification of plan.

* * * * *

(d) EPA-approved State source-specific orders/permits

EPA-APPROVED IOWA SOURCE-SPECIFIC ORDERS/PERMITS

Name of source	Order/permit No.	State effective date	EPA approval date	Comments
*	*	*	*	*
Blackhawk Foundry and Machine Company.	A.C.O. 03–AQ–51	12/4/2003	6/10/2004 [FR page citation].	Together with the permits listed below this order comprises the PM_{10} control strategy for Davenport, Iowa.
Blackhawk Foundry and Machine Company.	Permit No. 02–A–116 (Cold Box Core Machine).	8/19/02	6/10/2004 [FR page citation].	Provisions of the permit that relate to pollutants other than PM_{10} are not approved by EPA as part of this SIP.
Blackhawk Foundry and Machine Company.	Permit No. 02–A–290 (Wheelabrator #2 and Casting Sorting).	8/19/02	6/10/2004 [FR page citation].	Provisions of the permit that relate to pollutants other than PM_{10} are not approved by EPA as part of this SIP.
Blackhawk Foundry and Machine Company.	Permit No. 02–A–291 (Mold Sand Silo).	8/19/02	6/10/2004 [FR page citation].	Provisions of the permit that relate to pollutants other than PM_{10} are not approved by EPA as part of this SIP.
Blackhawk Foundry and Machine Company.	Permit No. 02–A–292 (Bond Storage).	8/19/02	6/10/2004 [FR page citation].	Provisions of the permit that relate to pollutants other than PM_{10} are not approved by EPA as part of this SIP.
Blackhawk Foundry and Machine Company.	Permit No. 02–A–293 (Induction Furnace and Aluminum Sweat Furnace).	8/19/02	6/10/2004 [FR page citation].	Provisions of the permit that relate to pollutants other than PM_{10} are not approved by EPA as part of this SIP.
Blackhawk Foundry and Machine Company.	Permit No. 77–A–114–S1 (Wheelabrator #1 & Grinding).	8/19/02	6/10/2004 [FR page citation].	Provisions of the permit that relate to pollutants other than PM_{10} are not approved by EPA as part of this SIP.
Blackhawk Foundry and Machine Company.	Permit No. 84–A–055–S1 (Cupola ladle, Pour deck ladle, Sand shakeout, Muller, Return sand #1, Sand cooler, Sand screen, and Return sand #2).	8/19/02	6/10/2004 [FR page citation].	Provisions of the permit that relate to pollutants other than PM_{10} are not approved by EPA as part of this SIP.

EPA-APPROVED IOWA SOURCE-SPECIFIC ORDERS/PERMITS—Continued

Name of source	Order/permit No.	State effective date	EPA approval date	Comments
Blackhawk Foundry and Machine Company.	Permit No. 72–A–060–S5 (Cupola).	8/19/02	6/10/2004 [FR page citation].	Provisions of the permit that relate to pollutants other than PM_{10} are not approved by EPA as part of this SIP.

* * * * *

[FR Doc. 04–13177 Filed 6–9–04; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0174; FRL–7362–9]

Fenpyroximate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of fenpyroximate and its metabolites in or on cotton gin byproducts; cotton undelinted seed; fruit pome group 11; grape; liver and kidney of cattle, goat, horse, and sheep; meat, fat, and meat byproducts (excluding liver and kidney) of cattle, goat, horse, and sheep; and milk. The Interregional Research Project Number 4 and Nichino America, Incorporated requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective June 10, 2004. Objections and requests for hearings, identified by docket ID number OPP–2004–0174, must be received on or before August 9, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under docket ID number OPP–2004–0174. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. Attention: Docket ID Number OPP–2004–0174. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Melody Banks, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–5413; e-mail address: *banks.melody@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food processing (NAICS 3110), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturers (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

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

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

II. Background and Statutory Findings

In the **Federal Register** of July 11, 2003 (68 FR 41345) (FRL–7314–8), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of pesticide petitions (PP 3E6519) by Interregional Research Project Number 4, 681 U.S. Highway No. 1 South, North Brunswick, NJ 08902 and (PP 2F6437) by Nichino America, Incorporated, 4550 New Linden Hill Rd., Wilmington, DE 19808. That notice included a summary of the petition prepared by Nichino America, Inc., the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.566 be amended by establishing tolerances for combined residues of the insecticide fenpyroximate, benzoic acid, 4-[[[(E)-[1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl)methylene]amino]oxy]methyl]-, 1,1-dimethylethyl ester, in or on fruit pome group 11 at 0.3 parts per million (ppm) (PP 3E6519); apple fruit at 0.8 ppm, grape at 0.3 ppm, cotton undelinted seed at 0.1 ppm, cotton gin byproducts at 9.0 ppm, milk at 0.01 ppm, liver and kidney of cattle, goat, hog, horse, and sheep at 0.50 ppm, and meat, fat, and meat byproducts (excluding liver and

kidney) of cattle, goat, hog, horse, and sheep at 0.02, 0.08, and 0.01 ppm, respectively (PP 2F6437).

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for combined residues of fenpyroximate, (E)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl)methylene] amino]oxy]methyl]benzoate and its Z-isomer, (Z)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl)methylene] amino]oxy]methyl]benzoate on fruit pome group 11 at 0.40 ppm, grape at 1.0 ppm, cotton undelinted seed at 0.10 ppm, cotton gin byproducts at 10.0 ppm; for combined residues of fenpyroximate and its metabolites ((E)-4-[(1,3-dimethyl-5-phenoxypyrazol-4-yl)-methyleneaminooxymethyl benzoic acid and (E)-1,1-dimethylethyl-2-hydroxyethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl) methylene]amino]oxy]methyl] benzoate, calculated as the parent compound in milk at 0.015 ppm, meat, fat, and meat byproducts (excluding liver and kidney) of cattle, goat, horse, and sheep at 0.03 ppm; and for combined residues of fenpyroximate and its metabolite ((E)-4-[(1,3-dimethyl-5-phenoxypyrazol-4-yl)-methyleneaminooxymethyl benzoic acid, calculated as the parent compound in kidney and liver of cattle, goat, horse and sheep at 0.25 ppm. EPA's assessment of exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

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

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study type	Results
870.3100	90-Day oral toxicity (rodent)	NOAEL = 1.5 milligrams/kilogram/day (mg/kg/day) (20 ppm) LOAEL = 7.4 mg/kg/day (100 ppm) for rats, based on decreased body weight gains in both sexes.
870.3150	90-Day oral toxicity (non-rodent)	NOAEL < 2 mg/kg/day LOAEL= 2 mg/kg/day, based on slight bradycardia and an increased incidence of diarrhea in both sexes; and reduced food consumption, body weight, body weight gain, emaciation, and torpor in females.
870.3200	21-Day dermal toxicity (rat)	NOAEL < 1,000 mg/kg/day highest dose tested (HDT) LOAEL = 1,000 mg/kg/day (the limit dose and the only dose tested) based on decreased body weight gains in males and females and increased liver weights in the females.
870.3200	21-Day dermal toxicity (rat)	NOAEL = 300 mg/kg/day LOAEL = 1,000 mg/kg/day (limit dose) based on clinical signs in the females, decreased body weights, body weights gains, and food consumption in both sexes, increased absolute liver weights and a possible increase in hepatocellular necrosis in the females.
870.3700	Prenatal developmental toxicity (rodent)	Maternal NOAEL = 5 mg/kg/day LOAEL = 25 mg/kg/day based on marginal decrease in body weight gain and food consumption. Developmental NOAEL = 5 mg/kg/day LOAEL = 25 mg/kg/day based on increased incidence of additional thoracic ribs.
870.3700	Prenatal developmental (rabbit)	Maternal NOAEL = 5 mg/kg/day LOAEL > 5 mg/kg/day Developmental NOAEL = 5 mg/kg/day LOAEL > 5 mg/kg/day

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study type	Results
870.3800	Reproduction and fertility effects (rat)	Parental/Systemic NOAEL = 1.99 mg/kg/day for males 2.44 mg/kg/day for and females LOAEL = 6.59 and 8.60 mg/kg/day for males and females, respectively, based on decreased body weights during the premating period Reproductive NOAEL = 6.59 and 8.60 mg/kg/day for males and females, respectively LOAEL was not established Offspring NOAEL = 2.44 mg/kg/day LOAEL = 8.60 mg/kg/day, based on decreased lactational weight gain in both generations of pups
870.4100	Chronic toxicity (dog)	NOAEL = 5 mg/kg/day LOAEL = 15 mg/kg/day in both sexes, based on diarrhea, bradycardia, decrease cholesterol, body weight gain, and food consumption (males); vomiting, diarrhea, excess salivation, and decrease cholesterol in females.
870.4200	Carcinogenicity (mice)	NOAEL = Males: 2.4 mg/kg/day; Females: 2.5 mg/kg/day LOAEL = Males: 9.5 mg/kg/day; Females: 10 mg/kg/day based on decreased body weights and food consumption. No evidence of carcinogenicity.
870.4300	Combined chronic/carcinogenicity (rat)	NOAEL = Males: 0.97 mg/kg/day; Females: 1.16 mg/kg/day LOAEL = Males: 3.08 mg/kg/day; Females: 3.79 mg/kg/day based on decreased mean body weight gain. No evidence of carcinogenicity.
870.5100	Bacterial reverse mutation	At limit concentration(5,000 µg/plate) inhibition of growth was observed in strains TA98, TA1537, TA1538, and WP2uvrA. The positive controls induced the appropriate responses in the corresponding strains. There was no evidence of induced mutant colonies over background.
870.5300	*In vitro* mammalian cell gene mutation	Not cytotoxic up to 330 µg/ml, the limit of solubility. There was no evidence of mutagenic effect at any dose level with or without metabolic activation. The positive controls induced the appropriate response.
870.5375	*In vitro* mammalian chromosome aberration (helacells)	Tested up to limit of solubility (up to 330 µg/ml). For metaphase analysis, the highest concentration (20 µg/ml) produced moderate toxicity (mitotic index –57% of solvent control). Two lower concentrations produces mitotic indices 25% and 12.5% of the high concentration. Positive controls induced the appropriate response. The results of this study provide sufficient evidence to consider NNI-850 negative in this assay.
870.5395	Mammalian micronucleus (mouse)	There was suggestive evidence that NNI-850 was cytotoxic to the target cell at the highest dose level. The positive control induced significant increases in micronucleated polychromatic erythrocytes (MPCEs). There was no significant increase in the frequency of MPCEs in bone marrow after any NNI-850 treatment time. Fenpyroximate is considered negative in this micronucleus assay.
870.5500	DNA damage/repair *REC* assay	Did not cause any inhibitory zone in either strain at any dose level in the presence or absence of metabolic activation. The negative and positive controls induced the appropriate responses.
870.5550	Unscheduled DNA synthesis (rat primary hepatocyte)	Fenpyroximate was negative. The positive control induced the appropriate response.
870.6100	Acute delayed neurotoxicity (hen)	NOAEL ≥ 5,000 mg/kg/day LOAEL was not observed
870.7485	Metabolism and pharmacokinetics (rat)	The majority of the radioactivity from the single and repeated low doses was excreted in the feces within 24 hours of dosing. In contrast, fecal excretion of the majority of the high dose was delayed until 96–144 hours, and at 24 hours the major portion of the single high dose (53.4–63.9%) remained in the stomach contents. The maximum concentration in blood (at the maximum time (tmax)) was reached at 7–11 hours following a single low dose compared with 29–101 hours after a single-high dose. The low doses were eliminated from blood within 96 hours, whereas the high dose persisted through 168 hours. A total of 20 metabolites, each accounting for <10% of the dose, were characterized from excreta (urine and feces) of low dosed rats. The preponderance of metabolites and low levels of parent in the feces at the 2 mg/kg dose indicates absorption from the digestive tract, extensive metabolism by the liver, and biliary excretion of the low dose (2 mg/kg). The high dose of 400 mg/kg causes as a toxic effect delayed excretion and decreased absorption and metabolism.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study type	Results
870.7600	Dermal penetration (rat)	Mean absorption based on urinary/fecal excretion, blood, carcass, and cage wash ranged from 0 to 5.3% (0.0 to 5.3% low dose, 0.5 to 2.5% mid dose and 0.52 to 1.5% high dose). Dermal absorption factor is 5%

B. Toxicological Endpoints

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

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

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

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for fenpyroximate used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FENPYROXIMATE FOR USE IN HUMAN RISK ASSESSMENT

Exposure scenario	Dose used in risk assessment, UF	FQPA SF* and level of concern for risk assessment	Study and toxicological effects
Acute dietary Females 13–49 years of age	NOAEL = 5.0 mg/kg/day UF = 100 Acute RfD = 0.05 mg/kg/day	FQPA SF = 1X aPAD = acute RfD/FQPA SF = 0.05 mg/kg/day	Prenatal Developmental-Toxicity Study—rat LOAEL = 25 mg/kg/day based on increase in the fetal incidence of additional thoracic ribs.
Chronic dietary All populations	NOAEL= 0.97 mg/kg/day UF = 100 Chronic RfD = 0.01 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD/FQPA SF = 0.01 mg/kg/day	Combined Oral Chronic Toxicity/carcinogenicity Study—rat LOAEL = 3.1 mg/kg/day based on decreased body weights, accompanied by reduced food efficiency and a slight decrease in mean food consumption.

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

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.566) for the combined residues of fenpyroximate and its metabolites, in or on a variety of raw agricultural commodities. Time-limited tolerances have been established for imported wine grapes and imported hops. Risk assessments were conducted by EPA to assess dietary exposures from fenpyroxymate in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. In conducting this acute dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™) which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Tolerance-level residues and 100% crop treated information for all registered and proposed uses of fenpyroximate were used to conduct an unrefined acute dietary-exposure assessment for females 13–49 years old. The acute dietary-exposure estimate for females 13–49

years old represents 5% of the aPAD and is below EPA's level of concern. Since an effect of concern attributable to a single dose in toxicity studies was not identified for the general U.S. population, an acute dietary-exposure assessment was not performed for this population.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment EPA used DEEM-FCID™ which incorporates food consumption data as reported by respondents in CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Tolerance-level residues and 100% crop treated information for all registered and proposed uses of fenpyroximate were used to conduct an unrefined, Tier 1 chronic dietary-exposure assessment for the general U.S. population and various population subgroups. The chronic dietary-exposure estimates range from 4% to 29% of the cPAD. These estimates are below EPA's level of concern The most highly-exposed population subgroup is children 1–2 years old at 29% cPAD.

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

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and Sreening Concentration in Groundwater (SCI-GROW), which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

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

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

Based on the PRZM/EXAMS and SCI-GROW models the EECs of fenpyroximate for acute exposures are estimated to be 1.5 parts per billion (ppb) for surface water and <0.006 ppb for ground water. The EECs for chronic exposures are estimated to be 0.13 ppb for surface water and <0.006 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fenpyroxymate is not registered for use on any sites that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* EPA evaluated the potential for increased susceptibility of infants and children from exposure to fenpyroximate according to the February 2002 OPP 10X guidance document. EPA concluded that there are no concerns or residual uncertainties for prenatal and postnatal toxicity.

3. *Conclusion.* Based on these data, EPA determined that the 10X safety factor to protect infants and children should be removed. The FQPA factor is removed because:

- There are no concerns or residual uncertainties for pre- or postnatal toxicity.
- The toxicological database is complete for the assessment of toxicity and susceptibility following pre- and/or postnatal exposures. No clinical signs of neurotoxicity or neuropathology were observed in the database.
- There are no residual concerns regarding completeness of the exposure database.
- The dietary food exposure assessment is Tier 1, screening level,

which is based on tolerance level residues and assumes 100% of all crops will be treated with fenpyroximate. By using these screening-level assessments, actual exposures/risks will not be underestimated.

- The dietary drinking water assessment utilizes water concentration values generated by models and associated modeling parameters which are designed to provide conservative, health-protective, high-end estimates of water concentrations which will not likely be exceeded.
- There are currently no registered or proposed residential uses of fenpyroximate.

E. Aggregate Risks and Determination of Safety

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

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

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to fenpyroximate will occupy 5% of the aPAD for females 13–49 years old. In addition, there is potential for acute dietary exposure to fenpyroximate and its M-1 and M-3 metabolites in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO FENPYROXIMATE

Population subgroup	aPAD (mg/kg/day)	% aPAD (Food)	Surface water EEC (ppb)	Ground water EEC (ppb)	Acute DWLOC (ppb)
Females 13–49 years old	0.05	5	1.5	< 0.006	1,400

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fenpyroximate from food will utilize 8% of the cPAD for the U.S. population, 18% of the cPAD for all infants (< 1 year old) and 29% of the cPAD for children 1–2 years old. In addition, there is potential for chronic dietary exposure to fenpyroximate in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO FENPYROXIMATE

Population subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface water EEC (ppb)	Ground water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.01	8	0.13	< 0.006	320
All infants (< 1 year old)	0.01	18	0.13	< 0.006	82
Children 1–2 years old	0.01	29	0.13	< 0.006	71
Children 3–5 years old	0.01	21	0.13	< 0.006	79
Children 6–12 years old	0.01	10	0.13	< 0.006	90
Youth 13–19 years old	0.01	4	0.13	< 0.006	290
Adults 20–49 years old	0.01	6	0.13	< 0.006	330
Females 13–49 years old	0.01	6	0.13	< 0.006	280
Adults 50+ years old	0.01	5	0.13	< 0.006	330

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

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

5. *Aggregate cancer risk for U.S. population.* Fenpyroximate is classified as not likely to be carcinogenic to humans; therefore, an aggregate cancer risk assessment was not performed.

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

IV. Other Considerations

International Residue Limits

Codex maximum residue levels (MRLs) are established for residues of fenpyroximate per se in/on grapes, apple and cattle commodities. There are no established or proposed tolerances for fenpyroximate in or on grapes in Canada and Mexico. Harmonization with the Codex MRLs is not possible as the U.S. tolerance expressions include additional metabolites/isomers.

V. Conclusion

Therefore, tolerances are established for combined residues of fenpyroximate, (E)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl)methylene] amino]oxy]methyl]benzoate and its Z-isomer, (Z)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl)methylene] amino]oxy]methyl]benzoate on fruit pome group at 0.40 ppm, grape at 1.0 ppm, cotton undelinted seed at 0.10 ppm, cotton gin byproducts at 10.0 ppm; for combined residues of fenpyroximate and its metabolites ((E)-4-[(1,3-dimethyl-5-phenoxypyrazol-4-yl)-methyleneaminooxymethyl] benzoic acid and (E)-1,1-dimethylethyl-2-hydroxyethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl)methylene]amino]oxy]methyl] benzoate, calculated as the parent compound in milk at 0.015 ppm, meat, fat, and meat byproducts (excluding liver and kidney) of cattle, goat, horse, and sheep at 0.03 ppm; and for combined residues of fenpyroximate and its metabolite ((E)-4-[(1,3-dimethyl-5-phenoxypyrazol-4-yl)-methyleneaminooxymethyl] benzoic acid, calculated as the parent compound in kidney and liver of cattle, goat, horse, and sheep at 0.25 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0174 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 9, 2004.

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

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

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0174, to: Public Information and Records Integrity Branch, Information Resources

and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov/*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 28, 2004.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.566 is amended by designating the text of paragraph (a) as paragraph (a)(1) and by adding paragraphs (a)(2), (a)(3), and (a)(4) to read as follows:

§ 180.566 Fenpyroximate; tolerances for residues.

(a) * * *

(2) Tolerances are established for residues of the insecticide fenpyroximate, (E)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl -5-phenoxy-1H-

pyrazol-4-yl) methylene] amino]oxy]methyl] benzoate and its Z-isomer, (Z)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5- phenoxy-1H- pyrazol-4-yl)methylene] amino]oxy] methyl]benzoate in or on the following commodities:

Commodity	Parts per million
Cotton, gin byproducts	10
Cotton undelinted seed	0.10
Fruit pome group 11	0.40
Grape	1.0
Hop[1]	10

[1]There are no U.S. registrations on hop.

(3) Tolerances are established for residues of the insecticide fenpyroximate, (E)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5 -phenoxy-1H-pyrazol-4-yl) methylene] amino]oxy]methyl] benzoate and its metabolites, (E)-4- [(1,3-dimethyl-5-phenoxypyrazol-4-yl)-methylene aminooxymethyl]benzoic acid and (E)-1,1-dimethylethyl-2-hydroxyethyl 4-[[[[(1,3-dimethyl -5-phenoxy-1H-pyrazol-4-yl) methylene]amino]oxy]methyl] benzoate, calculated as the parent compound in or on the following commodities:

Commodity	Parts per million
Cattle, fat	0.03
Cattle, meat	0.03
Cattle, meat byproduct (excluding liver and kidney)	0.03
Goat, fat	0.03
Goat, meat	0.03
Goat, meat byproducts (excluding liver and kidney	0.03
Horse, fat	0.03
Horse, meat	0.03
Horse, meat byproducts (excluding liver and kidney)	0.03
Milk	0.015
Sheep, fat	0.03
Sheep, meat	0.03
Sheep, meat byproducts (excluding liver and kidney	0.03

(4) Tolerances are established for residues of the insecticide fenpyroximate, (E)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl) methylene]amino]oxy]methyl] benzoate and its metabolite, (E)-4-[(1,3-dimethyl-5-phenoxypyrazol-4-yl)-methylene aminooxymethyl]benzoic acid, calculated as the parent compound in the following commodities:

Commodity	Parts per million
Cattle, kidney	0.25
Cattle, liver	0.25
Goat, kidney	0.25
Goat, liver	0.25
Horse, kidney	0.25
Horse, liver	0.25
Sheep, kidney	0.25
Sheep, liver	0.25

* * * * *

[FR Doc. 04–13146 Filed 6–9–04; 8:45 am]
BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 10, 12, and 15

[USCG–1999–5610]

RIN 1625–AA24 (Formerly RIN 2115–AF83)

Training and Qualifications for Personnel on Passenger Ships

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This final rule adopts without changes the interim rule published on October 30, 2002, which established requirements of training and certification for masters, certain licensed officers, and certain crewmembers on most vessels inspected under subchapter H, T, or K. It is intended to help reduce human error, improve the ability of crewmembers to assist passengers during emergencies, and promote safety.

DATES: This final rule is effective July 12, 2004.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1999–5610 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call Mark Gould, Project Manager, Commandant (G–MSO–1), Coast Guard, telephone (202) 267–6890. If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone (202) 366–0271.

SUPPLEMENTARY INFORMATION:

Interim Rule

On October 30, 2002, we published an interim rule with request for comments (67 FR 66063; effective January 28, 2003). The interim rule established training and certification requirements for masters, certain licensed officers, and certain crewmembers on ships inspected under 46 CFR subchapters H, T, and K. It did not apply to roll-on/roll-off passenger ships carrying more than 12 passengers on international voyages, or to passenger ships on domestic voyages. The interim rule implemented Regulation V/3 of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1997.

We issued an interim rule instead of a final rule in order to give the public time to comment on a change we made in 46 CFR 12.35–5 subsequent to publication of the Notice of Proposed Rulemaking (NPRM; 65 FR 37507, June 15, 2000). That section provides general requirements for unlicensed persons who serve on passenger ships and perform duties that involve safety or care for passengers. The public comment period for the interim rule ended December 20, 2002.

We received no comments in response to our interim rule and request for comments. Because no reason to change the rule has been brought to our attention, we now announce our decision to finalize the interim rule. Pursuant to the Administrative Procedure Act, 30 days must elapse before the final rule takes effect, and during that period the interim rule will continue to be in effect.

Regulatory Evaluation

The analyses we conducted in connection with the interim rule all remain unchanged, and the Analysis Documentation prepared for the interim rule remains in the docket. 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 (OMB) has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). Please consult the Regulatory Evaluation provided in the interim rule for further information.

Collection of Information

As described in the NPRM and in the Analysis Documentation, the interim rule contained three added

requirements that call for collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). We received no comments on the collection of information in our request for comments in the NPRM.

As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to OMB for its review of the collection of information. OMB has approved the collection. The section numbers are §§ 10.1105, 12.35–5, and 15.1103, and the corresponding approval number from OMB is OMB Control Number 1625–0079 (formerly OMB Control Number 2115–0624), which expires on February 28, 2006.

List of Subjects

46 CFR Part 10

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

PART 10—LICENSING OF MARITIME PERSONNEL

PART 12—CERTIFICATION OF SEAMEN

PART 15—MANNING REQUIREMENTS

■ Accordingly, the interim rule amending 46 CFR parts 10, 12, and 15 which was published at 67 FR 66063 on October 30, 2002, is adopted as a final rule without change.

Dated: June 2, 2004.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 04–13174 Filed 6–9–04; 8:45 am]

BILLING CODE 4910–15–P

Proposed Rules

Federal Register
Vol. 69, No. 112
Thursday, June 10, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. 2004N–0018]

Human Subject Protection; Foreign Clinical Studies Not Conducted Under an Investigational New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise its regulations on its acceptance of foreign clinical studies not conducted under an investigational new drug application (IND) as support for an IND or marketing application for a drug or biological product. We are proposing to replace the requirement that such studies be conducted in accordance with ethical principles stated in the Declaration of Helsinki (Declaration) with a requirement that the studies be conducted in accordance with good clinical practice (GCP), including review and approval by an independent ethics committee (IEC). The proposed rule is intended to update the standards for the acceptance of nonIND foreign studies and to help ensure the quality and integrity of data obtained from such studies.

DATES: Submit written or electronic comments by September 8, 2004. Submit written comments on the information collection requirements by July 12, 2004. See section VIII of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: You may submit comments, identified by Docket No. 2004N–0018, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.
- E-mail: *fdadockets@oc.fda.gov*. Include Docket No. 2004N–0018 in the subject line of your e-mail message.
- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No. 2004N–0018 or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/dockets/ecomments*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see section IV of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/dockets/ecomments* and/or the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

See section VI of this document for the address to which comments on the information collection requirements of this rule may be sent.

FOR FURTHER INFORMATION CONTACT: David A. Lepay, Office for Science and Health Coordination, Good Clinical Practice Programs (HF–34), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3340.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Current Regulations on Acceptance of Foreign Studies Not Conducted Under an IND

FDA regulations permit the acceptance of foreign clinical studies in support of an IND, a new drug application (NDA), or a biologics license application (BLA) if certain conditions are met. Foreign studies performed under an IND must meet the same requirements of part 312 (21 CFR part 312) that apply to U.S. studies conducted under an IND. Under § 312.120(a), we generally accept for review foreign clinical studies not conducted under an IND provided they are well-designed, well-conducted, performed by qualified investigators, and conducted in accordance with ethical principles acceptable to the world community.

With respect to such ethical principles, § 312.120(c)(1) states that for a foreign clinical study not conducted under an IND to be used to support an IND or marketing application, the study must have been conducted in accordance with the ethical principles stated in the Declaration of Helsinki or the laws and regulations of the country in which the research was conducted, whichever represents the greater protection of the individual. Section 312.120(c)(4) sets forth the text of the 1989 version of the Declaration.

We first incorporated the Declaration (1964 version) into our regulations on nonIND foreign studies in 1975 (40 FR 16053, April 9, 1975) in what was then § 312.20. We amended § 312.20 in 1981 to replace the 1964 Declaration with the 1975 version (46 FR 8942, January 27, 1981). In 1991, we replaced the 1975 Declaration with the 1989 version (56 FR 22112, May 14, 1991) in what had been recodified as § 312.120.

B. Reasons for Proposing To Revise the Regulations

We believe that a revision of the requirements for the acceptance of foreign clinical studies not conducted under an IND is again needed for several reasons.

1. Updating Standards

First, standards for protecting human subjects have evolved considerably over the past decade. For example, since we last amended § 312.120 in 1991, several notable documents identifying ethical and other clinical practice-related principles have been published. These include the following documents:

- The 1996 and 2000 revisions of the Declaration by the World Medical Assembly;
- "Ethical and Policy Issues in International Research: Clinical Trials in Developing Countries," published by the National Bioethics Advisory Commission;
- "International Ethical Guidelines for Biomedical Research Involving Human Subjects," prepared by the Council for International Organizations of Medical

Sciences in collaboration with the World Health Organization; and

• Several documents issued by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH).

The ICH documents are notable because they define and incorporate the standard of GCP. GCP principles are addressed comprehensively in an ICH document entitled "Good Clinical Practice: Consolidated Guideline," which we adopted for use as guidance for industry in 1997 (62 FR 25692, May 9, 1997) (Good Clinical Practice guidance). The Good Clinical Practice guidance defines GCP as a "standard for the design, conduct, performance, monitoring, auditing, recording, analyses, and reporting of clinical trials that provides assurance that the data and reported results are credible and accurate, and that the rights, integrity, and confidentiality of trial subjects are protected." As so defined, GCP shares many important ethical principles with the 1989 Declaration, such as review by an IEC, the need for freely-given informed consent, conduct of clinical trials only by qualified individuals, and a recognition that the rights, safety, and well-being of trial subjects take precedence over the interests of science and society. The GCP concept, however, provides more detail and enumeration of specific responsibilities of various parties, including monitoring of the trial and reporting adverse events. In addition to the Good Clinical Practice guidance, GCP principles are incorporated in other FDA guidances adopted from the ICH, including "Structure and Content of Clinical Study Reports" (July 1996) (recommending that any study submitted to us in support of an application provide an assurance that the study complied with GCP).[1]

Many of the principles underlying GCP have already been incorporated in FDA's regulations, including parts 50, 56, 312, 314, and 601 (21 CFR parts 50, 56, 314, and 601). For example, the regulations in subpart B of part 50 contain the requirements for obtaining the informed consent of human subjects in clinical investigations. In addition, subpart D of part 312 describes the responsibilities of sponsors and investigators regarding IND studies, including conformance to parts 50 and 56 (on the use of institutional review boards (IRBs)).

We are now proposing to revise § 312.120 to incorporate GCP into the requirements for acceptance of nonIND foreign studies.

The GCP standard in proposed § 312.120 is consistent with the ICH standard developed through an international collaborative process. We believe that the proposed standard is sufficiently flexible to accommodate differences in how countries regulate the conduct of clinical research and obtain informed consent, while helping to ensure adequate and comparable human subject protection.

2. Ensuring Quality of Data

Another reason for revising § 312.120, related to the adoption of GCP, is to help provide greater assurance of the quality of the data obtained from nonIND foreign studies. It has become increasingly recognized that the development of data that are scientifically sound is a critical responsibility of investigators and sponsors and is part of a responsible relationship between these entities and study subjects. The 1989 Declaration endorses this view but does not address in detail how to ensure study quality. The 1989 Declaration notes that it is unethical to enroll human subjects in poorly designed or conducted clinical trials because subjects may be exposed to risks without the opportunity for potential benefit, but the Declaration does not provide guidance on how to ensure proper conduct of trials. The proposed revisions to § 312.120 seek to help ensure data quality and integrity in several ways including the following: (1) Specifying that GCP includes providing assurance that study data and reported results are credible and accurate and (2) requiring that supporting information on a nonIND foreign clinical study include a description of how the sponsor monitored the trial and ensured that the study was carried out consistent with the study protocol.

The informed consent provisions embodied in GCP also may contribute to the integrity of data obtained in clinical studies. The informed consent process enables each subject to receive high-quality information about the consequences of participating in the clinical trial. The process also provides an opportunity for the subject and investigator to discuss important information about the subject's condition, potential adverse events, and other factors (such as use of concurrent therapy, illegal drug use, or alcohol abuse) that could confound the study results if they remained undisclosed.

3. Eliminating Reference to the Declaration

Finally, we also are issuing this proposed rule to eliminate the reference in § 312.120 to the Declaration. The Declaration is a document that is subject to change independent of FDA authority. As a result, it could be modified to contain provisions that are inconsistent with U.S. laws and regulations. Although revisions to the Declaration could not supersede U.S. laws and regulations, such changes could create the potential for confusion about the requirements for nonIND foreign studies.

C. Consultation with FDA

We are confident that the requirements in proposed § 312.120 will facilitate our acceptance for review of data obtained from foreign studies in support of INDs and U.S. marketing applications. As always, we encourage applicants to meet with responsible officials in FDA's Center for Drug Evaluation and Research (CDER) or FDA's Center for Biologics Evaluation and Research (CBER) as early as possible in the development of a drug or biological product to determine if a particular foreign clinical study appears to meet the standards for acceptance for review.

II. Description of the Proposed Rule

A. Definitions

We propose to add under § 312.3, under definitions and interpretations, a definition for IEC. We propose to define an IEC as a "review panel that is responsible for ensuring the protection of the rights, safety, and well-being of human subjects involved in a clinical investigation and is adequately constituted to provide assurance of that protection". An adequately constituted IEC includes a reasonable number of members with the qualifications and experience to perform the IEC's functions (see, e.g., section 3.2.1 of the Good Clinical Practice guidance). The definition of independent ethics committee also specifies that an IRB, as defined in § 56.102(g) and subject to the requirements of part 56, is one type of IEC.

B. Requirements for Acceptance as Support for an IND or Marketing Application

Current § 312.120(a) states that the provision describes the criteria for acceptance by FDA of foreign clinical studies not conducted under an IND. It

[1] Sponsors seeking additional guidance on GCP generally should consult the Good Clinical Practice guidance. Additional relevant guidance may be found in sections of other FDA guidances adopted from the ICH, including "E11 Clinical Investigation of Medicinal Products in the Pediatric Population" (December 2000) and "E10 Choice of Control Group and Related Issues in Clinical Trials" (May 2001). These guidances are available electronically at *http://www.fda.gov/cder/guidance/index.htm.*

states that, in general, FDA accepts such studies provided they are well-designed, well-conducted, performed by qualified investigators, and conducted in accordance with ethical principles acceptable to the world community. Section 312.120(a) further states that studies meeting these criteria may be utilized to support clinical investigations in the United States and/or marketing approval. Finally, § 312.120(a) states that marketing approval of a new drug based solely on foreign clinical data is governed by § 314.106.

Current § 312.120(c)(1) states that foreign clinical research is required to have been conducted in accordance with the ethical principles stated in the Declaration (which is set forth in current § 312.120(c)(4)) or the laws and regulations of the country in which the research was conducted, whichever represents the greater protection of the individual. Section 312.120(c)(2) states that for each foreign clinical study submitted under § 312.120, the sponsor must explain how the research conformed to the ethical principles in the Declaration or the foreign country's standards, whichever were used. Under § 312.120(c)(3), when the research has been approved by an independent review committee, the sponsor must submit to FDA documentation of such review and approval, including the names and qualifications of the members of the committee. A "review committee" means a committee composed of scientists and, where practicable, individuals who are otherwise qualified (e.g., other health professionals or laymen). Section 312.120(c)(3) further states that the investigator may not vote on any aspect of the review of his or her protocol by a review committee.

We are proposing to revise the conditions under which we will accept, as support for an IND or marketing application for a drug or biologic, a foreign clinical study not conducted under an IND, principally by specifically requiring conformance with GCP, including review and approval by an IEC, and by deleting the reference to the Declaration. Under proposed § 312.120(a)(1), we would accept as support for an IND, NDA, or BLA a well-designed and well-conducted foreign clinical study not conducted under an IND if two conditions are met. The first condition, stated in proposed § 312.120(a)(1)(i), is that the study was conducted in accordance with GCP. For purposes of this section, GCP would be defined as a standard for the design, conduct, performance, monitoring, auditing, recording, analysis, and reporting of clinical trials in a way that provides assurance that the data and reported results are credible and accurate and that the rights, safety, and well-being of trial subjects are protected. Proposed § 312.120(a)(1)(i) states that GCP includes review and approval (or provision of a favorable opinion) by an IEC[2] before initiating a study, continuing review of an ongoing study by an IEC, and obtaining and documenting the freely given informed consent of a subject (or the subject's legally authorized representative if the subject is unable to provide informed consent) before initiating a study. Proposed § 312.120(a)(1)(i) further states that GCP does not require informed consent in life-threatening situations when the IEC reviewing the study finds that the conditions present are consistent with those described in § 50.23 or § 50.24(a) of this chapter (concerning exemptions from informed consent requirements in life-threatening situations), or when the measures described in the study protocol or elsewhere will protect the rights, safety, and well-being of subjects and ensure compliance with applicable regulatory requirements. This provision would be consistent with the Good Clinical Practice guidance, which recommends that a legally authorized representative provide informed consent or that the requirement of informed consent be waived under such circumstances.

Proposed § 312.120(a)(1)(ii) states the second condition for our acceptance of a nonIND foreign study as support for an IND, NDA, or BLA. We must be able to validate the data from the study through an onsite inspection if the agency deems it necessary. The ability to inspect records relating to a foreign study is essential to our ability to resolve any uncertainties about whether the study was conducted in accordance with GCP.

Proposed § 312.120(a)(2) states that although we will not accept as support for an IND, NDA, or BLA a study that does not meet the conditions of § 312.120(a)(1), we will examine data from such a study. We remind sponsors and applicants that they must submit all studies and other information required under applicable FDA regulations for drugs and biologics, including §§ 314.50, 314.80, 314.81, 600.80 (21 CFR 600.80), and 601.2. For example, as part of our review of an NDA, we consider all relevant data bearing on the safe use of the proposed drug product, including data obtained in any foreign clinical studies not conducted under an IND—even data from studies that are not carried out in accordance with GCP.

Proposed § 312.120(a)(3) reiterates the statement in current § 312.120(a) that marketing approval of a new drug based solely on foreign clinical data is governed by § 314.106.

C. Requirements for Supporting Information

Under current § 312.120(b)(1) through (b)(5), a sponsor who wishes to rely on a foreign clinical study to support an IND or to support an application for marketing approval must submit to FDA the following information:

- A description of the investigator's qualifications;
- A description of the research facilities;
- A detailed summary of the protocol and results of the study, and, if FDA requests, case records maintained by the investigator or additional background data such as hospital or other institutional records;
- A description of the drug substance and drug product used in the study, including a description of components, formulation, specifications, and bioavailability of the specific drug product used in the clinical study, if available; and
- If the study is intended to support the effectiveness of a drug product, information showing that the study is adequate and well controlled under § 314.126.

Proposed § 312.120(b) would retain the requirements listed in the previous paragraphs and would add certain requirements concerning IECs and other aspects of GCP. Under proposed § 312.120(b), a sponsor or applicant who submits data from a foreign clinical study not conducted under an IND as support for IND, NDA, or BLA must submit to FDA, in addition to information required elsewhere in parts 312, 314, or 601, respectively, a description of the actions the sponsor or applicant took to ensure that the research conformed to GCP as described in § 312.120(a)(1)(i). Under proposed § 312.120(b)(1) through (b)(11), the description would include the following information:

- The investigator's qualifications;
- A description of the research facilities;
- A detailed summary of the protocol and results of the study, and, at FDA's request, case records maintained by the investigator or additional background data such as hospital or other institutional records;

[2] See, e.g., section 1.27 of the Good Clinical Practice guidance, stating that an IEC either approves or provides a favorable opinion on matters such as trial protocols, the suitability of investigators, and the methods and materials used in obtaining and documenting informed consent.

• A description of the drug substance and drug product used in the study, including a description of the components, formulation, specifications, and, if available, bioavailability of the specific drug product used in the clinical study;

• If the study is intended to support the effectiveness of a drug product, information showing that the study is adequate and well-controlled under § 314.126;

• The names and qualifications of the members of the IEC that reviewed the study;

• A summary of the IEC's decision to approve or modify and approve the study, or to provide a favorable opinion;

• A description of how informed consent was obtained;

• A description of what incentives, if any, were provided to subjects to participate in the study;

• A description of how the sponsor(s) monitored the study and ensured that the study was carried out consistent with the study protocol; and

• A description of how investigators were trained to comply with GCP (as described in § 312.120(a)(1)(i)) and to conduct the study in accordance with the study protocol, and copies of written commitments, if any, by investigators to comply with GCP and the protocol.

We would encourage, but not require, sponsors to obtain written commitments by investigators to comply with GCP and the study protocol. If such commitments were obtained, the proposed rule would require that copies of the commitments be included in the supporting information for a nonIND foreign study.

We believe that this proposed documentation, combined with an onsite inspection, if necessary, would provide us with the ability to determine whether a particular foreign clinical study had been conducted in accordance with GCP.

D. Requirements for Waiver Requests

Under proposed § 312.120(c)(1), a sponsor or applicant may submit a request to FDA to waive any applicable requirements under proposed § 312.120(a)(1) and (b). A waiver request would be submitted in an IND or in an information amendment to an IND, or in an application or in an amendment or supplement to an application submitted under part 314 or 601. Proposed § 312.120(c)(1) further states that under proposed § 312.120(c)(1)(i) through (c)(1)(iii), the waiver request must contain at least one of the following:

• An explanation why the sponsor's or applicant's compliance with the requirement is unnecessary or cannot be achieved;

• A description of an alternative submission or course of action that satisfies the purpose of the requirement; or

• Other information justifying a waiver.

Under proposed § 312.120(c)(2), FDA may grant a waiver if it finds that doing so would be in the interest of the public health. For example, we may determine that a waiver is in the interest of the public health if alternative procedures used by the sponsor or applicant satisfy the purpose of these regulations.

III. Legal Authority

We are proposing to issue this rule under the authority of the provisions of the Federal Food, Drug, and Cosmetic Act (the act) that apply to drugs (21 U.S.C. 201 *et seq.*) and section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262). These laws authorize us to issue regulations to ensure the following: (1) Data that we review are of adequate quality to enable us to make appropriate regulatory decisions; (2) clinical investigators involved in developing data submitted to us are qualified to conduct such clinical investigations and are otherwise reliable; and (3) clinical investigations generating data submitted in support of applications are well designed and well conducted in a manner supporting the reliability of study results.

Section 505 of the act (21 U.S.C. 355) requires us to weigh evidence of effectiveness and safety to determine whether the evidence supports drug approval, whether data are adequate to permit a clinical investigation to proceed under the IND regulations, and/or whether a product is appropriately labeled. Section 505(d) of the act provides that we may approve an NDA only after finding substantial evidence as follows:

> "[c]onsisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could fairly and responsibly be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof."

When we review INDs, section 505(i) of the act requires us to determine whether the reports submitted in support of an application are "adequate to justify the proposed clinical testing" and whether the sponsor has submitted "adequate reports of basic information * * * necessary to assess the safety of the drug for use in clinical investigation."

The act also requires us to determine whether adequate and reliable studies are sufficient to support a drug's labeling. Under section 505(d)(5) of the act, evidence from clinical investigations of a drug's safety and effectiveness must support the conditions of use prescribed, recommended, or suggested in the labeling thereof.

Section 701(a) of the act (21 U.S.C. 371(a)) vests in the Secretary of the Department of Health and Human Services (the Secretary) (who has delegated it to FDA) the authority to issue regulations for the efficient enforcement of the act.

Section 351(a)(2)(B)(i)(I) of the PHS Act authorizes us (by delegation from the Secretary) to approve a BLA only if the applicant demonstrates that the product is safe, pure, and potent. Section 351(a)(2)(A) of the PHS Act authorizes us (by delegation from the Secretary) to establish, by regulation, requirements for the approval, suspension, and revocation of biologics licenses.

These statutory provisions authorize us to issue regulations describing when we may consider foreign clinical trials not conducted under the IND regulations as reliable evidence supporting an IND, NDA, or BLA.

IV. Analysis of Economic Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the proposed rule is not an economically significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the estimated impact of the proposed rule is not substantial and, in any event, clinical investigators generally follow GCP already, the

agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is $110,000,000. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

A. Objectives of the Proposed Rule

The objectives of the proposed rule are to ensure the quality and integrity of foreign clinical data supporting FDA decisionmaking on product applications and to help ensure the protection of human subjects participating in foreign clinical studies. High-quality data from foreign studies may be critical to the agency's decisionmaking on applications and product labeling. By increasing our knowledge of a drug, including its effect in more diverse study populations, such data will help us better perform these review functions.

By incorporating the monitoring and reporting responsibilities under GCP, the proposed rule also would reduce the risk to subjects who take part in foreign clinical trials of investigational drug and biological products. Most investigations of new therapeutic products carry potential risks for trial subjects due to the investigational nature of the products. However, if trials are well-designed and carefully monitored, these risks can be minimized.

B. Background on Current Situation Regarding Foreign Studies

The current process for marketing a new drug product or amending the conditions of use of an existing product requires us to review and approve the results of clinical investigations included in NDAs and BLAs. These applications contain the results of clinical investigations that characterize the therapeutic benefit of the new product and assess its risks. FDA reviews the submitted data and decides whether there is sufficient evidence of safety and effectiveness to grant approval.

Clinical data included in a marketing application usually are collected under an IND, to which protocols of the proposed clinical investigations are submitted for review. An IND is needed to lawfully administer an unapproved pharmaceutical or biological product to humans in the United States. However, not all clinical trials used to support an NDA or BLA take place in the United States. For a variety of reasons (e.g., foreign developer or manufacturer), there has been an increase in the number of foreign clinical investigations of potential new drug products. According to an analysis by the Department of Health and Human Services' Office of the Inspector General (OIG) (Ref. 1), the number of foreign clinical investigators that conducted drug research under INDs increased from 41 in 1980 to 271 in 1990, and 4,458 in 1999. Although trials not conducted in the United States are not required to be conducted under an IND, many sponsors submit an IND before initiating a foreign trial. FDA has always required and reviewed the safety results of nonIND foreign clinical trials of drug products considered for marketing approval in the United States.

According to CDER and CBER estimates, approximately 650 clinical investigations of investigational products intended for commercial marketing were initiated each year over the last 5 years. In addition, commercial sponsors submitted approximately 2,600 new protocols each year for new clinical trials under existing INDs. Therefore, in a typical recent year, we received approximately 3,250 new investigations (initial INDs and new protocols combined) for commercial development of new therapies.

A CDER study of the INDs submitted to support development of new molecular entities (NMEs) approved between 1995 and 1999 found that up to 35 percent of the trials that were conducted under an IND included foreign sites. Thus, in an average year, we estimate that approximately 1,140 foreign clinical trials (3,250 x 0.35) are conducted under IND review and oversight. However, this estimate does not include foreign clinical trials that were not subject to IND review. The CDER analysis indicates that as many as 15 percent of the trials submitted in NME marketing applications were not conducted under an IND. If this proportion holds with respect to all clinical trials, we estimate that approximately 3,825 clinical trials are conducted annually to develop data for submission to FDA in support of a marketing application (assuming the 3,250 clinical trials conducted annually under an IND constitute only 85 percent of all trials conducted to develop data for such an application). We can then estimate that 575 nonIND foreign trials are conducted annually for eventual submission to FDA as part of a research or marketing application (3,825 - 3,250 = 575).

We also estimated the applications supported by data from foreign trials not conducted under an IND. According to CDER data, each marketing application may cite an average of approximately five investigations that provide important information relative to approval decisions. Lacking data on INDs, we will assume the same ratio of investigations to applications is true for trials that support an IND. Based on these estimates, we estimate that the 575 foreign trials conducted annually are used to support 115 research or marketing applications.

C. The Proposed Rule

We are proposing that all nonIND foreign clinical research submitted as support for an IND or marketing application be conducted under GCP as defined in the proposed rule. Currently, we accept as support for an IND or marketing application foreign clinical studies not conducted under an IND provided they are well-designed, well-conducted, performed by qualified investigators, and conducted in accordance with ethical principles. Sponsors of nonIND investigations used in support of INDs or marketing applications must either follow the principles of the 1989 Declaration for patient protection or national laws that provide even greater protection. The proposed regulations on acceptance of nonIND foreign studies are expected to provide greater assurance that such clinical investigations will provide results that are of satisfactory quality while ensuring that the investigations are conducted with subjects' informed consent and do not place subjects unduly at risk. We believe that this change is necessary to ensure that foreign clinical investigations that are intended to be used as support for an IND or U.S. marketing application are well-designed and well-conducted and provide sufficient protection to subjects. Consequently, under the proposed rule, we would not accept any nonIND foreign clinical results as support for sponsor claims of efficacy unless the trials were conducted in conformance with GCP. The results of all clinical trials must in any case be submitted with new product applications to evaluate the safety of the new therapy.

D. Costs of the Proposed Rule

We interviewed seven pharmaceutical manufacturers that had submitted results from nonIND foreign clinical studies to us during 1998 through 2001. These firms indicated that they currently conduct all research, including investigations not conducted under an IND, in accordance with ICH standards for GCP. However, the proposed regulation would require that an applicant submit a description of the actions taken to ensure that the research conformed to GCP. Several items included in GCP (as defined in the proposed regulation) are not specifically required to be documented and submitted in a marketing application for results to be accepted by FDA. In particular, documentation that includes attestations by investigators and evidence that study protocols have been reviewed and approved by an IEC is not always included in INDs and marketing applications. For studies under an IND, there are specific regulatory requirements for obtaining informed consent, ensuring IRB review, and carrying out appropriate monitoring. The absence of these requirements for nonIND studies makes it difficult for us to determine the adequacy of preinitiation review of study protocols. The proposed rule would help ensure that these documents are available for our inspection at research sites and that information on IEC review is included in INDs and marketing applications.

The amount and detail of the necessary documentation would vary according to the size and complexity of the proposed clinical trial. The general position among the seven sponsors we interviewed was that providing a description of their compliance with GCP, including related documentation and recordkeeping, would take between 18 and 32 additional hours for each nonIND clinical trial.

We obtained information on typical nonproduction, salaried labor costs for the pharmaceutical industry from the Bureau of Labor Statistics (North American Industrial Classification System (NAICS) 325412). Including wages and benefits, the average cost for these labor resources is slightly more than $30 per hour. As previously noted in this document, we estimate that approximately 575 nonIND foreign commercial clinical trials are conducted annually. Using the high estimate of the additional hours of documentation needed for each nonIND clinical trial, this would result in a total annual cost of about $552,000 to the sponsoring firms (32 hours x 575 nonIND foreign trials x $30 = $552,000).

E. Benefits of the Proposed Rule

We believe that improvement in the conduct of clinical trials will improve the quality of clinical data submitted, allowing these data to provide support for marketing applications. We further believe that the proposed rule would decrease the likelihood that subjects in foreign clinical trials will be placed unnecessarily at risk.

We have not quantified the benefit of improvements in the data being included with marketing applications resulting from the use of GCP in lieu of current requirements. However, if these data were determined to be adequate to support an application, beneficial therapies could become available earlier. Similarly, we expect that the greater integrity of data from nonIND studies would result in an additional benefit, also difficult to quantify, due to greater public confidence in the scientific basis for FDA decisions.

F. Small Business Impact

The proposed rule is not expected to have a significant impact on a substantial number of small entities. Nevertheless, we have prepared a voluntary regulatory flexibility analysis.

1. Nature of the Impact

As previously discussed in this document, we estimate that the proposed rule would increase total costs to sponsors of foreign clinical studies by approximately $552,000 per year. The increased costs would be due to greater costs of review and documentation of the approval of study protocols by IECs. The resources needed to comply with this proposal are not specialized. Assuming, for purposes of this calculation, that each of the approximately 115 marketing or research applications submitted annually (in which are reported approximately 575 nonIND foreign clinical studies) is submitted by a different sponsor, each sponsor would incur costs of approximately $4,800 per year to comply with this proposal ($552,000 ÷ 115 = $4,800).

2. The Affected Industry

The Census of Manufacturers defines the pharmaceutical preparations industry in NAICS 325412. This industry consists of 712 companies and 837 establishments. Average revenues per company are over $100 million annually.

However, the Small Business Administration has defined any entity with 750 or fewer employees as a small entity. According to the Census of Manufacturers, approximately 95 percent of the industry establishments would meet this criterion. With the industry-wide average of approximately 1.2 establishments per company, it is likely that at least 90 percent of the companies would be considered small entities.

On the other hand, the proportion of sponsors that submit original marketing applications is markedly different from the general industry. FDA examined the characteristics of sponsors of new drug product marketing applications between October 1996 and October 1999 (Ref. 2). Of the 158 firms that had sponsored marketing applications during that period, 56 (or about 33 percent) were considered domestic small entities (750 or fewer employees). The remaining firms were either foreign sponsors or large innovating enterprises. The 56 small firms submitted a total of 76 NDAs during that period, which is about 1.5 applications each over a 3-year period (or 0.5 annually per small entity).

The 76 NDAs submitted by small domestic entities represented about 20 percent of all applications. Using this proportion, we estimate that 20 percent of the 575 annual nonIND foreign clinical trials to develop data for submission in an FDA marketing application (approximately 115 studies) could be sponsored by small entities. If these trials were distributed equally among each sponsoring small entity, each sponsor would be expected to conduct two nonIND clinical trials per year. If so, the compliance costs would equal about $9,600 annually per small entity ($4,800 x 2 = $9,600).

The Census of Manufacturers also reports that a sizable proportion of the industry has an annual value of shipments of approximately $1 million. For example, a reported 494 of the 837 establishments had total shipments of approximately $480 million during 1997. The expected cost of $9,600 per small firm would not represent a significant impact.

3. Alternatives to the Proposed Rule

FDA considered several alternatives to the proposed rule. We rejected leaving § 312.120 unchanged because it would not meet the objectives of enhancing standards for study conduct and ensuring data integrity. We rejected other regulatory options to increase our oversight of foreign clinical investigations because they would be either too costly or unenforceable. We considered changing the inspection strategy for foreign clinical trials, but this option would not ensure GCP compliance, a process that makes all parties to a study responsible for patient safety and study quality. We considered

but rejected allowing an exemption from the requirements in the proposed rule for small entities. We must have confidence that all clinical investigations submitted as support for a research or marketing application meet basic standards of reliability, patient safety, and data quality.

4. Outreach

We are publishing this proposed rule in anticipation of receiving comments from affected small entities. The proposed rule is available to all interested parties through FDA's Internet Web site at *http://www.fda.gov*.

5. Conclusion

For the reasons previously stated, we conclude that the proposed rule would not result in a significant impact on a substantial number of small entities.

G. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Department of Health and Human Services, Office of the Inspector General, "The Globalization of Clinical Trials: A Growing Challenge in Protecting Human Subjects," OEI–01–00–00190, September 2001.

2. FDA, "Who Submits NDAs and ANDAs," unpublished document, October 1999.

V. Environmental Impact

FDA has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements that are subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on these topics: (1) Whether the collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Foreign Clinical Studies Not Conducted Under an IND

Description: Current § 312.120 states that we generally accept foreign clinical studies not conducted under an IND provided they are well-designed, well-conducted, performed by qualified investigators, and conducted in accordance with ethical principles. Such studies must be conducted in accordance with the 1989 Declaration or the laws of the country in which the research is conducted, whichever provides greater protection to subjects.

The proposed rule would replace the requirement that nonIND foreign studies be conducted in accordance with the 1989 Declaration with a requirement to conduct such studies in accordance with GCP, including review and approval by an IEC. We are proposing this change for the following reasons: (1) We want to provide greater assurance of the quality of data obtained from nonIND foreign studies, (2) standards for protecting human subjects have evolved considerably over the past decade and include the adoption of GCP, and (3) we want to eliminate the reference in current § 312.120 to the Declaration because that document is subject to change, independent of FDA authority, in a manner that is inconsistent with U.S. laws and regulations.

Under proposed § 312.120(a), we would accept for review as support for an IND, NDA, or BLA a well-designed and well-conducted foreign clinical study not conducted under an IND if the study were conducted in accordance with GCP and we were able to validate the data from the study through an onsite inspection if necessary. GCP would include review and approval by an IEC before initiating a study, continuing review of an ongoing study by an IEC, and obtaining and documenting the freely given informed consent of the subject before initiating a study.

Current § 312.120(b) requires a sponsor of a nonIND foreign study who wants to rely on that study as support for an IND or marketing application to provide certain data to FDA. Proposed § 312.120(b) would require this same information as well as the following information: (1) A description of the IEC and its decision to approve, or modify and approve, the study; (2) a description of how informed consent was obtained and what incentives, if any, were provided to subjects to participate in the study; (3) a description of how the sponsor monitored the trial and ensured that it was carried out consistent with the study protocol; and (4) a description of how investigators were trained to comply with GCP and to conduct the trial in accordance with the protocol, as well as copies of any written commitments by investigators to comply with GCP and the protocol.

Proposed § 312.120(c) would specify how sponsors or applicants could request a waiver for any of the requirements under § 312.120(a)(1) and (b). By permitting a waiver of certain requirements, this provision is not likely to increase the burden on a sponsor or applicant. Under proposed § 312.120(c)(1), the waiver request would contain at least one of the following requirements: (1) An explanation why the sponsor's or applicant's compliance with the requirement is unnecessary or cannot be achieved, (2) a description of an alternative submission or course of action that satisfies the purpose of the requirement, or (3) other information justifying a waiver. Under proposed § 312.120(c)(2), FDA may grant a waiver if doing so would be in the interest of the public health.

Description of Respondents: Businesses.

Burden Estimate: Table 1 of this document provides an estimate of the annual reporting burden associated with the proposed rule.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Frequency of Responses	Total Annual Responses	Hours per Response	Total Hours
312.120(d)	115	5	575	32	18,400
Total					18,400

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We estimate that, each year, 115 companies submit a total of approximately 575 nonIND foreign clinical studies in support of an IND or marketing application for a drug or biological product. We conducted consultations with seven large and small companies that had submitted nonIND foreign clinical studies to us within the past 3 years. All respondents indicated that they currently conduct nonIND foreign clinical studies in conformance with GCP and generally document all the items listed in proposed § 312.120(b). Sponsors often plan to obtain marketing approval in more than one country and often conduct studies with the intention to submit data for review in multiple countries that may require compliance with GCP. Companies currently are required (under § 312.120(b)(1) through (b)(5) and (c)(3)) to document the items in proposed § 312.120(b)(1) through (b)(7) as well as to document how the research conformed to the ethical principles contained in the 1989 Declaration or the foreign country's standards, whichever represents the greater protection of the individual (current § 312.120(c)(2)).

Hour burden estimates will vary due to differences in size, complexity, and duration across studies, because each of these factors affects the amount and intricacy of data collected. For example, the applicant of a study that involves five research sites each with its own IEC must submit documentation of review by all five committees. However, if the same study is performed with one IEC overseeing all five sites, the hour burden estimate would be less.

As previously stated in this document, the general position among the sponsors that we interviewed was that documenting their compliance with GCP would take between 18 and 32 hours annually for each nonIND foreign clinical trial. To provide a liberal estimate of costs to industry, we will assume that no companies currently document compliance with any component of GCP and that the documentation required under proposed § 312.120(b) would require 32 hours to complete for each study submitted for a total of 18,400 annual burden hours (575 x 32 hours).

In compliance with the PRA (44 U.S.C. 3507(d)), we have submitted the information collection requirements of this rule to OMB for review. Interested persons are requested to fax comments regarding information collection to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

VII. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies 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. Accordingly, we have concluded that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. Proposed Effective Date

We propose to apply any final rule that may issue based on this proposal to foreign clinical studies for which the first subject is enrolled 180 days after the final rule is published in the **Federal Register**.

IX. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on this proposal. Two paper copies of any comments are to be submitted, 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. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA proposes that 21 CFR part 312 be amended to read as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

1. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371; 42 U.S.C. 262.

2. Section 312.3 is amended in paragraph (b) by alphabetically adding the definition for "Independent ethics committee" to read as follows:

§ 312.3 Definitions and interpretations.

* * * * *

Independent ethics committee (IEC) means a review panel that is responsible for ensuring the protection of the rights, safety, and well-being of human subjects involved in a clinical investigation and is adequately constituted to provide assurance of that protection. An institutional review board (IRB), as defined in § 56.102(g) of this chapter and subject to the requirements of part 56, is one type of IEC.

* * * * *

3. Section 312.120 is revised to read as follows:

§ 312.120 Foreign clinical studies not conducted under an IND.

(a) *Acceptance of studies.* (1) FDA will accept as support for an IND, a new drug application (NDA), or a biologics license application (BLA) a well-designed and well-conducted foreign clinical study not conducted under an IND, if the following conditions are met:

(i) The study was conducted in accordance with good clinical practice (GCP). For the purposes of this section, GCP is defined as a standard for the design, conduct, performance, monitoring, auditing, recording, analysis, and reporting of clinical trials in a way that provides assurance that the data and reported results are credible and accurate and that the rights, safety, and well-being of trial subjects are protected. GCP includes review and approval (or provision of a favorable opinion) by an independent ethics committee (IEC) before initiating a study, continuing review of an

ongoing study by an IEC, and obtaining and documenting the freely given informed consent of the subject (or a subject's legally authorized representative, if the subject is unable to provide informed consent) before initiating a study. GCP does not require informed consent in life-threatening situations when the IEC reviewing the study finds that the conditions present are consistent with those described in §§ 50.23 or 50.24(a) of this chapter, or when the measures described in the study protocol or elsewhere will protect the rights, safety, and well-being of subjects and ensure compliance with applicable regulatory requirements; and

(ii) FDA is able to validate the data from the study through an onsite inspection if the agency deems it necessary.

(2) Although FDA will not accept as support for an IND, NDA, or BLA a study that does not meet the conditions of paragraph (a)(1) of this section, FDA will examine data from such a study.

(3) Marketing approval of a new drug based solely on foreign clinical data is governed by § 314.106 of this chapter.

(b) *Supporting information.* A sponsor or applicant who submits data from a foreign clinical study not conducted under an IND as support for an IND, NDA, or BLA must submit to FDA, in addition to information required elsewhere in parts 312, 314, or 601 of this chapter, respectively, a description of the actions the sponsor or applicant took to ensure that the research conformed to GCP as described in paragraph (a)(1)(i) of this section. The description must include the following:

(1) The investigator's qualifications;

(2) A description of the research facilities;

(3) A detailed summary of the protocol and results of the study and, should FDA request, case records maintained by the investigator or additional background data such as hospital or other institutional records;

(4) A description of the drug substance and drug product used in the study, including a description of the components, formulation, specifications, and, if available, bioavailability of the specific drug product used in the clinical study;

(5) If the study is intended to support the effectiveness of a drug product, information showing that the study is adequate and well-controlled under § 314.126 of this chapter;

(6) The names and qualifications for the members of the IEC that reviewed the study;

(7) A summary of the IEC's decision to approve or modify and approve the study, or to provide a favorable opinion;

(8) A description of how informed consent was obtained;

(9) A description of what incentives, if any, were provided to subjects to participate in the study;

(10) A description of how the sponsor(s) monitored the study and ensured that the study was carried out consistent with the study protocol; and

(11) A description of how investigators were trained to comply with GCP (as described in paragraph (a)(1)(i) of this section) and to conduct the study in accordance with the study protocol, and copies of written commitments, if any, by investigators to comply with GCP and the protocol.

(c) *Waivers.* (1) A sponsor or applicant may request FDA to waive any applicable requirements under paragraphs (a)(1) and (b) of this section. A waiver request may be submitted in an IND or in an information amendment to an IND, or in an application or in an amendment or supplement to an application submitted under part 314 or 601 of this chapter. A waiver request is required to contain at least one of the following:

(i) An explanation why the sponsor's or applicant's compliance with the requirement is unnecessary or cannot be achieved;

(ii) A description of an alternative submission or course of action that satisfies the purpose of the requirement; or

(iii) Other information justifying a waiver.

(2) FDA may grant a waiver if it finds that doing so would be in the interest of the public health.

Dated: February 16, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–13063 Filed 6–9–04; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–70–2–7347b; FRL–7672–6]

Approval and Promulgation of Implementation Plans for Texas; Approval of Section 179B Demonstration of Attainment, Volatile Organic Compound and Nitrogen Oxide Motor Vehicle Emissions Budgets for Conformity for the El Paso Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve, through direct final action, a revision to the Texas State Implementation Plan, submitted to show attainment of the one-hour ozone National Ambient Air Quality Standard in the El Paso ozone nonattainment area, but for emissions emanating from outside of the United States. The EPA is also proposing to approve the El Paso area's volatile organic compounds and nitrogen oxides emissions budgets. The State submitted the revisions to satisfy sections 179B and other part D requirements of the Federal Clean Air Act.

DATES: EPA is accepting adverse comment until July 12, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by File ID No. TX–70–2–7347, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- U.S. EPA Region 6 "Contact Us" Web site: *http://epa.gov/region6/r6coment.htm*. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.
- E-mail: Mr. Thomas Diggs at *diggs.thomas@epa.gov*. Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at (214) 665–7263.
- Mail: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- Hand or Courier Delivery: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Please include the text "Public comment on File ID No. TX–70–2–7347" in the subject line of the first page of your comments. EPA's policy is that all comments received will be included in the public file without change, 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 regulations.gov, or e-mail. The Federal regulations.gov Web site is an "anonymous access" system, 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Official File: Copies of the documents relevant to this action are in the official file which is available at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

Copies of any State submittals and EPA's technical support document are also available for public inspection at the State Air Agency listed below during official business hours by appointment:

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

FOR FURTHER INFORMATION CONTACT: Joe Kordzi, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7186; fax number (214) 665–7263; e-mail address *kordzi.joe@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 action, 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 and Regulations" section of this **Federal Register**.

Dated: May 27, 2004.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 04–13176 Filed 6–9–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R07–OAR–2004–IA–0001; FRL–7672–2]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Iowa. This revision pertains to the order and permits issued by the state to control particulate matter (PM_{10}) emissions from Blackhawk Foundry and Machine Company in Davenport (Scott County), Iowa. This approval would make the order and permits Federally enforceable.

DATES: Comments on this proposed action must be received in writing by July 12, 2004.

ADDRESSES: Comments may be mailed to Harriett Jones, Environmental Protection Agency, Air Permitting and Compliance Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the Addresses section of the direct final rule which is located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Harriett Jones at (913) 551–7730, or at *jones.harriett@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant 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 action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts 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: June 3, 2004.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 04–13178 Filed 6–9–04; 8:45 am]

BILLING CODE 6560–50–U

Notices

Federal Register
Vol. 69, No. 112
Thursday, June 10, 2004

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be sent via e-mail to *David_Rostker@omb.eop.gov* or fax to 202–395–7285. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0012.

Form Number: 282.

Title: Supplier's Certificate Agreement with the U.S. Agency for International Development Invoice-and-Contract Abstract.

Type of Submission: Renewal of information collection.

Purpose: The U.S. Agency for International Development (USAID) finances goods and related services under its Commodity Import Program which are contracted for by public and private entities in the countries receiving the USAID Assistance. Since USAID is not a party to these contracts, USAID needs some means to collect information directly from the suppliers of the goods and related services and to enable USAID to take an appropriate action against them in the event they do not comply with the applicable regulations. USAID does this by securing from the suppliers, as a condition for the disbursement of funds a certificate and agreement with USAID which contains appropriate representations by the suppliers.

Annual Reporting Burden:

Respondents: 800.

Total annual responses: 2,400.

Total annual hours requested: 1,200 hours (½hour per response).

Dated: June 1, 2004.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau of Management.

[FR Doc. 04–13165 Filed 6–9–04; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

National Sheep Industry Improvement Center; Inviting Grant Proposals for the Sheep and Goat Industry Grant Initiative

AGENCY: National Sheep Industry Improvement Center, USDA.

ACTION: Notice.

SUMMARY: The National Sheep Industry Improvement Center (NSIIC) announces the availability of approximately $300,000 in competitive grants for product or business development, producer information or education, marketing and promotion for sheep or goats or their products, genetic retention, and animal health. Eligible applicants, including many business structures but excluding individuals (see section III), may apply for up to $50,000 in Federal Funds per proposal. The intent is to fund a variety of proposals that will benefit the U.S. sheep and goat industries.

DATES: Applications shall be considered as meeting the announced deadline if they are received on or before 5 p.m. e.s.t., October 15, 2004.

ADDRESSES: Submissions should be sent to: USDA—National Sheep Industry Improvement Center, P.O. Box 23483, Washington, DC 20026, if you are using the U.S. Postal Service or USDA—National Sheep Industry Improvement Center, South Building, Room 2117, 1400 Independence Ave., SW., Washington, DC 20250, if using any other courier or delivery service.

FOR FURTHER INFORMATION CONTACT: Jay B. Wilson, Executive Director/CEO, P.O. Box 23483, Washington, DC 20026, if you are using the U.S. Postal Service or USDA—National Sheep Industry Improvement Center, South Building, Room 2117, 1400 Independence Ave., SW., Washington, DC 20250, if using any other courier or delivery service. 202–690–0632 or 207–236–6567.

SUPPLEMENTARY INFORMATION:

Overview

Agency: National Sheep Industry Improvement Center.

Title: Sheep and Goat Industry Grant Initiative.

Type: Initial announcement for funding availability.

Catolog of Federal Domestic Assistance Number: 10.774.

Dates: Applications must be received by October 15, 2004, for projects that will be completed on or before September 30, 2006.

I. Funding Opportunity Description

The National Sheep Industry Improvement Center (NSIIC) is authorized under 7 U.S.C. 2008j. NSIIC is a fund established in the Treasury, without fiscal year limitation, to provide seed money for a revolving fund that will provide financial assistance through a variety of mechanisms for the enhancement and marketing of sheep or goat products in the United States with an emphasis on infrastructure development. The NSIIC is a unique pilot program with the management vested in a Board of Directors that is appointed by, and reports to the Secretary of Agriculture. The Board of Directors consists of 7 voting members chosen from the sheep and goat industries. The respective Under Secretaries for Rural Development (RD) and Cooperative State Research, Education, and Extension Service (CSREES) also serve as non-voting members of the Board of Directors. The mission of the NSIIC is "To assist the U.S. Sheep and Goat Industries by strengthening and enhancing the production and marketing of sheep, goats, and their products in the United States." The NSIIC Board of Directors has made low interest loans available through an intermediary arrangement with the National Livestock Producers Association since 2000 and has conducted the National Sheep Industry Grant Initiative in each of the past fiscal years since Fiscal Year (FY) 2002. The Board is making this grant initiative of up to $300,000 available for FY 2005.

Projects that are submitted in the proposals should be completed in a timely fashion as provided in the proposal, with a final completion date

on or before September 30, 2006. The primary objective of the Sheep and Goat Industry Grant Initiative (SGIGI) is to fund a number of diverse projects that will benefit the U.S. sheep or goat industries through product or business development, producer information or education, marketing and promotion for sheep or goats or their products, genetic retention and animal health at the regional, national or international level. Examples of previously funded projects can be found at *www.nsiic.org/grants.htm.*

II. Award Information

The total amount of funds available for grants in FY 2005 is approximately $300,000. It is anticipated that all funds will be awarded in FY 2005 for projects that will be completed by September 30, 2006. It is expected that there will be proposals submitted that address a variety of needs related to the U.S. sheep and goat industries. Awards may be classified so that a variety of needs will be addressed by the funded proposals. The actual number of grants funded will depend on the quality of proposals received and the amount of funding requested. A proposal may be partially funded or funded in its entirety. The maximum amount of Federal funds through this grant initiative awarded for any one proposal will be $50,000.

The primary objective of the Sheep and Goat Industry Grant Initiative (SGIGI) is to fund a number of diverse projects that will benefit the U.S. sheep or goat industries through product or business development, producer information or education, marketing and promotion for sheep or goats or their products, genetic retention or animal health at the regional, national or international level.

Funds may not be used to: (a) Pay costs of preparing the application package; (b) pay costs incurred prior to the effective date of the grant; (c) conduct duplicative research; or (d) fund political activities.

III. Eligibility Information

Eligible applicants—An eligible entity is one that promotes the betterment of the United States sheep or goat industries and includes: (a) A public, private, or cooperative organization; (b) an association, including a corporation not operated for profit; (c) a federally recognized Indian Tribe; or (d) a public or quasi-public agency. Eligible entities must be domestic with at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

Ineligible applicants—Individuals, Organizations under the Lobbying Disclosure Act of 1995 and organizations described in section 501(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(4)) which engages in lobbying activities. Applications from Ineligible applicants will be returned without review or consideration.

Cost Sharing or Matching—Cost sharing or matching funds are not required but preference may be given to proposals that have over 50 percent of the project costs in matching funds, including in kind contributions (See the Review and Selection Process). Overhead costs cannot exceed 25 percent.

Other—There is no limit on the number of applications that an entity may submit for this announcement. If an entity is found to be in violation of 7 CFR part 3017 they are ineligible.

IV. Application and Submission Information

Address to Request Application Package—Forms can be found at *http://www.nsiic.org.* They can also be obtained by: e-mailing a request to *info@nsiic.org;* writing National Sheep Industry Improvement Center, U.S. Department of Agriculture, P.O. Box 23483, Washington, DC 20026–3483; Faxing a request to 202–720–1053 or calling 202–690–0632.

Content and Form of Application Submission—A proposal should contain the following:

1. Form SF–424 "Application for Federal Assistance." This serves as the cover page and no other cover page should be included.

2. Form SF–424A "Budget Information-Non Construction Programs."

3. Form SF–424B "Assurances-Non Construction Programs."

4. Project Summary: The proposal must contain a project summary of 1 page or less on a separate page. This page must include the title of the project, the names of the primary project contacts, the applicant entity, followed by the summary. The summary should be self-contained and should describe the overall goals and relevance of the project. The summary should also contain a listing of all organizations involved in the project. The Project Summary should immediately follow the Form SF–424B.

5. Project Narrative—The project narrative is limited to 10 pages and the pages should be numbered, beginning with page 1 on the first page of the narrative. The narrative portion of the Project Proposal should contain the following:

a. Introduction—Substantiate the need for the proposed project. Describe the project's specific relationship to the segment of sheep or goat industry issue, product or market being addressed.

b. Potential Industry Impact—Discuss the specific objectives to be accomplished under the project. Describe the proposed project and demonstrate how it will stimulate the U.S. sheep or goat industries. Provide a detailed analysis of the sheep or goat industry issue that is being addressed by the proposal by including the: (a) Product or group that will be impacted by the proposal (b) geographic area affected (c) target audience or end user; (d) and expected results.

c. Industry Commitment—Describe the commitment of the producers, processor, end-users or other involved parties in participating in the proposed project. This may include, but is not limited to, individual producers, producer groups, processors, seminar participants, local organizations, local or state governments or trade associations.

d. Business Soundness— Discuss the specific goals and objectives to be accomplished under the project. Provide a timetable and objectives along with a quantifiable benchmark and expected results.

e. Financial Feasibility—Provide a well-defined budget for the proposal and describe how the budget specifically relates to the completion of each goal or objective. This requirement may be accomplished, in whole or in part, by the required completion of SF–424B.

f. Management Ability—Identify the management team needed to complete the proposal objectives and describe their qualifications. Describe how the project will be coordinated among various participants and the nature of the collaborations. Describe plans for management of the project to ensure its proper and efficient administration.

What to Submit—An original which must bear an original signature and 10 additional copies must be submitted. Each copy must be stapled in the upper left-hand corner, do not bind. All copies of the proposal must be submitted in one package. The proposal must be submitted on standard 8.5″ x 11″ paper with typing on one side of the page only. In addition, margins must be at least 1″, type must be 12 characters per inch (12 pitch or 10 point) or larger, no more than 6 lines per inch, and there should be no page reductions.

Proposals are limited to the information requested. *Do Not:* Exceed the narrative limit; include organizational brochures, promotional materials, slides, films, clips, books, videos, product samples, letters of support (they should be summarized in the narrative) or any other additional materials. Proposals that contain more than the requested information will be returned without review or consideration.

Information that successful applicants must submit—Successful applicants will receive a letter of intent from NSIIC at which time they will be required to provide evidence to satisfy the "Insurance and Bonding" requirement and complete forms: AD–1047 "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions"; AD–1048 "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions"; AD–1049 "Certification Regarding Drug-Free Workplace Requirements (Grants)"; RD–400–1 "Equal Opportunity Agreement"; "Certification Regarding Lobbying-Contracts, Grants, Loans and Cooperative Agreement"; SF–270 "Request for Advance for Reimbursement" and SF–269 "Financial Status Report" which is filed with the semi annual reports.

Submission Dates and Times—Applications shall be considered as meeting the announced deadline if they are received on or before 5 p.m. e.s.t., October 15, 2004. Submissions should be sent to: USDA—National Sheep Industry Improvement Center, P.O. Box 23483, Washington, DC 20026 if you are using the U.S. Postal Service or USDA—National Sheep Industry Improvement Center, South Building, Room 2117, 1400 Independence Ave., SW., Washington, DC 20250, if using any other courier or delivery service. Proposals received after that time and date will be returned without review or consideration. We strongly recommend you do not wait until the deadline date for submissions.

Funding Restrictions—Each application is limited to $50,000. Applicants will not be allowed reimbursement of pre-award costs.

V. Application Review Information

Selection Criteria—The proposal will initially be reviewed to determine whether the entity submitting the proposal meets the eligibility requirements and whether the proposal application contains the information required. After this initial evaluation, the following criteria will be used to rate and rank proposals received in response to this notice of funding availability. Failure to address any one of the criteria will disqualify the proposal and the proposal will be returned without review or consideration. Equal weight shall be given to each of the criterion listed below and points will be awarded on a scale of 5, 4, 3, 2, 1. A score of 5 indicates that the proposal was judged to be highly relevant to the criterion and a score of 1 indicates that the proposal was judged not to sufficiently address the criterion.

Each proposal will be evaluated and judged using the following criteria:

1. Potential Industry Impact—Describe the proposed project and demonstrate how it will stimulate the U.S. sheep or goat industries. Provide a detailed analysis of the sheep or goat industry issue that is being addressed by the proposal by including the: (a) Product or group that will be impacted by the proposal (b) geographic area affected (c) target audience or end user; (d) and expected results. The NSIIC will evaluate whether the industry issue and need are well-defined and the proposed project provides an effective and efficient approach to resolving the identified need.

2. Industry Commitment—Describe the commitment of the producers, processor, end-users or other involved parties in participating in the proposed project. This may include, but is not limited to, individual producers, producer groups, processors, seminar participants, local organizations, local or state governments or trade associations. The NSIIC will evaluate whether there is a commitment from all who are expected to participate and benefit from the proposed project.

3. Business Soundness—Provide a timetable and objectives along with a quantifiable benchmark and expected results. The NSIIC will evaluate whether the proposal includes (a) A clear objective; (b) well-defined tasks that will accomplish the objectives; (c) realistic benchmarks; and (d) a realistic timetable for the completion of the proposed tasks and whether a business strategy has been adequately developed.

4. Financial Feasibility—Provide a well-defined budget for the proposal. The NSIIC will evaluate whether the funding requirements and budget for the project are well defined, financially feasible and the matching funds or other resources that will be used to leverage the requested funds are identified.

5. Management Ability—Identify the management team needed to complete the proposal objectives and describe their qualifications. The NSIIC will evaluate whether the management team is identified and capable of implementing the proposal.

Review and Selection Process—The NSIIC Board of Directors will evaluate proposal applications. Applications will be evaluated competitively and points awarded as specified in the Selection Criteria section of this Notice. Grants will be awarded on a competitive basis to eligible entities. A proposal may be partially funded. After assigning points based upon the selection criteria, applications will be funded in rank order until all available funds have been expended. The Board of Directors reserves the right to award up to five additional points in order to provide a diversity of projects targeting various (1) situations, (2) geographic areas, or subjects, or for proposals with over 50 percent in matching funds. Projects that are approved for further processing will be subject to the grant terms that are negotiated between the applicant and the Board of Directors including, but not limited to, the amount to be funded, project goals, timetables, completion date or other terms as deemed necessary.

Award Administration Information: All applicants will receive notification of the outcome no later than January 31, 2005. Notifications will be sent to the contact person identified on the SF–424 by traceable carrier or USPS certified, return receipt mail.

VI. Award Administration Information

Award Notices—Successful applicants can expect notification no later than January 31, 2005. A letter of intent will be sent to the contact person identified on the SF–424. The letter of intent will be followed by a letter of conditions, the requirements described in the "Information that Successful applicants must submit" section. When those are competed the grant agreement will be executed.

Administrative and National Policy Requirements—Several Federal statutes and regulations apply to proposals considered for review and to grants awarded by USDA. These include, but are not limited to:

7 CFR part 1.1—USDA implementation of the Freedom of Information Act.

7 CFR part 15a—USDA implementation of title VI of the Civil Rights Act of 1964.

7 CFR part 3015—USDA Uniform Federal Assistance Regulations.

7 CFR part 3016—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

7 CFR part 3017—Governmentwide Debarment and Suspension

(nonprocurement) and Governmentwide Requirements for drug-free workplace (grants).

7 CFR part 3018—New Restrictions on Lobbying.

7 CFR part 3019—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR part 3052—Audits of State, Local Governments, and Non-Profit Organizations.

The terms of the above parts will be incorporated in the grant agreement.

Reporting—In addition to any other required reports, awardees will be required to submit written project performance reports on a semi-annual basis and a final report at the completion of the project. The project performance report and final report shall include, but need not be limited to: (a) SF–269 "Financial Status Report"; (b) A comparison of timeline, tasks and objectives outlined in the proposal as compared to the actual accomplishments; (c) If report varies from the stated objectives or they were not met, the reasons why established objectives were not met; (d) Problems, delays, or adverse conditions which will materially affect attainment of planned project objectives; (e) Objectives established for the next reporting period; and (f) Status of compliance with any special conditions on the use of awarded funds.

VII. Agency Contact(s)

Web site—Forms, previous recipients and other information can be found at *www.nsiic.org;* e-mail *info@nsiic.org;* USPS at NSIIC, P.O. Box 23483, Washington, DC 20026–3483; other carriers at Room 2117, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250; Telephone (202) 690–0632 or (207) 236–6567 or FAX (202) 720–1053.

VIII. Other Information

Low interest loans: For information on NSIIC intermediary low interest loan program, visit National Livestock Producers Association at *http://www.nlpa.org.*

The NSIIC Board of Directors reserves the right to award more, or less than the funds described in this announcement. In the absence of worthy application, the Board may decide not to make an award if deemed in the best interest of the Government.

Dated: June 4, 2004.

Jay B. Wilson,

Executive Director/CEO, National Sheep Industry Improvement Center.

[FR Doc. 04–13107 Filed 6–9–04; 8:45 am]

BILLING CODE 1351–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet at the USDA Service Center in Redding, California, on June 29, 2004 and August 4, 2004. The purpose of these meetings is to discuss proposed projects under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: June 29, 2004 and August 4, 2004.

ADDRESSES: USDA Service Center, 3644 Avtech Parkway, Redding, California 96002.

FOR FURTHER INFORMATION CONTACT: Michael R. Odle, Assistant Public Affairs Officer and RAC Coordinator.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. Public input sessions will be provided and individuals will have the opportunity to address the Shasta County Resource Advisory Committee.

Dated: June 3, 2004.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 04–13131 Filed 6–9–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Request for Proposals: Fiscal Year 2004 Funding Opportunity for 1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Initial notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of approximately $1.5 million in competitive cooperative agreement funds allocated from fiscal year (FY) 2004 budget. RBS hereby requests proposals from the 1890 Land Grant Universities and Tuskegee University (1890 Institutions) interested in applying for competitively awarded cooperative agreements for support of RBS mission goals and objectives of outreach to small rural communities and to develop programs that will develop future entrepreneurs and businesses in rural America in those communities that have the most economic need. These programs must provide sustainable development that is in keeping with the needs of the community and designed to help overcome currently identified economic problems. Proposals in both traditional and nontraditional business enterprises are encouraged. The initiative seeks to create a working partnership between the 1890 Institutions and RBS through cooperative agreements.

Awards will be made for proposals found to be meritorious by a peer review panel of USDA's employees knowledgeable of the subject matter. Awards will be made to the extent that funds are available. However, there is no commitment by USDA to fund any particular proposal or to make a specific number of awards.

Eligible applicants must provide matching funds in support of this project. Matching funds must equal at least 25 percent of the amount provided by RBS in the cooperative agreement. This Notice lists the information needed to submit an application for these funds.

DATES: Cooperative agreement applications must be received by 4 p.m. July 26, 2004. Proposals received after July 26, 2004, will not be considered for funding.

ADDRESSES: Send proposals and other required materials to Mr. Edgar L. Lewis, Program Manager, Rural Business-Cooperative Service, USDA, STOP 3252, Room 4221, 1400 Independence Avenue SW., Washington, DC 20250–3252. Telephone: (202) 690–3407, E-mail: *edgar.lewis@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Edgar L. Lewis, Program Manager, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4221, 1400 Independence Avenue SW., Washington, DC 20250–3252. Telephone: (202) 690–3407, E-mail: *edgar.lewis@usda.gov.*

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service (RBS).

Funding Opportunity Title: 1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative.

Announcement Type: Initial Announcement.

Catalog of Federal Domestic Assistance (CFDA) Number: 10–856.

Key Dates: Cooperative agreement applications must be received by 4 p.m. July 26, 2004. Proposals received after July 26, 2004, will not be considered for funding.

Executive Summary: The Rural Business-Cooperative Service (RBS) announces the availability of approximately $1.5 million in competitive cooperative agreement funds allocated from fiscal year (FY) 2004 budget. RBS hereby requests proposals from the 1890 Land Grant Universities and Tuskegee University (1890 Institutions) interested in applying for competitively awarded cooperative agreements for support of RBS mission goals and objectives of outreach to small rural communities and to develop programs that will develop future entrepreneurs and businesses, including cooperatives, in rural America in those communities that have the most economic need. These programs must provide sustainable development that is in keeping with the needs of the community and designed to help overcome currently identified economic problems. The initiative seeks to create a working partnership between the 1890 Institutions and RBS through cooperative agreements.

Awards will be made for proposals found to be meritorious by a peer review panel of USDA's employees knowledgeable of the subject matter. Awards will be made to the extent that funds are available. However, there is no commitment by USDA to fund any particular proposal or to make a specific number of awards.

Eligible applicants must provide matching funds in support of this project. Matching funds must equal at least 25 percent of the amount provided by RBS in the cooperative agreement. This Notice lists the information needed to submit an application for these funds.

I. Funding Opportunity Description

This solicitation is issued pursuant to 7 U.S.C. 2204b(b)(4). Also, this solicitation is issued pursuant to Executive Order 13256 (February 12, 2002), "President's Board of Advisors on Historically Black Colleges and Universities."

RBS was established under the authority of the Department of Agriculture Reorganization Act of 1994. The mission of RBS is to enhance the quality of life for rural Americans by providing leadership in building competitive businesses including sustainable cooperatives that can prosper in the global marketplace. RBS meets these goals by: Investing financial resources and providing technical assistance to businesses and cooperatives located in rural communities; establishing strategic alliances and partnerships that leverage public, private, and cooperative resources to create jobs and stimulate rural economic activity.

The primary purpose of the 1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative is to have 1890 Institutions promote Rural Development programs, provide outreach and technical assistance, to new and existing cooperatives, and encourage and assist underserved rural community residents to participate in the USDA-Rural Development programs, especially those administrated by RBS. This outreach initiative is also designed to develop programs that will develop future entrepreneurs and businesses, including cooperatives, in rural America in those communities that have the most economic need. These programs must provide sustainable development that is in keeping with the needs of the community and are designed to help overcome currently identified economic problems. Proposals in both traditional and nontraditional business enterprises are encouraged. The initiative seeks to create a working partnership through cooperative agreements between 1890 Institutions and RBS, to develop programs to assist future entrepreneurs, cooperatives and other businesses.

RBS plans to use cooperative agreements with the 1890 Institutions to strengthen the capacity of these communities to undertake innovative, comprehensive, citizen led, long-term strategies for community and economic development. The cooperative agreements will be for an outreach effort to promote Rural Development-RBS programs in targeted underserved rural communities and shall include, but not be limited to:

(a) Developing a business startup program including technical assistance, to assist new cooperatives and other businesses with new business development, business planning, franchise startup and consulting, business expansion studies, marketing analysis, cashflow management, and seminars and workshops for cooperatives and small businesses;

(b) Developing management and technical assistance plans that will:

(1) Assess cooperative and small business alternatives to traditional agricultural and other natural resource based industries;

(2) Assist in the development of business plans or loan packages, marketing, or bookkeeping;

(3) Assist and train cooperatives and small businesses in customer relations, product development, or business planning and development.

(c) Assessing and conducting feasibility studies of local community weaknesses and strengths, feasible alternatives to agricultural production, and the necessary infrastructure to expand or develop new or existing businesses;

(d) Providing community leaders with advice and recommendations regarding best practices in community economic development stimulus programs for their communities;

(e) Conducting seminars to disseminate information to stimulate business and economic development in selected rural communities; and

(f) Developing computer technology outreach and establishing and maintaining a computer network system, linking community leaders and residents to available economic development information.

Funds may not be used to: (a) Pay costs of preparing the application package; (b) fund political activities; (c) pay costs prior to the effective date of the cooperative agreement; (d) provide for revolving funds; (e) do construction; (f) conduct any activities where there is or may appear to be a conflict of interest; or (g) purchase real estate.

II. Award Information

This is a cooperative agreement award instrument. The total amount of funds available in FY 2004 for support of this program is approximately $1.5 million. Applicants should request a budget commensurate with the project proposed. Total funds to be awarded will be distributed to the 1890 Institutions, competitively, for the purpose of conducting outreach and providing technical assistance to targeted small rural communities. This outreach initiative includes, but is not limited to, technical assistance in cooperative, economic, and community development, feasibility studies, research, market development, loan packaging, conducting workshops and seminars in the area of cooperative, business, and economic development, and developing and providing access to computer technology and web sites development to the targeted population and communities.

The actual number of cooperative agreements funded will depend on the quality of proposals received and the amount of funding requested. Maximum amount of Federal funds awarded for

any one proposal will be $150,000. It is anticipated that a typical award would range from $75,000 to $150,000. A larger award may be granted at the Administrator's discretion.

In the event that the applicant is to receive an award that is less than the amount requested, the applicant will be required to modify the application to conform to the reduced amount before execution of the cooperative agreement. RBS reserves the right to reduce or de-obligate any award if acceptable modifications are not submitted by the awardees within 10 working days from the date the application is returned to the applicant. Any modification must be within the scope of the original application.

Awards will be made for proposals found to be meritorious by a peer review panel of USDA's employees knowledgeable of the subject matter. Awards will be made to the extent that funds are available. However, there is no commitment by USDA to fund any particular proposal or to make a specific number of awards.

Eligible applicants must provide matching funds in support of this project. Matching funds must equal at least 25 percent of the amount provided by RBS in the cooperative agreement. This Notice lists the information needed to submit an application for these funds.

Throughout the project period, Rural Development/RBS' commitment to the continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in certified acceptable quarterly progress and financial reports), and the determination that continued funding is in the best interest of the U.S. Government.

A cooperative agreement award instrument requires substantial involvement of the agency in carrying out the objectives of the project. Information on the agency involvement can be found in the award administration information in Section VI.

III. Eligibility Information

1. Eligible Applicants

Eligible applicants are 1890 Institutions which are: Alabama A&M University; University of Arkansas—Pine Bluff; Delaware State University; Florida A&M University; Fort Valley State University; Kentucky State University; Southern University and A&M College; University of Maryland—Eastern Shore; Alcorn State University; Langston University; North Carolina A&T State University; Lincoln University (MO); South Carolina State University; Tennessee State University; Prairie View A&M University; Virginia State University; and West Virginia State College; also including Tuskegee University. For this program, the agency will accept only one application per institution. In the event that more than one application is submitted, the 1890 Institution's president will determine the official application for consideration.

The applicant and assigned personnel must have expertise and experience in providing the recommended assistance. Applicants should also have a previous record of successful implementation of similar projects and must have the expertise in the use of electronic network technologies and/or a business information system network Web site.

Eligible beneficiaries must be located in a rural area as defined in 7 U.S.C. 1991(a)(13)(A) with a demonstrated economic need. Economic need can be demonstrated by the methods delineated in the evaluation section of this Notice. Location in an Empowerment Zone, Enterprise Community, Champion Community, federally-recognized Indian reservation or other federally declared economic depressed or disaster area is sufficient indication of economic need. Eligible beneficiaries must also be located in communities that show significant community support for the proposal. Preference will be given for projects that operate in a multi-county service area.

Award recipients may subcontract to organizations not eligible to apply provided such organizations are necessary for the conduct of the project. However, the subcontracted amount may not exceed one-third of the total Federal award.

2. Cost Sharing or Matching

Eligible applicants must provide matching funds in support of this project. Matching funds must equal at least 25 percent of the amount provided by RBS in the cooperative agreement. Applicants' contributions may be in cash or in-kind contributions and must be from non-Federal funds.

IV. Application and Submission Information

1. Address to Request Application

To obtain application instructions and all required forms, please contact the RBS Cooperative Services Program at (202) 690–3407 or FAX (202) 690–2723. The application forms and instructions may also be requested via e-mail by sending a message with your name, mailing address, and phone number to *edgar.lewis@usda.gov*. The application forms and instructions will be mailed to you as quickly as possible. When calling or e-mailing Cooperative Services, please indicate that you are requesting application forms and instructions for FY 2004 1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative. The application forms may also be located at Rural Business-Cooperative Service Web site: *http://www.rurdev.usda.gov/rbs/oa/1890.htm*.

2. Content and Form of Application

An original and two copies of the complete application are required. The original and 2 copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative of the applicant organization, have original signatures, and be submitted unbound.

All Federal grant applicants must provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants and cooperative agreements. The DUNS number is required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number is required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003. Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnd.com*.

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.

Your proposal should contain each of the following:

(a) Completed Forms.

(1) Form SF–424, "Application for Federal Assistance." Please complete SF–424, including items 10 and 14 (voting District, Congressman and Senator).

(2) Form SF–424A, "Budget Information—Non-Construction Programs."

(3) Form SF–424B, "Assurances—Non-Construction Programs."

(4) Form AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions."

(5) Form AD–1049, "Certification Regarding Drug-Free Workplace Requirements."

(b) A letter of support from your Rural Development/RBS State office.

(c) *Table of Contents:* For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

(d) *Project Executive Summary:* A summary of the Project Proposal, not to exceed one page.

(e) *Project Proposal:* The application must contain a narrative statement describing the nature of the proposed outreach initiative. The proposal must include at least the following:

(1) Project Title Page. The Title Page must include the following: title of the project, names of principal investigators, and applicant organization.

(2) Introduction. A concisely worded justification or rationale for the outreach initiative must be presented. Included should be a summarization of social and economical statistical data (income, population, employment rate, poverty rate, education attainment, etc.), of the target area which substantiates the need for the outreach initiative. Note in this section if the target area includes an Employment Zone/Enterprise Community, Champion Community, Federally-recognized Indian reservation or other federally declared economic disaster area. Please discuss the "Economic Need of Community" evaluation criterion in this section.

(3) Workplan. Discuss the approach (strategy) to be used in carrying out the proposed outreach initiative and accomplishing the objectives. Please discuss the "Statement of Work" evaluation criterion in this section. A description of any subcontracting arrangements to be used in carrying out the project must be included. Also, the workplan must include:

(i) Overview of the project objectives and goals: Identify and discuss the specific goals and objectives of the project and the impact of the outreach initiative on end-users;

(ii) Timeframe: Develop a tentative schedule for conducting the major steps of the outreach initiative;

(iii) Milestones: Describe and quantify the expected outcome of the specific outreach objective, including jobs created or assisted, conferences and seminars conducted and number of participants, loans packaged, etc.;

(iv) Recipient involvement: Identify the person(s) who will be performing the activities; and

(v) RBS involvement: Identify RBS staff responsible for assisting and monitoring the activities.

(4) Estimated Budget. You must provide a detailed budget justification including matching funds.

(5) Leveraging Funds. Other institutional support of this outreach initiative project. Please discuss the "Matching Fund/Leveraging" evaluation criterion in this section.

(6) Coordination and Management Plan. Describe how the project will be coordinated among various participants, the nature of the collaborations and benefits to participants, the communities, the applicant, and RBS. Describe your plans for the management of the project to ensure its proper and efficient administration. Describe the scope of RBS's involvement in the project. Please discuss the "Coordination and Management of the Project" evaluation criterion in this section.

(7) Technology Outreach. The proposal must address the applicant's ability to deliver computer technology to the targeted rural communities and implement and maintain a computer network system linking community leaders and residents to available economic development information. Please discuss the "Digital Technology Outreach" evaluation criterion in this section.

(8) Key Personnel Support. The proposal must include curriculum vitae for the key personnel used to carry out the goals and objectives of the proposal.

(9) Facilities or Equipment. Your proposal must identify where the project will be located (housed) and what other equipment is needed or already available to carry out the specific objectives of the project.

(10) Previous Accomplishments. Summarize previous accomplishments of outreach work funded by RBS or similar outreach experiences. This is especially important for first time applicants. Please discuss the "Previous Accomplishments" evaluation criterion in this section.

(11) Local and Rural Development/RBS State Office Support. Letters of support from the local community such as businesses, educational institutions, local governments, community-based organizations, etc. One letter must be from the respective Rural Development/RBS State Office. Letters of support (other than from Rural Development/RBS) should show support with commitment for tangible resources and or assistance. A letter from Rural Development/RBS is evidence that the State office had an opportunity for input in your proposal and can meet the cooperative agreement requirements for RBS. Please discuss the "Local Support" evaluation criterion in this section.

(12) Any other information necessary for RBS to approve and show support with commitment for tangible resources and or rank your proposal.

Additionally you are encouraged to provide any strategic plan that has been developed to assist cooperative and business development or entrepreneurship for the targeted communities.

3. Submission Dates and Times

Dates:

Cooperative agreement proposals must be received in the RBS National Office by 4 p.m. July 26, 2004.

Proposals received after July 26, 2004, will not be considered for funding. The applicant assumes the risk of any delay in proposal delivery. Applicants are strongly encouraged to submit completed applications via overnight mail or delivery service to ensure timely receipt by RBS. Receipt of all applications will be acknowledged by e-mail. Therefore, applicants are strongly encouraged to provide accurate e-mail addresses. If the applicant does not receive an acknowledgment within 7 work days of the submission deadline, please contact the program manager (see item IV, 6). If RBS receives your application after closing due to:

(a) Carrier error, when the carrier accepted the package with guarantee for delivery by the closing date and time, or

(b) Significant weather delays or natural disaster, you will be given the opportunity to document these problems. RBS will consider the application as having been received by the deadline if your documentation meets these requirements and verifies the delay was beyond your control. However, applications submitted via facsimile or e-mail will not be accepted.

4. Intergovernmental Review of Applications

Executive Order 12372 does apply to this program.

5. Funding Restrictions

Based on Section 708 Title 7 Consolidated Appropriations-Act 2004, (Pub. L. 108–199) "No funds appropriated by this Act may be used to pay negotiated indirect cost rates on cooperative agreements or similar arrangements between the United States Department of Agriculture and nonprofit institutions in excess of 10 percent of the total cost of the agreement when the purpose of such cooperative arrangement is to carry out programs of mutual interest between the two

parties." Other funding restrictions are identified in the "Eligibility Information" section 2.

6. Other Submission Requirements

Send proposals and other required materials by mail or express delivery service to: Mr. Edgar L. Lewis, Program Manager, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4221, 1400 Independence Avenue SW, Washington, DC 20250–3252.

Applications may not be submitted electronically at this time.

Several other Federal statutes and regulations apply to proposals considered for review and to cooperative agreements awarded. These include, but are not limited to:

7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture "Effectuation of Title VI of the Civil Rights Act of 1964,

7 CFR part 3015—Uniform Federal Assistance Regulations,

7 CFR part 3017—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grant),

7 CFR part 3018—New Restrictions on Lobbying,

7 CFR part 3019—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,

7 CFR Part 3052—Audits of States, Local Governments, and Non-Profit Organizations.

V. Application Review Information

1. *Criteria*—Proposals will be evaluated using the following seven criteria. Each criterion is given the weight value shown with total points equal to 100. The points assigned provide an indication of the relative importance of each section and will be used by the reviewers in evaluating the proposals. Points do not have to be awarded by RBS for each criterion. After all proposals have been evaluated, the Administrator may award an additional 10 discretionary points to any proposal to obtain the broadest geographic distribution of the funds, insure a broad diversity of project proposals, or insure a broad diversity in the size of the awards.

(a) Support of Local Community (Up to 10 points)—Proposals should have the support of local government, educational, community, and business groups. Higher points will be awarded for proposals demonstrating broad support from all components of the communities served, particularly cooperative groups. Broad support is demonstrated by tangible contributions, such as providing volunteers, computers, or transportation or co-sponsoring workshops and conferences. Points will be awarded based on the level of tangible contribution in comparison to the size of the award. Tangible support must be stated in letters from supporting entities.

(b) Matching Funds/Leveraging (Up to 15 points)—This criteria relates to the extent to which the institution has the capacity to support the project with matching funds and leveraging additional funds and resources to carry out this outreach initiative.

A maximum of 10 points will be awarded based upon the amount the proposal exceeds the minimum 25 percent matching requirement. Applicants will be required to provide matching funds or equivalent in-kind in support of this project. Evidence of matching funds availability must be provided. Funds or equivalent in-kind must be available at the time the cooperative agreement is entered into. Matching funds points will be awarded as listed below.

>25 percent to 35 percent Match—2 points
>35 percent to 50 percent Match—5 points
>50 percent to 75 percent Match—7 points
>75 percent Match—10 points

Up to 5 additional points may be awarded based on the applicant's capacity to leverage additional funds and resources from other private and nonprivate sources to support this outreach initiative. Applicants must provide sufficient information on the amount and sources of your leveraging activities for the evaluation panel to properly rate this criterion.

(c) Economic Need of Community (Up to 15 points)—This criterion will be evaluated based on the economic need of the targeted communities.

A maximum of 5 points will automatically be awarded to proposals with one or more of the following entities in a targeted community(s): Empowerment Zones, Enterprise Communities, Champion Communities, Federally-recognized Indian reservations, and other federally declared economic depressed or disaster areas. Applicants must provide sufficient information for the panel to properly rate this part of the above criterion. The proposals must state the name and location of the declared economic depressed area.

Rural underserved targeted counties/communities must be an area other than a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town, as defined by the U.S. Bureau of Census using the latest decennial census of the United States.

Also, for this criterion, a maximum of 7 points will be awarded for demonstrated economic need based on the currently available poverty rate of the targeted local community(s). Applicants may use targeted county or community poverty rates if available. When multi-community proposals are submitted, the over-all weighted average for all counties or communities will be used. Applicants must use current (2000 Census) poverty data for each targeted county or community. Points will be awarded based on the differences in the targeted county or community's average poverty from the respective State poverty rate (average targeted county or community poverty rate minus the respective State poverty rate). Percents will be rounded to the next whole number.

Less than 3 percent—0 points
3–6 percent—1 point
7–10 percent—2 points
11–15 percent—5 points
Greater than 15 percent—7 points

Up to 3 additional points may be awarded for this criterion based on the applicant's ability to demonstrate or identify other economic needs of the targeted communities, such as, but not limited to, unemployment rates, education levels, and job availability. Applicants must provide sufficient information for the panel to properly rate this part of the above criterion.

(d) Previous Accomplishments (Up to 10 points)—This criterion will be evaluated based on the applicant's previous accomplishments with this outreach initiative and/or demonstrative capacity to conduct similar outreach work.

A point will be awarded to those institutions for each year they have been awarded a cooperative agreement under this program up to 5 years. Applicants must provide evidence of satisfactorily completing the agreement for each year that they claim for credit.

Up to five additional points may be awarded based on the applicant's ability to document the positive impact of their project upon the targeted underserved rural communities. It is incumbent upon the applicant to provide information as to the type of services delivered and names of rural communities.

Applicants with zero or less than 5 recent years of awards in this program may receive up to the maximum 10 points by highlighting the applicant's

commitment and previous performance on this project or projects with cooperative development outreach objectives. The applicant should discuss the potential impact of their project upon the targeted underserved rural communities, as well as describing previous similar outreach work.

(e) Statement of Work (up to 30 Points)—This criterion relates to the degree to which the proposed project addresses the major purposes for the "1890 Land Grant Institutions: Rural Entrepreneurial Program Outreach Initiative." Points will be awarded according to the degree to which the statement of work reflects innovative strategies for providing outreach and assistance to the targeted underserved rural entrepreneurs, cooperatives, businesses and communities, and the potential for achieving project objectives. To receive up to 20 points, proposals must have a clearly and concisely stated work plan showing objectives, goals, timetables, expected results, measurable outcomes, a commitment to cooperative development and who will be performing various activities, including RBS involvement. All proposals must integrate substantial RBS involvement. An extra 10 points will be awarded for this criterion for those proposals that reflect innovation and commitment in working with new and existing cooperatives.

(f) Digital Technology Outreach (Up to 10 points)—This criterion is meant to evaluate the applicant's level of outreach and capacity to provide innovative and effective computer technology outreach to the underserved targeted rural communities.

A maximum of 5 points will be awarded based on the applicant's demonstrated capacity to promote innovations and improvements in the delivery of computer technology benefits to underserved rural communities whose share in these benefits is disproportionably low. Examples of innovations and improvements in this needed area include, but are not limited to; computer-based decision support systems to assist entrepreneurs and rural community governments in taking advantage of relevant technologies or effective delivery systems for business information or resource management assistance for rural underserved entrepreneurs and local governments and providing a business information systems network.

Up to 5 additional points may be awarded based on the qualification and subject skill level of the individuals directly conducting the technology outreach activities. Applicants must provide sufficient information for the evaluation panels to properly rate this technology criterion.

(g) Coordination and Management of the Project (Up to 10 points)—This criterion will be evaluated based on the applicant's demonstrated capacity to coordinate and manage this type of outreach initiative among the various stakeholders.

A maximum of 5 points will be awarded for the coordination plan. Applicants will need to describe the role and coordination mechanisms among various participants, including communities, the applicant, the USDA Rural Development State Office and RBS National Office. The nature of the collaborations and benefits to participants must also be described.

By definition, a cooperative agreement requires substantial involvement by the funding agent in carrying out the project objectives in the project. Therefore, up to 5 additional points may be awarded for this criterion based on demonstration of broad involvement and collaboration with each applicant's respective USDA Rural Development State Office as related to the outreach project. This involvement and collaboration should include, but not be limited to: (1) Rural Development State Office input and review of applicant's proposal, (2) invitations to attend and participate in workshops and conferences when needed, (3) on-going monitoring of the outreach project, and (4) directing applicants to the Rural Development State Office when applicable.

2. *Review and Selection Process*—Each application will be evaluated in a two-part process. First, each application will be screened to ensure that it meets the administrative requirements as set forth in the Request for Proposals. Second, a number of expert reviewers will conduct a merit review based on the "Evaluation Criteria and Weights" section of this notice. The review of the individual reviewers will be used by RBS to determine which application will be recommended to the Administrator for funding. Evaluated applications will be ranked based on merit. The RBS Administrator will make final approval for those applications recommended for an award. If there is a tie score after the proposals have been rated and ranked, the tie will be resolved by the proposal with the largest matching funds as a percent of the Federal amount of the award.

VI. Award Administration Information

1. *Award Notices*—This is a competitive cooperative agreement. In August, successful applicants will receive notice of award from RBS National Office stating that their university has been selected to receive an award to provide technical assistance and business development information to the targeted rural communities. Upon final approval of the award, based on an expert panel review and ranking process, as well as the Office of the General Counsel's review and clearance of your proposal by USDA's Under Secretary for Rural Development, an official cooperative agreement document will be sent to the successful applicant for signing by the institution's president or designee. The document will become binding after signing by the USDA official.

Unsuccessful applicants will receive notification of the results of the application review by mail.

In compliance with USDA's Management Control Review and RBS recommendations, the State Office representative will be conducting semiannual on-site reviews of your project, as well as any additional reviews deemed necessary by the National Office.

Upon final approval of the award, and as stated in the cooperative agreement, a copy of your quarterly progress and annual report are to be forwarded to the National and State Offices. In addition, "Request for Advance or Reimbursement" (SF–270), "Financial Status Report" (SF–269 or 269A) and quarterly progress reports are to be submitted contemporaneously to the National Office.

During the term of the negotiated agreements, the recipients will deliver quarterly reports of progress of the work to RBS and prepare and deliver a final report detailing all work done and results accomplished. In addition, all reports forwarded to RBS National Office must be forwarded to the USDA Rural Development State Office. Also, upon request by RBS, the recipient will deliver manuscripts, videotapes, software, or other media, as may be identified in approved proposals. RBS retains those rights delineated in 7 CFR 3019.36. Also, the recipients will deliver project outreach success stories and other project related information requested by RBS for use on the Web site (*http://bisnet.sus.edu*), or other Web sites designated by USDA–RBS.

2. *Administrative and National Policy:* Institutions that are awarded a cooperative agreement will be responsible for the following:

(a) Completing the objectives as defined in the approved proposal.

(b) Keeping up-to-date records on the project during the term of the

agreement, making quarterly reports of the progress of the work to RBS on or prior to January 31, April 29, July 29, and October 31, 2005, and preparing a final report detailing all work done and results accomplished. Submitting a final report to RBS National Office and to the USDA Rural Development State Office within 90 days of the project's completion.

(c) Submitting to RBS, on a quarterly basis, (SF–270), "Request for Advance or Reimbursement."

(d) Keeping an account of expenditures of the Federal dollars and matching fund dollars and providing to RBS, (SF–269), "Financial Status Report," with each SF–270 submitted, and a final SF–269 within 90 days of the project's completion.

(e) Immediately refunding to RBS, at the end of the agreement, any balance of unobligated funds received from RBS.

(f) Providing matching funds or equivalent in-kind in support of the project, at least to the level agreed to in the accepted proposal.

(g) Conducting seminars to disseminate Rural Development program information to stimulate business and economic development in selected rural communities.

(h) Participating in the RBS Entrepreneurship and Information Annual or Bi-annual Conferences/ Workshops when planned.

(i) In cooperation with local businesses, developing a program of cooperative and business startup and technical assistance that will assist with new company development, business planning, new enterprise, franchise startup and consulting, business expansion studies, marketing analysis, cashflow management, and seminars and workshops for cooperatives and small businesses.

(j) Providing office space, equipment, and supplies for all personnel assigned to the project.

(k) Developing management and technical assistance plans in cooperation with USDA Rural Development State Office that will:

(1) assess cooperative and small business alternatives to traditional, nontraditional, agricultural, and other natural resources-based industries;

(2) assist in the development of business plans and loan packages, marketing, bookkeeping assistance, and organizational sustainability; and

(3) in cooperation with USDA Rural Development State Office, provide technical assistance and training in customer relations, product development, and business planning and development.

(l) Assessing the need for and, if necessary, conducting a feasibility study of local community weaknesses and strengths, feasible alternatives to agriculture production, and the needed infrastructure to expand or develop new or existing businesses. The plans for any such studies must be submitted for approval prior to the study being conducted.

(m) In cooperation with the USDA Rural Development State Office, providing community leaders with advice and recommendations regarding best practices in community economic development stimulus programs for their communities.

(n) Developing digital technology outreach and establish and maintaining a Business Information Network System web site, linking community leaders and residents to available economic development information.

(o) Assuring and certifying that it is in compliance with, and will comply in the course of the agreement with, all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those set out in 7 CFR parts 3015 and 3019.

(p) Using Federal funds to only pay meeting related travel expenses when the employees are performing a service of direct benefit to the Government directly in furtherance of the objectives of the proposed agreement. Federal funds cannot be used to pay non-Federal employees to attend meetings.

(q) Not commingling or using program funds for administrative expenses to operate an intermediary relending program (IRP).

(r) Collaborating with the RBS National and USDA Rural Development State Offices in performing the tasks in the agreement as needed and providing the RBS National Office with the necessary information for RBS to:

(1) Monitor the program as it is being implemented and operated, including monitoring of financial information to ensure that there is no commingling or use of program funds for administrative expenses to operate an IRP or other unapproved items.

(2) Halt activity, after written notice, if tasks are not met.

(3) Review and approve changes to key personnel.

(4) Provide guidance in the evaluation process and other technical assistance as needed.

(5) Approve the final plans for the community business workshops, cooperative, business, and economic development sessions, and training workshops to be conducted by the applicant.

(6) Provide reference assistance as needed to the applicant for technical assistance given on a one-on-one basis to entrepreneurs and startup businesses.

(7) Review and comment upon strategic plans developed by the applicant for targeted areas.

(8) Review economic assessments made by the applicant for targeted counties so that RBS can indicate which of its programs may be beneficial.

(9) Carefully screen the project to prevent First Amendment violations.

(10) Monitor the program to ensure that a Business Information System Network web-site link is established and maintained.

(11) Provide assistance and training to the Business Information System Network Hub-sites and Wide Area Network (WAN) Team Members at the universities in preparing economic development information for posting on the Internet.

(12) Allow the USDA Rural Development State Office to conduct a semi-annual on-site review and submit written reports to the National Office.

(13) Participate in program workshops, seminars and conferences as required or by invitations.

(14) Sponsor annual or bi-annual Entrepreneurship and Information workshops for 1890 participants and Rural Development/RBS 1890 representatives.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Mr. Edgar L. Lewis, Program Manager, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4221, 1400 Independence Avenue SW., Washington, DC 20250–3252. Telephone: (202) 690–3407. e-mail: *edgar.lewis@usda.gov*.

Paperwork Reduction Act

The paperwork burden associated with this initiative has been cleared by the Office of Management and Budget under OMB Control Number 0570–0041.

Dated: June 4, 2004.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 04–13105 Filed 6–9–04; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed Collection; Request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agencies' intention to request an extension for a currently approved information collection in support of the Agencies' use of supervised bank accounts (SBA).

DATES: Comments on this notice must be received by August 9, 2004, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Janet Stouder, Deputy Director, Multi-Family Housing Portfolio Management Division, RHS, STOP 0782, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–0782. Telephone: (202) 720–9728.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1902–A, Supervised Bank Accounts.

OMB Number: 0575–0158.

Expiration Date of Approval: January 31, 2005.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: The Agencies extend financial assistance to applicants that do not qualify for loans under commercial rates and terms.

The Agencies use SBAs as a temporary mechanism to (1) ensure correct disbursement and expenditure of all funds designated for a project; (2) help a borrower properly manage its financial affairs; and (3) ensure that the Government's security is protected adequately from fraud, waste, and abuse.

SBAs are mandatory for Multi-Family Housing (MFH) reserve accounts. The MFH funds must be kept in the SBA for the full term of a loan. Any funds withdrawn for disbursement for an authorized purpose require a countersignature from an Agency official.

This regulation prescribes the policies and responsibilities for the use of SBAs. In carrying out their mission as a supervised credit Agency, this regulation authorizes the use of supervised accounts for the disbursement of funds. The use may be necessitated to disburse Government funds consistent with the various stages of any development (construction) work actually achieved. On limited occasions, a supervised account is used to provide temporary credit counseling and oversight of those being assisted who demonstrate an inability to handle their financial affairs responsibly. Another use is for depositing multi-housing reserve account funds in a manner requiring Agency co-signature for withdrawals. Multi-housing reserve account funds are held in a sinking fund for the future capital improvement needs for apartment projects. Supervised accounts are established to ensure Government security is adequately protected against fraud, waste, and abuse.

The legislative authority for requiring the use of supervised accounts is contained in section 339 of the Consolidated Farm and Rural Development Act (CON ACT), as amended (7 U.S.C. 1989), and section 510 of the Housing Act of 1949, as amended (42 U.S.C. 1480). These provisions authorize the Secretary of Agriculture to make such rules and regulations as deemed necessary to carry out the responsibilities and duties the Government is charged with administering.

Estimate of Burden: Public reporting burden for this information collection is estimated to average .42 hours per response.

Respondents: The primary respondents are small businesses.

Estimated Number of Respondents: 20,000.

Estimated Number of Responses per Respondent: 3.1.

Estimated Number of Responses: 62,000.

Estimated Total Annual Burden on Respondents: 26,260 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility; (b) the accuracy of Agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Givelekian, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave, SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 1, 2004.

James R. Little,

Administrator, Farm Service Agency.

Dated: May 20, 2004.

Hilda Legg,

Administrator, Rural Utilities Service.

Dated: May 18, 2004.

James C. Alsop.

Administrator, Rural Housing Service.

Dated: May 19, 2004.

John Hosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 04–13164 Filed 6–9–04; 8:45 am]

BILLING CODE 3410–XV–P

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 emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Technology Administration.

Title: Global Positioning System (GPS) Industry Study.

Form Number(s): None.

OMB Approval Number: None.

Type of Review: Emergency submission.

Burden Hours: 250.

Number of Respondents: 200.

Average Hours Per Response: 1.25 hours.

Needs and Uses: This information is to be collected from all known producers of Global Positioning System (GPS) equipment. It will be used to develop a public report describing the size and characteristics of the GPS manufacturing industry, and its economic impact on the United States.

The dissemination of this information will provide a service to businesses and investors involved in the GPS industry. The information will also be used within the U.S. Government to inform ongoing policy and budget decisions related to the GPS program.

Affected Public: Business and for-profit organizations.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Kristy LaLonde, (202) 395–3087.

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 by June 16, 2004 to Kristy LaLonde, OMB Desk Officer, FAX number 202–395–5806, or *KLaLonde@omb.eop.gov.*

Dated: June 4, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–13101 Filed 6–9–04; 8:45 am]

BILLING CODE 3510–18–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on July 15, 2004, 10:30 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Public Session

1. Opening remarks and introductions.

2. Presentation of papers and comments by the public.

3. Discussion of control status of toxic gas monitors.

Closed Session

4. Discussion of matters the premature disclosure of which would be likely to frustrate implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B).

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Lee Ann Carpenter at *Lcarpent@bis.doc.gov.*

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on May 28, 2004, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with matters the premature disclosure of which would likely frustrate the implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: June 7, 2004.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 04–13124 Filed 6–9–04; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898, A–469–814]

Initiation of Antidumping Duty Investigations: Chlorinated Isocyanurates From the People's Republic of China and Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of antidumping duty investigation.

DATES: *Effective Date:* June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Paige Rivas (Spain) or Sochieta Moth (PRC), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0651 or (202) 482–0168, respectively.

Initiation of Investigations

The Petitions

On May 14, 2004, the Department of Commerce (the Department) received petitions on imports of chlorinated isocyanurates (chlorinated isos) from the People's Republic of China (PRC), and Spain, filed in proper form by Clearon Corporation and Occidental Chemical Corporation (referred to hereafter as "the petitioners"). On May 19, May 20, May 25, and May 26, 2004 the Department requested additional information and clarification of certain areas of the petitions. The petitioners filed supplements to the petitions on May 24, 2004, and May 28, 2004. On June 2, 2004, Arch Chemicals, Inc., a U.S. importer of chlorinated isos from the PRC and Spain, submitted a letter challenging the assertion made by the petitioners that they represent more than 50 percent of the domestic production of chlorinated isos. The petitioners rebutted this challenge to their industry support on June 3, 2004.

In accordance with section 732(b)(i) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of chlorinated isos from the PRC and Spain are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring and threaten to injure an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9)(c) of the Act and the petitioners have demonstrated sufficient industry support with respect to the antidumping investigations that the petitioners are requesting the Department to initiate.

Period of Investigations

The period of investigation (POI) for the PRC is October 1, 2003, through March 31, 2004. The POI for Spain is April 1, 2003, through March 31, 2004.

Scope of Investigations

The products covered by these investigations are chlorinated isos. Chlorinated isos are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isos: (1) Trichloroisocyanuric acid ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3 \cdot 2H_2O$), and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isos are available in powder, granular,

and tabletted forms. These investigations cover all chlorinated isos.

Chlorinated isos are currently classifiable under subheading 2933.69.6050 of the Harmonized Tariff Schedule of the United States (HTSUS). This tariff classification represents a basket category that includes chlorinated isos and other compounds including an unfused triazine ring. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise remains dispositive.

During our review of the petitions, we discussed the scope with the petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.[1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, the petitions cover a single class or kind of merchandise, chlorinated isos, as defined in the "Scope of Investigations" section, above. The petitioners do not offer a definition of domestic like product distinct from the scope of the investigations. Further, based on our analysis of the information presented by the petitioners, we have determined that there is a single domestic like product, chlorinated isos, which is defined in the "Scope of Investigations" section above, and we have analyzed industry support in terms of the domestic like product.

The Department has determined that the petitioners established industry support representing over 50 percent of total production of the domestic like product, requiring no further action by the Department pursuant to section 732(c)(4)(D) of the Act. In addition, the Department received no opposition to the petitions from domestic producers of the like product. The Department received opposition to the petitions from an importer of the domestic like product (see Industry Support Attachment to the Initiation Checklists for the PRC and Spain, dated June 3, 2004, on file in the Central Records Unit, Room B–099 of the Department of Commerce ("Industry Support Attachment")). Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) are met. Furthermore, the domestic producers or workers who support the petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petitions. Thus, the requirements of section 732(c)(4)(A)(ii) are also met.

Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* Industry Support Attachment.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to export price (EP) and normal value (NV) are discussed in greater detail in the Initiation Checklists. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may reexamine the information and revise the margin calculations, if appropriate.

The petitions identified 19 producers of chlorinated isos in the PRC (*see* May 14, 2004, petition, Exhibit 5–G) and 2 producers in Spain (*see* May 14, 2004, petition, Exhibit 5–I).

Export Price—The PRC

The petitioners based EP on ten contemporaneous quotations of PRC-manufactured chlorinated isos from two PRC exporters. For prices quoted on an free-on-board PRC port basis, the petitioners deducted inland freight from the manufacturer's plant to the port of exportation. For prices quoted as delivered, the petitioners deducted ocean freight, brokerage and handling, and inland freight. We have examined the information provided regarding EP and have determined that it represents information reasonably available to the petitioners and have reviewed it for adequacy and accuracy. *See* Initiation Checklist.

Normal Value—The PRC

The petitioners assert that the Department considers the PRC to be a non-market-economy (NME) country and, therefore, they constructed NV based on the factors-of-production methodology pursuant to section 773(c) of the Act. In previous cases, the Department has determined that the PRC is an NME country. *See e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final*

[1] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp.* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988).

Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004). In accordance with section 771(18)(c)(i) of the Act, the NME status remains in effect until revoked by the Department. The NME status of the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is based on factors of production valued in a surrogate market-economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–87 (May 2, 1994).

As required by 19 CFR 351.202(b)(7)(i)(c), the petitioners provided dumping margin calculations using the Department's NME methodology described in 19 CFR 351.408. For the calculation of NV, the petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, and overhead), for chlorinated isos on the quantities of inputs used by a U.S. producer of chlorinated isos. The petitioners adjusted the per-unit consumption values of certain inputs to reflect known differences in the production of trichlor and dichlor[2] in the PRC. *See* Initiation Checklist.

The petitioners selected India as their surrogate country. The petitioners stated that India is comparable to the PRC in its level of economic development and is a significant producer of comparable merchandise. The petitioners selected calcium hypochlorite as the comparable merchandise for surrogate country selection since both products are used in swimming pools primarily because of their available chlorine content. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is reasonable for purposes of initiation of this investigation. *See* Initiation Checklist.

The petitioners valued the factors of production for chlorinated isos using publically available data from India for all production inputs except cyanuric acid and chlorine. Where Indian data is not contemporaneous to the POI, the petitioners have adjusted the Indian price to account for inflation using wholesale price indices. The petitioners converted Indian values to U.S. dollars at the POI exchange rate.

The petitioners valued cyanuric acid using the average unit values of imports of this commodity into the United States from Taiwan. The petitioners outlined their unsuccessful efforts to identify a value for cyanuric acid in the countries which the Department has typically used as surrogates for the PRC in the past: India, Pakistan, Sri Lanka, Philippines, and Indonesia. The petitioners state that to their knowledge none of the aforementioned countries produce cyanuric acid. The petitioners also stated that there were no imports of cyanuric acid into the United States from Pakistan, Sri Lanka, the Philippines, or Indonesia.

The petitioners also note that the harmonized tariff systems of the aforementioned countries classify imports of cyanuric acid and chlorinated isos under a single tariff subheading. The petitioners note that imports of this tariff subheading for cyanuric acid into any of these countries would overstate its value because chlorinated isos have greater monetary value. Similarly, the HTSUS classifies imports of cyanuric acid in a basket category. The petitioners demonstrated with Port Import-Export Reporting Service (PIERS) data that all imports from Taiwan within subheading 2933.69.60.50 into the United States consist of only cyanuric acid. Based on the explanations provided, we find petitioners' use of this factor value to be adequate for purposes of initiation as its use meets their burden of data reasonably available to them.

The petitioners valued sulfuric acid and caustic soda using pricing data in the Indian publication *Chemical Weekly*. The petitioners point out that prices of liquid chlorine, a significant input in the production of dichlor and triclor, are not listed in *Chemical Weekly*. Therefore, the petitioners valued chlorine using Indonesian import statistics compiled in *World Trade Atlas* for 2002. Packing inputs include supersacks, plastic drums, and pallets. The petitioners used *Monthly Statistics of the Foreign Trade of India* and data from the *Monthly Times of India* to value these inputs. They valued water using information that they obtained from the *Second Water Utilities Data Book: Asian and Pacific Region* for 1997. The price of electricity was valued based on the most recent statistics available for India which were published by the U.S. Department of Energy in 2003.

The petitioners stated that they are not aware of any producers of trichlor and dichlor in India or any other country commonly used. Therefore, the petitioners calculated factory overhead, selling, general, and administrative (SG&A) expenses, and profit ratios based on the 2002–2003 Annual Report of DSM Shriram Consolidated, Ltd., an Indian producer of sodium hypochlorite, chlorine, and caustic soda. Based on our analysis of the data in the petition, we believe that the petitioners' calculations of NV are reasonable and accurate.

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated dumping margins range from 109.14 percent to 157.82 percent for trichlor and dichlor from the PRC.

Export Price—Spain

To calculate EP, the petitioners started with three price quotes: Two price quotes for Spanish manufactured trichlor and one price quote for Spanish manufactured dichlor. The petitioners calculated net U.S. prices by deducting foreign inland freight, U.S. import duties, U.S. inland freight, insurance, ocean freight, and commission. We reviewed the information provided regarding EP and have determined that it represents information reasonably available to the petitioners. We have also reviewed the adequacy and accuracy of the petitioners' information and calculation. *See* Initiation Checklist.

Normal Value—Spain

To calculate NV, the petitioners obtained through foreign market research, three price quotes for dichlor and three price quotes for trichlor. The petitioners calculated net Spanish prices by deducting the inland freight from the producer to the port of export. We reviewed the NV information provided and have determined that it represents information reasonably available to the petitioners. We have also reviewed the adequacy and accuracy of the petitioners' information and calculation. *See* Initiation Checklist.

Although the petitioners provided margins based on price-to-price comparisons, the petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of trichlor and dichlor in the home market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. *See*

[2] Trichlor and dichlor are two types of chlorinated isos sold in the U.S. market. The petitioners are not aware of any chlorinated isos other than trichlor and dichlor that are currently produced and sold in commercial quantities.

Initiation of Cost Investigation section *infra* for further discussion.

Pursuant to section 773 (b)(3) of the Act, COP consists of the cost of manufacture (COM), SG&A, financial expenses and packing. The petitioners calculated COP based on the experience of a U.S. trichlor and dichlor producer during 2003, adjusted for known differences between costs incurred to manufacture trichlor and dichlor products in the United States and in Spain using publicly available data which the petitioners stated is the most specific and recent cost data reasonably available. Based upon a comparison of the prices of the foreign like product to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also calculated NV based on constructed value (CV). The petitioners calculated CV using the same COM, SG&A and financial expense figures used to compute the COP. Consistent with 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in Uralita Group's 2002 financial statements.

The petitioners revised the COM for trichlor and dichlor in their May 25, 2004, submission based on revised labor rates (*i.e.*, the labor rates in Spain). We recalculated the dumping margin based the revised COM of trichlor and dichlor. Based on comparisons of EP (method derived from price quotes) to CV, calculated in accordance with section 773(a) of the Act, the estimated dumping margins range from 29.68 percent to 42.36 percent for trichlor and dichlor from Spain. We note that these margins are conservative since the petitioners did not include packing in the CV calculation.

Initiation of Cost Investigation

As noted above, pursuant to section 773(b) of the Act, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home market of Spain were made at prices below the fully absorbed COP and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in connection with the requested antidumping investigation for this country. The Statement of Administrative Action (SAA), accompanying the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. *See* SAA, H.R. Doc. No. 103–316 at 833 (1994). The SAA states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation." *Id.*

Further, the SAA provides that the "new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." *Id.* Based upon the comparison of the adjusted prices from the petition for the representative foreign like product to its COP, we find the existence of "reasonable grounds to believe or suspect" that sales of these foreign like products in Spain were made below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigation.

Fair-Value Comparison

Based on the data provided by the petitioners, there is reason to believe that imports of chlorinated isos from the PRC and Spain are being, or are likely to be, sold in the United States at less than fair value. As a result of a comparison of EP to NV, based on our recalculations described above, the estimated dumping margins range from 109.14 percent to 157.82 percent for the PRC and from 29.68 percent to 42.36 percent for Spain.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured and is threatened with material injury by reason of the imports of the subject merchandise sold at less than NV. The petitioners contend that the industry's injured condition is evidenced by declining trends in market share, pricing, production levels, profits, sales, utilization of capacity, reduction of labor force, and increasing inventory levels.

These allegations are supported by relevant evidence including import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by adequate evidence and meet the statutory requirements for initiation (*See* Initiation Checklists, Re: Material Injury).

Initiation of Antidumping Investigations

Based upon the examination of the petitions on chlorinated isos from the PRC and Spain, and other information reasonably available to the Department, we find that the petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of chlorinated isos from the PRC and Spain are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, copies of the public versions of the petitions have been provided to the representatives of the governments of the PRC and Spain. We will attempt to provide copies of the public versions of the petitions to each producer named in the petitions, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiations as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than June 28, 2004, whether there is a reasonable indication that imports of chlorinated isos from the PRC and Spain are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: June 3, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–13066 Filed 6–9–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On December 8, 2003, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and an examination of our calculations, we have made certain changes for the final results. We find that the companies reviewed sold circular welded non-alloy steel pipe from Korea in the United States below normal value during the period November 1, 2001, through October 31, 2002.

EFFECTIVE DATE: June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Julie Santoboni, Scott Holland, or Andrew McAllister, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4194, (202) 482–1279, or (202) 482–1174, respectively.

SUPPLEMENTARY INFORMATION:

Background

Since the publication of the preliminary results of this review (*see Notice of Preliminary Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 68 FR 68331 (December 8, 2003) ("*Preliminary Results*")), the following events have occurred:

The Department of Commerce ("the Department") issued verification reports for Husteel Co., Ltd. ("Husteel"), SeAH Steel ("SeAH"), and Hyundai HYSCO ("HYSCO") in November and December 2003. See Memoranda to the File, "Verification Report of the Sales and Cost Responses of Husteel in the 2001/2002 Antidumping Duty Administrative Review of Circular Non-Alloy Steel Pipe from Korea," dated December 8, 2003; "CEP Sales Verification Report—SeAH Steel," dated December 10, 2003; "CEP Sales Verification Report—Hyundai HYSCO," dated December 29, 2003; "Home-Market Sales and Cost Verification Report—Hyundai HYSCO," dated December 30, 2003. These reports are on file in the Central Records Unit, Room B–099 of the main Department building ("CRU").

On December 17, 2003, we notified the parties that the briefing schedule was extended, with case briefs due on January 26, 2004, and rebuttal briefs due on February 2, 2004. On January 8, 2004, we granted a request submitted by Husteel and SeAH for an extension to file rebuttal briefs until February 5, 2004. Case briefs were submitted by Husteel, SeAH, and HYSCO (collectively, "the respondents") on January 26, 2004. Allied Tube and Conduit Corporation and Wheatland Tube Company (collectively, the "domestic interested parties") submitted a case brief on January 28, 2004. Rebuttal briefs were submitted by the respondents on February 5, 2004. The domestic interested parties submitted a rebuttal brief on February 6, 2004.

On February 19, 2004, we published in the **Federal Register** an extension of the time limit for the completion of the final results of the review to no later than June 1, 2004, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"). *See Certain Circular Welded Non-Alloy Steel Pipe From Korea: Notice of Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 69 FR 7724 (February 19, 2004).

Due to the unexpected emergency closure of the main Commerce building on Tuesday, June, 1, 2004, the Department has tolled the deadline for these final results by one day to June 2, 2004.

Scope of the Order

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in this order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the Department's *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico, and Venezuela*, 61 FR 11608 (March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A–53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following *Harmonized Tariff Schedule of the United States* ("HTSUS") subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Review

The period of review ("POR") is November 1, 2001, through October 31, 2002.

Verification

As stated in the *Preliminary Results* and provided in section 782(i) of the Act, we verified information submitted by the respondents using standard verification procedures, including on-site inspection of the manufacturers' facilities and examination of the relevant sales, cost, and financial records.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the "Issues and Decision Memorandum" from Jeffrey May, Deputy Assistant Secretary, Import Administration to James J. Jochum,

Assistant Secretary, Import Administration, dated June 2, 2004 ("*Decision Memorandum*"), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Fair Value Comparisons

We calculated export price ("EP"), constructed export price ("CEP"), normal value ("NV"), cost of production ("COP"), and constructed value ("CV") based on the same methodologies used in the *Preliminary Results* with the following exception:

- We recalculated HYSCO's COP, CV, and CEP profit rate using the reported combined costs for self-produced and further manufactured pipe. (*See Final Results Calculation Memorandum for Hyundai HYSCO* dated June 2, 2004, and *Decision Memorandum* at Comment 6).

Results of the COP Test

Pursuant to section 773(b)(1)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the 12-month period were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determined that such below-cost sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that for each of the respondents, for certain specific products, more than 20 percent of the home market sales within an extended period of time were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

HYSCO had U.S. sales of subject merchandise for which there were no comparable home market sales in the ordinary course of trade (*e.g.*, sales that passed the cost test). We compared those sales to CV, in accordance with section 773(a)(4) of the Act.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the *Preliminary Results*.

Final Results of the Review

We determine that the following percentage margins exist for the period November 1, 2001, through October 31, 2002:

Exporter/producer	Weighted-average margin percentage
HYSCO	0.84
Husteel	1.82
SeAH	0.66

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer (or customer)-specific assessment rates for merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we calculated a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of circular welded non-alloy steel pipe from Korea entered, or withdrawn from warehouse, for consumption, on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates listed above (except no cash deposit will be required if a company's weighted-average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate shall be 4.80 percent, the "all others" rate established in the less than fair value investigation. *See Notice of Antidumping Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea*, 57 FR 49453 (November 2, 1992).

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO

materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and this notice in accordance with sections section 751(a)(1) and 777(i)(1) of the Act.

Dated: June 2, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix I

List of Comments in the Issues and Decision Memorandum

Comment 1: Treatment of 201 Duties
Comment 2: Duty Drawback Adjustment
Comment 3: Inclusion of U.S. Affiliates' Interest Expenses as a Component of U.S. Indirect Selling Expenses
Comment 4: New Information Submitted by HYSCO at Verification
Comment 5: HYSCO's Home Market Credit Expense Calculation
Comment 6: Cost Files Used in HYSCO's Margin Calculation
Comment 7: CEP Offset for Husteel and SeAH
Comment 8: Husteel's Allocation of Export Selling Expenses
Comment 9: Husteel's General and Administrative Expenses Calculation
Comment 10: Husteel's and SeAH's Treatment of Foreign Exchange Gains and Losses
Comment 11: New Information Submitted by SeAH at Verification
Comment 12: SeAH's Consignment Sales
Comment 13: Credit Expenses Incurred by SeAH's Home Market Affiliated Resellers HSC and SSP
Comment 14: SeAH's U.S. Indirect Selling Expense Calculation

[FR Doc. 04–13065 Filed 6–9–04; 8:45 am]
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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Amended Final Results of First Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of first antidumping duty administrative review.

SUMMARY: On May 5, 2004, the U.S. Department of Commerce (the Department) published in the **Federal Register** the final results of the first administrative review of the antidumping duty order on honey from the People's Republic of China (PRC) covering the period February 10, 2001, through November 30, 2002 [1] (69 FR 25060). On May 4, 2004, in accordance with 19 CFR 351.224(c)(2), we received timely-filed ministerial error allegations from respondent, Zhejiang Native Produce and Animal By-Products Import & Export Corp. a.k.a. Zhejiang Native Produce and Animal By-Products Import and Export Group Corporation (Zhejiang). We did not receive comments from petitioners.[2] Based on our analysis of Zhejiang's ministerial error allegations, the Department has revised the antidumping duty rate for Zhejiang. Accordingly, we are amending the final results. See the "Amended Final Results of Review" section below.

EFFECTIVE DATE: June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Brandon Farlander at (202) 482–3019 or (202) 482–0182, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Scope of the Antidumping Duty Order

The products covered by this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this review is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and the U.S. Customs and Border Protection (CBP) purposes, the Department's written description of the merchandise under order is dispositive.

Amended Final Results of Review

Zhejiang alleged that the Department did not calculate a raw honey value representative of the POR, as it intended to do, in calculating Zhejiang's final *ad valorem* margin. Specifically, Zhejiang alleged that the Department: (1) Incorrectly double-counted for the December 2001 raw honey surrogate value, adjusted for inflation, in its calculation of a POR average value and (2) failed to inflate the raw honey surrogate value by an average rate of inflation for the period February 2001 through November 2001, which was inconsistent with its calculation of inflation for the period June 2002 through November 2002. Additionally, Zhejiang noted that the Department incorrectly described the denominator used to calculate inflation for the period June 2002 through November 2002.

We agree in part with Zhejiang. The Act, as well as the Department's regulations, define a ministerial error as one involving "addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial." See section 751(h) of the Act and 19 CFR 351.224(f) of the Department's regulations. We agree with Zhejiang's claim that we inadvertently failed to inflate the raw honey surrogate value by an average rate of inflation for the period February 2001 through November 2001. Therefore, we have corrected Zhejiang's final margin program accordingly. However, the Department disagrees with Zhejiang's other claim that the Department double-counted the December 2001 raw honey surrogate value in its calculations. In fact, the Department only represented the December 2001 raw honey surrogate value (adjusted for inflation) once in its calculation. See Memorandum to the File regarding Final Results of the First Administrative Review of the Antidumping Duty Order on Honey from the People's Republic of China; Factors of Production Valuation (April 28, 2004) (Final FOP Memo) at Attachment 2, in which the Department notes that it calculated an average raw honey surrogate value for the period January 2002 through May 2002. Therefore, since the Department did not commit an error with respect to the December 2001 surrogate value, we are not making any adjustments in regard to our use of the December 2001 raw honey surrogate value in our final calculation of the final POR average value. See the June 1, 2004, memorandum to James J. Jochum, Assistant Secretary for Import Administration, from Joseph A. Spetrini, Deputy Assistant Secretary for

[1] The period of review (POR) for those entities with an affirmative critical circumstances finding from the less-than-fair-value investigation (including Zhejiang) is February 10, 2001, through November 30, 2002. For all other companies, the period of review is May 11, 2001, through November 30, 2002.

[2] Petitioners in this proceeding are the American Honey Producers Association and the Sioux Honey Association.

AD/CVD Enforcement Group III (Amended Final Memo) at Attachment 1.

With respect to Zhejiang's comment that the Department incorrectly described the denominator that yielded its Inflator 2 calculation, we have updated the description to accurately reflect the variable used by the Department. See Amended Final Memo at Attachment 3.

As a result of our corrections, for the period February 10, 2001, through November 30, 2002, Zhejiang's antidumping duty margin decreased from 68.35 percent to 67.70 percent *ad valorem*.

The Department will instruct the CBP to assess antidumping duties, as indicated above, on all appropriate entries. The Department will issue liquidation instructions directly to the CBP. The amended cash deposit requirement is effective for all shipments of subject merchandise from Zhejiang entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

These amended final results are issued and published in accordance with section 751(h) of the Act and 19 CFR 351.224 of the Department's regulations.

Dated: June 2, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–13067 Filed 6–9–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–827]

Notice of Final Results and Rescission of Antidumping Duty Administrative Review: Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results and rescission of antidumping duty administrative review.

SUMMARY: We are rescinding the third antidumping duty administrative review of Tubos de Acero de Mexico, S.A. (TAMSA) because we have determined that TAMSA did not ship subject merchandise to the United States during the period of review.

DATES: *Effective Date:* June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Kristina Boughton or Charles Riggle at (202) 482–8173 or (202) 482–0650, respectively; AD/CVD Enforcement Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2003, pursuant to a request by the petitioner,[1] we published the notice of initiation of this administrative review of the antidumping duty order on certain large diameter carbon and alloy seamless standard, line, and pressure pipe from Mexico with respect to TAMSA. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review*, 68 FR 56262 (September 30, 2003). On December 9, 2003, TAMSA submitted a letter, certifying that during the period of review (POR) neither it, nor its U.S. affiliate, Siderca Corporation, entered subject merchandise for consumption, or sold, exported, or shipped subject merchandise for entry for consumption, in the United States.

On May 4, 2004, the Department published in the **Federal Register** the notice of its preliminary intent to rescind this administrative review and invited parties to comment. See *Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Mexico; Intent To Rescind Antidumping Duty Administrative Review, 69 FR 24569 (Notice of Preliminary Intent to Rescind)*. No interested party submitted comments, a case brief, or requested a hearing.

Scope of the Review

The products covered by this order are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials (ASTM) A53, ASTM A106, ASTM A333, ASTM A334, ASTM A589, ASTM A795, and the American Petroleum Institute (API) 5L specifications and meeting the physical parameters described below, regardless of application, with the exception of the exclusions discussed below. The scope of this order also includes all other products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification, with the exception of the exclusions discussed below. Specifically included within the scope of this order are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this order are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.31.60.50, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.60, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States (HTSUS).

Specifications, Characteristics, and Uses: Large diameter seamless pipe is used primarily for line applications such as oil, gas, or water pipeline, or utility distribution systems. Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas, and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM A335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A106 standard.

Seamless standard pipes are most commonly produced to the ASTM A53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not

[1] The petitioner is United States Steel Corporation.

exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A333 or ASTM A334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A589) and seamless galvanized pipe for fire protection uses (ASTM A795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A106, ASTM A53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A106 pressure pipes and triple or quadruple certified pipes in large diameters is for use as oil and gas distribution lines for commercial applications. A more minor application for large diameter seamless pipes is for use in pressure piping systems by refineries, petrochemical plants, and chemical plants, as well as in power generation plants and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A106 pipes may be used in some boiler applications.

The scope of this order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the exclusions discussed below, whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of this order. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A53, ASTM A106, ASTM A333, ASTM A334, ASTM A589, ASTM A795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A106 applications. These specifications generally include ASTM A161, ASTM A192, ASTM A210, ASTM A252, ASTM A501, ASTM A523, ASTM A524, and ASTM A618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of this order.

Specifically excluded from the scope of this order are:

A. Boiler tubing and mechanical tubing, if such products are not produced to ASTM A53, ASTM A106, ASTM A333, ASTM A334, ASTM A589, ASTM A795, and API 5L specifications and are not used in standard, line, or pressure pipe applications.

B. Finished and unfinished oil country tubular goods (OCTG), if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

C. Products produced to the A335 specification unless they are used in an application that would normally utilize ASTM A53, ASTM A106, ASTM A333, ASTM A334, ASTM A589, ASTM A795, and API 5L specifications.

D. Line and riser pipe for deepwater application, *i.e.*, line and riser pipe that is (1) used in a deepwater application, which means for use in water depths of 1,500 feet or more; (2) intended for use in and is actually used for a specific deepwater project; (3) rated for a specified minimum yield strength of not less than 60,000 psi; and (4) not identified or certified through the use of a monogram, stencil, or otherwise marked with an API specification (*e.g.*, API 5L).

With regard to the excluded products listed above, the Department will not instruct U.S. Customs and Border Protection (CBP) to require end-use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being utilized in a covered application. If such information is provided, the Department will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in a covered application as described above. For example, if, based on evidence provided by the petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A–335 specification is being used in an A–106 application, it will require end-use certifications for imports of that specification. Normally the Department will require only the importer of record to certify to the end-use of the imported merchandise. If it later proves necessary for adequate implementation, the Department may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive.

Rescission of Third Administrative Review

On May 4, 2004, the Department published in the **Federal Register** its intent to rescind the administrative review. See *Notice of Preliminary Intent to Rescind*. In this notice we stated that, based on our shipment data query and examination of entry documents (see Memorandum to Michael S. Craig from Gary Taverman: Request for U.S. Entry Documents—Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico (A–201–827) (March 4, 2004) and Memorandum to the File: Customs Entry Documents—Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico (A–201–827) (April 30, 2004)), we should treat TAMSA as a non-shipper and, in accordance with section 351.213(d)(3) of the Department's regulations, rescind this review. We invited interested parties to comment on our intent to rescind the administrative review. No comments were submitted.

Consequently, the Department continues to treat TAMSA as a non-shipper for the purpose of this review. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, and consistent with our practice, we rescind this review because TAMSA is the sole respondent and a non-shipper. See, *e.g.*, *Polychloroprene Rubber from Japan: Notice of Rescission of Antidumping Duty Administrative Review*, 66 FR 45005 (August 27, 2001).

We are issuing this notice is in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended, and section 351.213(d) of the Department's regulations.

Dated: June 2, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–13070 Filed 6–9–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Certain Polyester Staple Fiber From Korea; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review and Preliminary Notice of Intent To Revoke, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of 2002–2003 administrative review, partial rescission of review, partial request for revocation of antidumping duty order, and preliminary notice of intent to revoke, in part.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on certain polyester staple fiber from Korea. The period of review is May 1, 2002, through April 30, 2003. This review covers imports of certain polyester staple fiber from three producers/exporters.

We have preliminarily found that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties.

Interested parties are invited to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

DATES: *Effective Date:* June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Julie Santoboni, Andrew McAllister or Jesse Cortes, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–4194, (202) 482–1174 or (202) 482–3986.

Background

On May 25, 2000, the Department of Commerce ("the Department") published an antidumping duty order on certain polyester staple fiber ("PSF") from Korea. (*See* 65 FR 33807.) On May 1, 2003, the Department published a notice of "Opportunity to Request Administrative Review" of this order. (*See* 68 FR 23281). On May 30, 2003, Arteva Specialties S.a.r.l., d/b/a KoSa and Wellman, Inc. ("the petitioners") requested administrative reviews of Daehan Synthetic Fiber Co., Ltd. ("Daehan"), Daeyang Industrial Co., Ltd. ("Daeyang"), East Young Co., Ltd. ("East Young"), Estal Industry Co., Ltd. ("Estal"), Keon Baek Co., Ltd. ("Keon Baek"), Geum Poong Corp. ("Geum Poong"), Huvis Corporation ("Huvis"), Mijung Industrial Co. ("Mijung"), Saehan Industrial Co. ("Saehan"), Samheung Co., Ltd. ("Samheung"), Sam Young Synthetics Co., Ltd. ("Sam Young") and Sunglim Co., Ltd. ("Sunglim"). On May 30, 2003, Geum Poong, Sam Young, East Young, Daeyang, Mijung, Keon Baek, Saehan, and Huvis made similar requests for administrative reviews. Keon Baek also requested that the Department revoke the antidumping duty order with respect to Keon Baek. Also, on May 30, 2003, Stein Fibers, Ltd. ("Stein Fibers"), an interested party in this review, requested an administrative review of imports of the subject merchandise produced by Daeyang, East Young, Geum Poong, Huvis, Keon Baek, Mijung, and Sam Young. On July 1, 2003, the Department published a notice initiating the review for the aforementioned companies. (*See* 68 FR 39055). The period of review ("POR") is May 1, 2002, through April 30, 2003.

On July 10, 2003, we issued antidumping questionnaires in this review. On August 14, 2003, Mijung withdrew its request for review. Also, on August 14, 2003, Stein Fibers withdrew its request for administrative review of the shipments of Mijung. On September 3, 2003, the petitioners withdrew their requests for review of Daehan, Daeyang, East Young, Estal, Geum Poong, Mijung, Saehan, Samheung, Sam Young and Sunglim. On September 12, 2003, Daeyang, East Young, Geum Poong, and Sam Young withdrew their requests for review. Also, on September 12, 2003, Stein Fibers withdrew its requests for administrative review of the shipments of Daeyang, East Young, Geum Poong, and Sam Young. *See* "Partial Rescission" section, below.

We received responses from Keon Baek, Saehan and Huvis (collectively, "the respondents") on September 12, 2003. As a result of certain below-cost sales being disregarded in the previous administrative review, on October 15, 2003, we instructed Huvis to respond to the cost questionnaire. On November 25, 2003, we received Huvis' response to the cost questionnaire.

On October 24, and November 3, 2003, in accordance with 19 CFR 351.301(d)(2)(ii), the petitioners alleged that Keon Baek and Saehan, respectively, had made sales in the home market at prices below the cost of production ("COP") during the POR. On October 29, and November 4, 2003, Keon Baek and Saehan, respectively, submitted objections to the petitioners' COP allegations on the basis that they were untimely filed. We accepted the allegations and found that the petitioners' allegations provided a reasonable basis to believe or suspect that sales in the home market by Keon Baek and Saehan had been made at prices below the COP. On November 11, and December 2, 2003, pursuant to section 773(b) of the Tariff Act of 1930, as amended effective January 1, 1995 ("the Act") by the Uruguay Round Agreements Act ("URAA"), we initiated investigations to determine whether Keon Baek and Saehan, respectively, made home market sales during the POR at prices below the COP (*see* Memorandum from Jesse Cortes to Susan Kuhbach, Director, AD/CVD Enforcement Office 1, "Petitioners" Allegation of Sales Below the Cost of Production for Keon Baek Co., Ltd.," dated November 11, 2003 and Memorandum from Julie Santoboni to Susan Kuhbach, Director, AD/CVD Enforcement Office 1, "Petitioners" Allegation of Sales Below the Cost of Production for Saehan Industries, Inc.," dated December 2, 2003, which are on file in the Department's Central Records Unit ("CRU") in room B–099 of the main Department building). Accordingly, on November 17 and December 2, 2003, we notified Keon Baek and Saehan, respectively, that they must respond to section D of the antidumping duty questionnaire. We received responses to the cost questionnaire from Keon Baek and Saehan on December 8, 2003, and January 22, 2004, respectively.

In January, February and April 2004, we issued supplemental questionnaires to Huvis, Keon Baek and Saehan. We received responses to these supplemental questionnaires in January, February, March and May 2004.

On January 13, 2004, in accordance with section 751(a)(3)(A) of the Act, we published a notice extending the time limit for the completion of the preliminary results in this case by 120 days (*i.e.*, until no later than June 1, 2004). (*See* 69 FR 1971).

Due to the unexpected emergency closure of the main Commerce building on Tuesday, June, 1, 2004, the Department has tolled the deadline for

these preliminary results by one day to June 2, 2004.

Scope of the Order

For the purposes of this order, the product covered is PSF. PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheading 5503.20.00.20 is specifically excluded from this order. Also specifically excluded from this order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from this order. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.

Partial Rescission

As noted above, Mijung, Daeyang, East Young, Geum Poong, and Sam Young withdrew their requests for review, and Stein Fibers withdrew its request for review of the same companies. Additionally, the petitioners withdrew their requests for review of Daehan, Daeyang, East Young, Estal, Geum Poong, Mijung, Saehan, Samheung, Sam Young, and Sunglim. Because these withdrawals were timely filed and no other party requested a review of these companies, with the exception of Saehan, pursuant to 19 CFR 351.213(d)(1) we are rescinding this review with respect to Daehan, Daeyang, East Young, Estal, Geum Poong, Mijung, Samheung, Sam Young, and Sunglim. We will instruct CBP to liquidate any entries from these companies during the POR and to assess antidumping duties at the rate that was applied at the time of entry.

Revocation

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than normal value ("NV") in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and, (3) an agreement to reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1).

Pursuant to 19 CFR 351.222(e)(1), Keon Baek requested revocation of the antidumping duty order as it pertains to that company. According to 19 CFR 351.222(b)(2), upon receipt of such a request, the Department may revoke an order, in part, if it concludes that (1) the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) the continued application of the antidumping duty order is not otherwise necessary to offset dumping; and (3) the company has agreed to its immediate reinstatement in the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV.

We preliminarily find that the request from Keon Baek meets all of the criteria under 19 CFR 351.222. With regard to the criteria of subsection 19 CFR 351.222(b)(2), our preliminary margin calculations show that Keon Baek sold PSF at not less than NV during the current review period. *See* dumping margins below. In addition, Keon Baek sold PSF at not less than NV during the 1999–2001 review period (*i.e.*, Keon Baek's dumping margin was zero or *de minimis*). *See Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review*, 67 FR 63616 (Oct. 15, 2002) ("1999–2001 PSF AR Final"), covering the period November 8, 1999, through April 30, 2001. In accordance with 19 CFR 351.222(d) we did not review the intervening review period.

Based on our examination of the sales data submitted by Keon Baek, we preliminarily find that Keon Baek sold the subject merchandise in the United States in commercial quantities in each of the consecutive years cited by Keon Baek to support its request for revocation. *See Keon Baek Calculation Memorandum*. Thus, we preliminarily find that Keon Baek had zero or *de minimis* dumping margins for the requisite administrative review periods and sold in commercial quantities for those consecutive years. Also, we preliminarily find that application of the antidumping order to Keon Baek is no longer warranted for the following reasons: (1) The company had zero or *de minimis* margins for a period of at least three consecutive years; (2) the company has agreed to immediate reinstatement of the order if the Department finds that it has resumed making sales at less than normal value; and (3) the continued application of the order is not otherwise necessary to offset dumping. Therefore, we preliminarily find that Keon Baek qualifies for revocation of the order on PSF pursuant to 19 CFR 351.222(b)(2) and that the order with respect to merchandise produced and exported by Keon Baek should be revoked. If these preliminary findings are affirmed in our final results, we will revoke this order in part for Keon Baek and, in accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for any of the merchandise in question that is entered, or withdrawn from warehouse, for consumption on or after May 1, 2003, and will instruct CBP to refund any cash deposits for such entries.

Verification

As provided in section 782(i) of the Act, in March 2004, we verified information provided by Keon Baek using standard verification procedures, including on-site inspection of the manufacturer's facilities, examination of relevant sales, cost and financial records, and selection of original documentation containing relevant information. The Department reported its findings from the sales and cost verification on May 26, 2004. *See* Memorandum to the File, *Sales and Cost Verification Report—Keon Baek* dated May 26, 2004 (*Keon Baek Verification Report*), which is on file in the CRU.

Fair Value Comparisons

To determine whether the respondents' sales of PSF to the United States were made at less than NV, we compared export price ("EP") to NV, as

described in the "Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in the home market covered by the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. In accordance with section 773(a)(1)(C)(ii) of the Act, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. (For further details, *see* the "Normal Value" section, below.)

We compared U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the POR until two months after the POR. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Where there were no sales of identical or similar merchandise made in the ordinary course of trade in the home market to compare to U.S. sales, we compared U.S. sales to constructed value ("CV"). In making product comparisons, consistent with our final determination in the original investigation, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: (1) Composition; (2) type; (3) grade; (4) cross section; (5) finish; and (6) denier (*see Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea*, 65 FR 16880, 16881 (March 30, 2000)).

Export Price

For sales to the United States, we calculated EP, in accordance with section 772(a) of the Act, because the merchandise was sold prior to importation by the exporter or producer outside the United States to the first unaffiliated purchaser in the United States and because constructed export price methodology was not otherwise warranted. We calculated EP based on the FOB, C&F, CIF, EDDP (ex-dock duty paid) FOB U.S. port, or EDDP CIF price to unaffiliated purchasers in the United States. We made deductions, where appropriate, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: inland freight from the plant to port of exportation, foreign brokerage and handling, wharfage, container tax, bill of lading charge, terminal handling charge, international freight, marine insurance, and U.S. customs duty.

We increased EP, where appropriate, for duty drawback in accordance with section 772(c)(1)(B) of the Act. Huvis and Saehan provided documentation demonstrating that they have received duty drawback under the individual-rate system. In prior investigations and administrative reviews, the Department has examined the individual-rate system and found that the government controls in place generally satisfy the Department's requirements for receiving a duty drawback adjustment (*i.e.*, that (1) the rebates received were directly linked to import duties paid on inputs used in the manufacture of the subject merchandise, and (2) there were sufficient imports to account for the rebates received). *See Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea*, 62 FR 55574, 55577 (October 27, 1997). We examined the documentation submitted by Huvis and Saehan and confirmed that they met the Department's two-prong test for receiving a duty drawback adjustment. Accordingly, we are allowing the full duty drawback adjustment on all of Huvis' and Saehan's U.S. sales.

Keon Baek received duty drawback under the fixed-rate system. The Department has found that the Korean fixed-rate duty drawback system does not sufficiently link import duties paid to rebates received upon export. Therefore, the fixed-rate system does not, in and of itself, meet the Department's criteria, *i.e.*, that the rebates received were directly linked to import duties paid on inputs used in the manufacture of the subject merchandise, and that there were sufficient imports to account for the rebates received. *See id.* Furthermore, Keon Baek stated in its questionnaire response, and we verified, that it did not import any raw materials during the POR. Consequently, Keon Baek was unable to demonstrate that duty drawback which it received under the fixed-rate system met the Department's criteria for a duty drawback adjustment. Accordingly, for purposes of these preliminary results, we are not granting Keon Baek a duty drawback adjustment.

Finally, for Keon Baek we incorporated the minor corrections to EP submitted at verification. *See Keon Baek Verification Report* at Exhibit 1.

Normal Value

A. Selection of Comparison Market

In order to determine whether there was a sufficient volume of sales of PSF in the home market to serve as a viable basis for calculating NV, we compared each respondent's home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for all producers.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),[1] including selling functions,[2] class of customer ("customer

[1] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of each respondent to properly determine where in the chain of distribution the sale appears to occur.

[2] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major

Continued

category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices [3]), we consider the starting prices before any adjustments. *See Micron Technology, Inc.* v. *United States, et al.*, 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001) (affirming this methodology).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP sales at a different LOT in the comparison market, where available data show that the difference in LOT affects price comparability, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

Huvis reported that it made direct sales to distributors and end users in both the home market and in the United States. Keon Baek made direct sales to end users in the home market and in the United States. Saehan made direct sales to distributors and end users in the home market and distributors and end users in the United States. Saehan also made sales to Korean trading companies for export to the United States. Each respondent has reported a single channel of distribution and a single level of trade in each market, and has not requested an LOT adjustment. We examined the information reported by each respondent regarding its marketing process for making the reported home market and U.S. sales, including the type and level of selling activities performed and customer categories. Specifically, we considered the extent to which sales process, freight services, warehouse/inventory maintenance, and warranty services varied with respect to the different customer categories (*i.e.*, distributors and end users) within each market and across the markets. Based on our analyses, we found a single level of trade in the United States, and a single, identical level of trade in the home market for all respondents. Thus, it was unnecessary to make a LOT adjustment for Saehan, Keon Baek or Huvis in comparing EP and home market prices.

categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services. Other selling functions unique to specific companies were considered, as appropriate.

[3] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A expenses, and profit for CV, where possible.

C. Sales to Affiliated Customers

Huvis made sales in the home market to an affiliated customer. To test whether these sales were made at arm's length, we compared the starting prices of sales to the affiliated customer to those of unaffiliated customers, net of all movement charges, direct and indirect selling expenses, discounts, and packing. Where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. *See Modification Concerning Affiliated Party Sales in the Comparison Market*, 67 FR 69186 (November 15, 2002). In accordance with the Department's practice, we only included in our margin analysis those sales to an affiliated party that were made at arm's length.

D. Cost of Production Analysis

As discussed in the "Background" section above, there were reasonable grounds to believe or suspect that the respondents made sales of the subject merchandise in its comparison market at prices below the COP in accordance with section 773(b) of the Act.

1. Calculation of COP

We calculated the COP on a product-specific basis, based on the sum of the respondents' costs of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative ("SG&A") expenses, including interest expenses, and the costs of all expenses incidental to placing the foreign like product in a condition packed ready for shipment in accordance with section 773(b)(3) of the Act.

We relied on COP information submitted in the respondents' cost questionnaire responses, except for the following adjustments.

Huvis. We adjusted Huvis' reported cost of manufacturing to account for purchases of modified terephthalic acid and ethylene glycol from affiliated parties at non-arm's-length prices. *See* Memorandum from Team to the File, *Preliminary Results Calculation Memorandum—Huvis Corporation*, dated June 2, 2004 (*Huvis Calculation Memorandum*), which is on file in the CRU.

Keon Baek. We adjusted Keon Baek's net interest expense ratio to take into account a calculation error found at verification. *See Keon Baek Verification Report.* We also adjusted Keon Baek's general and administrative expense ratio to exclude the reversal of allowance of doubtful accounts. *See Keon Baek Calculation Memorandum.*

Saehan. We adjusted Saehan's reported general and administrative ("G&A") expenses ratio to include certain items that Saehan had omitted from its submitted calculation. *See* Memorandum from the Team to the File, *Preliminary Results Calculation Memorandum for Saehan Industries Inc.*, dated June 1, 2004 (*Saehan Calculation Memorandum*), which is on file in the CRU. We also did not include Saehan's adjustment to its net interest expense calculation that was reported in the SAS field INTEXADJ in its submitted cost file. *See Saehan Calculation Memorandum.*

2. Test of Home Market Prices

On a product-specific basis, we compared the adjusted weighted-average COP figures for the POR to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales were made at prices below the COP. The prices were exclusive of any applicable movement charges, billing adjustments, discounts, commissions, warranties and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of COP Test

Pursuant to section 773(b)(1), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product are at prices less than the COP, we determine that the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of each of the respondent's home market sales were at prices less than the COP and, thus, the below-cost sales were made

within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not provide for the recovery of costs within a reasonable period of time. Therefore, we excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1).

E. Calculation of Normal Value Based on Home Market Prices

We calculated NV based on the price to unaffiliated customers, and an affiliated customer where sales were made at arm's length. We made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act. We also made adjustments, where appropriate, consistent with section 773(a)(6)(B)(ii) of the Act, for the following movement expense: inland freight from the plant to the customer. In addition, we made adjustments for differences in circumstances of sale ("COS") in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments, where appropriate, by deducting direct selling expenses incurred on home market sales (*i.e.*, credit expenses, bank charges, less charges, and letter of credit charges) and adding U.S. direct selling expenses (*i.e.*, credit expenses, bank charges, letter of credit fees, bank document handling charges, term charges, collection charges, postage, and telegram charges).

Preliminary Results of the Review

We find that the following dumping margins exist for the period May 1, 2002, through April 30, 2003:

Exporter/manufacturer	Weighted-average margin percentage
Huvis Corporation	1.54
Keon Baek Co., Ltd	0.07 (*de minimis*)
Saehan Industries, Inc	8.33

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

Assessment Rates and Cash Deposit Requirements

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer or customer of the subject merchandise. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review. Upon issuance of the final results of this administrative review, if any importer- or customer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will instruct CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered quantity of the merchandise. For assessment purposes, we calculated importer- or customer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer or customer and dividing the amount by the total entered quantity of the sales to that importer or customer.

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of PSF from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rate established in the final results of this administrative review (except no cash deposit will be required if its weighted-average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or a previous review, the cash deposit rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 7.91 percent, the "all others" rate established in *Certain Polyester Staple Fiber from the Republic of Korea: Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision*, 68 FR 74552 (December 24, 2003).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 2, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–13068 Filed 6–9–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808]

Stainless Steel Plate in Coils From Belgium: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel plate in coils (SSPC) from Belgium in response to a request by petitioners, Allegheny Ludlum, AK Steel Corporation, Butler Armco Independent Union, United Steelworkers of America, AFL–CIO/CLC, and Zanesville Armco Independent Organization (collectively, petitioners). This review covers sales of subject merchandise to the United States during the period of May 1, 2002, through April 30, 2003.

We have preliminarily determined that U.S. sales have been made below normal value (NV). If these preliminary results are adopted in our final results,

we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the constructed export price (CEP) and the NV. Interested parties are invited to comment on these preliminary results. *See Preliminary Results of Review* section of this notice.

DATES: *Effective Date:* June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Scot Fullerton or Elfi Blum-Page, Office of Antidumping/Countervailing Duty Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1386 or (202) 482–0197, respectively.

Background

The Department published the antidumping duty order on SSPC from Belgium in the **Federal Register** on May 21, 1999 (64 FR 27756). On May 1, 2003, the Department published a notice of opportunity to request administrative review of the antidumping duty order on SSPC from Belgium (68 FR 23281). On May 30, 2003, the Department received a timely request for an administrative review of this order from petitioners. On July 1, 2003, we published a notice initiating an administrative review of SSPC for ALZ, N.V. (ALZ) and its affiliate Arcelor International America, Inc.[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 39055 (July 1, 2003).

On December 30, 2003, the Department extended the deadline for the preliminary results of this antidumping duty administrative review from January 30, 2004, until no later than 365 days from the last day of the anniversary month of the order. Since this date falls on a weekend and the next business day is a holiday, the due date is June 1, 2004. *See Notice of Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review: Stainless Steel Plate in Coils from Belgium*, 68 FR 75212 (December 30, 2003). Due to the unexpected emergency closure of the main Commerce building on Tuesday, June 1, 2004, the Department has tolled the deadline for these preliminary/final results by one day to June 2, 2004. On May 10, 2004, petitioners submitted comments on U&A Belgium's original and first supplemental questionnaire responses. Because these comments were not submitted in time to fully consider them for these preliminary results, we will continue to consider these comments for the final results of this review.

[1] Petitioners requested a review of ALZ and its affiliate Arcelor International America, Inc. U&A Belgium claims to be the successor of ALZ N.V. We are making a determination as to whether U&A Belgium is the successor for ALZ N.V. in this review.

Scope of the Antidumping Duty Order

Effective March 11, 2003, in accordance with *Allegheny Ludlum Corp.* v. *United States*, 287 F.3d 1365 (Fed. Cir. 2002) remanded to CIT No. 99–06–00361, slip op. 2002–147 (CIT Dec. 12, 2002), and *Notice of Amended Antidumping Duty Orders: Certain Stainless Steel Plate in Coils from Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan*, 68 FR 11520 (March 11, 2003), the scope of this order was amended. Therefore, for purposes of this review, there were separate scopes in effect. These scopes are set forth below. Respondent has appropriately reported only those U.S. sales during the relevant period covered by each scope.

Scope of Order From May 1, 2002, Through March 10, 2003

The product covered by this order is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, *etc.*) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this order are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of this order. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219110030, 7219110060, 7219120005, 7219120020, 7219120025, 7219120050, 7219120055, 7219120065, 7219120070, 7219120080, 7219310010, 7219900010, 7219900020, 7219900025, 7219900060, 7219900080, 7220110000, 7220201010, 7220201015, 7220201060, 7220201080, 7220206005, 7220206010, 7220206015, 7220206060, 7220206080, 7220900010, 7220900015, 7220900060, and 7220900080. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

Scope of Order On or After March 11, 2003

The product covered by this order is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, *etc.*) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this order are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this order is currently classifiable in the HTS at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05. 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to these orders is dispositive.

Analysis

Affiliation of Parties

U&A Belgium reported that ALZ's parent company Arbed S.A. (Arbed) was acquired by Arcelor S.A. (Arcelor).

Pursuant to section 771(33)(E) of the Tariff Act of 1930, as amended (the Act), the Department preliminarily finds that Arcelor is affiliated with Arbed, by virtue of the merger of those entities and Arcelor's acquisition of 99.45 percent of Arbed.[2] ALZ, a Belgian stainless steel producer, and the original respondent in this case, was a subsidiary of Arbed. As a result of the merger, the Arcelor Group created a new unit that combined Ugine S.A., a French stainless steel producer, and ALZ. The new business unit, called Ugine & ALZ, is part of Arcelor's stainless steel flat sector. As such, the former ALZ now operates as U&A Belgium. *See Successorship* section, below.[3] Further, effective February 2002, Arcelor also merged with Usinor S.A. (Usinor) and Aceralia Corporacion Siderurgica, S.A. (Aceralia), acquiring 97.58 percent and 95.03 percent of the companies' shares, respectively.[4]

According to section 771(33)(E) of the Act, any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization shall be considered affiliated. Since Arcelor owns 99.45 percent of Arbed's shares, 97.58 percent of Usinor's shares, and 95.03 percent of Aceralia's shares, it directly owns more than five percent of the shares of these companies. According to section 771(33)(F) of the Act, two or more persons directly or indirectly controlling, controlled by, or under common control with, any person, shall be considered affiliated. Therefore, the Department preliminarily finds that Arbed is affiliated with Usinor and Aceralia by virtue of the merger with and common ownership by Arcelor. Moreover, we preliminarily find this affiliation between Arbed and Arcelor, Usinor, and Aceralia and their subsidiaries to be effective as of February 28, 2002.[5]

Successorship

U&A Belgium reported that ALZ, which was the respondent in the original investigation and subsequent reviews, changed its name on December 31, 2001, prior to the period of review, to U&A Belgium. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Belgium (SSPC LTFV Investigation)*, (March 31, 1999) 64 FR 15476; *see also Stainless Steel Plate in Coils From Belgium; Final Results of Antidumping Duty Administrative Review, (SSPC Belgium 00/01)* 67 FR 64352 (October 18, 2002). As requested by U&A Belgium, we have conducted a successor in interest analysis during this administrative review because the sales of SSPC were made under the name of U&A Belgium during this POR.

The Department is making this successorship determination in order to apply the appropriate and necessary company-specific assessment and cash deposit rates. In determining whether U&A Belgium is the successor to ALZ for purposes of applying the antidumping duty law, the Department examines a number of factors, including, but not limited to, changes in: (1) Management, (2) production facilities, (3) suppliers, and (4) customer base. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France,* 68 FR 69379 (December 12, 2003) (*SSSS from France*); *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (May 13, 1992) (*Brass from Canada*); *Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Changed Circumstances Review,* 59 FR 6944 (February 14, 1994); and *Steel Wire Strand for Prestressed Concrete from Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 55 FR 28796 (July 13, 1990). While examining these factors alone will not necessarily provide a dispositive indication of succession, the Department will generally consider one company to have succeeded another if that company's operations are essentially inclusive of the predecessor's operations. *See Brass from Canada.* Thus, if the evidence demonstrates, with respect to the production and sale of the subject merchandise, that the new company is essentially the same business operation as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

The evidence on the record, including U&A Belgium's company brochures, customer lists, and lists of suppliers, and the information provided in U&A Belgium's March 22, 2004, supplemental response, demonstrates that, with respect to the production and sale of the subject merchandise, U&A Belgium is the successor to ALZ. Specifically, the evidence on the record indicates that, under the Arcelor umbrella, U&A Belgium retained the ownership structure of ALZ, and continued to be a separate company, incorporated in Belgium. The record further indicates that U&A Belgium has the same SSPC production facilities and the same customer and supplier base as ALZ had. However, the management structure and board of directors experienced some changes due to the merger of Arbed into the Arcelor Group.[6] We reviewed U&A Belgium's organizational structure at the time of the merger and after the streamlining/centralization of certain administrative and selling functions with U&A France[7], and found that there were only minimal changes.[8] Therefore, we peliminarily find that U&A Belgium is the successor to ALZ for purposes of this antidumping proceeding.

Start-Up Adjustment

U&A Belgium stated that during the review period, it implemented a pre-existing plan to expand the melt capacity of its Genk facility, and claimed a start-up adjustment for its expansion and renovation. Specifically, U&A Belgium reports that it built a new electric-arc furnace (EAF), and relined and retooled the existing EAF from being a fixed vessel to an exchangeable vessel. U&A Belgium further replaced its MRP converter to an AOD converter, and improved its continuous casting capabilities by replacing its fixed-width continuous caster with a variable-width caster. Specifically, section 773(f)(1)(C)(ii) of the Act states that the Department shall make an adjustment for startup costs where the following two conditions are met: (1) A producer is using new production facilities or producing a new product that requires substantial additional investment, and (2) the production levels are limited by technical factors associated with the initial phase of commercial production. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316, Vol. I, (1994) at 836 (SAA), provides further guidance as to what constitutes a new production facility or a new product.

We have examined U&A Belgium's claim and determined that the criteria for granting a startup adjustment within the meaning of section 773(f)(1)(C) of

[2] *See* Section A response of September 11, 2003, at 1 and Exhibit A–17B, at 38. For percent ownership refer to the first supplemental response of March 22, 2004, Exhibit S1–A–17.

[3] *See* page S1–4 of the first supplemental response.

[4] *See* page A–1 of the section A response, dated September 11, 2003, and Exhibit A–17B, page 38.

[5] *Id.* At 11 and page S1–A4 of the supplemental response.

[6] *See* First supplemental response at S1–4 through S1–10, and Exhibits S1–A2 through S1–A4.

[7] *See* A–17 of the September 11, 2003, section A response. U&A France is owned by Usinor S.A. (67.33 percent) and Valinter (32.37 percent). Valinter, in turn, is wholly owned by Usinor Industeel S.A., which is wholly owned by Usinor S.A.

[8] *See* pages A–8 through A–10 and Exhibits A–2 through A–3 of the September 11, 2003, secton A response.

the Act have not been satisfied in this case. The installation of a new EAF and the relining and retooling of the existing EAF, from being a fixed vessel to an exchangeable vessel; the replacing of an MRP converter with an AOD converter; as well as the replacing of a fixed-width continuous caster with a variable-width caster; does not constitute a "new production facility," nor is U&A Belgium producing a "new product" that required substantial additional investment, within the meaning of section 773(f)(1)(C)(ii)(I) of the Act. Rather, the addition of a new production line within an already existing facility is a "mere improvement" that the SAA at 835 states will not qualify for a startup adjustment. Likewise, an expansion of the current production capacity of a facility will not qualify unless it requires the construction of a new facility. Moreover, U&A Belgium has not identified the actual costs associated with "substantially retooling" its existing facility. Section 773(f)(1)(C)(ii) of the Act establishes that both prongs of the startup test *i.e.*, (1) a producer is using new production facilities or producing a new product, and (2) production levels are limited by technical factors, must be met to warrant a startup adjustment. Therefore, we are not making an adjustment for startup in this case. Based upon our preliminary determination as to the first prong of the analysis, we need not address U&A Belgium's claims concerning technical factors that limit production levels under the second prong of section 773(F)(1)(c)(ii) of the Act, as both prongs must be met for granting a startup adjustment. *See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms From Chile*, 63 FR 41786, 41788 (August 5, 1998).

Country of Origin

Petitioners argue that SSPC hot-rolled by U&A Belgium's German affiliate, and subsequently pickled and annealed in Belgium, is Belgian merchandise and should be included in the analysis of U&A Belgium's sales for purposes of this review. Petitioners claim that the German affiliate cannot be considered the producer, as the hot-rolling by the German affiliate is performed pursuant to a tolling arrangement. Petitioners claim that the hot-rolling does not change the country of origin since the German company neither takes title to the merchandise nor controls the relevant sale of the subject merchandise. In support of their position, petitioners cite the Department's regulations, at 19 CFR 351.401(h).[9]

Petitioners further state that, in *Stainless Steel Bar from India: Preliminary Results of New Shipper Antidumping Administrative Review*, 66 FR 13496 (March 6, 2001), the Department determined that an Indian company was the producer of merchandise that had been toll-rolled by an unaffiliated subcontractor, where the Indian company (1) produced all of the inputs, (2) paid the subcontractor a processing fee for the toll services, and (3) maintained ownership at all times of the inputs as well as of the final product. *See Petitioners' December 15, 2003, Comments. See also, Petitioners' May 12, 2004, Comments.* Petitioners state that, in this proceeding, U&A Belgium purchases all the inputs used to produce the merchandise, maintains ownership at all times of the inputs as well as of the final product, and is invoiced for services performed by its German affiliate pursuant to the tolling arrangement. Therefore, petitioners claim, the German affiliate cannot be considered the producer, and Belgium must be the country of origin.

U&A Belgium objects to the inclusion of sales of SSPC that have been hot-rolled by its German affiliate, as it claims the material is of German origin, and therefore outside the scope of this review. U&A Belgium states that the material is of German origin, as Germany is where substantial transformation of the merchandise occurs. U&A Belgium cites *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip In Coils from the U.K. (SSSS UK)*, 64 FR 30688 (June 9, 1999), where the Department determined that British slabs hot-rolled in Sweden before being returned to the United Kingdom for finishing were excluded from the scope of that review because the hot-rolling process constitutes substantial transformation. U&A Belgium argues that country of origin for merchandise produced in more than one country is not linked to the country in which the producer is located but, rather, is always determined by where the last substantial transformation occurred. *See U&A Belgium April 5, 2004, Supplemental Questionnaire Response*, pages 3–4.

U&A Belgium argues that the substantial transformation which occurred in Germany, conferring country of origin on Germany, is not affected by the fact the hot-rolling was performed pursuant to a tolling arrangement with U&A Belgium. It states that the Department has already addressed the issue of whether the country of origin of a particular product can be transformed through a tolling process in *Final Scope Ruling on Antidumping Order on Polyvinyl Alcohol from Taiwan*, December 19, 1996. *See U&A Belgium April 5, 2004, Supplemental Questionnaire Response*, at pages 5–6. U&A Belgium states that in that case, a U.S. manufacturer shipped merchandise to a toll processor in Taiwan that performed two chemical processes, the second of which transformed the product into subject merchandise. U&A Belgium further argues that the fact that the merchandise was processed through a tolling arrangement did not affect the Department's determination that the chemical processes did constitute substantial transformation and, therefore, that the merchandise was of Taiwan origin, and within the scope of the review. U&A Belgium states that the U.S. manufacturer appealed the issue to the U.S. Court of International Trade (CIT), which upheld the Department's determination. U&A Belgium states that the CIT held that the use of the substantial transformation test to determine a product's country of origin was a reasonable interpretation of the antidumping statute.

For purposes of these preliminary results, we have considered the record evidence and arguments, submitted by petitioners and respondent, addressing the treatment of U&A Belgium's SSPC, which were hot-rolled in Germany. As summarized above, petitioners and respondent have commented on the treatment of the merchandise hot-rolled in Germany, in the context of this order's scope, the Department's tolling regulation, and substantial transformation. Considering the specific facts surrounding the small quantity of U&A Belgium's sales in the instant review of SSPC which was hot-rolled in Germany, we preliminarily find that these sales of merchandise that was hot-rolled in Germany and returned to Belgium for pickling and annealing and shipment, are appropriately classified as merchandise of German origin. Therefore, for purposes of the preliminary results, we have not included sales of this merchandise in our NV comparisons. However, we will continue to analyze the record evidence and arguments on the treatment of U&A Belgium sales of SSPC hot-rolled in Germany for purposes of the final results.

[9] *Treatment of subcontractors ("tolling" operations).* The Secretary will not consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor does not acquire ownership, and does not control the relevant sale of the subject merchandise or foreign like product.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent that are covered by the descriptions in the *Scope of Antidumping Duty Order* section, above, and sold in the home market during the POR, except for merchandise hot-rolled in Germany, to be the foreign like product for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in Appendix V of the initial antidumping questionnaire we provided to U&A Belgium. *See U&A Belgium Antidumping Questionnaire,* dated July 29, 2003.

Normal Value Comparisons

To determine whether sales of subject merchandise to the United States were made at less than fair value, we compared the CEP to NV, as described in the *Constructed Export Price and Normal Value* sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transaction prices.

Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared U&A Belgium's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B) of the Act, and section 351.404(b) of the Department's regulations, because U&A Belgium's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determine that the home market was viable. Moreover, there is no evidence on the record supporting a particular market situation in the exporting company's country that would not permit a proper comparison of home market and U.S. prices.

Arm's Length Test

U&A Belgium reported that it made sales in the home market to affiliated customers, classified into six categories, during the POR. U&A Belgium reported that with one exception, it did not have any sales of subject merchandise to any affiliates which were resold to unaffiliated customers. It reported that one sale to one affiliate was resold to an unaffiliated customer. *See* section A response of September 11, 2003, at page 5. For purposes of these preliminary results, we did not include this sale in our analysis.

Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we consider the sales to be at arm's length prices. *See* 19 CFR 351.403(c). Conversely, where the affiliated party did not pass the arm's length test, all sales to that affiliated party have been have been excluded from the NV calculation. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186 (Nov. 15, 2002).

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

As stated at 19 CFR 351.401(i), the Department will use the respondent's invoice date as the date of sale unless another date better reflects the date upon which the exporter or producer establishes the essential terms of sale. U&A Belgium reported the invoice date as the date of sale for both the U.S. market and the home market because the date of invoice reflects the date on which the material terms of sale were finalized. We used invoice date as the date of sale in the investigation and prior review. *See SSPC LTFV Investigation* and *SSPC Belgium 00/01.*

For purposes of this review, U&A Belgium classified all of its export sales of SSPC as CEP sales. During the POR, U&A Belgium made sales to the United States through its U.S. affiliate, TrefilARBED and, beginning November 2002, through its affiliate U&A S.A. and its U.S. affiliate, Arcelor Stainless USA, which then resold the merchandise to unaffiliated customers. According to U&A Belgium, Arcelor Stainless USA has served as the exclusive distributor for U&A Belgium's U.S. sales since November 2002.[10]

The Department calculated CEP for U&A Belgium based on packed prices to customers in the United States. We made deductions from the starting price, net of discounts, for movement expenses (foreign and U.S. movement, U.S. Customs duty and brokerage, and post-sale warehousing) in accordance with section 772(c)(2) of the Act and section 351.401(e) of the Department's regulations. In addition, because U&A Belgium reported CEP sales, in accordance with sections 772(d)(1) of the Act, we deducted from the starting price credit expenses, commissions, warranty expenses, and indirect selling expenses, including inventory carrying costs, incurred in the United States and Belgium and associated with economic activities in the United States.

Normal Value

In accordance with section 773(a)(1)(B)(i) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade. In addition, because the NV level of trade (LOT) is more remote from the factory than the CEP LOT, and available data provide no appropriate basis to determine an LOT adjustment between NV and CEP, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act (*see Level of Trade* section, below).

As stated at 19 CFR 351.401(i), the Department will use the respondent's invoice date as the date of sale unless another date better reflects the date upon which the exporter or producer establishes the essential terms of sale. U&A Belgium reported the invoice date as the date of sale for both the U.S. market and the home market because the date of invoice reflects the date on which the material terms of sale were finalized.

We used sales to affiliated customers only where we determined such sales were made at arms-length prices (*i.e.*, at prices comparable to the prices at which the respondent sold identical merchandise to unaffiliated customers).

Cost of Production

The Department disregarded sales below cost of production (COP) in the last completed review. *See SSPC Belgium 00/01,* which incorporated *Stainless Steel Plate in Coils From Belgium: Preliminary Results of*

[10] *See* page A–21 and A–33–34, section A response of September 11, 2003.

Antidumping Administrative Review, 67 FR 39354, 39355 (June 7, 2002). We therefore have reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below COP. Thus, pursuant to section 773(b)(1) of the Act, we examined whether U&A Belgium's sales in the home market were made at prices below the COP.

We compared sales of the foreign like product in the home market with model-specific COP figures for the POR. In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in packed condition and ready for shipment. In our sales-below-cost analysis, we relied on home market sales and COP information provided by U&A Belgium in its questionnaire responses. We made adjustments to COP and CV to reflect appropriately U&A Belgium's expenses associated with scrap and hot band purchases from affiliates and U&A Belgium's general and administrative expenses.

We compared the weighted-average COPs to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which did not permit recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with section 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any movement charges, discounts, and direct and indirect selling expenses.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of the respondent's sales of a given product were at prices less than COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time, in accordance with sections 773(b)(2)(A) and (C) of the Act. Because we compared prices to POR-average costs, we determined that the below-cost prices did not permit the recovery of costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act. Therefore, we disregarded the below-cost sales and used the remaining sales, if any, as the basis for NV, in accordance with section 773(b)(1) of the Act.

CEP to NV Comparison

For those sales at prices above COP, we based NV on home market prices to affiliated (when made at prices determined to be arm's-length) or unaffiliated parties, in accordance with section 351.403 of the Department's regulations. Home market starting prices were based on packed prices to affiliated or unaffiliated purchasers in the home market net of discounts. We made adjustments, where applicable, for packing and movement expenses, in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in costs attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act. For comparison to CEP, we deducted home market direct selling expenses pursuant to section 773(a)(6)(C)(iii) of the Act and section 351.410(c) of the Department's regulations.

In accordance with section 773(a)(4) of the Act, we used constructed value (CV) as the basis for NV when there were no above-cost contemporaneous sales of identical or similar merchandise in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determined NV based on sales in the comparison market at the same LOT as the U.S. sales. *See* 19 CFR 351.412. The NV LOT is the level of the starting-price sale in the comparison market or, when NV is based on CV, the level of the sales from which we derive SG&A and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer. *See* 19 CFR 351.412. As noted above, U&A Belgium classified all its exported sales of SSPC as CEP sales.

To determine whether NV sales are at a different LOT than CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada, 67 FR 8781 (February 26, 2002); see also Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997) and *Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Italy*, 68 FR 47032 (August 7, 2003). For the CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. *See Micron Technology Inc.* v. *United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). We expect that, if claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain-on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000).

In the current review, U&A Belgium reported five customer categories and one level of trade in the comparison market. U&A Belgium performs a variety of distinct selling functions in each customer category. *See* Appendix SA–8. We examined the selling functions performed for the five customer categories and found there were no differences in selling functions offered among them. Therefore, we

preliminarily conclude that U&A Belgium's five customer categories in the home market constitute one level of trade.

U&A Belgium reported two channels of distribution and one level of trade in the U.S. market. U&A Belgium's two channels of distribution are: sales shipped directly from U&A Belgium to the customer, and sales of U&A Belgium merchandise which has been stocked by Arcelor Stainless USA. *See* Appendix SA–8. We examined the selling functions performed for both U.S. sales channels and found that there was only one minor difference in selling functions offered between them. Arcelor Stainless USA performs a variety of functions in both sales channels. U&A Belgium and Arcelor Stainless USA also perform several selling functions jointly in both sales channels. With the exception of one selling function, the selling activities and services do not vary between sales channels. In light of the above, we preliminarily conclude that the U&A Belgium's two U.S. sales channels constitute one level of trade.

The home market selling expenses are attributable to selling activities performed by U&A Belgium, while all the selling functions for the U.S. market are performed by Arcelor Stainless USA, with the exception of a few which are shared with U&A Belgium. Thus, very few of the selling functions performed for home market sales are performed for the constructed sale from the exporter to the U.S. importer. Therefore, we conclude that U&A Belgium's home market sales are made at a different, and more remote, level of trade than its CEP sales.

We therefore examined whether an LOT adjustment or CEP offset may be appropriate. In this case, U&A Belgium only sold at one LOT in the comparison market; therefore, there is no information available to determine a pattern of consistent price differences between the sales on which NV is based and the comparison market sales at the LOT of the export transaction, in accordance with the Department's normal methodology as described above. See 19 CFR 351.412(d). Further, we do not have record information which would allow us to examine pricing patterns based on respondent's sales of other products, and there are no other respondents or other record information on which such an analysis could be based. Accordingly, because the data available do not provide an appropriate basis for making a LOT adjustment, but the LOT in the comparison market is at a more advanced stage of distribution than the LOT of the CEP transactions, we made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act and 19 CFR 351.412(F). This offset is equal to the amount of indirect selling expenses incurred in the comparison market not exceeding the amount of indirect selling expenses deducted from the U.S. price in accordance with section 772(d)(1)(D) of the Act. For a detailed discussion, *see Analysis for Ugine & ALZ, N.V. Belgium (U&A Belgium) for the Preliminary Results of the Fourth Administrative Review of Stainless Steel Plate in Coils (SSPC) from Belgium*, issued concurrently with this notice.

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations based on rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/Exporter: U&A Belgium.

Time Period: 05/01/02–04/30/03.

Margin: 2.40 percent.

Duty Assessment and Cash Deposit Requirements

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review.

Furthermore, the following deposit rates will be effective with respect to all shipments of SSPC from Belgium entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided for by section 751(a)(1)(c) of the Act: (1) For U&A Belgium, the cash deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate shall be the all other rate established in the LTFV investigation, which is 9.86 percent. *See SSPC LTFV Investigation.* These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

Pursuant to section 351.224(b) of the Department's regulations, the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to section 351.309 of the Department's regulations, interested parties may submit written comments in response to these preliminary results. Unless extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) A statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with section 351.303(f) of the Department's regulations.

Also, pursuant to section 351.310(c) of the Department's regulations, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, not later than 120 days after publication of these preliminary results, unless extended. *See* 19 CFR 351.213(h).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent

assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 2, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–13069 Filed 6–9–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–449–804]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars From Latvia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Daniel O'Brien or Shane Subler, at (202) 482–5346 or (202) 482–0189, respectively; AD/CVD Enforcement Office 1, Group 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on steel concrete reinforcing bar (rebar) from Latvia. We preliminarily determine that sales of subject merchandise by Joint Stock Company Liepajas Metalurgs (Liepajas Metalurgs) have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries based on the difference between the export price (EP) and the NV.

Interested parties are invited to comment on these preliminary results. Parties that submit arguments are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. Further, we ask that parties submitting comments provide the Department with an additional copy of the public version of any such comments on diskette.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2001, the Department issued an antidumping duty order on rebar from Latvia. *See Antidumping Duty Orders: Steel Concrete Reinforcing Bars From Belarus, Indonesia, Latvia, Moldova, People's Republic of China, Poland, Republic of Korea and Ukraine*, 66 FR 46777 (September 7, 2001). On September 2, 2003, the Department issued a notice of opportunity to request the second administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 52181 (September 2, 2003). On September 17, 2003, in accordance with 19 CFR 351.213(b), Liepajas Metalurgs requested an administrative review. On September 30, 2003, also in accordance with 19 CFR 351.213(b), the petitioners [1] requested an administrative review of Liepajas Metalurgs. On October 24, 2003, the Department published the notice of initiation of this antidumping duty administrative review, covering the period September 1, 2002, through August 31, 2003 (the POR). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 60910 (October 24, 2003).

On November 7, 2003, the Department issued its antidumping questionnaire to Liepajas Metalurgs, specifying that the responses to Section A and Sections B–D would be due on November 28, 2003, and December 14, 2003, respectively.[2] We received timely responses to Sections A–C of the initial antidumping questionnaire and associated supplemental questionnaires. We initiated a cost of production (COP) investigation of Liepajas Metalurgs on April 23, 2004. The company submitted timely responses to Section D of the antidumping questionnaire, as well as to supplemental questionnaires.

Due to the unexpected emergency closure of the main Commerce building on Tuesday, June 1, 2004, the Department has tolled the deadline for these preliminary results by one day to June 2, 2004.

[1] The petitioners in this case are the Rebar Trade Action Coalition ("RTAC") and its individual members.

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under review. Section E requests information on further manufacturing.

Scope of the Order

For purposes of this review, the product covered by this order is all steel concrete reinforcing bars sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Fair Value Comparisons

We compared the EP to the NV, as described in the *Export Price* and *Normal Value* sections of this notice. We first attempted to compare contemporaneous sales of products sold in the United States and comparison market that are identical with respect to the matching characteristics. Pursuant to section 771(16) of the Act, all products produced by the respondent that fit the definition of the scope of the order and were sold in the comparison market during the POR fall within the definition of the foreign like product. We have relied on three criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: type of steel, yield strength, and size. Where there were no sales of identical merchandise in the comparison market, we compared U.S. sales to sales of the next most similar foreign like product on the basis of the characteristics listed above.

Export Price

We calculated an EP for all of Liepajas Metalurgs' sales because the merchandise was sold directly by Liepajas Metalurgs to the first unaffiliated purchaser for delivery to the United States, and constructed export price (CEP) was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included inland freight and domestic brokerage and handling expenses.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the

merchandise is sold in sufficient quantities (or value, if quantity is inappropriate); that the time of the sales reasonably corresponds to the time of the sale used to determine EP; and that there is no particular market situation that prevents a proper comparison with the EP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

We found that Liepajas Metalurgs had a viable home market for rebar. As such, Liepajas Metalurgs submitted home market sales data for purposes of the calculation of NV.

In deriving NV, we made adjustments as detailed in the *Calculation of Normal Value Based on Home Market Prices* section below.

B. Cost of Production Analysis

Because we disregarded below-cost sales in the first administrative review, we have reasonable grounds to believe or suspect that home market sales of the foreign like product by Liepajas Metalurgs have been made at prices below the COP during the period of the second review. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales made by Liepajas Metalurgs. *See* Memorandum From Daniel O'Brien, International Trade Compliance Analyst, to Gary Taverman, Director, Office 5, Re: Allegation of Sales Below the Cost of Production for Joint Stock Company Liepajas Metalurgs, dated April 23, 2004.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of materials, fabrication, and general and administrative (G&A) expenses. We relied on Liepajas Metalurgs' submitted COP. *See* Memorandum from Daniel O'Brien and Jim Kemp, International Trade Compliance Analysts, to Constance Handley, Program Manager, Re: Analysis Memorandum for Joint Stock Company Liepajas Metalurgs, dated June 2, 2004 (the Analysis Memorandum).

2. Test of Comparison Market Sales Prices

We compared the weighted-average COPs for Liepajas Metalurgs to its home-market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the COP to the home market prices, less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses.

3. Results of the COP Test

We disregarded below-cost sales where (1) 20 percent or more of Liepajas Metalurgs' sales of a given product during the POR were made at prices below the COP, because such sales were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on comparisons of price to weighted-average COPs for the POR, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act. We found that Liepajas Metalurgs made sales below cost and we disregarded such sales where appropriate.

C. Calculation of Normal Value Based on Comparison-Market Prices

We determined NV for Liepajas Metalurgs as follows. We made adjustments for any differences in packing and deducted home market movement expenses pursuant to sections 773(a)(6)(A) and 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. We made COS adjustments for Liepajas Metalurgs's EP transactions by deducting direct selling expenses incurred for home market sales (credit expenses) and adding U.S. direct selling expenses (credit expenses). We note that Liepajas Metalurgs reported freight revenue on some sales, but failed to provide the corresponding freight expenses. For the purposes of this preliminary results, we have not added freight revenue to normal value. We will request the correct freight information from Liepajas Metalurgs prior to the deadline for case briefs being due.

D. Level of Trade Adjustment

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP transaction. The NV level of trade is that of the starting-price sales in the comparison market. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different level of trade than EP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act.

In implementing these principles in this administrative review, we obtained information from Liepajas Metalurgs about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondent for each channel of distribution. In identifying levels of trade for EP and home market sales, we considered the selling functions reflected in the starting price before any adjustments.

In conducting our level-of-trade analysis for Liepajas Metalurgs, we examined the specific types of customers, the channels of distribution, and the selling practices of the respondent. Generally, if the reported levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different for different categories of sales, the functions and activities may be dissimilar. We found the following.

Liepajas Metalurgs reported two channels of distribution in the home market: (1) Direct sales by Liepajas Metalurgs; and (2) sales by Liepajas Metalurgs' affiliated reseller Armaturas Servisa Centrs (ASC).[3] In the U.S. market, Liepajas Metalurgs reported one channel of distribution: direct sales by Liepajas Metalurgs. The company reported three customer categories in the home market: (1) Traders; (2) end users; and (3) service centers. We found that the selling functions performed by Liepajas Metalurgs differed significantly for home market customers depending on the channel of distribution. The activities performed by ASC were in greater number and more advanced than those provided by Liepajas Metalurgs on

[3] Liepajas Metalurgs sold its share in ASC on August 19, 2003. For all sales subsequent to that date, Liepajas Metalurgs reported its sales to ASC as direct sales to an unaffiliated customer.

direct sales. ASC provided selling functions such as customer negotiation, warehousing, sorting, repacking, and freight delivery, while Liepajas Metalurgs only negotiated with customers and arranged delivery of the product. Therefore, we have preliminarily determined that sales through ASC are at a more advanced level of trade than Liepajas Metalurgs' direct sales in the home market.

Liepajas Metalurgs has reported one customer category in the U.S. market: traders. In comparing EP sales to the direct sales in the home market, we found that the selling functions performed by Liepajas Metalurgs were very similar in the U.S. and Latvian markets. For U.S. sales, Liepajas Metalurgs conducts negotiations with the traders and arranges delivery to the port. Therefore, we concluded that the EP and home market direct sales were made at the same level of trade. Since Liepajas Metalurgs' direct home market and U.S. sales are at the same level of trade, and ASC's home market sales are at a more advanced level of trade and a pattern of consistent price differences exists, we have preliminarily determined that a level of trade adjustment is warranted when we based NV on sales made through ASC. We have calculated a level of trade adjustment based on the difference in price between the two levels of trade in the home market for U.S. sales that match to sales made through ASC.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average margin exists for the period September 1, 2002, through August 31, 2003:

Producer	Weighted-average margin (percentage)
Joint Stock Company Liepajas Metalurgs.	4.61

The Department will disclose calculations performed in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, the parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Assessment

Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. We will calculate importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Since the delivery terms for all of Liepajas Metalurgs' U.S. sales were FOB Latvian seaport, we will calculate entered value using the gross unit price reported in the U.S. sales database. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of rebar from Latvia entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate listed above for Liepajas Metalurgs will be the rate established in the final results of this review, except if a rate is less than 0.5 percent, and therefore *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 17.21 percent, the "All Others" rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entities during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 2, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–13071 Filed 6–9–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office (USPTO).

Title: Trademark Trial and Appeal Board (TTAB) Actions.

Form Number(s): PTO 2120, 2151, 2153, 2188, 2189, and 2190.

Agency Approval Number: 0651–0040.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Burden: 12,505 hours annually.

Number of Respondents: 46,900 responses per year. The USPTO estimates that of this total, 4,400 notices of opposition, 1,100 electronic notices

of opposition, 21,000 extensions of time to file an opposition, 9,000 electronic requests for extension of time to file an opposition, 1,520 petitions to cancel, 380 electronic petitions to cancel, 5,000 electronic papers in inter partes cases, 2,400 notices of appeal, 600 electronic notices of appeal, and 1,500 electronic miscellaneous ex parte papers will be submitted per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public an average of 10 to 45 minutes to gather the information, prepare the notices of opposition, the extension of time to file an opposition, the petitions to cancel, the notices of appeal, and the additional papers needed in inter partes and ex partes cases, and submit them to the TTAB. The USPTO estimates that it takes 10 minutes to complete the extension of time to file an opposition and 10 minutes to complete the form for submission of additional papers needed for inter partes and ex parte cases, 15 minutes to complete a notice of appeal, and 45 minutes to complete the notice of opposition and the petition to cancel. The USPTO believes that it takes the same amount of time to complete these items electronically as well.

Needs and Uses: Individuals or entities, believing that they are or will be damaged by the registration of a trademark or service mark, may file an opposition to the registration of that mark or a request for an extension of time to file an opposition under Section 13 of the Trademark Act, 15 U.S.C. 1063. Sections 14 and 20 of the Trademark Act, 15 U.S.C. 1064 and 1070, allow individuals and entities to file a petition to cancel the registration of a mark or a notice of appeal. The USPTO administers the Trademark Act according to 37 CFR part 2. These actions are governed by the Trademark Trial and Appeal Board (TTAB), an administrative tribunal empowered to determine the right to register and subsequently determine the validity of a trademark. If a mark is successfully opposed or canceled, registration will not take place. There are no paper forms associated with this collection; however, there are forms available to submit this information electronically through the Electronic System for Trademark Trials and Appeals (ESTTA).

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, the Federal Government, and State, local or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before July 12, 2004, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: June 3, 2004.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 04–13132 Filed 6–9–04; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 04–07]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/OPS–ADMIN, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 04–07 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: June 4, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

3 JUN 2004
In reply refer to:
I-04/001110

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 04-07 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Republic of Korea for defense articles and services estimated to cost $403 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 04-07

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Republic of Korea**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$380 million
Other	$ 23 million
TOTAL	$403 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 159 SM-2 Block IIIA Standard missiles with MK 13 Mod 0 canisters, 130 Rolling Airframe Missiles with MK 8 launching canisters, spare and repair parts, containers, supply support, personnel training and training equipment, publications and technical data, contractor engineering services and other related elements of logistics support.**

(iv) **Military Department: Navy (AJA and AIZ)**

(v) **Prior Related Cases, if any:**
FMS case AHU - $126 million - 10Oct00
FMS case AHV - $28 million - 10Oct00

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress: 3 JUN 2004**

* **as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Republic of Korea – Standard Missiles and Rolling Airframe Missiles

The Republic of Korea has requested a possible sale of 159 SM-2 Block IIIA Standard missiles with MK 13 Mod 0 canisters, 130 Rolling Airframe Missiles with MK 8 launching containers, spare and repair parts, supply support, personnel training and training equipment, publications and technical data, contractor engineering services and other related elements of logistics support. The estimated cost is $403 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Northeast Asia.

Korea will use these missiles as the primary defensive system aboard the KDX-II destroyer class and LPX Amphibious ships for anti-missile ship protection. Korea will have no difficulty absorbing these additional missiles into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Systems Company of Tucson, Arizona. One or more proposed offset agreements may be related to this proposed sale.

There will be three U.S. Government representatives for nine months following the delivery of the missiles to Korea.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 04-07

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The SM-2 Block IIIA Standard missile is a U.S. Navy surface-launched guided missile and classified Secret. It is operationally deployed on cruisers, destroyers, and frigates for use against air and surface threats (aircraft, missiles, and ships). The guidance system employs a continuous-wave radar link for homing to the target. Steering and roll commands from the adaptive auto pilot system provide flight stability via four aft-mounted control surfaces. Propulsion is provided by a solid propellant, dual thrust rocket motor, which is an integral part of the missile airframe. The target-detecting device is a complex fuze with dual radar systems to optimize warhead lethality against a spectrum of target sizes and speeds.

2. The MK 44 Guided Missile Round Pack (GMRP) Tactical Missiles each consist of a MK 116 Block 1A Rolling Airframe Missile (RAM) within a MK 8 Launching canister. The MK 44 GMRP (containing the RAM missile) is Unclassified but considered sensitive. If the missile is removed from its sealed launching canister, the missile is considered Confidential. The GMRP is transported in a tri-pack shipping and storage container and is loaded as an All Up Round into the launchers. Only in extreme cases would a missile be removed from its canister. Some Secret software is loaded into the missile. Extraction of the Secret software would be difficu The documents are not considered sensitive and are Unclassified.

3. If a tecnnologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Korea can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 04–13119 Filed 6–9–04; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Defense Contract Audit Agency Senior Executive Service Performance Review Boards

AGENCY: Defense Contract Audit Agency.

ACTION: Notice of Membership of the Defense Contract Audit Agency Senior Executive Service Performance Review Boards.

SUMMARY: This notice announces the appointment of members to the Defense Contract Audit Agency (DCAA) Performance Review Boards. The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, Defense Contract Audit Agency, regarding final performance ratings and performance awards for DCAA SES members.

EFFECTIVE DATE: June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Dale R. Collins, Chief, Human Resources Management Division, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, Virginia 22060–6219, (703) 767–1039.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of DCAA career executives appointed to serve as members of the DCAA Performance Review Boards. Appointees will serve one-year terms, effective upon publication of this notice.

Headquarters Performance Review Board:

Mr. Robert DiMucci, Assistant Director, Policy and Plans, DCAA, chairperson.

Mr. Earl Newman, Assistant Director, Operations, DCAA, member

Mr. John Farenish, General Counsel, DCAA, member
Regional Performance Review Board:
Mr. Michael Steen, Regional Director, Eastern Region, DCAA, chairperson
Ms. April Stephenson, Director, Field Detachment, DCAA, member
Mr. Edward Nelson, Regional Director, Northeastern Region, DCAA, member

Dated: June 3, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–13117 Filed 6–9–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, 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 July 12, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Alice Thaler, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, 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 Leader, Regulatory Information Management Group, 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: June 4, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Characteristics of High-Performing Local Adult Education Programs.

Frequency: One time.

Affected Public: Not-for-profit institutions (primary), State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 384. Burden Hours: 552.

Abstract: The primary purpose is to understand the characteristics of high-performing adult education programs. Site visits to 24 programs will be conducted to develop an understanding of service delivery and instructional practices that allow these programs to achieve positive student outcomes, and to investigate whether the structure of the program affects student performance.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2497. 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. 04–13080 Filed 6–9–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, 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 August 9, 2004.

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, Regulatory Information Management Group, 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: June 4, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: National Educational Technology Trends Study.

Frequency: Monthly.

Affected Public:

State, local, or tribal Gov't, SEAs or LEAs; Individuals or household, Not-for-profit institutions Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 852.

Burden Hours: 422.

Abstract: The study is designed to evaluate implementation of the Enhancing Education Through Technology (EETT) program, inform program management, and enable ED to respond to GPRA reporting requirements for this program. The EETT program funds initiatives designed to integrate technology into classrooms in ways that improve academic achievement of students. Respondents for this study will include state administrators, district administrators, principals, and teachers.

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 2561. 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. 04–13192 Filed 6–9–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–263–001]

Algonquin Gas Transmission Company; Notice of Compliance Filing

June 4, 2004.

Take notice that on May 28, 2004, Algonquin Gas Transmission Company (Algonquin) tendered for filing (i) three firm transportation service agreements with negotiated rates, effective March 1, 2004; and (ii) one interruptible service agreement with discounted and negotiated rates, effective January 1, 2005.

Algonquin states that the purpose of this filing is to comply with the Commission's order issued on May 19, 2004, in Docket Nos. RP04–24 and RP04–263.

Algonquin states that it proposes to implement revised service agreements providing for transportation service to be rendered by Algonquin to USGen New England, Inc. (USGenNE) as part of a Settlement Agreement designed to resolve all issues between Algonquin and USGenNE in Case No. 03–30465 (PM) in the United States Bankruptcy Court For The District Of Maryland (Greenbelt Division) as well as in FERC Docket Nos. RP04–24 and RP04–263.

Algonquin states that copies of its filing have been served on all affected customers of Algonquin, interested state commissions, and to all parties on the Commission's official service list in this proceeding

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1326 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–305–014]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Negotiated Rate Filing

June 4, 2004.

Take notice that on June 1, 2004, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing and approval a negotiated rate arrangement between MRT and Union Electric Company (d/b/a AmerenUE). MRT requests that the Commission accept and approve the transaction under which transportation service will commence April 1, 2005.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1321 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–311–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Filing

June 3, 2004.

Take notice that on May 28, 2004, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Thirty-Second Revised Sheet No. 11A, with an effective date of July 1, 2004.

CIG states the tariff sheet is being filed to revise the fuel reimbursement percentage applicable to lost, unaccounted-for and other fuel gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1294 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–314–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 3, 2004.

Take notice that on May 28, 2004, Colorado Interstate Gas Company (CIG) tendered for filing as part its FERC Gas Tariff, First Revised Volume No. 1, with an effective date of June 28, 2004:

Eighth Revised Sheet No. 225 and
Fourth Revised Sheet No. 378

CIG states that these tariff sheets add provisions to CIG's Tariff authorizing it to make purchases and sales of natural gas for system operations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1297 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–057]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

June 4, 2004.

Take notice that on May 10, 2004, Columbia Gas Transmission Corporation (Columbia) filed to report on the sharing with its customers of a portion of the profits from the sale of certain base gas as provided in Columbia's Docket No. RP95–408 rate case settlement. *See* Stipulation II, Article IV, Sections A through E, in Docket No. RP95–408 approved at Columbia Gas Transmission Corp., 79 FERC ¶ 61,044 (1997).

Columbia states that copies of its filing have been mailed to all firm customers, State commissions, and parties on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. 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 proceedings. 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gove* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eFiling link.

Protest Date: June 11, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1332 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–563–030 and EL04–102–000]

Notice of Initiation of Proceeding and Refund Effective Date

June 4, 2004.

Take notice that on June 2, 2004, the Commission issued an order in the above-referenced dockets initiating an investigation in Docket No. EL04–102–000 under section 206 of the Federal Power Act to determine whether a separate energy load zone should be created for Southwest Connecticut (SWCT), and whether it should be implemented in advance of the implementation of locational installed capacity (LICAP).

The refund effective date in Docket No. EL04–102–000, established pursuant to section 206(b) of the Federal Power Act, will be 60 days from the date the Commission's June 2, 2004 Order is published in the **Federal Register**.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1338 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–323–000]

Discovery Gas Transmission LLC; Notice of Filing

June 4, 2004.

Take notice that on June 1, 2004, Discovery Gas Transmission LLC (Discovery) tendered for filing in its FERC Gas Tariff Original Volume No. 1 the following tariffs sheets to continue its current Lost and Unaccounted for Gas percentage:

Fourth Revised Sheet No. 33;
Fourth Revised Sheet No. 44; and
Fourth Revised Sheet No. 53.

Discovery further states that copies of the filing have been mailed to each of its customers, interested State Commissions and other interested persons.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eFiling link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1329 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–206–001]

Dominion Transmission, Inc.; Notice of Compliance Filing

June 4, 2004.

Take notice that on May 28, 2004, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of April 1, 2004:

Substitute First Revised Sheet No. 151 and Substitute Second Revised Sheet No. 201

DTI states that the purpose of this filing is to comply with the Commission's Letter Order dated April 2, 2004, in this proceeding and to clarify the right of first refusal rights of a shipper with varying MDTQs under its Rate Schedules FT and FTNN.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1325 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04319–000]

Eastern Shore Natural Gas Company; Notice of Tariff Filing

June 3, 2004.

Take notice that on May 28, 2004, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing its annual Fuel Retention Adjustment filing pursuant to section 31 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Eastern Shore states that copies of its filing has been mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1302 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR04–2–000]

Enbridge Energy, Limited Partnership; Notice of Settlement Filing

June 4, 2004.

Take notice that on May 20, 2004, Enbridge Energy, Limited Partnership (Enbridge Energy) with the support of the Canadian Association of Petroleum Producers (CAPP), submitted an Offer of Settlement under Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602, regarding an incremental surcharge, referred to as the "Facilities Surcharge," to be included in the tariff rates of Enbridge Energy commencing July 1, 2004.

In accordance with Rule 602(f) of the Commission's Rules of Practice and Procedure, 18 CFR 385.602(f), any person desiring to comment on this Offer of Settlement should file its comments with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, no later than 20 days after the date of filing of the Offer of Settlement. Reply comments will be due no later than 30 days after the date of the filing of the Offer of Settlement. 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, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1306 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–059]

Gas Transmission Northwest Corporation; Notice of Negotiated Rate

June 4, 2004.

Take notice that on May 26, 2004, Gas Transmission Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1–A, Ninth Revised Sheet No. 15, with an effective date of June 1, 2004.

GTN states that this sheet is being filed to reflect the continuation of a negotiated rate agreement pursuant to evergreen provisions contained in the agreement.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1305 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–318–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

June 3, 2004.

Take notice that on May 28, 2004, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to be effective July 1, 2004:

Sixteenth Revised Sheet No. 1;
Fourth Revised Sheet No. 50A;
Second Revised Sheet No. 50B;
Sixth Revised Sheet No. 84; and
Third Revised Sheet No. 86A.

Great Lakes states that these tariff sheets are being filed to add a provision to Great Lakes' tariff specifying types of discounts that will not be considered as material deviations from Great Lakes' *pro forma* service agreements. Great Lakes states that none of the proposed changes will affect any of its currently effective rates and charges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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. 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 TTY, contact (202) 502–8659. The Commission

strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1300 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–318–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

June 3, 2004.

Take notice that on May 28, 2004, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to be effective July 1, 2004:

Sixteenth Revised Sheet No. 1;
Fourth Revised Sheet No. 50A;
Second Revised Sheet No. 50B;
Sixth Revised Sheet No. 84 ; and
Third Revised Sheet No. 86A.

Great Lakes states that these tariff sheets are being filed to add a provision to Great Lakes' tariff specifying types of discounts that will not be considered as material deviations from Great Lakes' *pro forma* service agreements. Great Lakes states that none of the proposed changes will affect any of its currently effective rates and charges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1301 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR04–13–000]

GulfTerra Alabama Intrastate, L.L.C.; Notice of Petition for Rate Approval

June 4, 2004.

Take notice that on May 21, 2004, GulfTerra Alabama Intrastate, L.L.C. (GTAI) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve the proposed rates as fair and equitable for firm and interruptible transmission services performed under section 311 of the Natural Gas Policy Act of 1978 (NGPA). GTAI states that it is an intrastate pipeline company providing services through its facilities located in Alabama.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the date as indicated below. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval 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 I the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Intervention and Protest Date: June 21, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1324 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–589–001]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

June 4, 2004.

Take notice that on May 28, 2004, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing to its FERC Gas Tariff, First Revised Volume No. 1, the following proposed tariff sheets to be effective on July 1, 2004:

Thirteenth Revised Original Sheet No. 4A;
Third Revised Sheet No. 4B;
Fourth Revised Sheet No. 75C;
First Revised Sheet No. 75D.

Iroquois states that its filing makes two modifications to Iroquois' tariff to reflect the terms of the August 29, 2003, Stipulation and Settlement Agreement (Settlement) that was approved by the Commission's letter-order issued on October 24, 2003.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1323 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–81–017]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Compliance Filing

June 4, 2004.

Take notice that on May 28, 2004, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–B, Original Sheet No. 44A, to be effective June 27, 2004.

KMIGT states that the above-referenced tariff sheet reflects changes to the General Terms and Conditions of KMIGT's Tariff regarding term coordination provisions between contracts associated with planned, interconnecting pipeline projects. KMIGT further states that the tariff sheet is being filed in compliance with the Commission's Letter Order issued in this proceeding on April 30, 2004.

KMIGT states that a copy of this filing has been served upon all parties to this proceeding, KMIGT's customers and affected State commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1334 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–316–000]

MarkWest New Mexico, L.P.; Notice of Proposed Changes in FERC Gas Tariff

June 4, 2004.

Take notice that on June 1, 2004, MarkWest New Mexico, L.P., (MarkWest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of July 1, 2004.

MarkWest states that the revised tariff sheets reflect a change in name resulting from a corporate reorganization previously disclosed to the Commission. MarkWest states that under the reorganization, it became the successor to the certificates issued in Pinnacle Pipeline Company, 105 FERC ¶ 61,051 (2003), reh'g granted, 106 FERC ¶ 61,045 (2004).

MarkWest states that copies of the filing have been mailed to all affected customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1327 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–321–000]

Panhandle Eastern Pipe Line Company, LLC and Panhandle Eastern Pipe Line Company, LP; Notice of Proposed Changes in FERC Gas Tariff

June 3, 2004.

Take notice that on May 28, 2004, Panhandle Eastern Pipe Line Company, LLC (Panhandle) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to reflect a change in corporate name and corporate form.

Panhandle states that the revised tariff sheets reflect a name change that Panhandle states is planned to occur on June 30, 2004. Panhandle states on that date it plans to convert from a limited liability company to a limited partnership and change its corporate name to Panhandle Eastern Pipe Line Company, LP.

Panhandle states that copies of its transmittal letter and appendices have been mailed to all affected customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,
Secretary.
[FR Doc. E4–1292 Filed 6–9–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–317–000]

Questar Southern Trails Pipeline Company; Notice of Annual Fuel Gas Reimbursement Report

June 3, 2004.

Take notice that on May 28, 2004, Questar Southern Trails Pipeline Company (Southern Trails) tendered for filing its annual Fuel Gas Reimbursement Percentage (FGRP) report and proposed a 0.17% variance adjustment to be effective July 1, 2004.

Southern Trails stated that a copy of this filing has been served upon its customers and the Public Service Commissions of Utah, New Mexico, Arizona and California.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Comment Date: June 10, 2004.

Magalie R. Salas,
Secretary.
[FR Doc. E4–1299 Filed 6–9–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL00–95–000 and EL00–98–000]

San Diego Gas & Electric Company, Complainant; v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Investigation of Practices of the California Independent System Operator and the California Power Exchange; Notice of Conference

June 4, 2004.

The staff of the Federal Energy Regulatory Commission is convening a conference to discuss potential settlements in the above captioned proceedings (collectively, Refund Proceeding). The conference will be held on Wednesday, June 30, 2004, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, at 10 a.m. (EST).

The purpose of the conference is to encourage all interested parties to attempt to resolve these proceedings short of protracted and expensive litigation and appeals to the extent possible. In that regard, the California Parties (Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas and Electric Company, the People of the State of California, *ex rel.* Bill Lockyer, Attorney General, the California Department of Water Resources, the California Public Utilities Commission, and the California Electricity Oversight Board) have committed to devoting extensive time and resources by their key personnel to pursuing settlements over the next three months. Representatives from each of the California Parties will be present at the conference and the California Parties intend to present a template for settlements with each of the parties that will owe refunds in the Refund Proceeding. The Commission supports this effort and is similarly committing time and resources from its Office of Market Oversight and Investigations (OMOI) to assist in the settlement process. Accordingly, the Commission encourages all parties to attend this conference and try to achieve settlements of the Refund Proceeding. With respect to parties that are already in active settlement discussions with the California Parties, the June 30 conference is not intended to disrupt those discussions or substitute for them, and the Commission fully encourages those discussions to continue.

The conference will be governed by Rule 602 of the Commission's Rules of Practice and Procedures, 18 CFR 385.602 (2003).

For additional information concerning the conference, parties or their counsel may contact Robert Pease at *robert.pease@ferc.gov* or Lee Ann Watson at *leeann.watson@ferc.gov*.

Linda Mitry,
Acting Secretary.
[FR Doc. E4–1337 Filed 6–9–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–87–001]

Southern Star Central Gas Pipeline, Inc.; Notice of Filing of Final OFO Penalty Refund Report

June 4, 2004.

Take notice that on May 28, 2004, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing, pursuant to Order by the Commission issued April 20, 2004, its final report of Operational Flow Order (OFO) refunds.

Southern Star states that there were no Periods of Daily Balancing (PODB) issued during the twelve-month period from October 1, 2002, through September 30, 2003, and no PODB penalties were assessed or collected for such period. Furthermore, Southern Star clarifies in this final refund report that it collected all OFO penalties that were assessed for the 12 month period ending September 30, 2003.

Southern Star states that a copy of its filing was served on all jurisdictional customers and interested State commissions, as well as parties appearing on the official service list for this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. 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 proceedings. 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: June 11, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1330 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–315–000]

Tennessee Gas Pipeline Company; Notice of Filing and Request for Waiver

June 3, 2004.

Take notice that on May 28, 2004, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a report on the status of its take-or-pay costs and a request for waiver of section 2 of Article XXV of the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1, in order to permit Tennessee to omit the filing of the revised tariff sheets scheduled to be filed on May 28, 2004, and to omit further filings under this Article.

Tennessee states that this filing of the current accounting is in compliance with Article XXV of the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee further states that the request for waiver is based on the fact that Tennessee has not incurred any recoverable take-or-pay costs since its last filing on November 26, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in on or before the date as indicated below. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Intervention and Protest Date: June 9, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1298 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–320–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

June 3, 2004.

Take notice that on May 28, 2004, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Fifth Revised Sheet No. 220A, with an effective date of July 1, 2004.

Tennessee states that this filing is to update Rate Schedule NET–284 to reflect the conversion of two shippers Rate Schedule NET–284 Agreements to service under two Rate Schedule FT–A Agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1303 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–114–006]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

June 4, 2004.

Take notice that on May 20, 2004, and May 28, 2004, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a response to a Commission Staff data request dated May 3, 2004.

Tennessee states that copies of its filing will be served to all parties of record in the RP02–114–000 proceedings.

Any party desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in on or before the date as indicated below. 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 proceedings. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: June 15, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1322 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP91–203–073 and RP92–132–061]

Tennessee Gas Pipeline Company; Notice of Tariff Sheets

June 4, 2004.

Take notice that on May 28, 2004, Tennessee Gas Pipeline Company, (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be made effective July 1, 2004.

Tennessee states that pursuant to the May 15, 1995, comprehensive settlement in the referenced proceeding, which relates to Tennessee's recovery of the costs of remediating polychlorinated biphenyl (PCB) and other hazardous substance list contamination on its system (Settlement), Tennessee is seeking to extend the PCB Adjustment Period for twenty-four mouths as provided for in the Settlement. Tennessee further states that it is submitting revised tariff sheets to update its rate sheet footnote pertaining to the PCB Adjustment Period and to reflect the extension of the PCB Adjustment Period proposed in the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1331 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–480–009]

Texas Eastern Transmission, LP; Notice of Compliance Filing

June 4, 2004.

Take notice that on June 1, 2004, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, Sub Original Sheet No. 108, effective May 1, 2004.

Texas Eastern states that the purpose of this filing is to comply with the Commission's order issued in the captioned docket on April 30, 2004 (April 30 Order). Specifically, Texas Eastern states that it is revising the tariff sheet filed herewith, which lists Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. (CP&L) as a party to a negotiated rate arrangement, in accordance with the April 30 Order. Texas Eastern also states that, by this filing, Texas Eastern proposes to implement a revised service agreement, which includes a negotiated rate, between Texas Eastern and CP&L for firm transportation service under Rate Schedule FT–1 on facilities constructed as part of Texas Eastern's M–1 Expansion Project (Docket No. CP02–381).

Texas Eastern states that copies of its filing have been served on all affected customers of Texas Eastern, interested State commissions, and all parties on the Commission's official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1336 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–106–009]

TransColorado Gas Transmission Company; Notice of Revenue Sharing Report

June 4, 2004.

Take notice that on June 1, 2004, TransColorado Gas Transmission Company (TransColorado) tendered for filing its revenue sharing report in accordance with the provisions of the Settlement in Docket No. RP99–106 and the Commission's Order dated April 24, 2002.

TransColorado states that a copy of this filing has been served upon all parties listed on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. 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 proceedings. 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eFiling link.

Protest Date: June 11, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1335 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–463–006]

Williston Basin Interstate Pipeline Co.

Issued June 1, 2004.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of request for comments; order on remand.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is requesting comments on its policy concerning a shipper's retention of its discounted rates when a secondary point is used, as that policy has been modified by the decisions in *Colorado Interstate Gas Co.*, 95 FERC ¶ 61,321 (2001) and *Granite State Transmission Co.*, 96 FERC ¶ 61,273 (2001).

DATES: Initial comments are due August 9, 2004.

Reply comments are due August 30, 2004.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Wayne Guest, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6475.

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8685.

Michael Miller (concerning information collection), Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8415.

SUPPLEMENTARY INFORMATION:

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

1. On February 20, 2004, in *Williston Basin Interstate Pipeline Co.* v. *FERC*,[1] the United States Court of Appeals for the District of Columbia Circuit (Court) vacated the Commission's decisions in *Williston Basin Interstate Pipeline Co.*[2] The Commission's decisions addressed Williston Basin Interstate Pipeline Company's (Williston) filing to comply with Order Nos. 637, 587–G and 587–L. The Court found that the Commission had failed to present an adequate explanation for its ruling directing Williston to adopt the policy set forth by the Commission in *Colorado Interstate Gas Co. (CIG)*[3] concerning shippers' ability to retain their primary point discounts when they or a replacement shipper use secondary points.

2. The Court's decision raises questions concerning the Commission's discount policy on a generic basis, as well as the effect of the policy on individual pipelines. In order to better resolve the issues raised in this proceeding, the Commission is requesting additional comments on its policy concerning a shipper's retention of its discounted rates when a secondary point is used, as that policy has been modified by the decisions in *Colorado Interstate Gas Co. (CIG)*[4] and *Granite State Transmission Co.*[5] (*Granite State*). The Commission recognizes that the resolution of the issues in this proceeding will have implications for other pipelines. Therefore, the Commission will permit late intervention in this proceeding to permit comments from all interested parties.

[1] 358 F.3d 45 (D.C. Cir. 2004).

[2] 98 FERC ¶ 61,212 (2002), *reh'g*, 99 FERC ¶ 61,327 (2002).

[3] 95 FERC ¶ 61,321 (2001).

[4] 95 FERC ¶ 61,321 (2001).

[5] 96 FERC ¶ 61,273 (2001).

I. Background

A. The Commission's Discount Policy

1. The Discount Policy Prior to Order No. 636

3. As part of Order No. 436, which commenced the transition to open-access transportation, the Commission adopted regulations permitting pipelines to engage in selective discounting based on the varying demand elasticities of the pipeline's customers.[6] The Commission explained that these selective discounts would benefit all customers, including customers that did not receive the discounts, because the discounts allow the pipeline to maximize throughput and thus spread its fixed costs across more units of service.[7] The Commission's adoption of these regulations was upheld in *Associated Gas Distributors* v. *FERC (AGD I)*.[8]

4. In the Rate Design Policy Statement[9] and a number of section 4 rate cases,[10] the Commission held that if a pipeline grants a discount in order to meet competition, the pipeline is not required in its next rate case to design its rates based on the assumption that the discounted volumes would flow at the maximum rate. As the Commission explained, if the pipeline must assume in the next rate case that volumes it has transported at discounted rates would still be transported if the maximum rate were charged, the pipeline might be unable to recover its cost of

[6] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, FERC Stats. & Regs. Regulations Preambles 1982–1985 ¶ 30,665 at 31,543–45 (1985); Order No. 436–A, FERC Stats. & Regs. Regulations Preambles 1982–1985 ¶ 30,675 at 31,677–80 (1985). 18 CFR 284.10(c)(5).

[7] Order No. 436 at 31,544.

[8] 824 F.2d 981, 1010–1012 (D. C. Cir. 1987).

[9] 47 FERC ¶ 61,295 at 62,056–57 (1989).

[10] *See, e.g., Southern Natural Gas Co*, 65 FERC ¶ 61,347 at 62,829–62,833 (1993), *reh'g denied*, 67 FERC ¶ 61,155 at 61,456–61,460 (1994); *Williston Basin Interstate Pipeline Co.*, 67 FERC ¶ 61,137 at 61,377–61,282 (1994); *Panhandle Eastern Pipe Line Co.*, 71 FERC ¶ 61,228 at 61,866–61,871 (1995) (Opinion No. 395); *Northwest Pipeline Corp.*, 71 FERC ¶ 61,253 at 62,007–61,009 (1995); *Panhandle Eastern Pipe Line Co.*, 74 FERC ¶ 61,109 at 61,399–61,408 (1996) (Opinion No. 404); *Williams Natural Gas Co.*, 77 FERC ¶ 61,277 at 62,205–61,207 (1996), *reh'g denied*, 80 FERC ¶ 61,158 at 61,189–61,190; *Iroquois Gas Transmission System, L.P.*, 84 FERC ¶ 61,086 at 61,478 (1998), *reh'g denied*, 86 FERC ¶ 61,261 (1999); *Williston Basin Interstate Pipeline Co.*, 84 FERC ¶ 61,266 at 61,401–61,402 (1998); *Northwest Pipeline Corp.*, 87 FERC ¶ 61,266 at 62,077 (1999); and *Trunkline Gas Co.*, 90 FERC ¶ 61,017 at 61,084–61,096 (2000).

service.[11] Therefore, in order to avoid a disincentive to discounting, the Commission has stated that, in the next rate case after giving discounts, the pipeline is permitted to reduce the discounted volumes used to design its rates so that, assuming market conditions require it to continue giving the same level discounts that it gave during the test period when the new rates are in effect, the pipeline will be able to recover 100 percent of its cost of service.

2. The Discount Policy After Order No. 636

5. In Order No. 636, requiring the unbundling of the pipeline's sales and transportation services, the Commission adopted significant changes to the structure of the services provided by natural gas pipelines in order to foster greater competition in natural gas markets. As part of these changes, the Commission adopted the capacity release program that permits holders of firm transportation rights on a pipeline to resell those rights to other shippers. As the Commission explained in Order No. 636–A, the capacity release mechanism is intended to create a robust secondary market for capacity where the pipeline's direct sale of its capacity must compete with its firm shippers' offers to release their capacity. The Commission stated that this competition would help ensure that customers pay only the competitive price for the available capacity.[12] In *UDC* v. *FERC*,[13] the Court recognized that capacity release is intended to develop an active secondary market with holders of unutilized firm capacity rights reselling those rights in competition with capacity offered directly by the pipeline. In addition to promoting competition, capacity release was a means for firm capacity holders to mitigate the shift to the SFV rate design.

6. Order No. 636 also adopted a policy giving firm shippers the right to use, on a secondary basis, receipt and delivery points other than the primary points listed in their contracts. This permits them to receive and deliver gas to any point within the firm capacity rights for which they pay. As the Court recognized in *INGAA* v. *FERC*,[14] Order No. 636's establishment of flexible point rights, as well as segmentation, was intended to enhance the value of firm capacity and promote competition in the secondary market between firm shippers releasing capacity and pipelines, as well as between releasing shippers themselves.

7. In the individual pipeline restructuring proceedings to comply with Order No. 636, the question arose whether a releasing shipper paying a discounted rate may retain that discount if its replacement shipper uses points other than the releasing shipper's primary points. In *El Paso Natural Gas Co.*,[15] the Commission held that if the pipeline's contract with the releasing shipper limited its discount to its primary points, the pipeline could require the releasing shipper to pay the maximum rate whenever its replacement shipper used a different point. The Commission explained that it permits, but does not require, pipelines to offer discounts below the maximum rate, and therefore the pipeline could limit a discount to a shipper's primary point. The releasing shipper, rather than the replacement shipper, would be responsible for paying any difference between the maximum rate and the replacement shipper's rate, because the replacement shipper's reservation charge is established through the bidding or other procedures set forth in the pipeline's tariff. The Commission also stated that the releasing shipper could protect itself by putting a condition in the release preventing the use of alternate points.

8. In Order No. 637, the Commission took additional actions to enhance flexibility and competition in the secondary market. Among other things, Order No. 637 revised the Part 284 regulations to require pipelines to permit a firm shipper to segment its capacity either for its own use or for the purpose of capacity release, where operationally possible. While Order No. 637 did not change the Commission's policy on selective discounting, the Commission stated that the policy of permitting a pipeline to limit a shipper's discount to its primary point needed to be reexamined in the compliance filings, as part of the examination of restrictions on capacity release and segmentation. The Commission explained in Order No. 637–B[16] that it was concerned that requiring a releasing shipper with a discounted rate to pay the maximum rate in order to effectuate a segmented or release transaction could interfere with the competition created by capacity release.

9. *CIG* was the first Order No. 637 compliance proceeding where the Commission addressed how to resolve the tension between the Commission's selective discounting policy and the Commission's goal in adopting its segmentation and flexible point right policies of enhancing competition. The Commission explained that if a shipper always loses its primary point discount and is always required to pay the maximum rate when it uses a secondary point or segments its capacity, the shipper will be less likely to engage in these activities and competition will be restricted. On the other hand, the Commission recognized that if a shipper always retains its discount when it utilizes secondary points, discounts could be allowed at non-competitive points. Therefore, the Commission refined its discount policy to provide that if a pipeline is discounting its primary capacity at a point, a shipper that segments to that point or uses that point on a secondary basis should also receive that discount if it is similarly situated to the shipper receiving the discount. In *Granite State*, the Commission amended its holding in *CIG* to require pipelines to process shipper requests to retain discounts in no longer than two hours from the time the request is submitted.

B. The Williston Decisions

10. In Williston's Order No. 637 compliance filing, the Commission required Williston to implement the discount policies set forth in *CIG/Granite State*. On rehearing, Williston argued that the *CIG/Granite State* discount policy undercuts its ability to target firm discounts to specific points in order to encourage the shipper to flow gas in a manner that will permit Williston to maximize the capacity of its reticulated system. Williston also argued that the policy would allow a firm shipper to obtain a long-term discount for an underutilized portion of its system and then engage in short-term discounted transactions at different receipt and delivery points. Williston asserted that this could reduce interruptible throughput in heavily utilized portions of its system while failing to increase flow at the point where the discount was originally given and where additional throughput was needed. Williston also argued that the policy is harmful because it limits its ability to grant discounts to obtain long-term firm service commitments and that application of the policy is not appropriate on its reticulated system.

11. The Commission concluded that shippers could not misuse the discounts in the manner described by Williston because, under the *CIG/Granite State* policy, the firm shipper changing points would pay the greater of its own discounted rate or the prevailing

[11] 47 FERC ¶ 61,295 at 62,056. The Commission referred to the example provided by the Court in *AGD I* illustrating how the pipeline might be unable to recover its cost of service if volumes that were obtained because of a discount were projected as volumes that would be transported at the maximum rate in the pipeline's next rate case. 824 F.2d at 1012.

[12] See Order No. 636–A, FERC Stats & Regs at 30,553 and 30,556.

[13] 88 F.3d 1105, 1149 (DC Cir. 1996).

[14] 285 F.3d 18, 36 (DC Cir. 2002).

[15] 62 FERC ¶ 61,311 at 62,990–91 (1993).

[16] 92 FERC at 61,167–68.

discount at the alternate point. Thus, the Commission stated, the shipper on the less utilized portion of the system could not shift its deeper discount to the more heavily utilized portion of the system. The Commission acknowledged that this new policy may require changes in long-term contracting, but stated that the policy change was nevertheless necessary to resolve the conflict between enhancing competition by adopting segmentation and flexible point rights and continuing to permit pipelines to restrict discounts to specific shippers at specific points.

12. The Court vacated the Commission's decisions in *Williston* on essentially two grounds. First, the Court held that the Commission had not adequately addressed whether the application of the *CIG/Granite State* policy in this case was appropriate in light of Williston's individual circumstances, particularly the reticulated nature of its system. The Court found that the Commission had not addressed Williston's contention that the policy could adversely affect its ability to use targeted discounts to manage gas flows across its system, in order to maximize its capacity and system utilization. Second, the Court held that the Commission had not adequately justified the general policy established in *CIG/Granite State* concerning retention of discounts when secondary points are used. The Court observed that the purpose of selective discounting is to increase throughput by allowing price discrimination in favor of demand-elastic customers, but a pipeline is unlikely to be able to increase throughput by selective discounting if capacity at secondary points can be transferred readily among shippers through resale at a discounted rate. The Court stated that "economic theory tells us price discrimination, of which selective discounting is a species, is least practical where arbitrage is possible "that is, where a low-price buyer can resell to a high price buyer. . . . Yet this is precisely what the Commission's policy would appear not only to allow but to encourage." 358 F.3d at 50. Therefore, the Court was concerned that the *CIG/Granite State* policy undermines the benefits of selective discounting.

II. Discussion

13. This case raises important issues concerning the relationship between the Commission's discounting policy and its policies concerning capacity release, segmentation, and flexible point rights. As explained above, the Commission's regulations permitting selective discounting were first adopted as part of the Commission's regulatory policies as set forth in Order No. 436 and the Rate Design Policy Statement. Since that time, in Order Nos. 636 and 637, the Commission has moved toward a more competitive model, using a blend of approaches to approximate the results of a competitive market. The Commission has sought to create choice and competition where incentives and lack of market power allow for it, and to retain a cost-based approach where market power is too strong to allow a more market-oriented approach. Capacity release, segmentation, and flexible point rights are features of the Commission's more competitive model, while selective discounting is an outgrowth of the regulatory model.

14. Because the policies were developed at different times under different regulatory and economic models, selective discounting may not always be entirely compatible with the competitive measures adopted in Order Nos. 636 and 637. For example, the value of selective discounting to the captive customer has been to some extent replaced by the captive customer's ability to receive discounted capacity on the secondary market. The purpose of capacity release and flexible point rights is to encourage competition between the sale of the pipeline's own capacity and capacity release. The availability of capacity in the secondary market reduces the pipeline's sale of interruptible service, and may cause a reallocation of costs to firm customers in the next rate case. Thus, capacity release itself has undercut the ability of pipelines to use selective discounting both to obtain increased throughput from shippers with competitive alternatives and to maximize the revenue it obtains from each unit of throughput at the expense of inelastic or captive customers. However, capacity release gives firm customers a more direct way to reduce their costs. By releasing capacity in the secondary market, the firm shipper, including a captive customer, receives immediate payment for unused capacity, rather than waiting for the pipeline to file a new rate case to reflect throughput it has received through discounts.[17]

15. Thus, as the Commission recognized in *CIG*, there is a tension between the policy of permitting pipelines to restrict discounts to specific shippers at specific points and the goal of enhancing competition through segmentation and flexible point rights. Placing restrictions on discounted transactions could interfere with competition created through released capacity. A shipper that uses flexible point rights to move to a secondary point or segments its capacity will require the use of different points than the primary points contained in the contract. Replacement shippers frequently need to use points different from those of the releasing shippers, and neither the releasing shipper nor the replacement shipper may be willing to absorb the differential between the discounted and maximum rate. If the releasing and/or replacement shipper is always required to pay the maximum rate when a secondary point is needed, competition will be restricted, but if the Commission requires the discount to apply to all points along the path, discounts may be given for other than competitive reasons.

16. In the *CIG* decision, the Commission attempted to strike a balance between these two extremes, so that a replacement or segmenting shipper could retain a discount if it was moving to a point where a discount was being given to a similarly situated shipper. Therefore, the Commission adopted a rebuttable presumption that a shipper segmenting, releasing, or utilizing specific points on a secondary basis will receive a discount at those points only if the pipeline is already granting discounts to those points under other firm or interruptible service agreements. The Commission intended that this balancing would address pipeline concerns that a discount necessary to meet competition at one point would not be appropriate or necessary at another point where conditions were different.

17. In view of these concerns, and the issues raised by the Court's decision in *Williston*, the Commission has determined in this proceeding to reexamine both (1) the general policy established in *CIG/Granite State* concerning retention of discounts when secondary points are used and (2) the application of that policy in the specific circumstances of Williston's reticulated system. Because the Commission will be using this proceeding to consider general policy matters applicable in other proceedings, the Commission will permit any interested party to intervene in this proceeding. To assist the Commission in this reevaluation, the Commission seeks responses from interested parties on the following issues.

[17] At the time the discount policy was originally adopted, pipeline rates were set every three years under the terms of the Purchased Gas Adjustment (PGA) clause in their tariff. Order No. 636 eliminated the three year rate review and the PGA clause, and section 4 rate cases are filed much less frequently by the pipelines.

A. The General Policy Issue

18. Parties should state their views on whether the Commission should reaffirm the general policy established in *CIG/Granite State* concerning retention of discounts when secondary points are used, return to its previous policy as set forth in *El Paso Natural Gas Co.*,[18] or adopt some other alternative policy. One alternative policy, for example, could permit a releasing shipper to retain its discount if the release is for one month or less. This alternative would permit the releasing shipper to release capacity in competition with the pipeline's sale of interruptible and short-term firm capacity, without allowing the shifting of a long-term firm discount to another point on a long-term basis. The Commission seeks comments on this alternative.

19. Further, the Commission is interested in comments on the extent to which the *CIG/Granite State* policy does, in fact, undercut the benefits of selective discounting for captive customers, and seeks comments on the following issues within 60 days of the date of publication of this order in the **Federal Register**. Parties may also file reply comments within 80 days of the date of publication of this order in the **Federal Register**.

(A) The Court was concerned that "a pipeline is unlikely to be able to increase throughput by selective discounting * * * if capacity at secondary points can be transferred readily among shippers through resale at the discounted rate." 358 F.3d at 50. Under the *CIG/Granite State* policy, the pipeline need only permit a releasing shipper with a discount at its primary point to retain that discount in connection with its replacement shipper's transaction at a secondary point, if (1) the pipeline has given another shipper at the secondary point a discount due to its competitive alternatives, and (2) the replacement shipper is similarly situated, *i.e.*, also has competitive alternatives. Given these limitations on the right of the releasing shipper to retain its discount, does the *CIG/Granite State* policy significantly increase the opportunities for arbitrage?

(B) Is there less of an incentive under the *CIG/Granite State* policy for pipelines to offer discounts to attract additional throughput? Pipeline commenters should explain how the policy has affected their discounting practices, and provide detailed information concerning how many discounts were given prior to adoption of the policy and after its adoption, and how many discount firm contracts are in effect on their systems. Specifically, pipeline commenters should provide information concerning the term of the agreement, the total CD involved, and the receipt and delivery points for each discount given in the year prior to the adoption of the *CIG/Granite State* policy, and that same information for the year after adoption of the policy. In addition, pipeline commenters should state how many requests they have received from shippers, pursuant their tariff provisions implementing the *CIG/Granite State* discount policy, seeking to retain discounts when a different point is used, and how many such requests have been granted. For those requests for discounts that were denied, pipeline commenters should supply the reasoning used and whether the transaction was consummated without a discount. Pipeline commenters should also provide information on how selective discounts were used for system management prior to the adoption of the policy and whether their ability to use selective discounts for this purpose has been harmed by the policy. Provide examples.

(C) Shipper commenters should explain how the *CIG/Granite State* policy has affected their release of capacity, and provide information concerning release of discounted capacity prior to adoption of the policy and after its adoption. Shipper commenters should explain whether and why they were discouraged from engaging in capacity release as a result of the previous policy and the extent to which the *CIG/Granite State* policy has reduced such disincentives.

(D) Explain whether the impact of the *CIG/Granite State* policy is different on reticulated systems than on long line systems.

B. Application of the Policy to Williston

20. Williston has asserted that the application of the *CIG/Granite State* policy to its system is not appropriate because of the reticulated nature of its system. Therefore, if the Commission upholds the policy on a generic basis, it will also consider whether the nature of Williston's system supports applying the policy to Williston on a modified basis.

(A) In order to aid the Commission in that determination, the Commission directs Williston to provide the following information within 60 days of the date of publication of this order in the **Federal Register:**

1. For the year before implementation of the *CIG/Granite State* policy on your system, list each discount that you granted to firm shippers. Provide information concerning the term of the agreement, the total CD involved, and the receipt and delivery points. Explain the benefits to system management that resulted from each discount. To the extent that any of these discounts were intended to increase flows on particular parts of the system, identify each discount and explain on what parts of the system the discount was intended to increase flow.

2. Provide this same information for the year following implementation of the *CIG/Granite State* policy on the system. Explain how any transfer of discounts to secondary points that occurred pursuant to the *CIG/Granite State* policy harmed system management. Explain how shippers were able to use the discounts granted on less heavily utilized portions of the system to displace volumes of gas moving on other more heavily utilized portions of the system. Explain how this could occur in view of the fact that the Commission's policy requires that a discount be granted at another point only if a discount has already been granted to a similarly situated shipper at that point, *i.e.*, the point has already been designated by the pipeline as a point where competition requires a discount.

3. For the year before and the year after Williston implemented the *CIG/Granite State* policy, list each discount you gave to interruptible shippers, including the term of each agreement and the receipt and delivery points.

4. In the *Williston* decision, the Court referred to Williston's concern that under the *CIG/Granite State* policy, a shipper with a long-term discount to an underutilized portion of the system could use the discount instead either to reduce its own shipments or displace those of other shippers on more heavily utilized portions of the system. Provide specific examples of how this would occur and indicate whether this has in fact ever occurred. If it has in fact occurred, be specific as to the customer(s), the term of the agreement, the discount rate, and the CD involved.

5. Provide information on all instances, after implementation of the *CIG/Granite State* policy, where Williston refused to grant a firm shipper a discount based on the concern that the shipper would be able to shift the discount to another point, thereby causing Williston to lose business.

(B) Within 80 days of the date of publication of this order in the **Federal Register**, other interested parties may reply to the information submitted by Williston regarding how the *CIG/*

[18] 62 FERC ¶ 61,311 at 62,990–91 (1993).

Granite State policy should be applied to Williston.

C. Administrative Findings

Information Collection Statement

21. As discussed above, the Commission seeks comment on whether it should reaffirm the general policy established in *CIG/Granite State* concerning retention of discounts when secondary points are used, return to its previous policy as set forth in *El Paso Natural Gas Co.*, or adopt some other policy. In order to make a determination the Commission seeks specific information from pipelines on their discounting practices. Because the Commission is asking identical questions to obtain information from ten or more respondents, it is seeking approval of this data request from the Office of Management and Budget.

22. The collection of information set forth below has been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.[19] OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.[20] The Commission identifies the information provided for under this order as FERC–605, Discount Practice Reports.

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–605	100	1	3	300

Information Collection Costs: The Commission seeks comments on the cost to comply with this data request. It has projected the average annualized cost of all respondents to be: $15,459. (300 hrs. ÷ 2,080 hours × $107,185) or 300 @ $52.00 an hour.

23. OMB's regulations require it to approve certain information collection requirements imposed by agency rule. The Commission is submitting a copy of this order to OMB.

Title: Discount Practice Reports.

Action: Proposed collection.

OMB Control No: To be determined.

Respondents: Businesses or other for profit.

Frequency of Responses: On occasion.

Necessity of Information: The information is needed so that the Commission can prepare an order in response to the Court's determination in *Williston Basin Interstate Pipeline Co.* v. *FERC* and assess its current policies. The Commission must ascertain the effects of its generic discount policy on pipeline operations and the relationship with other Commission policies, specifically, capacity release, segmentation and flexible point rights. The Commission will use responses to this inquiry to formulate its response in other proceedings on whether to maintain the current policy or adopt an alternative policy.

Internal Review: The Commission has reviewed the data request and has determined that the information is necessary in order to reevaluate both the general policy established in *CIG/Granite State* concerning the retention of discounts when secondary points are used and the application of that policy in the specific circumstances of Williston's reticulated system. This information conforms to the Commission's plan for efficient information collection, communication and management within the natural gas industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information/data request.

24. Interested persons may obtain information on the information request by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov.*]

25. For submitting comments concerning the collection of information and the associated burden estimates, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–7856, fax: (202) 395–7285.

The Commission orders:

Parties may submit comments on the issues set forth above within 60 days of the date of the publication of this order in the **Federal Register**, and may file reply comments within 80 days of the date of the publication of this order in the **Federal Register**.

By the Commission.

Linda Mitry,

Acting Secretary.

[FR Doc. 04–12920 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–U

[19] 44 U.S.C. 3507(d)(2000)).

[20] 5 CFR 1320.12 (2003).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–322–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

June 4, 2004.

Take notice that on June 1, 2004, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Eleventh Revised Sheet No. 375, to become effective June 1, 2004.

Williston Basin states that it has revised the above-referenced tariff sheet found in section 48 of the General Terms and Conditions of its Tariff to remove two retired receipt points, Point ID No. 02996 (Dobie Creek) and Point ID No. 03148 (Whistle Creek), from Williston Basin's Big Horn Pool.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1328 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–313–000]

Wyoming Interstate Company, Ltd; Notice of Proposed Changes in FERC Gas Tariff

June 3, 2004.

Take notice that on May 28, 2004, Wyoming Interstate Company, Ltd (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets, with an effective date of June 28, 2004:

Ninth Revised Sheet No. 35 and
Second Revised Sheet No. 85A

WIC states that these tariff sheets add provisions authorizing WIC to make purchases and sales of natural gas for system operations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1296 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–28–013]

Wyoming Interstate Company, Ltd.; Notice of Negotiated Rate

June 4, 2004. .

Take notice that on June 1, 2004, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, Fourth Revised Sheet No. 112, to be effective June 1, 2004.

WIC states that the tariff sheet updates a previously approved negotiated rate transaction with Western Gas Resources and is proposed to become effective June 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1333 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–312–000]

Young Gas Storage Company, Ltd; Notice of Proposed Changes in FERC Gas Tariff

June 3, 2004.

Take notice that on May 28, 2004, Young Gas Storage Company, Ltd (Young) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of June 28, 2004:

Third Revised Sheet No. 46 and
Second Revised Sheet No. 106A

Young states that these tariff sheets add provisions authorizing Young to make purchases and sales of natural gas for system operations and are proposed to become effective June 28, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1295 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–115–000, et al.]

Granite II Holding, LLC, et al.; Electric Rate and Corporate Filings

June 3, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Granite II Holding, LLC; LSP Energy Limited Partnership; and CEP Batesville Acquisition, LLC

[Docket No. EC04–115–000]

Take notice that on June 1, 2004, Granite II Holding, LLC (Granite II), LSP Energy Limited Partnership (LSP Energy) and CEP Batesville Acquisition, LLC (CEP Batesville) (collectively, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b, and part 33 of the Commission's regulations, 18 CFR part 33, for authorization of a disposition of certain jurisdictional facilities. Applicants state that the proposed disposition of jurisdictional facilities will occur in connection with the sale by Granite II to CEP Batesville of all of the issued and outstanding membership interests in LSP Batesville Holding, LLC, a Delaware limited liability company. LSP Batesville Holding, LLC indirectly owns LSP Energy, which owns and operates an 837 MW gas-fired combined-cycle electric generating facility located in Batesville, Mississippi (the Facility) that is interconnected with the transmission systems of Entergy Services, Inc. and Tennessee Valley Authority and makes wholesale sales of electricity at market-based rates.

Applicant's state that a copy of the application was served upon the Mississippi Public Service Commission and the customers of LSP Energy.

Comment Date: June 22, 2004.

2. Coleto Creek WLE, LP

[Docket No. EG04–55–000]

Take notice that on June 2, 2004, Coleto Creek WLE, LP, 101 Ash Street, San Diego, California 92101 filed with the Federal Energy Regulatory Commission a supplement to its April 29, 2004, application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Comment Date: June 14, 2004.

3. E. S. Joslin, LP

[Docket No. EG04–58–000]

Take notice that on June 2, 2004, E. S. Joslin, LP, 101 Ash Street, San Diego, California 92101 filed with the Federal Energy Regulatory Commission a supplement to its April 29, 2004, application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Comment Date: June 14, 2004.

4. Laredo WLE, LP

[Docket No. EG04–64–000]

Take notice that on June 2, 2004, Laredo WLE, LP, 101 Ash Street, San Diego, California 92101 filed with the Federal Energy Regulatory Commission a supplement to its April 29, 2004, application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Comment Date: June 14, 2004.

5. Midwest Independent Transmission; System Operator, Inc. and PJM Interconnection, L.L.C.

[Docket No. ER04–375–005]

Take notice that on May 28, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed an amendment to its April 2, 2004, filing of a Joint Operating Agreement (JOA) between the Midwest ISO and PJM Interconnection, L.L.C. (PJM), in compliance with the Commission's May 17, 2004, letter request for additional information.

Midwest ISO states that it has served a copy of this filing as directed in the May 17, 2004 letter. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: June 11, 2004.

6. PacifiCorp

[Docket No. ER04–439–002]

Take notice that on June 1, 2004, PacifiCorp (PacifiCorp) tendered for filing an amendment to its January 20, 2004, filing under Docket No. ER04–439–000. PacifiCorp states that this amended filing revises certain provisions of PacifiCorp's Open Access Transmission Tariff relating to Energy Imbalance calculations.

PacifiCorp states that copies of this filing were supplied to the parties on the service list under Docket No. ER04–439–000 including the Public Utility Commission of Oregon, and the Washington Utilities and Transportation Commission.

Comment Date: June 22, 2004.

7. Jersey Central Power and Light Company

[Docket No. ER04–727–002]

Take notice that on May 27, 2004, Jersey Central Power and Light Company, a FirstEnergy Company, (Jersey Central) submitted an amendment to its April 9, 2004, filing in Docket No. ER04–727–000. Jersey Central states that the filing consists of some relevant material that was inadvertently omitted from its May 21, 2004, amendment of the April 9, 2004, filing.

Jersey Central states that copies of this filing have been served on regulators in New Jersey, OPP and PJM.

Comment Date: June 17, 2004.

8. Sierra Pacific Resources Operating Companies

[Docket No. ER04–877–000]

Take notice that on May 27, 2004, Sierra Pacific Resources Operating Companies (Sierra) tendered for filing a unilateral amendment to their FERC Electric Tariff, First Revised Volume No. 1, Service Agreement No. 97 with Duke Energy North America, LLC and Duke Energy Trading and Marketing, L.L.C.

Comment Date: June 17, 2004.

9. Equus Power I, L.P.

[Docket No. ER04–878–000]

Take notice that on May 28, 2004, Equus Power I, L.P. (Equus Power) filed with the Commission, pursuant to section 205 of the Federal Power Act, an Application for Order Accepting Initial Market Based Rate Tariff and Granting Certain Waivers and Blanket Approvals, which would allow Equus Power to engage in the sale of electric energy, capacity and ancillary services at market-based rates. Equus Power states that it is engaged in the business of owning and operating a 47 MW generation facility located in The Village of Freeport, New York. Equus Power also seeks certain waivers and blanket approvals under the Commission's Regulations, expedited review, and a waiver of the sixty (60)-day notice requirement under 18 CFR 35.3 (2003).

Comment Date: June 18, 2004.

10. Sunoco Power Generation LLC

[Docket No. ER04–879–000]

Take notice that on May 27, 2004, Sunoco Power Generation LLC (Sunoco Power) filed for application for authority to sell capacity, energy, and certain ancillary services at market-based rates, pursuant to section 35.3(a) of the Commission's regulations. Sunoco Power requests waiver of the Commission's standard 60-day notice requirement to permit an effective date as of the date Sunoco Power commences the sale of energy generated by the Eagle Point Cogeneration Facility.

Comment Date: June 17, 2004.

11. Central Vermont Public Service Corporation

[Docket No. ER04–880–000]

Take notice that on May 27, 2004, Central Vermont Public Service Corporation (CVPS) tendered for filing the Actual 2003 Cost Report required under Paragraph Q–1 on Original Sheet No. 18 of the Rate Schedule FERC No. 135 (RS–2 Rate Schedule) under which Central Vermont Public Service Corporation (Company) sells electric power to Connecticut Valley Electric Company Inc. (Customer). CVPS states that the Actual 2003 Cost Report reflect changes to the RS–2 Rate Schedule which were approved by the Commission's order issued June 6, 1989 in Docket No. ER88–456–000.

CVPS states that copies of the filing were served upon the Customer, the New Hampshire Public Utilities Commission, and the Vermont Public Service Board.

Comment Date: June 17, 2004.

12. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER04–881–000]

Take notice that on May 27, 2004, Deseret Generation & Transmission Co-operative, Inc. (Deseret) tendered an informational filing in compliance with Service Agreements on file with the Commission. Deseret states that the filing sets forth the revised approved costs for member-owned generation resources and the revised approved reimbursements under its Resource Integration Agreements with two of its members, Garkane Power Association, Inc. and Moon Lake Electric Association, Inc.

Deseret states that a copy of this filing has been served upon all of Deseret's members.

Comment Date: June 17, 2004.

13. New England Power Pool

[Docket No. ER04–882–000]

Take notice that on May 28, 2004, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include Littleton (NH) Water and Light Department (Littleton) and UPC Wind Management, LLC (UPC). NEPOOL Participants Committee requests an effective date of June 1, 2004 for the commencement of participation in NEPOOL by Littleton and UPC.

NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: June 18, 2004.

14. West Penn Power Company

[Docket No. ER04–883–000]

Take notice that on May 27, 2004, Allegheny Energy Service Corporation on behalf of West Penn Power Company (WPP), doing business as Allegheny Power, tendered for filing a Notice of Termination of Service Agreement No. 74 under Allegheny Power FERC Electric Tariff, Original Volume No. 6, a Power Service Agreement between WPP and Letterkenny Industrial Development Authority.

Allegheny Energy Service Corporation on behalf of WPP states that copies of the filing have been provided to the customer and their counsel of record and the Pennsylvania Public Utility Commission.

Comment Date: June 17, 2004.

15. Ameren Services Company

[Docket No. ER04–884–000]

Take notice that on May 27, 2004, Ameren Services Company, on behalf of Union Electric Company dba AmerenUE and Central Illinois Public Service Company dba AmerenCIPS (collectively, Ameren), submitted for filing proposed revisions to the Open Access Transmission Tariff (OATT) of the Ameren Operating Companies to accommodate the transfer of functional control of the AmerenUE and AmerenCIPS transmission systems to GridAmerica and the Midwest ISO on May 1, 2004. Ameren requests that the Commission accept the revised OATT effective May 1, 2004.

Ameren states that it has served a copy of this filing on the Illinois Commerce Commission and the Missouri Public Service Commission and has notified all affected customers of the filing.

Comment Date: June 17, 2004.

16. Entergy Services, Inc.

[Docket No. ER04–886–000]

Take notice that on May 27, 2004, Entergy Services, Inc. (Entergy Services), acting as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing its 2004 annual rate redetermination update (Update) in accordance with its Open Access Transmission Tariff. Entergy Services states that the Update redetermines the formula rate in accordance with the annual rate redetermination provisions of Appendix 1 to Attachment H and Appendix A to Schedule 7.

Entergy Services further states that copies of the Update have been served upon its transmission customers and its state and local regulatory commissions.

Comment Date: June 17, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1291 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF04–12–000]

Transcontinental Gas Pipe Line Corporation; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Central New Jersey Expansion Project, Request for Comments on Environmental Issues and Notice of Scoping Meeting

June 4, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Transcontinental Gas Pipe Line Corporation's (Transco) planned Central New Jersey Expansion Project located in Burlington County, New Jersey. This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the projects. Your input will help the Commission staff determine which issues need to be evaluated in the EA. The Commission will use the EA in its decision-making process to determine whether or not to authorize the project. Please note that the scoping period will close on August 27, 2004.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the public participation section of this notice. In lieu of sending written comments, you are invited to attend the public scoping meeting that is scheduled as follows: Tuesday, June 29, 2004, 7 p.m. (e.s.t.), Ramada Inn, Bordentown, 1083 Route 206 North, Bordentown, NJ 08505, 609–298–3200. This notice is being sent to affected landowners; Federal, State, and local government representatives and agencies; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers in this proceeding. We [1] encourage government representatives to notify their constituents of these planned projects and advise them to comment on their areas of concern.

Summary of the Proposed Project

Transco proposes to construct and operate about 3.5 miles of 36-inch-diameter pipeline that would loop [2] Transco's existing Trenton Woodbury Line, located in Bordentown and Mansfield Townships in Burlington County, New Jersey. The expansion would add an additional 105,000 dekatherms per day of firm transportation capacity to Transco's existing system. Transco proposes to place the Central New Jersey Expansion facilities into service by November 1, 2005, and requests a certificate approval from the Commission by February 1, 2005.

A map depicting Transco's proposed facilities and alternate routes is provided in Appendix 1.[3]

Currently Identified Environmental Issues

Transco has initially identified five route variations, of which have several issues that we think deserve attention based on a preliminary review of the planned facilities. This preliminary list of issues may be changed based on our analysis:

- Two variations (Alternates A and B) may have land use conflicts with regards to commercial and/or private development;
- Two variations (Alternates B and C) may have land use conflicts with regards to transportation development; and
- Two variations (Alternates D and E) bisect Farmland Preservation Property.

The siting of the pipeline loop in proximity to residential neighborhoods and commercial businesses; and public safety have also been raised by concerned citizens.

The EA Process

The FERC will use the EA to consider the environmental impact that could result if it issues Transco a Certificate of Public Convenience and Necessity.

This notice formally announces our preparation of the EA and the beginning of the process referred to as "scoping." We are soliciting input from the public and interested agencies to help us focus the analysis in the EA on the potentially significant environmental issues related to the proposed action.

Our independent analysis of the issues will be included in an EA that will be prepared for the project. Our evaluation will also include possible alternatives to the proposed project or portions of the project, and we will make recommendations on how to lessen or avoid impacts on the various resource areas of concern.

The EA will be mailed to Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 30-day comment period will be allotted for review of the EA. We will consider all comments submitted on the EA in any Commission Order that is issued for the project.

Although no formal application for authorizing these natural gas facilities has been filed, the FERC staff is initiating its NEPA review now. The purpose of the FERC's pre-filing process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC.

We are currently involved with discussions with other jurisdictional agencies to identify their issues and concerns. These agencies include the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, New Jersey Department of Environmental Protection, and the U.S. Department of Transportation. By this notice, we are asking these and other federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the proposals. Your comments should focus on the potential environmental effects, reasonable alternatives and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please mail your comments so that they will be received in Washington, DC on or before August 27, 2004, and carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 1, DG2E;

[1] "We," "us," and "our" refer to the environmental staff of the Office of Energy Projects.

[2] A loop is a segment of pipeline that is installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "eLibrary" link or from the Commission's Public Reference Room or call (202) 502–8371. For instructions on connecting to eLibrary refer to the end of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

• Reference Docket No. PF04–12–000 on the original and both copies;

Please note that the Commission encourages electronic filing of comments. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the "eFiling" link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on "Login to File" and then "New User Account." You will be asked to select the type of filing you are making. This filing is considered a "Comment on Filing."

When Transco submits its application for authorization to construct and operate the Central New Jersey Expansion Project, the Commission will publish a Notice of Application in the **Federal Register** and will establish a deadline for interested persons to intervene in the proceeding. Because the Commission's pre-filing process occurs before an application to begin a proceeding is officially filed, petitions to intervene during this process are premature and will not be accepted by the Commission.

Environmental Mailing List

If you wish to remain on the environmental mailing list, please return the Mailing List Retention Form included in Appendix 2. If you do not return this form, you will be taken off our mailing list.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208 FERC (3372) or on the FERC Internet website (*http://www.ferc.gov*). Using the "eLibrary" link, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number" (*i.e.*, PF04–12–000), and follow the instructions. Searches may also be done using the phrase "Central New Jersey Expansion" in the "Text Search" field. For assistance with access to eLibrary, the 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 rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, Transco has established an Internet Web site for its project at *http://centralnj.williams.com*. The website includes a project overview, contact information, regulatory overview, and construction procedures.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1317 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

June 3, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original major license under 5 megawatts (MW).

b. *Project No.:* P–11879–001.

c. *Date filed:* May 20, 2004.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Chester Diversion Hydroelectric Project.

f. *Location:* On Henry's Fork of the Snake River, near the Town of Rexburg, in Fremont County, Idaho. The project would occupy 2-acres of U.S. Bureau of Reclamation (BOR) land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834 or Dr. Vincent A. Lamarra, Ecosystems Research Institute, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

i. *FERC Contact:* Emily Carter at (202) 502–6512, or *Emily.Carter@ferc.gov*.

j. *Cooperating agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues, to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item 'l.' below.

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: July 19, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

m. *Status:* The application is not ready for environmental analysis at this time.

n. The proposed Chester Diversion Hydroelectric Project would utilize the existing BOR Chester Dam on the Henry's Fork of the Snake River. The dam has an overall structural height of 17 feet and a total length of 457 feet, spanning the river. Operation of the project would depend on flows in the Henry's Fork and would be dependant on the irrigation season. It would be operated run-of-river and no storage would occur at the project.

The proposed project would consist of the following facilities: (1) A new three-foot-high inflatable rubber dam bolted to the crest of the existing spillway; (2) a new 50-foot-wide concrete spillway; (3) two new Kaplan-type turbine generator units with a combined generating capacity of 3.3 MW; (4) a new low-profile powerhouse; and (5) appurtenant facilities.

The applicant estimates that the average annual generation would be about 16.8 gigawatthours.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Idaho State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so.

Action	Tentative date
Issue Acceptance or Deficiency Letter.	July 2004.
Request Additional Information.	July 2004.
Issue Acceptance Letter (if necessary).	October 2004.
Issue Scoping Document 1 for comments.	November 2004.
Hold Scoping Meetings	December 2004.
Request Additional Information (if necessary).	February 2005.
Issue Scoping Document 2 ...	February 2005.
Notice of Application Ready for Environmental Analysis.	February 2005.
Notice of the availability of the draft EA.	August 2005.
Initiate 10(j) process (if necessary).	October 2005.
Notice of the availability of the final EA.	February 2005.
Ready for Commission decision on the application.	May 2006.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1307 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Additional Scoping Meetings, Soliciting Scoping Comments, and Extending Comment Period

June 4, 2004.

Take notice that the following hydroelectric application has been filed with Commission and is available for public inspection:

a. *Type of Application:* New major license.

b. *Project No.:* 2082–027.

c. *Date filed:* February 25, 2004.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Klamath Hydroelectric Project.

f. *Location:* On the Klamath River in Klamath County, Oregon and on the Klamath River and Fall Creek in Siskiyou County, California. The project currently includes 219 acres of federal lands administered by the Bureau of Reclamation and the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Todd Olson, Project Manager, PacifiCorp, 825 N.E. Multnomah, Suite 1500, Portland, Oregon 97232, (503) 813–6657.

i. *FERC Contact:* John Mudre, (202) 502–8902 or *john.mudre@ferc.gov.*

j. *Deadline for filing scoping comments:* Extended to July 22, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an 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 document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application is not ready for environmental analysis at this time.

l. The proposed Project consists of four existing generating developments (J.C. Boyle, Copco No. 1, Copco No. 2. and Iron Gate) along the mainstem of the Upper Klamath River, between RM 228 and RM 254, and one generating development (Fall Creek) on Fall Creek, a tributary to the Klamath River at about RM 196. The existing Spring Creek diversion is proposed for inclusion with the Fall Creek Development. The currently licensed East Side, West Side, and Keno Developments are not included in the proposed project.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process:* The Commission intends to prepare an Environmental Impact Statement (EIS) on the project in accordance with the National Environmental Policy Act. The EIS will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Additional Scoping Meetings

FERC staff will hold two additional scoping meetings to solicit agency and public input for this relicensing proceeding. Over the period May 18–May 21, FERC staff held four scoping meetings in the project area and participated in a site visit. We invite all interested agencies, non-governmental organizations, Native American tribes, and individuals to attend one or more of these additional meetings and to assist the staff in identifying the scope of environmental issues to be analyzed in the EIS. The times and locations of these meetings are as follows:

Agency Scoping Meeting

When: Tuesday, June 22, 2004, 1 p.m. to 4 p.m (p.s.t).

Where: Red Lion Inn, 1929 Fourth Street, Eureka, California.

Public Scoping Meeting

When: Tuesday, June 22, 2004, 7 p.m.–9 p.m. (p.s.t.).

Where: Red Lion Inn, 1929 Fourth Street, Eureka, California.

Copies of Scoping Document (SD1), outlining the subject areas to be addressed in the EIS, were distributed to the parties on the Commission's mailing list on April 16, 2004. Additional copies of the SD1 will be available at the scoping meeting or may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link (see item m above).

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EIS; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Extension of Comment Period

Our April 16, 2004, notice established June 21, 2004, as the deadline for filing scoping comments in this proceeding. In light of these additional scoping meetings, the deadline for filing scoping comments in this proceeding is extended until July 22, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1311 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2602–007]

Duke Power; Notice of Application for Surrender of License and Solicitation of Comments, Motions To Intervene, and Protests

June 4, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of license.

b. *Project No.:* 2602–007.

c. *Date Filed:* June 1, 2004.

d. *Applicant:* Duke Power.

e. *Name of Project:* Dillsboro Hydroelectric Project.

f. *Location:* On the Tuckasegee River, in Jackson County, North Carolina. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John C. Wishon, Nantahala Area Relicensing Project Manager, Duke Power, 301 NP&L Loop, Franklin, NC 28734, (828) 369–4604, *jcwishon@duke-energy.com.*

i. *FERC Contact:* Lee Emery at (202) 502–8379, or *lee.emery@ferc.gov*; or Carolyn Holsopple at (202) 502–6407, or *carolyn.holsopple@ferc.gov.*

j. *Cooperating Agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. *Deadline for filing comments, motions to intervene, protests, and requests for cooperating agency status:* 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an 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 document on that resource agency.

Comments, motions to intervene, protests, and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. *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. After logging into the e-Filing system, select "Comment on Filing" from the Filing Type Selection screen and continue with the filing process."

l. *Status:* This application is not ready for environmental analysis at this time.

m. *Description of Request:* Duke Power filed an application to surrender its major license for the Dillsboro Hydroelectric Project. Duke requests that the Commission approve the following: (1) Continue operating the Dillsboro Project under the terms of the current license until dam removal begins; (2) decommission the dam and powerhouse and complete dam removal and powerhouse closure/removal within three years following the final FERC approval order; (3) prepare and obtain FERC approval of, and implement an environmental monitoring plan in association with the dam removal, including completion of the Duke implemented portions of any post-removal stream restoration and annual monitoring within two years following completion of the dam removal. Also included in the surrender application was the Tuckasegee/Nantahala Settlement Agreements which were filed on January 26, 2004, as part of the relicense applications for the East Fork (P–2698), West Fork (P–2686), and Nantahala (P–2692) Hydroelectric Projects. The settlement agreements provide various environmental enhancement measures, which include the removal of the Dillsboro Dam and Powerhouse.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field (P–2602), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are initiating consultation with the North Carolina State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

p. Individuals desiring to be included on the Commission's mailing list for this project should so indicate by writing to the Secretary of the Commission.

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.

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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Procedural schedule and final amendments: The application will be processed according to the following Hydro Surrendering Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

Action	Tentative date
Issue Deficiency Letter	August 2004.
Issue Acceptance letter/Request Additional Information.	September 2004.
Issue Scoping Document 1 for Comments.	October 2004.
Request Additional Information, if necessary.	November 2004.
Issue Scoping Document 2, if necessary.	December 2004.
Notice of Application is Ready for Environmental Analysis.	January 2005.
Notice of the availability of the Draft EA.	April 2005.
Notice of the availability of the Final EA.	June 2005.
Ready for Commission's decision on the Application.	July 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1313 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2686–032]

Duke Power; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

June 4, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* 2686–032.

c. *Date filed:* January 26, 2004.

d. *Applicant:* Duke Power (Nantahala Area).

e. *Name of Project:* West Fork Hydroelectric Project.

f. *Location:* On the West Fork of the Tuckasegee River, in Jackson County, North Carolina. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John C. Wishon, Nantahala Area Relicensing Project Manager, Duke Power, 301 NP&L Loop, Franklin, NC 28734, (828) 369–4604, *jcwishon@duke-energy.com.*

i. *FERC Contact:* Carolyn Holsopple at (202) 502–6407 or *carolyn.holsopple@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov* under the "e-Filing" link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing West Fork Project operates in a peaking mode and is comprised of two developments: Thorpe and Tuckasegee. The Thorpe development consists of the following features: (1) A 900-foot-long, 150-foot-tall rockfill dam (Glenville Dam), with a 410-foot-long, 122-foot-tall earth and rockfill saddle dam located approximately 500 feet from the main dam left abutment; (2) a spillway for Glenville Dam located at the right abutment; (3) a 1,462 acre reservoir, with a normal reservoir elevation of 3,491.8 feet National Geodetic Vertical Datum and a storage capacity of 72,000 acre-feet; (4) a concrete and brick powerhouse containing one generating unit having an installed capacity of 15.5 megawatts (MW); and (5) appurtenant facilities.

The Tuckasegee development consists of the following features: (1) A 254-foot-long, 61-foot-high concrete arch dam (Tuckasegee Dam), with 24 steel flashboards; (2) a 233.5-foot-long spillway; (3) a 7.9 acre reservoir, with a normal reservoir elevation of 2,778.75 feet National Geodetic Vertical Datum and a storage capacity of 35 acre-feet; (4) a concrete powerhouse containing one generating unit having an installed capacity of 2.6 MW; and (5) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202)

502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1314 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2692–032, 2698–033, 2686–032, 2601–007, 2602–005, 2603-012, 2619–012]

Duke Power; Notice of Settlement Agreements and Soliciting Comments

June 4, 2004.

Take notice that the following settlement agreements have been filed with the Commission and are available for public inspection.

a. *Type of Application:* Settlement agreements (Tuckasegee River and Nantahala River).

b. *Project Nos.:* 2692–032, 2698–033, 2686–032, 2601–007, 2602–005, 2603–012, 2619–012.

c. *Date Filed:* January 26, 2004.

d. *Applicant:* Duke Power

e. *Names of Projects:* Nantahala, East Fork, West Fork, Bryson, Dillsboro, Franklin, and Mission Hydroelectric Projects.

f. *Location:* The Nantahala Project is located on the Nantahala River and its tributaries, in Macon and Clay Counties, North Carolina. There are 41 acres of United States Forest Service land (Nantahala National Forest) within the boundary of the project. The East Fork Project is located on the East Fork of the Tuckasegee River, in Jackson County, North Carolina. There are 23.15 acres of United States Forest Service land (Nantahala National Forest) within the boundary of the project. The West Fork Project is located on the West Fork of the Tuckasegee River, in Jackson County, North Carolina. The project does not affect Federal lands. The Bryson Project is located on the Oconaluftee River, in Swain County, North Carolina. The project does not affect Federal lands. The Dillsboro Project is located on the Tuckasegee River, in Jackson County, North Carolina. The project does not affect Federal lands. The Franklin Project is located on the Little Tennessee River, in Macon County, North Carolina. The project does not affect Federal lands. The Mission Project is located on the Hiwassee River, in Clay County, North Carolina. The project does not affect Federal lands.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* John C. Wishon, Nantahala Area Relicensing Project Manager, Duke Power, 301 NP&L Loop, Franklin, NC 28734, (828) 369–4604, *jcwishon@duke-energy.com.*

i. *FERC Contact:* Carolyn Holsopple at (202) 502–6407 or *carolyn.holsopple@ferc.gov.*

j. *Deadline for Filing Comments:* The deadline for filing comments on the Settlement Agreements is 20 days from the date of this notice. The deadline for filing reply comments is 30 days from the date of this notice. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions of the Commission's Web site (*http://www.ferc.gov*) under the "e-filing" link.

k. Duke Power filed two Settlement Agreements (Tuckasegee River and Nantahala River) on behalf of itself and 19 other stakeholders. The purpose of the Settlement Agreements is to resolve, among the signatories, all issues related to Duke Power's pending Applications for New Licenses for the Nantahala, East Fork, West Fork, Bryson, Franklin, and Mission Hydroelectric Projects and provides for the removal of the Dillsboro Dam as one of several environmental enhancement measures proposed at the six other projects. The issues resolved through the settlements include but are not limited to reservoir level limitations, public recreational facilities, minimum flow requirements for habitat and recreation, downstream recreational flows, flow and reservoir level communication protocols, resource enhancements, shoreline management guidelines, cultural resources, sediment management and compliance monitoring and reporting requirements.

l. Copies of the Settlement Agreements are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the "e-Library" link. Enter the docket number, excluding the last three digits in the docket number field to access the documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1315 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2698–033]

Duke Power; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

June 4, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* 2698–033.

c. *Date filed:* January 26, 2004.

d. *Applicant:* Duke Power (Nantahala Area).

e. *Name of Project:* East Fork Hydroelectric Project.

f. *Location:* On the East Fork of the Tuckasegee River, in Jackson County, North Carolina. There are 23.15 acres of United States Forest Service land (Nantahala National Forest) within the boundary of the project.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John C. Wishon, Nantahala Area Relicensing Project Manager, Duke Power, 301 NP&L Loop, Franklin, NC 28734, (828) 369–4604, *jcwishon@duke-energy.com.*

i. *FERC Contact:* Carolyn Holsopple at (202) 502–6407 or *carolyn.holsopple@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing East Fork Project operates in a peaking mode and is comprised of three developments: Cedar Cliff, Bear Creek and Tennessee Creek. The Cedar Cliff development consists of the following features: (1) A 590-foot-long, 173-foot-tall earth core and rockfill dam (Cedar Cliff Dam); (2) a service spillway excavated in rock at the right abutment; (3) a 221-foot-long emergency spillway located at the left abutment; (4) a 121 acre reservoir, with a normal reservoir elevation of 2,330 feet National Geodetic Vertical Datum and a storage capacity of 6,200 acre-feet; (5) a concrete powerhouse containing one generating unit having an installed capacity of 6.1 megawatts (MW); and (6) appurtenant facilities.

The Bear Creek development consists of the following features: (1) A 760-foot-long, 215-foot-tall earth core and rockfill dam (Bear Creek Dam); (2) a spillway on the right abutment; (3) a 473 acre reservoir, with a normal reservoir elevation of 2,560 feet National Geodetic Vertical Datum and a storage capacity of 34,650 acre-feet; (4) a concrete powerhouse containing one generating unit having an installed capacity of 8.2 MW; and (5) appurtenant facilities.

The Tennessee development consists of the following features: (1) A 385-foot-long, 140-foot-tall earth core and rockfill dam (Tanasee Creek Dam) with a 225-foot-long, 15-foot-tall earth and rockfill saddle dam located 600 feet south of the Tanasee Creek Dam left abutment; (2) a spillway located in a channel excavated in the right abutment; (3) a 810-foot-long, 175-foot-tall earth core and rockfill dam (Wolf Creek Dam); (4) a spillway located in a channel excavated in the right abutment; (5) a 40 acre reservoir (Tanasee Creek Lake), with a normal reservoir elevation of 3,080 feet National Geodetic Vertical Datum and a storage capacity of 1,340 acre-feet; (6) a 176 acre reservoir (Wolf Creek Lake), with a normal reservoir elevation of 3,080 feet National Geodetic Vertical Datum and a storage capacity of 10,040 acre-feet; (7) a concrete powerhouse containing one generating unit having an installed capacity of 8.75 MW.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1316 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Supplemental Notice of Agenda for Technical Conference

June 3, 2004.

Market-Based Rates For Public Utilities, AEP Power Marketing, Inc., AEP Service Corporation, CSW Power Marketing, Inc., CSW Energy Services, Inc., and Central and South West Services, Inc. (Not consolidated), Entergy Services, Inc., Southern Company Energy Marketing L.P., Conference on Supply Margin Assessment [Docket Nos. RM04–7–000, ER96–2495–016, ER96–2495–017, ER97–4143–004, ER97–4143–005, ER97–1238–011, ER97–1238–012, ER98–2075–010, ER98–2075–011, ER98–542–006, ER98–542–007, ER91–569–018, ER91–569–019, ER97–4166–010, ER97–4166–011, and PL02–8–000];

1. The attachment to this supplemental notice provides additional information concerning the technical conference to discuss issues associated with the rulemaking proceeding on market-based rates that is scheduled for June 9, 2004, from 9:30 a.m. to 4:30 p.m. (e.s.t.) in the Commission's Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. All interested persons are invited to attend. Microphones will be available to enable those in the audience to participate in the discussion as issues arise. Members of the Commission will participate in the conference. While the Commission does not intend the conference discussion to include the merits of any issues pending on rehearing in the *AEP Power Marketing, Inc., et al.* proceeding in Docket No. ER96–2495–016, *et al.*, we have included those docket numbers out of an abundance of caution since the issues in the conference may overlap with issues in the rehearing dockets.

2. The conference will be transcribed. Those interested in acquiring the transcript should contact Ace Reporters at 202–347–3700 or 800–336–6646. Transcripts will be placed in the public record ten days after the Commission receives the transcripts. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone or via satellite. Persons interested in receiving the broadcast, or who need information on making arrangements, should contact David Reininger or Julia Morelli at Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on "FERC."

3. For more information about the conference, please contact Mary Beth Tighe at 202–502–6452 or *mary.beth.tighe@ferc.gov*.

Magalie R. Salas,

Secretary.

Market-Based Rates for Public Utilities Technical Conference, June 9, 2004, 9:30 a.m.–4:30 p.m.

Agenda

For many years the Commission has conducted the following four-part test to determine whether an applicant should be granted market-based rate authority: (1) Whether the applicant has generation market power; (2) whether the applicant has transmission market power, (2) whether the applicant can erect barriers to entry, and (3) whether there are concerns involving the applicant that relate to affiliate abuse and/or reciprocal dealing. The Commission recently initiated a rulemaking proceeding with respect to the adequacy of the current four-prong analysis and whether and how it should be modified to assure that electric market-based rates are just and reasonable under the Federal Power Act. The public technical conference that is the subject of this notice is the first step in this rulemaking proceeding. The purpose of this conference will be to frame the issues that will comprise the rulemaking proceeding, including a discussion of how all four parts of the current test interrelate, as well as what other factors the Commission should consider in granting market-based rate authorizations.

Panelists will each be asked to address issues among the following in an overview prepared statement, which will be followed by questions and general discussion:

1. To what extent, if any, does the Commission's current four-part test need to be revised, consolidated or expanded? Are there other factors the Commission should consider in granting market-based rate authorizations?

2. Should the interim generation market power screens that were adopted in the *AEP Order*[1] be retained over the long-term?

3. How do each of the four parts of the test relate to the other parts? Should the Commission's review of generation market power and transmission market power be more integrated than it is currently? How do these two factors interrelate? Should the Commission's analysis explicitly address vertical market power issues?

4. Should the Commission adopt a regional approach to assessing market power wherein all jurisdictional entities selling at wholesale in a particular region are reviewed for authorization to sell at market-based rates simultaneously, rather than the current applicant-by-applicant approach? If we adopted such an approach, how should we address the associated data and procedural/transition issues that would be needed to implement such an approach?

5. Should there be new Commission regulations promulgated expressly for electric market-based rate filings? If so, in what areas are such regulations specifically needed?

6. Transmission specific issues:

a. How should we calculate transmission access to the market?

b. Are the current rights under the Order No. 888 transmission tariffs sufficient to ensure access to competitive markets?

c. Did Order No. 888 eliminate the potential for exercise of transmission market power? If not, how can transmission market power be exercised under the Open Access Transmission Tariff (OATT)? If Order No. 888 did not eliminate the potential for expansion of transmission market power, what policies are likely to do so? How should incentives factor into the analysis?

d. Is transmission market power a more serious concern than generation market power?

e. How can transmission market power be mitigated?

f. What is the best method to identify instances where market power is being exercised over transmission?

g. Should a public utility with transmission market power be eligible for market-based rate authorization?

7. Entry specific issues:

a. As part of the Commission's review of barriers to entry, should we examine the planning and expansion process with respect to generation siting? If so, how should that be done?

b. Who should be able to nominate sites for planning purposes?

c. What elements should go into the planning process?

d. What actions, if any, should be taken if barriers to entry exist that are not caused by any one entity?

e. What is the role of merchant transmission entry in reducing market power?

8. Affiliate Issues:

a. Should the Commission adopt different approaches to affiliate transactions than it currently does?

b. How should the history of affiliate violations factor into the analysis?

c. In general, are rules or proper incentives best for market efficiency?

d. What are the benefits and detriments that affiliate transactions bring to the market or to customers?

e. Do our affiliate rules hinder gains from economies of scope?

f. Is there an efficiency rationale for affiliate transactions given our behavioral rules?

g. Should any revisions to the current code of conduct be made and if so, what?

9. Are there certain entities that should not be granted market-based rate authority (*e.g.*, trading platforms or banks that loan money to potential energy-related competitors)? If so, why?

10. Should there be revisions to how market-based rates associated with ancillary services outside RTOs are currently authorized? If so, in what way?

[1] *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (2004) (*AEP Order*).

Panel I

9:30 a.m.–12 p.m.

(Generation Market Power, Transmission Market Power, Vertical Market Power and Barriers to Entry)

David DeRamus, Partner, Bates White.

Mark Hegedus, of counsel, Spiegel & McDiarmid, on behalf of American Public Power Association.

Paul Bonavia, President of Commercial Enterprises for Xcel Energy.

Robert Weishaar, Partner, McNees, Wallace & Nurick, on behalf of industrial customers.

Mathew Morey, Senior Consultant, Lauritsr.Christensen Associates, on behalf of National Rural Electric Cooperative Association.

Michael Wroblewski, Federal Trade Commission.

Panel II

1:30 p.m.–4:30 p.m.

(Affiliate Abuse, Other Factors the Commission Should Consider in Granting Market-Based Rates, Other Issues (Substantive and Procedural) That Should be Addressed in the Rulemaking)

Julie Simon, Vice President of Policy, Electric Power Supply Association.

Fred Bryant, General Counsel for Florida Municipal Power Agency, on behalf of Transmission Access Policy Study (TAPS) Group.

Gerald Norlander, Chairman of the Electricity Committee of the National Association of State Utility Consumer Advocates.

Diana Moss, Vice President and Senior Research Fellow, American Antitrust Institute.

[FR Doc. E4–1293 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PL04–9–000, EC02–113–000, EC02–113–001, EC03–53–000, and EC03–131–000]

Conference on Acquisition and Disposition of Merchant Generation Assets by Public Utilities; Cinergy Services, Inc.; Ameren Energy Generating Company and Union Electric Company d/b/a; AmerenUE; Oklahoma Gas and Electric Company NRG McClain LLC; Supplemental Notice of Agenda for Technical Conference

June 4, 2004.

1. The attachment to this supplemental notice provides additional information concerning the June 10, 2004, technical conference to discuss issues associated with public utilities' acquisition and disposition of merchant generation assets, including the implications for the competitive landscape in general and for a region's wholesale competition in particular. (*See* May 11, 2004, Notice of Technical Conference.) While the Commission does not intend the conference discussion to include the merits of any issues pending before the Commission, we have included the docket numbers of contested pending section 203 cases out of an abundance of caution since issues in the conference may overlap with issues in these cases. The conference will begin at 1 p.m. (e.s.t.) and will conclude at approximately 4 p.m. and will be convened in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. Members of the Commission will attend the conference. All interested persons are invited to attend. Microphones will be available to enable those in the audience to participate in the discussion as issues arise.

2. The conference will be transcribed. Those interested in acquiring the transcript should contact Ace Reporters at 202–347–3700 or 800–336–6646. Transcripts will be placed in the public record 10 days after the Commission receives the transcripts. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone or via satellite. Persons interested in receiving the broadcast, or who need information on making arrangements, should contact David Reininger or Julia Morelli at Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on "FERC."

3. For more information about the conference, please contact David Hunger at 202–502–8148 or *David.Hunger@ferc.gov*.

Linda Mitry,

Acting Secretary.

Conference on Public Utilities' Acquisition and Disposition of Merchant Generation Assets, June 10, 2004, 1 p.m.–4 p.m.

Agenda

Panelists will each be asked to address issues among the following in a five minute overview prepared statement, which will be followed by questions and general discussion:

- Trends in acquisitions of generation facilities owned by independent power producers (IPPs) and affiliated power producers (APPs); characteristics of sellers, buyers and assets and the roles of financial players; who is selling to whom and what is the role of banks and other financial institutions.
- Changing pattern of generation acquisitions by vertically-integrated utilities and their APPs over the past 15 years.
- Competitive effects of vertically integrated utilities acquiring IPP generation assets in short-run and long-run markets.
- Competitive effects of vertically integrated utilities acquiring APP generation assets in short-run and long-run markets; the potential for affiliate abuse; validity of safety net concerns.
- Whether or how the evaluation of the competitive harm under current section 203 review standards (Merger Policy Statement and Order No. 642) and policy needs to be changed to take account of competitive effects of acquisitions of IPPs and APPs.
- Whether the Commission should require an Edgar type standard of review for section 203 affiliate acquisitions.
- Should the Commission consider the effect of buyers' market power (monopsony power) in its review of generation acquisitions? If so, how should it analyze the effect on competition? Does economic dispatch address horizontal market power, vertical market power and/or monopsony power?
- What are the remedies? In particular, can a competitive solicitation prevent harm due to affiliate acquisitions?

Panel I: 1 p.m.–2:15 p.m.

John Hilke, Federal Trade Commission.

Steve Daniel, GDS Associates.

Pete Delaney, Oklahoma Gas and Electric Company.

State Commissioner—TBA.

Peter Kind, CitiGroup.

Break: 2:15 p.m.–2:30 p.m.

Panel II: 2:30 p.m.–3:45 p.m.

David DeRamus, Partner, Bates White.

Mark Huston, Constellation Generation.

Jone-Lin Wang, Cambridge Energy Research Associates.

Mark Cooper, Consumer Federation of America.

Diana Moss, American Antitrust Institute.

Marji Philips, PSE&G.

Wrap-up: 3:45 p.m.–4 p.m.

[FR Doc. E4–1319 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1893–042]

Public Service Company of New Hampshire; Notice of Site Visit, Scoping Meetings and Soliciting Scoping Comments

June 3, 2004.

a. *Type of Application:* New major license.

b. *Project No.:* P–1893–042.

c. *Date filed:* December 30, 2003.

d. *Applicant:* Public Service Company of New Hampshire (PSNH).

e. *Name of Project:* Merrimack River Project.

f. *Location:* On the Merrimack River, in Merrimack and Hillsborough

counties, New Hampshire. The project does not occupy Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* James J. Kearns, 780 North Commercial Street, P.O. Box 330, Manchester, NH 03105 (603) 634–2936.

i. *FERC Contact:* Steve Kartalia, *Stephen.kartalia@ferc.gov* (202) 502–6131.

j. *Deadline for filing scoping comments:* July 26, 2004.

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.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. The Merrimack project consists of three developments described below:

The Amoskeag Development consisting of: (1) A 29-foot-high, 710-foot-long concrete gravity dam comprised of: (i) A low crest section with 5-foot-high flashboards; and (ii) a high crest section with 3-foot-high flashboards; (2) a 7-mile-long, 478-acre reservoir; (3) a powerhouse, integral with the dam, containing three generating units with a total installed capacity of 16,000 kW; (4) a 415-foot-long, 34.5-kV double circuit transmission line; and (5) other appurtenances.

The Hooksett Development consisting of: (1) A dam comprised of: (i) A 340-foot-long stone masonry section with 2-foot-high flashboards connected to; (ii) a 250-foot-long concrete section with 2-foot-high flashboards; (2) a 15-foot by 20-foot Taintor gate; (3) a 5.5-mile-long, 405-acre reservoir; (4) a powerhouse containing a single generating unit with an installed capacity of 1,600 kW; and (5) other appurtenances.

The Garvins Falls Development consisting of: (1) An 18-foot-high, 550-foot-long concrete and granite gravity dam comprised of: (i) A low crest section with 3-foot-high flashboards; and (ii) a high crest section with 1.2-foot-high flashboards; (2) an 8-mile-long reservoir; (3) a 500-foot-long water canal with a 10-foot-wide waste gate; (4) two powerhouses, each containing two generating units for a total installed capacity of 12,300 kW; (5) a 340-foot-long, 34.5-kV transmission line; and (6) other appurtenances.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. *Scoping Process:* Commission staff intend to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act once the final license application is filed. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

n. *Scoping Meetings:* Commission staff will conduct a site visit, one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency, Indian Tribes, and non-governmental organization concerns, while the public scoping meeting is primarily for public input. All interested individuals, organizations, resource agencies, and Indian Tribes are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Site Visit

When: Wednesday, June 23, 2004, 10 a.m. to 2 p.m. (e.s.t.).

Where: PSNH 5 Rivers auditorium, PSNH Energy Park, 780 North Commercial St., Manchester, NH, RSVP to Applicant Contact (item h) by June 15.

Public Scoping Meeting

When: Wednesday, June 23, 2004, 7 p.m. to 9 p.m. (e.s.t.).

Where: PSNH auditorium in Manchester.

Agency Scoping Meeting

When: Thursday, June 24, 2004, 10 a.m. to noon (e.s.t.).

Where: PSNH auditorium in Manchester.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission(s mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link (see item l above).

o. *Objectives:* At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff(s preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

p. *Procedures:* The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1304 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PL04–6–000; ER03–583–000, ER03–583–001 and ER03–583002; ER03–681–000 and ER03–681–001; ER03–682–000, ER03–682–001 and ER03–682–002; ER03–744–000 and ER03–744–001 (Consolidated); ER03–753–000 (Not Consolidated); ER03–713–000 and ER03–713–001]

Solicitation Processes for Public Utilities; Entergy Services, Inc. and EWO Marketing, L.P.; Entergy Services, Inc. and Entergy Power, Inc.; Entergy Services, Inc. and Entergy Power, Inc.; Entergy Services, Inc. and Entergy Louisiana, Inc.; Entergy Services, Inc.; and Southern Power Company; Supplemental Notice for Technical Conference

June 3, 2004.

This supplemental notice provides additional information concerning the technical conference to discuss issues

associated with solicitation processes for power procurement on June 10, 2004, from 9 a.m. to 12 p.m. (e.s.t.) in the Commission's Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. All interested persons are invited to attend. Microphones will be available to enable those in the audience to participate in the discussion as issues arise. Members of the Commission will participate in the conference. While the Commission does not intend the conference discussion to include the merits of any issues pending before it in contested proceedings, we have included the docket numbers of contested pending section 205 cases out of an abundance of caution since issues in the conference may overlap with issues in these cases.

The conference will be transcribed. Those interested in acquiring the transcript should contact Ace Reporters at 202–347–3700 or 800–336–6646. Transcripts will be placed in the public record 10 days after the Commission receives the transcripts. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone or via satellite. Persons interested in receiving the broadcast, or who need information on making arrangements, should contact David Reininger or Julia Morelli at Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on "FERC."

For more information about the conference, please contact Mary Beth Tighe at 202–502–6452 or *mary.beth.tighe@ferc.gov*.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1318 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2150–033]

Puget Sound Energy; Notice of Meeting on Baker River Project Relicensing Legal Working Group

June 4, 2004.

The Commission hereby gives notice that members of its staff will participate by telephone with the Legal Working Group of the Baker River Relicensing Collaborative on June 7, 2004, from 10 a.m. to 3 p.m (P.s.t.). The meeting will be held in the conference room of the Mercato Ristorante, 111 Market Street, NE., 1st Floor Olympia, Washington. The purpose of the meeting is to discuss on-going settlement negotiations for the Baker River Project No. 2150. Topics to be discussed include aquatic issues, the Agreement in Principle, the possibility of requesting the Commission to designate non-decisional staff, and a review of the request for a revised schedule. The meeting is open to the public. Parties interested in further information about the meeting may contact Connie Freeland, Puget Sound Energy, at (425) 462–3556, or Keith Brooks at (202) 502–8174 at FERC.

During the course of the meeting, it is possible that the discussion may address matters pending in the above-captioned docket.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1312 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

June 4, 2004.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merit's of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) 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.

Exempt:

Docket number	Date filed	Presenter or requester
1. CP03–75–000.	5–24–04	Glenn W. Shankle.
2. PF04–1–000, PF04–3–000, PF04–9–000, CP04–37–000 and CP04–47–000.	6–2–04	Joanne Wachholder.[1]
3. Project No. 2083–035.	5–19–04	Jerrilynne Purdy.

[1] Record of April 28, 2004 Interagency Meeting.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1320 Filed 6–9–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[SWH–2004–0007, FRL–7672–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Identification, Listing and Rulemaking Petitions Information Collection Request, EPA ICR Number 1189.14, OMB Control Number 2050–0053

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection for Identification, Listing, and Rulemaking Petitions (ICR Number 1189.09). In addition, EPA is incorporating the burden associated with the recently published zinc fertilizer rulemaking (see 67 FR 48393; July 24, 2002) into the base ICR 1189.09. The base ICR is scheduled to expire on November 30, 2004. Before submitting the new base ICR 1189.14, which now incorporates the burden from the fertilizer rulemaking, to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 9, 2004.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2004–0007, to EPA online using EDOCKET (our preferred method), by e-mail to *RCRA-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, OSWER Docket, mail code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Narendra Chaudhari, Office of Solid Waste, 5304W, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–0454; fax number: (703) 308–0514; e-mail address: *chaudhari.narendra@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number RCRA–2004–0007, which is available for public viewing at the Office of Solid Waste and Emergency Response (OSWER) 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 OSWER Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, 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 *http://www.epa.gov/epadocket*.

Affected entities: Entities potentially affected by this action are rulemaking petitioners under 40 CFR 260.20(b), 260.21 and 260.22; owners or operators of facilities requesting variances from classification as a solid waste or for classification as a boiler under 40 CFR 260.30–260.33; generating facilities seeking a hazardous waste exclusion for certain types of wastes under 40 CFR 261.3 and 261.4, including zinc-bearing hazardous secondary materials; and generators and treatment, storage and disposal facilities requesting exemptions from listing as F037 and F038 wastes under 40 CFR 261.31(b)(2)(ii).

Title: Identification, Listing, and Rulemaking Petitions ICR Number 1189.14, expires November 30, 2007.

Abstract: Under 40 CFR 260.20(b), all rulemaking petitioners must submit basic information with their demonstrations, including name, address, and statement of interest in the proposed action. Under § 260.21, all petitioners for equivalent testing or analytical methods must include specific information in their petitions and demonstrate to the satisfaction of the Administrator that the proposed method is equal to, or superior to, the corresponding method in terms of its sensitivity, accuracy, and reproducibility. Under § 260.22, petitions to amend Part 261 to exclude a waste produced at a particular facility (more simply, to delist a waste) must meet extensive informational requirements. When a petition is submitted, the Agency reviews materials, deliberates, publishes its tentative decision in the **Federal Register**, and requests public comment. EPA also may hold informal public hearings (if requested by an interested person or at the discretion of the Administrator) to hear oral comments on its tentative decision. After evaluating all comments, EPA publishes its final decision in the **Federal Register**.

40 CFR 260.30–260.31, and 260.33 comprise the standards, criteria, and procedures for variances from classification as a solid waste for three types of materials, materials that are collected speculatively without sufficient amounts being recycled; materials that are reclaimed and then reused within the original primary production process in which they were generated; and materials which have been reclaimed, but must be reclaimed further before the materials are completely recovered. Under 40 CFR 260.32 and 260.33 are regulations governing the procedures and criteria for obtaining a variance for classification as a boiler. This variance is available to owners or operators of enclosed flame combustion devices.

40 CFR 261.3 and 261.4 contain provisions that allow generators to obtain a hazardous waste exclusion for certain types of wastes. Facilities applying for these exclusions must submit a notification, or supporting information and/or keep detailed records. Under § 261.3(a)(2)(iv), generators may obtain a hazardous waste exclusion for wastewater mixtures subject to Clean Water Act regulation. Under § 261.3(c)(2)(ii)(C), generators may obtain an exclusion for certain non-wastewater residues resulting from high

temperature metals recovery (HTMR) processing of K061, K062 and F006 waste. Also, under § 261.4(a)(20)(ii)(A), generators and intermediate handlers may obtain a hazardous waste exclusion for zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers. In addition, under § 261.4(b)(6), generators of chromium-containing waste may obtain a hazardous waste exclusion under certain conditions.

Also addressed under this section is the shipment of samples between generators and laboratories for the purpose of testing to determine their characteristics or composition. Sample handlers who are not subject to DOT or USPS shipping requirements must comply with the information requirements of § 261.4(d)(2).

When intended for treatability studies, hazardous waste otherwise subject to regulation under Subtitle C of RCRA is exempted from these regulations, provided that the requirements in § 261.4(e)–(f) are met, including the following information requests: initial notification, record keeping, reporting, and final notification. In addition, generators and collectors of treatability study samples also may request quantity limit increases and time extensions, as specified in § 261.4(e)(3).

40 CFR 261.31(b)(2)(ii) governs procedures and informational requirements for generators and treatment, storage and disposal facilities to obtain exemptions from listing as F037 and F038 wastes. Also under this section are regulations promulgated in 1990 under § 261.35(b) and (c) governing procedures and information requirements for the cleaning or replacement of all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams.

EPA anticipates that some data provided by respondents will be claimed as Confidential Business Information (CBI). Respondents may make a business confidentiality claim by marking the appropriate data as CBI. Respondents may not withhold information from the Agency because they believe it is confidential. Information so designated will be disclosed by EPA only to the extent set forth in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9, and in 48 CFR chapter 15.

EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

Burden Statement: 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.

EPA estimates the total respondent burden for this ICR (#1189.14) is 20,863 hours per year at a cost of $2,059,217. The burden increased by 61 hours per year at a cost of $12,653 from the previously approved ICR (#1189.09). This increase in the burden is a direct result of incorporating the respondent burden associated with the zinc fertilizer rulemaking into this ICR. EPA estimates a total of approximately 150 respondents. EPA also estimates that operation and maintenance (O&M) costs will be incurred by the respondents for various activities. The largest of these are for sampling wastes for a delisting petition ($28,006), and preparing a statement as part of a rulemaking petition ($9,479). Total O&M costs for this ICR are $886,315 per year. EPA estimates that there will be no capital costs incurred. Finally, EPA estimates that the average annual burden per respondent ranges from 3.5 hours (preparation of a nonwastewater exemption) to 414 hours (preparation of a delisting petition).

Dated: May 28, 2004.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 04–13163 Filed 6–9–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6652–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 02, 2004 (69 FR 17403).

Draft EISs

ERP No. D–COE–G61042–NM Rating LO, The Closure of the Al Black Recreation Area at the Cochiti Lake Dam Outlet Works, Implementation, Sandoval County, NM.

Summary: EPA has no objections to the preferred alternative.

ERP No. D–FHW–F40423–WI Rating EC2, Wisconsin Highway Project, Enhance the Mobility of Motorized and Nonmotorized Travel, U.S. 18/151 (Verona Road) and the U.S. 12/14 (Beltine) Corridors, Dane County, Wl.

Summary: EPA expressed concerns related to secondary impacts from growth and development.

ERP No. D–NPS–F65047–OH Rating LO, Fallen Timbers Battlefield and Fort Miamis National Historic Site, General Management Plan, Implementation, Lucas County, OH.

Summary: EPA had no objection to the proposed action.

ERP No. D–SFW–L65451–AK Rating LO, Alaska Peninsula and Becharof National Wildlife Refuges, Draft Revised Comprehensive Conservation Plan, Implementation, AK.

Summary: EPA has no objection to the proposed management strategy for the refuges.

Final EISs

ERP No. F–IBR–G39036–NM, City of Albuquerque Drinking Water Project to Provide a Sustainable Water Supply for Albuquerque through Direct and Full Consumptive Use of the City's San Juan-Chama (SJC) Water for Potable Purposes, Funding, Right-of-Way Grant and U.S. Army COE Section 404 Permit Issuance, City of Albuquerque, NM.

Summary: No comment letter was sent to the preparing agency.

Dated: June 7, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–13151 Filed 6–9–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6652–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564 7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed June 1, 2004, Through June 4, 2004,

Pursuant to 40 CFR 1506.9.

EIS No. 040261, DRAFT EIS, BLM, CO, Northern San Juan Basin Coal Bed Methane Project, Proposed to Drill Approximately 300 Well to Produce Natural Gas from Coal Beds on Federal, State and Private Owned Lands, Special-Use-Permit, Application for Permit to Drill and U.S. Army COE Section 404 Permit, LaPlata and Archulea Counties, CO, Comment Period Ends: September 13, 2004, Contact: Walt Brown (970) 385–1372. The Department of the Interior's Bureau of Land Management and the U.S. Department of Agriculture's Forest Service are Joint Lead Agencies for the above Project.

EIS No. 040262, FINAL EIS, FHW, NC, Second Bridge to Oak Island Transportation Improvement Project, SR–1104 (Beach Drive) to NC–211, Funding, U.S. Army COE Section 404 and U.S. Coast Guard Bridge Permits Issuance, Brunswick County, NC, Wait Period Ends: July 12, 2004, Contact: John F. Sullivan (919) 856–4346.

EIS No. 040263, DRAFT EIS, HUD, CA, Marysville Hotel Demolition Project, Proposed Acquisition and Demolition of Building, City of Marysville, Yuba County, CA, Comment Period Ends: July 26, 2004, Contact: Gary Price (530) 749–3904.

EIS No. 040264, FINAL EIS, AFS, CO, Upper Blue Stewardship Project, Vegetation Management, Travel Management, and Dispersed Camping Sites Designation, Implementation, U.S. Army COE 404 Permit, White River National Forest, Dillon Ranger District, Summit County, CO, Wait Period Ends: July 12, 2004, Contact: Peech Keller (970) 262–3495.

EIS No. 040265, FINAL EIS, AFS, PA, Spring Creek Project Area (SCPA), To Achieve and Maintain Desired Conditions, Allegheny National Forest, Marienville Ranger District, Elk and Forest Counties, PA, Wait Period Ends: July 12, 2004, Contact: Kevin Treese (814) 776–6172.

EIS No. 040266, FINAL EIS, BLM, WY, West Hay Creek Coal Lease Application, Federal Coal Leasing, Buckskin Mine, Powder River Basin, Campbell County, WY, Wait Period Ends: July 12, 2004, Contact: Patricia Karbs (307) 261–7612. This document is available on the Internet at: *http://www.wy.blm.gov/nepa/*.

EIS No. 040267, FINAL EIS, COE, NM, Closure of the Al Black Recreation Area at the Cochiti Lake Dam Outlet Works, Implementation, Sandoval County, NM, Wait Period Ends: July 12, 2004, Contact: Ernest Jahnke (505) 342–3416.

EIS No. 040268, DRAFT EIS, NPS, CA, Santa Monica Mountains National Recreation Area, Fire Management Plan, Implementation, Santa Monica Mountains, CA, Comment Period Ends: September 15, 2004, Contact: Marty O'Toole (805) 370–2364.

EIS No. 040269, FINAL EIS, FRC, OR, Pelton Round Butte Hydroelectric Project, (FERC No. 2030–036), Application for a New License for Existing 366.82-megawatt Project, Deschutes River, OR, Wait Period Ends: July 12, 2004, Contact: Nicholas JayJack (202) 502–8902.

EIS No. 040270, DRAFT EIS, AFS, ID, American and Crooked Rivers Project, Improve Forest Health and Reduce Hazardous Fuels, Implementation, Nez Perce National Forest, Red River Ranger District, Idaho County, ID, Comment Period Ends: July 26, 2004, Contact: Phil Jahn (208) 983–1950.

Amended Notices

EIS No. 040170, DRAFT EIS, NOA, WA, OR, Puget Sound Chinook Harvest Resource Management Plan (RMP) 2004–2009, Implementation, Endangered Species Act, OR and WA, Comment Period Ends: July 1, 2004, Contact: Susan Bishop (206) 526–4587. Revision of FR Notice Published on 4/16/2004: CEQ Comment Period Ending on 06/1/2004 has been Extended to 7/01/2004.

EIS No. 040204, DRAFT EIS, FHW, NJ, Cross Harbor Freight Movement Project, Improve the Movements of Goods Throughout Northern New Jersey and Southern New York, Funding, Kings, Richmond, Queens, New York Counties, NJ, Comment Period Ends: September 30, 2004, Contact: Richard Backlund (212) 668–2205. Revision of FR Notice Published on 5/7/2004: CEQ Comment Period Ending 7/6/2004 has been Extended to 9/30/2004.

EIS No. 040241, FINAL EIS, USA, HI, Transformation of the 2nd Brigade, 25th Infantry Division (Light) to a Stryker Brigade Combat Team in Hawai'i, Implementation, Honolulu and Hawai'i Counties, HI , Wait Period Ends: July 6, 2004, Contact: Cindy Barger (808) 438–4812. Revision of FR Notice Published on 6/4/2004: Correction to Wait Period from 6/28/2004 to 07/06/2004

Dated: June 7, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–13152 Filed 6–9–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0001; FRL–7364–3]

National Pollution Prevention and Toxics Advisory Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency EPA.

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Public Law) 92–463, EPA gives notice of a 2-day meeting of the National Pollution Prevention and Toxics Advisory Committee (NPPTAC). The purpose of the NPPTAC is to provide advice and recommendations to EPA regarding the overall policy and operations of the programs of the Office of Pollution Prevention and Toxics (OPPT).

DATES: The meeting will be held on July 14, 2004, from 8 a.m. to 10 a.m. and July 15, 2004, from 10:30 a.m. to 4:30 p.m.

Registration to attend the meeting, identified by docket ID number OPPT–2002–0001, must be received on or before July 9, 2004. Registration will also be accepted at the meeting.

Requests to provide oral comments at the meeting, identified as NPPTAC July 2004 meeting, must be received in writing on or before June 29, 2004.

Written comments, identified as NPPTAC July 2004 meeting, may be submitted at any time. Written comments received on or before June 29, 2004, will be forwarded to the NPPTAC members prior to or at the meeting.

ADDRESSES: The meeting will be held at the Hilton Arlington and Towers, 950 North Stafford Street, Arlington, VA.

For address information concerning registration, the submission of written comments, and requests to present oral comments, refer to Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: Mary Hanley, 7401M, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9891; e-mail address: *npptac.oppt@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 particular interest to those persons who have an interest in or may be required to manage pollution prevention and toxic chemical programs, individuals, groups concerned with environmental justice, children's health, or animal welfare, as they relate to OPPT's programs under the Toxic Substances Control Act (TSCA) and the Pollution Prevention Act. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in the activities of the NPPTAC. If you have any questions regarding the applicability of this action to a particular entity, consult the technical 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 identification ID number OPPT–2002–0001. 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 EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

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. 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. Once in the system, select "search," then key in the appropriate docket ID number.

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 OPPT–2002–0001, NPPTAC July meeting in the subject line on the first page of your comment.

1. *By mail:* OPPT Document Control Office, Environmental Protection Agency, 7407M, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

2. *Electronically:* At *http://www.epa.gov/edocket/*, search for OPPT–2002–0001, and follow the directions to submit comments.

3. *Hand delivery/courier:* OPPT Document Control Office in EPA East Bldg., Rm. M6428, 1201 Constitution Ave., NW., Washington, DC.

II. Background

The proposed agenda for the NPPTAC meeting includes: The High Production Volume Challenge Program; pollution prevention, risk assessment; risk management; risk communication, and coordination with Tribes and other stakeholders. The meeting is open to the public.

III. How Can I Request to Participate in this Meeting?

You may request to attend the meeting by filling out the registration form according to the instructions listed under Unit I.A. Please note that registration will assist in planning adequate seating; however, members of the public can register the day of the meeting. Therefore, all seating will be available on a first come, first serve basis.

1. *To register to attend the meeting:* Pre-registration for the July 2004 NPPTAC meeting and requests for special accommodations may be made by visiting the NPPTAC web site at: *http://www.epa.gov/oppt/npptac/meetings.htm.* Registration will also be available at the meeting. Special accommodations may also be requested by calling (202) 564–9891 and leaving your name and telephone number.

2. *To request an opportunity to provide oral comments:* You must register first in order to request an opportunity to provide oral comments at the July 2004 NPPTAC meeting. To register visit the NPPTAC web site at: *http://www.epa.gov/oppt/npptac/meetings.htm.* Request to provide oral comments at the meeting must be submitted in writing on or before June 29, 2004, with a registration form. Please note that time for oral comments may be limited to 3 to 5 minutes per speaker, depending on the number of requests received.

3. *Written comments.* You may submit written comments to the docket listed under Unit I.B. Written comments can be submitted at any time. If written comments are submitted on or before June 29, 2004, they will be provided to the NPPTAC members prior to or at the meeting. If you provide written comments at the meeting, 35 copies will be needed.

Do not submit any information that is considered CBI.

List of Subjects

Environmental protection, NPPTAC, Pollution prevention, Toxics, Toxic chemicals, Chemical health and safety.

Dated: June 4, 2004.

Charles Auer,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 04–13280 Filed 6–8–04; 1:11 pm]

BILLING CODE 6560–50–S

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 July 6, 2004.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Rhinebeck Bancorp, MHC, Poughkeepsie, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Rhinebeck Savings Bank, Rhinebeck, New York.

B. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Wintrust Financial Corporation, Lake Forest, Illinois; to acquire 100 percent of the voting shares of Northview Financial Corporation, Northfield, Illinois, and thereby indirectly acquire voting shares of Northview Bank & Trust, Northfield, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Centralia Bancshares, Inc., Centralia, Kansas, and Morrill Bancshares, Inc., Merriam, Kansas; to acquire directly and indirectly up to 36.8 percent of the voting shares of Century Capital Financial, Inc., Kilgore, Texas, and thereby indirectly acquire voting shares of Century Capital Financial–Delaware, Inc., Wilmington, Delaware, and City National Bank, Kilgore, Texas.

2. Davis Bancorporation, Inc., Davis Oklahoma; to acquire up to 17.90 percent of the voting shares of Century Capital Financial–Delaware, Inc., Wilmington, Delaware, and Century Capital Financial, Kilgore, Texas, and thereby indirectly acquire voting shares of City National Bank of Kilgore, Kilgore, Texas.

Board of Governors of the Federal Reserve System, June 4, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–13148 Filed 6–9–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 6, 2004.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Centralia Bancshares, Inc., Centralia, Kansas, and Morrill Bancshares, Merriam, Kansas; to acquire up to 77.7 percent of FBC Financial Corporation, and thereby indirectly and indirectly acquire 1st Bank Oklahoma, both of Claremore, Oklahoma, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, June 4, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–13149 Filed 6–9–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Notice of Roundtable To Aid Federal Trade Commission Staff in Conducting a Study of the Accuracy and Completeness of Consumer Reports, Pursuant to Section 319 of the Fair and Accurate Credit Transactions Act of 2003

AGENCY: Federal Trade Commission.

ACTION: Notice of roundtable meeting.

SUMMARY: The Federal Trade Commission (the "Commission" or "FTC") is conducting a study of the accuracy and completeness of consumer reports, as mandated by section 319 of the Fair and Accurate Credit Transactions Act of 2003 ("the Act" or "FACT Act"). The Commission's Bureau of Economics is holding a roundtable with scholars, researchers, and other relevant parties on a review of methodologies pertinent to testing the accuracy and completeness of consumer reports.

DATES: The roundtable will take place on June 30, 2004.

ADDRESSES: The roundtable will be held at the Federal Trade Commission, 601 New Jersey Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Persons seeking to attend the roundtable should contact Marie Tansioco at (202) 326–3613 (Federal Trade Commission, Bureau of Economics, 601 New Jersey Avenue, NW., Washington, DC 20580) by June 18, 2004. Please include in your request an explanation or statement

setting forth expertise in or knowledge of methodologies pertinent to assessing the accuracy and completeness of consumer reports. As a reminder, the roundtable will not be dealing with policy matters.

The FTC Act and other laws the Commission administers permit the collection of information concerning persons seeking to attend the roundtable to consider and use in this proceeding as appropriate. More information, including routine uses permitted by the Privacy Act to the extent applicable, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

SUPPLEMENTARY INFORMATION: The FACT Act was signed into law on December 4, 2003. Fair and Accurate Credit Transactions Act of 2003, Public Law 108–159 (2003). In general, the Act amends the Fair Credit Reporting Act ("FCRA") to enhance the accuracy of consumer reports and to allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. To promote increasingly efficient national credit markets, the FACT Act also establishes uniform national standards in key areas of regulation regarding consumer report information. The Act contains a number of provisions intended to combat consumer fraud and related crimes, including identity theft, and to assist its victims. Finally, the Act requires a number of studies to be conducted on consumer reporting and related issues.

Section 319 of the Act mandates that the Federal Trade Commission shall conduct an ongoing study of the accuracy and completeness of information contained in consumer reports prepared or maintained by consumer reporting agencies and methods for improving the accuracy and completeness of such information. The time horizon for the mandated study, inclusive of a series of biennial reports to Congress, runs eleven years. The first report is due in early December 2004.

The roundtable has a limited purpose: it is a review of various methodologies pertinent to testing the accuracy and completeness of consumer reports (also known as "credit reports"). This review is not part of any rule-making procedure and does not address any FTC policy matter. Also, in reference to the language of the Act, the roundtable discussion is solely a forum for review of methodologies applicable exclusively to the accuracy and completeness aspect of the section 319 study and will not address methods for *improving* accuracy and completeness, nor the costs and benefits of requirements, or potential requirements, pertaining to credit reports.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–13081 Filed 6–9–04; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 031–0201]

Itron, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 2, 2004.

ADDRESSES: Comments should refer to "Itron, Inc., *et al.*, File No. 031 0201," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Matthew Reilly, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2350.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 3, 2004), on the World Wide Web, at *http://www.ftc.gov/os/2004/06/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before July 2, 2004. Comments should refer to "Itron, Inc., *et al.*, File No. 031 0201," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential." [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

Analysis of Agreement Containing Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Itron, Inc. and Schlumberger Electricity, Inc. The purpose of the Consent Agreement is to remedy the anticompetitive effects of Itron's acquisition of Schlumberger Electricity. Under the terms of the Consent Agreement, Itron is required to grant a royalty-free, perpetual and irrevocable license to Hunt Technologies, Inc. for Itron's mobile radio frequency ("RF") automatic meter reading ("AMR") technology for electric utilities, as well as components of Schlumberger Electricity's mobile RF AMR technology for electric utilities.

The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make it final.

Pursuant to a stock and asset purchase agreement dated July 16, 2003, Itron agreed to acquire Schlumberger Electricity and 51 percent of the shares of Walsin Schlumberger Electricity Measurement Corporation (a Taiwan corporation), and certain foreign assets of Schlumberger Canada Limited, Schlumberger Distribucion S.A. de C.V., Schlumberger Servicios S.A. de C.V., and Axalto S.A. (formerly Schlumberger Systemes S.A.), all owned indirectly by Schlumberger Limited, in a cash transaction for approximately $255 million ("Proposed Acquisition"). The Commission's Complaint alleges that the Proposed Acquisition, if consummated, would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition in the United States market for the research, development, manufacture, and sale of mobile RF AMR systems for electric utilities.

II. The Parties

Headquartered in Spokane, Washington, Itron is the leading supplier of mobile RF AMR systems to electric utilities in the United States. Itron's mobile RF AMR system is based upon encoder-receiver-transmitter ("ERT") technology and related communication protocols. The Itron ERT is electronic circuitry that gathers consumption information from an electricity meter and then broadcasts the data via radio frequency, using a specific communication protocol, known as the ERT protocol. To gather this data stream, Itron supplies handheld and vehicle-transportable receivers, also known as drive-by data collectors. The ERT is sold as either a retrofit for existing electromechanical electricity meters, or is integrated into newly manufactured electromechanical and solid state meters. Itron also supplies mobile RF AMR systems to water and natural gas utilities. In each of these areas, Itron is a leading mobile RF AMR systems supplier. Itron is also active in other lines of business serving the utility sector, including handheld computers for manual meter reading, as well as specialized software systems for billing systems, route management, and line design.

Schlumberger Electricity is a wholly owned subsidiary of Schlumberger Limited, a leading provider of oilfield services. With its headquarters in Oconee, South Carolina, Schlumberger Electricity is the leading supplier of residential electricity meters in the United States, and the second largest supplier of mobile RF AMR systems in the United States. Presently, Schlumberger Electricity's mobile RF AMR is based on the R300, which is integrated into Schlumberger Electricity's meters. Schlumberger Electricity also sells handheld and drive-by data collectors through a partnership with Neptune Technology Group, Inc. The Neptune/Schlumberger mobile RF AMR receivers are capable of gathering data from the Itron ERT and the Schlumberger R300.

As the result of a license arrangement, Itron's and Schlumberger Electricity's mobile RF AMR systems utilize the same technology and proprietary communication protocols. Hence, products produced by Itron and Schlumberger are fully interoperable. Electric utilities, therefore, can utilize a combination of Itron and Schlumberger mobile RF AMR components, *i.e.*, endpoints and receiving devices, within the same system. No other company manufactures a mobile RF AMR system that is interoperable with the mobile RF AMR systems manufactured by Itron or Schlumberger.

III. Mobile RF AMR Systems

Electric utilities utilize mobile RF AMR systems to automatically and remotely gather consumption data from residential electricity meters and certain electricity meters used by smaller commercial enterprises. A mobile RF AMR system consists of two principle components: (1) An endpoint, which is electronic circuitry integrated into an electricity meter that records and broadcasts consumption data, and (2) a mobile receiving device, which can be handheld or vehicle-transportable, to gather the data signal.

Mobile RF AMR systems allow consumption data from electricity meters to be read automatically and remotely, eliminating the need for a utility to send a meter reader to manually inspect each individual meter. Manual meter reading is labor-intensive and time-consuming, requiring the meter reader to physically access and visually inspect each electricity meter. Further, many meters are hard to access. Consequently, manual meter reading requires the effort of a substantial workforce of meter readers. By deploying a mobile RF AMR system, an electric utility can reduce its labor costs significantly. Additional cost savings are obtained by eliminating other problems endemic to manual meter reading, such as transcription errors, unread meters, and theft of service. As a result of these benefits, electric utilities are unlikely to alter their mobile RF AMR purchases relative to manual meter reading even if the price of mobile RF AMR systems increased by five to ten percent. Likewise, in response to a small but significant increase in mobile RF AMR prices, customers are unlikely to utilize other, non-mobile AMR technologies as they entail different technical requirements and are substantially more expensive.

The United States is the appropriate geographic market for mobile RF AMR systems in which to analyze the competitive effects of the Proposed Acquisition. There are not now, nor have there ever been, any imports of mobile RF AMR systems. Companies cannot compete from abroad for two primary reasons. First, electric utilities will not purchase mobile RF AMR systems from companies that do not

have a substantial presence and track record in the United States. This is due to the importance of timely and effective service and support, as well as a strong "buy American" sentiment. Second, there are no significant foreign companies that produce mobile RF AMR systems.

The United States market for mobile RF AMR systems is highly concentrated. Itron and Schlumberger Electricity are the two largest suppliers of mobile RF AMR systems to electric utilities in the United States, and combined would account for over 99 percent of the market. There are three other firms in the market that together have a market share of less than one-half of one percent. Additionally, because Itron and Schlumberger Electricity are the only two mobile RF AMR suppliers with access to the proprietary ERT technology, the industry standard, they are especially close competitors, and the direct competition between Itron and Schlumberger Electricity has benefitted consumers significantly in the form of lower prices, improved service and greater innovation. Absent Commission action, Itron's acquisition of Schlumberger Electricity raises serious antitrust concerns.

Finally, sufficient new entry into the United States mobile RF AMR market is unlikely to occur in a timely manner as there are significant impediments to entry and expansion. A new entrant would need to devote significant time and expense to researching and developing a product. Second, a new entrant must undertake the lengthy and costly process of establishing a track record of performance and reliability for its product, which is critical to utility customers because they rely on the quality and accuracy of AMR systems in order to properly bill their customers. Further, a new entrant would not have access to the intellectual property necessary to sell a mobile RF AMR system that is compatible with the substantial installed base of systems produced by Itron and Schlumberger Electricity, which would significantly limit the available sales opportunities.

IV. The Consent Agreement

The Consent Agreement effectively remedies the Proposed Acquisition's anticompetitive effects in the U.S. market for the research, development, manufacture, and sale of mobile RF AMR systems by requiring Itron to grant a royalty-free license to its mobile RF AMR technology. Pursuant to the Consent Agreement, a package of assets referred to in the Consent Agreement as the RF AMR Assets, will be licensed to Hunt. The RF AMR Assets provide Hunt with all the technology and rights necessary to manufacture and sell a mobile RF AMR system, including endpoints and receivers, that is entirely interoperable with Itron's mobile RF AMR system. Should Itron fail to accomplish the divestiture within the time and in the manner required by the Consent Agreement, the Commission may appoint a trustee to divest the RF AMR Assets subject to Commission approval. The trustee will have the exclusive power and authority to accomplish the divestiture within twelve (12) months of being appointed, subject to any necessary extensions by the Commission.

The Commission is satisfied that Hunt is a well-qualified acquirer of the divested assets. Hunt is a private corporation headquartered in Pequot Lakes, Minnesota, that researches, develops, manufactures, and sells powerline carrier ("PLC") systems to electric utilities. PLC systems are a type of AMR technology used primarily for rural service areas. PLC systems are therefore complementary to mobile RF AMR systems, which are utilized primarily in areas of low population concentration. Therefore, Hunt does not pose separate competitive issues as the acquirer of the license to the RF AMR assets. Due to its involvement in the electric utility industry, Hunt has the resources, related expertise and capabilities to ensure that it will become an effective competitor in the market for mobile RF AMR systems for electric utilities.

Until Hunt has made the necessary manufacturing arrangements, Hunt will procure Electric RF Endpoints from Itron at terms that will allow Hunt to aggressively compete with Itron immediately upon the closing of the transaction. Under a separate supply agreement, Hunt may also procure mobile RF AMR receivers from Itron under terms that would enable Hunt to compete effectively with Itron. To provide mobile RF AMR receivers, however, Hunt may choose to partner with Neptune, as did Schlumberger Electricity. To ensure that Hunt retains the ability to partner with Neptune for mobile RF AMR receiving devices and to allow Neptune to continue to make sales for its own account, the proposed consent agreement requires Itron to assign all of Schlumberger Electricity's mobile RF AMR receiving device rights to Neptune.

The Consent Agreement contains several further provisions designed to help ensure that the divestiture of the mobile RF AMR Assets is successful. First, to assist Hunt in the manufacture and sale of the Hunt mobile RF AMR system, Itron will provide technical assistance to Hunt, including 200 hours of technical assistance at no cost to Hunt. Second, Itron must provide Hunt with any updates to ERT technology for a period of three years. Finally, the Decision and Order allows the Commission to appoint an Interim Monitor, if necessary, to ensure that Itron complies with all of its obligations and performs all of its responsibilities as required by the Consent Agreement.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and is not intended to constitute an official interpretation of the proposed Decision and Order or the Order to Maintain Assets, or to modify their terms in any way.

By direction of the Commission.

C. Landis Plummer,

Acting Secretary.

[FR Doc. 04–13082 Filed 6–9–04; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 042–3033]

KFC Corporation; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 2, 2004.

ADDRESSES: Comments should refer to "KFC Corporation, File No. 042 3033," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area

and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Shira Modell or Michelle Rusk, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3116 or 326–3148.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 3, 2004), on the World Wide Web, at *http://www.ftc.gov/os/2004/06/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before July 2, 2004. Comments should refer to "KFC Corporation, File No. 042 3033," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential." [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from KFC Corporation ("KFCC").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves the advertising and promotion of KFC Original Recipe fried chicken. According to the FTC complaint, KFC represented that eating KFC fried chicken, specifically 2 Original Recipe fried chicken breasts, is better for a consumer's health than eating a Burger King Whopper. The complaint alleges that this claim is false. Although 2 KFC Original Recipe fried chicken breasts have slightly less total fat (38 g. v. 43 g.) and saturated fat (12 g. v. 13 g.) than Burger King's Whopper, they have more trans fat (3.5 g. vs. 1 g.), more cholesterol (290 mg. v. 85 mg.), more sodium (2300 mg. vs. 980 mg.), and more calories (760 v. 710).

The FTC's complaint also alleges that KFCC represented that eating KFC fried chicken is compatible with "low carbohydrate" weight loss programs. The FTC alleges that this claim is false because "low carbohydrate" weight loss programs such as the Atkins Diet and the South Beach Diet, for example, advise against eating breaded, fried foods.

The proposed consent order contains provisions designed to prevent KFCC from engaging in similar acts and practices in the future.

Part I of the order prohibits KFCC from representing that eating KFC fried chicken is better for a consumer's health than eating a Burger King Whopper, or that eating KFC fried chicken is compatible with "low carbohydrate" weight loss programs, unless the representation is true and, at the time it is made, KFCC possesses and relies upon competent and reliable evidence—which in certain specified cases must be competent and reliable scientific evidence—that substantiates the representation.

Part II prohibits KFCC from making certain representations about the absolute or comparative amount of fat, cholesterol, sodium, calories or any other nutrient in any food it sells that contains chicken, about the compatibility of such food with any weight loss program, or about the health benefits of such food, unless the representation is true and, at the time it is made, KFCC possesses and relies upon competent and reliable evidence—which in certain specified cases must be competent and reliable scientific evidence—that substantiates the representation.

Part II also provides that representations conveying nutrient content or health claims that have been defined (for labeling purposes) by regulations promulgated by the Food and Drug Administration ("FDA") will be evaluated using the same nutrient thresholds that FDA has established for those claims. Furthermore, Part II provides that a mere numerical statement of the amount of a particular nutrient in such food will not, by itself, be considered to be a weight loss compatibility or health benefit claim covered by Part II.

Part III permits any representation for any product that is permitted in labeling for such product pursuant to regulations promulgated by FDA pursuant to the Nutrition Labeling and Education Act of 1990.

Parts IV through VII of the order require KFCC to keep copies of relevant advertisements and materials substantiating claims made in the

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

advertisements; to provide copies of the order to certain of its current and future personnel for three years; to notify the Commission of changes in corporate structure; and to file compliance reports with the Commission. Part VIII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

C. Landis Plummer,

Acting Secretary.

Statement of Commissioner Pamela Jones Harbour

The Commission has entered into a consent agreement with KFC Corp. ("KFCC") to settle allegations that the company deceptively advertised its fried chicken as being compatible with low-carbohydrate weight loss programs, among other claims. I concur with the Commission's admirable results in obtaining strong injunctive relief, and I applaud staff for bringing a national advertising case. I believe, however, that an even stronger remedy is warranted. KFCC is fully aware of our nation's struggle with obesity, yet has cynically attempted to exploit a massive health problem through deceptive advertising. Companies should not be allowed to benefit monetarily from this kind of deception, especially where the health and safety of consumers are compromised. Therefore, I encourage the Commission to find ways to seek monetary relief in future cases like this one.

Our nation's obesity rate has "reached epidemic proportions, afflicting 6 out of every 10 Americans." [1] Being overweight or obese is "the second leading cause of preventable death, after smoking, resulting in an estimated 300,000 deaths per year. The costs, direct and indirect, associated with [being] overweight and obes[e] are estimated to exceed $100 billion a year." [2] Obesity has been described as both an "epidemic" and a "crisis." [3] Many consumers are interested in controlling their weight, and they rely heavily on the nutritional information in food advertisements to help them make choices about which foods to eat.

In the fall of 2003, KFCC apparently was suffering from decreased fried chicken sales, perhaps as a result of consumers' interest in a healthier diet.[4] In October 2003, KFCC embarked on an ad campaign in which it deceptively advertised that eating KFC fried chicken is compatible with a "low carbohydrate" weight loss program, even though "low carbohydrate weight loss programs such as the Atkins Diet and the South Beach Diet advise against eating breaded, fried foods." [5] In another ad, KFCC advertised that eating two of its "Original Recipe" fried chicken breasts was better for a consumer's health than eating a Burger King Whopper—even though the chicken is nearly equivalent to the Whopper in fat grams and is actually higher in trans fat, cholesterol, sodium and calories.[6] Both ads also promote an entire bucket of chicken, even though the voiceovers in the ads referenced one or two-piece servings.[7]

KFCC knew (or certainly should have known) that its ads were false and deceptive, and that the ads would encourage consumers to believe that KFC fried chicken was much healthier for them that it actually is. Only a few days after the ads aired, an *Advertising Age* editorial strongly criticized KFCC for running them, describing the ads as "desperate and sleazy tactics." [8] In an interview on National Public Radio, the executive editor of *Advertising Age* stated that it was "very unusual" for the publication to run such a staff editorial, but justified it by saying that "[i]nstead of being truth well told, which is what advertising should be, it seems like not only an exaggerated claim, but basically an effort to deceive." [9] Consumer advocacy groups complained about the ads as well, and the ads were the subject of much discussion until they stopped airing in late November 2003.[10]

I have voted to accept the proposed settlement because it contains very strong injunctive relief that will go a long way toward preventing KFCC from engaging in similar deceptive advertising in the future. In addition to addressing the specific claims made in the KFCC ads, the proposed consent agreement also contains more general language prohibiting KFCC from making representations about the absolute or comparative amount of fat, cholesterol, sodium, calories, or any other nutrient in any food it sells that contains chicken; about the compatibility of such food with any weight loss program; or about the health benefits of such food, unless the representation is true and, at the time it is made, KFCC possesses and relies upon competent and reliable evidence—which in certain specified cases must be competent and reliable scientific evidence—that substantiates the representation.[11]

Accepting injunctive relief alone is reasonably consistent with the Commission's prior settlements in similar cases. However, where a company appears to have exploited a national health crisis, an even stronger response from the Commission is warranted. While I recognize that it may be difficult to calculate monetary relief in these kinds of cases, I would like to see the Commission develop methodological approaches that would support seeking such remedies in future cases of similar types of deceptive advertising, as the Commission has done in the past. For example, in 1995, the FTC settled charges with The Dannon Company that it had made false or misleading claims for its Pure Indulgence line of frozen yogurt. As part of the consent agreement, Dannon agreed to pay $150,000 in disgorgement.[12] Similarly, in 1983, the FTC settled charges with Estee Corporation that it had misled

[1] *Weight-Loss Advertising: An Analysis of Current Trends, A Report of the Staff of the Federal Trade Commission* (Sept. 2002). at vii ("Executive Summary"), available at *http://www.ftc.gov/bcp/reports/weightloss.pdf.*

[2] *Id.*

[3] *See The Time/ABC News Summit on Obesity* (Preliminary Agenda for June 2–4, 2004), available at *http://www.time.com/time/2004/obesity;* America's Obesity Crisis, Time (June 7, 2004).

[4] *See 20/20: Fost Not Fat: Fost Food Choins Will Go to Any Lengths to Keep People Eating Their Food* (ABC News television broadcast, Oct. 31, 2003); *Editorial, KFC blunders in "health" ads,* Advertising Age (Nov. 3, 2003), at 22; Bob Garfield, *Garfield's AdReview: KFC serves big, fat bucket of nonsense in "healthy" spots,* Advertising Age (Nov. 3, 2003), at 61.

[5] *In the Matter of KFC Corporotion.* File No. 042–3033, Complaint at ¶¶ 5, 8–9 (June 2, 2004).

[6] *Id.* at ¶ 7 ("While compared to Burger King's Whopper, two KFC Original Recipe fried chicken breasts have slightly less total fat (38 g. v. 43 g.) and saturated fat (12 g. v. 13 g.), they have more trans fat (3.5 g. vs. 1 g.), more cholesterol (290 mg. v. 85 mg.), more sodium (2300 mg. vs. 980 mg.), and more calories (760 v. 710).").

[7] *See, e.g., World News Tonight with Peter Jennings: Good for You? KFC Adverts* (ABC television broadcast, Nov. 19, 2003); *NBC Nightly News with Tom Brokaw: Federal Trode Commission Wanting Proof That KFC's Chicken Can Be Called a Health Food in TV Commerciols* (NBC television broadcast, Nov.18, 2003); *KFC Corporation,* Complaint at ¶ 5 (setting forth voiceovers).

[8] Garfield, *supra* note 4.

[9] *Day To Doy: Jonah Bloom Discusses Advertising Age Mogozine's Editoriol Criticism of KFC's New Ad Compoign* (National Public Radio broadcast, Nov. 6, 2003).

[10] *See, e.g.,* Bruce Schreiner, *KFC Ends Healthy Fried Chicken Ad Blitz,* Assoc. Press Online (Nov. 19, 2003); 20/20, supra note 4.

[11] *In the Motter of KFC Corporotion,* File No. 042–3033, Analysis of Proposed Consent Order to Aid Public Comment (June 2, 2004).

[12] FTC Press Release, *Dannon Agrees To Settle FTC Charges That Low-Fat Ad Claims for Frozen Yogurt were False and Misleading* (Nov. 25, 1995); *In the Motter of The Dannon Company, Inc.,* Dkt. No. C–3643, 121 F.T.C. 136, 139 (March 18, 1996) (consent order).

consumers by falsely claiming that the sweeteners in its foods had been accepted by the American Diabetes Association and the Food and Drug Administration. Estee Corporation agreed to pay $25,000 in *cy pres* relief to the American Diabetes Association or the Juvenile Diabetes Foundation.[13]

While injunctive relief is important in deceptive advertising cases such as this one, monetary relief may further serve to correct unlawful conduct, reverse its ill effects, and deter future violations of the law. Well-formulated *cy pres* relief, in particular, may provide real benefits to consumers. It is not only reasonably related to the violation, but also reasonably likely to reach the individuals most injured by a particular deceptive advertisement. Should the appropriate case present itself in the future, I strongly encourage the Commission to consider the applicability and effectiveness of *cy pres* and other potential monetary remedies.

Statement of Commissioner Mozelle W. Thompson

I have voted to accept the consent agreement with KFC Corp. in this matter and I concur with Commissioner Harbour's statement.

[FR Doc. 04–13083 Filed 6–9–04; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Funding Opportunity Title: Announcement of Availability of Funds for Cooperative Agreements for Family Planning Research

Announcement Type: This is the initial announcement of this competitive funding opportunity.

CFDA Number: 93.974.

Authority: Section 1004 of the Public Health Service (PHS) Act.

DATES: To receive consideration, applications must be received by the Office of Public Health and Science (OPHS) Grants Management Office no later than August 9, 2004.

SUMMARY: The Office of Population Affairs (OPA) announces the availability of fiscal year (FY) 2004 funds for a cooperative agreement program for family planning research. The purpose of this program is to obtain data or research-based information which can be used to help improve the delivery of family planning services.

Title X of the Public Health Service Act, 42 U.S.C. 300, *et seq.*, authorizes programs related to family planning. Section 1004 of the Act, as amended, authorizes the Secretary of Health and Human Services to award grants to entities for research in the biomedical, contraceptive development, behavioral, and program implementation fields related to family planning and population. Implementing regulations can be found at 42 CFR part 52.

The OPA is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a PHS-led national activity for setting priority areas. This announcement is related to the priority area of family planning. Potential applicants may obtain a copy of "Healthy People 2010" at *http://www.health.gov/healthypeople.*

Overview Summary

The Office of Population Affairs (OPA) announces the availability of $350,000 to $450,000 for fiscal year (FY) 2004 funds for one to three cooperative agreement projects for family planning research. Awards will be $150,000 to $250,000 per year and will be funded in annual increments (budget periods) and may be approved for a project period of up to five years. Funding for all budget periods beyond the first year of the cooperative agreement is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of Federal funds.

I. Funding Opportunity Description

This announcement seeks applications from public and non-profit private entities to conduct data analyses and related research and evaluation on issues of interest to the family planning field. Many persons have observed that gaps exist in the array of data and analyses needed by administrators, planners, and researchers in the field of family planning. The need for such data is likely to increase. Therefore, funds available under this announcement are for projects to increase the availability of data and research-based information which will be useful to family planning administrators and providers, researchers, and officials of local, State, and the Federal government, including OPA, in order to improve the delivery of family planning services to persons needing and desiring such services.

II. Award Information

The OPA intends to make available approximately $350,000 to $450,000 to support an estimated one to three research projects. Awards will range from $150,000 to $250,000 per year. Projects will be funded in annual increments (budget periods) and may be approved for a project period of up to five years. Funding for all budget periods beyond the first year of the cooperative agreement is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of Federal funds.

A cooperative agreement is an award instrument establishing an "assistance" relationship between OPA and a recipient, in which substantial programmatic involvement with the recipient is anticipated during performance of the activity. The recipient will have lead responsibilities in all aspects of the study, including any modification of study design, conduct of the study, data analysis and interpretation, and preparation of publications. However, OPA will collaborate with the recipient, as appropriate, and provide consultation, assistance, and support in planning, implementing, and evaluating all aspects of the proposed plan. OPA will provide assistance in the preparation and review of reports to be disseminated.

III. Eligibility Information

1. Eligible Applicants

Any public or private nonprofit entity located in a State (which includes one of the 50 United States, the District of Columbia, Commonwealth of Puerto Rico, U.S. Virgin Islands, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands) is eligible to apply for a cooperative agreement under this announcement. Faith-based organizations are eligible to apply for these cooperative agreements for family planning research.

2. Cost-Sharing or Matching

No cost sharing or matching of non-Federal funds is required.

IV. Application and Submission Information

Form of Application and Submission Information

1. Address to Request Application Package

Applications kits may be requested from, and applications should be

[13] *In the Matter of Estee Corporation*, Dkt. No. C–3126, 102 F.T.C. 1804, 1812 (Nov. 16, 1983) (consent order). *Cy pres* relief, also known as indirect restitution or fluid recovery, is used in situations where injured persons cannot be directly compensated. Instead, under *cy pres*, restitutionary funds are awarded in some alternate way that indirectly benefits the injured persons.

submitted to: OPHS Grants Management Office, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852, (301) 594–0758. Application kits are also available online through the OPA Web site at *http://opa.osophs.dhhs.gov,* may be requested by fax at (301) 594–9399, or may be obtained through the electronic grants management system, e-Grants. (Instructions for use of the e-Grants system may be obtained from the OPA Web site, or by calling the Grants Management Office at (301) 594–0758).

2. Content and Form of Application Submission

Applications must be submitted on Form OPHS–1 (Revised 6/01) and in the manner prescribed in the application kit. Submissions may be either electronic or in hard copy in the manner prescribed.

Applications should be limited to 60 double-spaced pages, not including appendices, using an easily readable serif typeface, such as Times Roman, Courier, or GC Times. All pages, charts, figures and tables should be numbered. Appendices may include curriculum vitae of key staff and other evidence of organizational experience and capabilities. Please note that appendices are supplementary information, and are not intended to be a continuation of the program narrative. Appendices should be clearly labeled. Applications must include a one-page abstract of the proposed project. The abstract will be used to provide reviewers with an overview of the application, and will form the basis for the application summary in grants management documents.

All applicants are required to submit an original application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. If the application is submitted electronically, a hard-copy of the OPHS–1 (Rev. 06/01) face-page with original signature must also be received on or before the deadline date listed in the DATES section of this announcement. An electronic submission is not considered complete unless both the electronic application and the hard-copy face-page with original signature are received by the application due date.

Program Requirements/Application Content

This notice solicits applications for projects to conduct data analysis and related research which will be useful in improving the delivery of family planning services by identifying areas in family planning in much need of attention and by assessing how well the Title X family planning program is meeting its objectives. In order to be competitive, an application should (1) describe a set of information needs in the field of family planning in the United States deemed by the applicant to represent the most pressing data gaps for the efficient and effective provision of family planning services and (2) propose a coherent five-year program of research and evaluation, data analysis estimation and/or assessment designed to fill these needs in a practical and creative manner.

The application should outline the frequency of any particular proposed analyses (*i.e.,* continuously, annually, biennially, or once during the five-year project period of this cooperative agreement), describe the methodologies to be used, and propose a plan to make accessible the products of this project to the OPA as well as to the audience intended, (*i.e.,* administrators, providers, and researchers), including via the Internet, for the five-year period of the project. The application should reflect a good understanding of the systems by which family planning services are provided, and a familiarity with research, data collection systems, and analyses in the area of family planning and population studies supported by other sources. The application should also include a discussion of the relationship of the studies proposed for support under this cooperative agreement to research and analyses supported by other sources. An explanation of the relevance and importance of the analytic, research, and evaluation activities proposed for this cooperative agreement, and a justification of the expected utility of the analytic products expected from this effort should also be included in this application.

Although the purpose of this announcement is to encourage applicants to develop and propose analytic strategies which they will pursue if supported under this announcement, there are a number of areas described below that are of specific interest to OPA. These include, but are not limited, to the following:

A. Estimates and Characteristics of Clients Served and Population in Need

1. Estimates of the size and geographic distribution of the population at risk of unintended pregnancy;

2. Estimates of the size and geographic distribution of the population in need of subsidized family planning services;

3. Characteristics, in terms of age, race, and income or poverty status of the two populations listed above (1 and 2);

4. Estimates of the size, geographic distribution, and characteristics of populations in need of family planning services but currently not being served;

B. Patterns and Trends in Delivery of Family Planning Services

1. Patterns of family planning and reproductive health care service delivery among the varied sources of family planning services (clinics, physicians' offices, community health centers, etc.);

2. Patterns of integration of family planning with related services including sexually transmitted infections (STI) services, HIV prevention, intimate partner violence, substance abuse, and cancer screening;

3. Patterns and trends in providing services to adolescents, including use of school settings, special clinics, special protocols;

4. Patterns and trends in the training, recruitment, and retention of clinic personnel;

5. The trends and patterns of family planning services to males and the role and influence of males in contraceptive decision-making and pregnancy prevention, as well as reproductive health;

6. Trends in the growing costs of delivering services, payment sources for family planning services, patterns in insurance coverage for family planning services, specifically for Title X clients;

7. Utilization of outreach, follow-up, and case management strategies in provision of services to hard to reach clients such as substance abusers, persons at high STD/HIV risk, adolescents, issues related to limited english proficiency (LEP) and other hard-to-reach populations.

8. Racial and ethnic disparities in reproductive health and access to reproductive health care.

In addition to the areas described above, applicants' topic selection should be guided by the knowledge that Title X appropriations for the family planning program administered by OPA include two important legislative mandates. These are as follows:

(1) None of the funds appropriated in this Act may be made available to any entity under Title X of the Public Health Service Act unless the applicant for the award certifies to the Secretary that it encourages family participation in the decision of minors to seek family planning services and that it provides counseling to minors on how to resist attempts to coerce minors into engaging in sexual activities; and

(2) Notwithstanding any other provision of law, no provider of services under Title X of the Public Health Service Act shall be exempt from any State law requiring notification or the reporting of child abuse, child molestation, sexual abuse, rape, or incest.

The principal purpose of this project is not to collect original data. However, if it is relevant and it can be demonstrated that appropriate data do not exist elsewhere, some collection of original data is not precluded. Applications also must provide a plan on how information will be disseminated.

The Title X program is intended to address the health needs of all men and women, including all subgroups as characterized by age, class, race, and ethnicity. Members of minority groups should be included in all proposed research unless a clear and compelling rationale or justification establishes that such inclusion is inappropriate. Applicants should approach their research and analysis with considerations of class, race, and ethnicity in mind whenever possible.

As a cooperative agreement, OPA will have substantial involvement with the recipient in prioritizing identified research activities proposed and/or identifying additional research topics or approaches. Other research, changing conditions, or new priorities may cause some activities proposed, particularly for the later years of this project, to be superseded in importance, and may necessitate modifications in actual work plans. This reprioritization will be negotiated between successful applicants and the OPA.

3. Submission Dates and Times

Applications will be considered as meeting the deadline if they are electronically submitted, or hand-delivered to the OPHS Grants Management Office on or before the deadline listed in the **DATES** section of this announcement. Hand-delivered applications must be received by the OPHS Grants Management Office not later than 4:30 eastern standard time on the application due date.

Electronic Submission: The OPA encourages electronic submission of grant applications using the OPHS e-Grants system. Instructions for use of this system are available on the OPA Web site, *http://opa.osophs.dhhs.gov,* or may be requested from the OPHS Grants Management Office at (301) 594–0758.

The body of the application and required forms can be submitted using the e-Grants system. In addition to electronically submitted materials, applicants are required to provide a hard copy of the application face page (Standard Form 424 [Revised 07/03]) with the original signature of an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. The application is not considered complete until both the electronic application and the hard copy face page with original signature are received. Both must be received on or before the due date listed in the DATES section of this announcement.

Hard Copy Applications: Applications submitted in hard copy must include an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed applications will be considered as meeting the deadline if they are received by the OPHS Office of Grants Management on or before the deadline listed in the DATES section of this announcement. The application due date requirement specified in the announcement supercedes the instructions in the OPHS–1. Applications which do not meet the deadline will be returned to the applicant unread.

Hand-delivered applications must be received by the OPHS Grants Management Office no later than 4:30 p.m. eastern standard time on the application due date. Applications delivered to the OPHS Grants Management Office after the deadline described above will not be accepted for review. Applications sent via facsimile or by electronic mail outside the e-Grants system will not be accepted for review. Applications which do not conform to the requirements of this program announcement will not be accepted for review, and will be returned to the applicant.

Applicants 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 OPA Web site at: *http://opa.osophs.dhhs.gov/duns.html.*

What to submit:

Original copy of the application with an original signature of an official with the authority to commit the applicant organization to the terms and conditions of a grant, if a grant is awarded. All pages of the application (limited to 60 double-spaced, not including appendices) should be numbered

Submit an original and two (2) copies of the application

Table of contents with identifying sections and corresponding page numbers

Form OPHS–1 (Rev. 06/01) (pages SF 424, SF 424A)

Budget Justification

Project Narrative

Position Descriptions

Resumes of all professional staff

Appendices

Confirmation of Application Receipt

4. Intergovernmental Review

Review Under Executive Order 12372: Applicants under this announcement are exempt from the review requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," as implemented by 45 CFR part 100.

5. Funding Restrictions

The allowability, allocability, reasonableness, and necessity of direct and indirect costs that may be charged to OPHS grants are outlined in the following documents: OMB Circular A–21 (Institutions of Higher Education); OMB Circular A–87 (State and Local Governments); OMB Circular A–122 (Nonprofit Organizations): and 45 CFR part 74, Appendix E (Hospitals). Copies of the Office of Management and Budget (OMB) Circulars are available on the Internet at *http://www.whitehouse.gov/omb/grants/grants_circulars.html.*

6. Other Submission Requirements

See Section IV.3.

V. Application Review Information

1. Criteria

The award decision will take into account the extent to which the applicant's proposed project is useful to planners and providers of family planning services, local, State, and Federal administrators and researchers in the areas of family planning and population studies, according to the following criteria:

A. The extent to which the proposal presents a coherent and well-justified plan for data analysis and research for the five year term of the cooperative agreement (15 points);

B. The extent to which the application reflects a good understanding of the systems for provision of family planning services in the United States and familiarity with data systems and relevant research (10 points);

C. The extent to which the applicant organization demonstrates in the application its ability to analyze data and make these analyses accessible to providers, planners, administrators and researchers in the area of family planning (10 points);

D. The extent to which the application creatively and efficiently proposes to use existing data and analyses, and to fill knowledge gaps by proposing analyses, research, estimations, and assessment tasks to fill the gaps (15 points);

E. The extent to which the application provides for periodic reporting (15 points);

F. Competency of proposed staff in relation to the research proposed (15 points);

G. Adequacy and feasibility of proposed methodology for carrying out planned activities (10 points);

H. Reasonableness of proposed budget in relation to the proposed project and adequacy of resources already available for the project (10 points).

2. Review and Selection Process

Applications in response to this solicitation will be reviewed on a nationwide basis and in competition with other submitted applications. Eligible applications will be reviewed by an Objective Review Committee which will apply the above review criteria in order to derive priority scores. The application of the review criteria will take into account the applicant's familiarity with and access to relevant data sets in the areas of family planning and population studies, and demonstrated ability to analyze data and present it in a manner useful to researchers, administrators and family planning providers.

Final award decisions will be made by the Deputy Assistant Secretary for Population Affairs (DASPA). In making the award decision, the DASPA will take into consideration the priority score, program relevance, and the availability of funds.

VI. Award Administration Information

1. Award Notice

The OPA does not release information about individual applications during the review process. When a final funding decision has been made, each applicant will be notified by letter of the outcome. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies the amount of money awarded, the purposes of the cooperative agreement, the length of the project period, and the terms and conditions of the award.

2. Administrative and National Policy Requirements

In accepting this award, the recipient stipulates that the award and any activities thereunder are subject to all provisions of 45 CFR parts 74 and 92, currently in effect or implemented during the period of the cooperative agreement.

The Buy American Act of 1933, as amended (41 U.S.C. 10a–10d), requires that Government agencies give priority to domestic products when making purchasing decisions. Therefore, to the greatest extent practicable, all equipment and products purchased with cooperative agreement funds should be American-made.

A Notice providing information and guidance regarding the "Government-wide Implementation of the President's Welfare-to-Work Initiative for Federal Grant Programs" was published in the **Federal Register** on May 16, 1997. This initiative was designated to facilitate and encourage grant recipients and their sub-recipients to hire welfare recipients and to provide additional needed training and/or mentoring as needed. The text of the Notice is available electronically on the OMB home page at *http://www.whitehouse.gov/omb.*

3. Reporting

Semi-annual briefings, and an annual progress and financial status reports must be submitted according to a schedule to be established by OPA. Applicants must submit all required reports in a timely manner, in recommended format (to be provided), and submit a final report on the project at the completion of the project period. Submissions of all required reports may be either electronic or in hard copy.

VII. Agency Contact(s)

For information on specific research or program requirements, contact Eugenia Eckard, Office of Population Affairs, 1101 Wootton Parkway, Suite 700 Rockville, MD 20852, (301) 594–4001, or via Email at *eeckard@osophs.dhhs.gov.* For assistance on administrative and budgetary requirements, contact Karen Campbell, Director, OPHS Grants Management Office, 1101 Wootton Parkway, Suite 550, Rockville, MD, (301) 594–0758, or via E-mail at *kcampbell@osophs.dhhs.gov.*

Dated: June 3, 2004.

Alma L. Golden,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 04–13112 Filed 6–9–04; 8:45 am]

BILLING CODE 4150–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to review contract proposals and provide recommendations to the Director, AHRQ, with respect to the technical merit of proposals submitted in response to a Request for Proposals (RFP) regarding "State and Regional Demonstrations in Health Information Technology". The RFP was published in the Federal Business Opportunities on March 26, 2004.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, 41 CFR 101–6.1023 and procurement regulations, 48 CFR 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision and procurement rules that protect the free exchange of candid views and facilitate Department and Committee operations.

Name of TRC: The Agency for Healthcare Research and Quality—"State and Regional Demonstrations in Health Information Technology."

Date: June 30 and July 1, 2004 (Closed to the public).

Place: Agency for Healthcare Research & Quality, 540 Gaither Road, Conference Center, Rockville, Maryland, 20850.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Steve Bernstein, Center for Primary Care, Prevention, and Clinical Partnerships, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland, 20850, 301–427–1581.

Dated: June 3, 2004.
Carolyn M. Clancy,
Director.
[FR Doc. 04–13102 Filed 6–9–04; 8:45 am]
BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to review contract proposals and provide recommendations to the Director, AHRQ, with respect to the technical merit of proposals submitted in response to a Request for Proposals (RFP) regarding "Patient Safety Research Coordinating Center". The RFP was published in the Federal Business Operations on April 27, 2004.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision and procurement rules that protect the free exchange of candid views and facilitate Department of Committee operations.

Name of TRC: The Agency for Healthcare research and Quality—"Patient Safety Research Coordinating Center."

Date: July 27, 2004 (Closed to the public).

Place: Agency for Healthcare Research & Quality, 540 Gaither Road, Conference Center, Rockville, Maryland, 20850.

Contact Person: Anyone wishing to obtain information regarding this meeting and should contact Kerm Henriksen, Center for Quality Improvement and Patient Safety, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland, 20850, 301–427–1331.

Dated: June 3, 2004.
Carolyn M. Clancy,
Director.
[FR Doc. 04–13103 Filed 6–9–04; 8:45 am]
BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Measures of Patients' Ambulatory Care Experiences

AGENCY: Agency for Healthcare Research and quality (AHRQ), DHHS.

ACTION: Notice of request for measures.

SUMMARY: The Agency for Healthcare Research and quality (AHRQ) is soliciting the submission of instruments or items that measure patients' perceptions of the quality of ambulatory care from researchers, health plans and other health care providers, stakeholders, vendors and other interested parties. This initiative is in response to input from stakeholders to revise the CAHPS® tool in order to measure different categories of ambulatory health care to provide useful information to multiple audiences, and to provide performance data that are more actionable for quality improvement than the previous CAHPS® instrument.

AHRQ is initiating the redesign of the CAHPS® health plan instrument to include different levels of ambulatory health care delivery, *i.e.*, services provided by individual primary care clinicians (such as a physicians or nurse practitioners); sites of care (that is a particular geographic location or facility from which care is delivered); group practices (where two or more practitioners legally organize as a medical group to deliver care under certain conditions); and health plans (the payor of health care services in either fee-for-service or managed care arrangements); through a review of existing instruments that capture the patients' ambulatory care experiences and perceptions at these different levels. There are several functional areas of ambulatory care that existing instruments (or items) speak to at specific delivery levels, but presently, not every level of ambulatory care delivery is addressed. Functional areas include: Access; communication; courtesy and respect; shared decision making; coordination integration of care; health promotion and education; customer service and decision-support. Our response to stakeholder input will ultimately provide users with a flexible, modular approach to be known as Ambulatory CAHPS (ACAHPS), to assess the quality of ambulatory care for all the functions listed above at the different delivery levels of the ambulatory care system. Presently, we are interested in receiving instruments and/or survey items that have been used for ambulatory care at the health plan level and that address any of the above-listed aspects of ambulatory care.

At a later time, we plan to ask for items that address a broader array of functions and topics at different delivery levels. However, at this time, please submit only those items directly relevant to the topics or functions specified below in the section on Submission Criteria.

DATES: Please submit instruments or items and supporting information on or before July 12, 2004. AHRQ will not respond individually to submitters, but will consider all submitted instruments and items and publicly report the results of the review of the submissions in aggregate.

ADDRESSES: Submissions should include a brief cover letter, a copy of an instrument or items for consideration and supporting statements and information as specified under the Submission Criteria below. Submissions may be in the form of a letter or e-mail, preferably as an electronic file with an E-mail attachment. Electronic submissions are strongly encouraged. Responses to this request should be submitted to: Charles Darby, Agency for Healthcare Research and quality, 540 Gaither Road, Rockville, MD 20850, Phone: (301) 427–1324, Fax: (301) 427–1341, E-mail: *cdarby@ahrq.gov.*

To facilitate handling of submissions, please include full information about the instrument developer or contact: (a) Name, (b) title, (c) organization, (d) mailing address, (e) telephone number, (f) fax number, and (g) e-mail address. Also, please submit with a copy of the instrument or items for consideration, evidence that it/they meet(s) the criteria set out under the Submission Criteria section below. It is requested that citation of peer-reviewed journal article(s) pertaining to the instrument or item(s) include the title of the article, author(s), publication year, journal name, volume, issue, and page numbers where article appears, may be included but are not required. Please do not use acronyms in your submissions.

Submitters must also provide a statement of willingness to grant to AHRQ the right to use and authorize others to use submitted measures and their documentation as part of a new or revised CAHPS®-trademarked instrument. The new CAHPS® instrument for patient assessment of ambulatory care will, as in the past, be made publicly available, free of charge.

FOR FURTHER INFORMATION CONTACT: Charles Darby, Center for Quality

Improvement and Patient Safety, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, MD 20850; Phone: (301) 427–1324; Fax: (301) 427–1341; E-mail: *cdarby@ahrq.gov*.

Submission Criteria

Instruments submitted should focus on ambulatory care at the health plan level and for these functions:

- Coordination of care between providers or sites of care for patients with chronic conditions;
- Shared decision-making or patient involvement in decision-making about health care options and treatment;
- Availability of information from the health plan to promote consumer decision-making about health care options and treatment;
- Providing care that is culturally appropriate or that tries to meet the cultural and linguistic needs of patients;
- Availability and usability of plan-level information on benefits, coverage and out-of-pocket cost to consumers for ambulatory medical services as well as pharmacy services;
- Availability and usability of consumer information from the health plan that compares individual ambulatory care providers;
- Availability and usability of consumer information from the health plan to assist consumers in the selection of an individual clinician (primary care or specialist); and,
- Effectiveness of health plan call center staff and customer service staff.

Measures submitted must meet these criteria to be considered: Capture the patients' experience of ambulatory care; demonstrate a high degree of reliability and validity; and have been used widely, not just in one or two research studies. Submitter's willingness to grant to AHRQ the right to use and authorize others to use the instrument means that the CAHPS® trademark will be applied to a new instrument combining the best features of all the submissions as well as any ideas that may develop from reviewing them. Accordingly, to encourage universal use, free access to any final Ambulatory CAHPS instrument(s), and free access to the instrument's supportive/administrative information as done in the past, is planned. Thus, submitters of items that may be incorporated in the new ACAHPS documents will be required to permit such universal free access to their incorporated item(s). However, item ownership will be protected during testing of the new ambulatory care surveys. AHRQ, in collaboration with expert CAHPS grantees, will evaluate all submitted instruments or items and select one or more either in whole or in part for testing and, if required, modification. AHRQ will assume responsibility for the final instruments as well as any future modifications.

The final instruments will bear the CAHPS® trademark and they will be made freely available for use by all interested parties. Submitters will relinquish exclusive control of any items that appear in the final instrument. As a matter of quality control, there will be warnings that the CAHPS® identification may not be used if any changes are made to the instrument or final measure set without review and permission of the Agency.

Each submission should include the following information:

- The name of the instrument;
- Whether the instrument/item(s) is disease or condition specific;
- Domain(s) of the instrument/items;
- Language(s) the instrument/item(s) is available in;
- Evidence of cultural/cross group comparability, if any;
- Instrument reliability (internal consistency, test-retest, etc.);
- Validity (content, construct, criterion-related);
- Response rates;
- Methods and results of cognitive testing and field-testing;
- Description of sampling strategies and data collection protocols, including such elements as mode of administration, use of advance letters, timing and frequencies of contacts;
- A list of where the instrument has been fielded and at what level it has been and/or is being used; and,
- Evidence addressing the criteria should be demonstrated through submission of peer-reviewed journal article(s) or through the best evidence available at the time of submission.

Submission of copies and existing report formats developed to disclose findings to consumers and providers is desirable, but not required. Additionally, information about existing database(s) for the instrument(s) submitted is helpful, but also not required for submission.

SUPPLEMENTARY INFORMATION:

Background

Since 1995, the only ambulatory CAHPS® survey has been focused on health plan level, though there are different versions across types of plans from fee-for-service through HMOs, as well as optional modules. Significant stakeholder interest has emerged in using a standard CAHPS® survey beyond the health plan level specifically for group practices and clinician-level surveys.

The idea behind ACAHPS is to provide a flexible, modular approach to assessing the quality of ambulatory care at different levels of the health care system while still retaining the valuable aspects of the current CAHPS® Health Plan Survey such as industry standardization and comparability.

Although many combinations of ACAHPS modules are possible, the CAHPS Consortium plans to simplify the task of constructing a survey by developing several sets of pre-packaged survey instruments and data collection protocols. These surveys will be designed to address the most common applications based on the market research completed in 2003 as well as the on-going input from stakeholders. We will also provide guidelines for reporting the results of these surveys to external and internal audiences.

In addition, we will design some simple decision trees to help users assess their needs and recommend a prepackaged survey or help users to build their own using the ACAHPS modules. Technical assistance will continue to be offered from the CAHPS–SUN Helpline, 1–800–492–9261 and the Web site located at *http://www.cahps-sun.org*.

Dated: June 3, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–13104 Filed 6–9–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04231]

Enhancement of HIV/AIDS Laboratory Training and Quality Assurance Center in the United Republic of Tanzania; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to facilitate the development of a national HIV Laboratory Quality Assurance Center and support the strengthening of strategic information systems to enable the Ministry of Health of the United Republic of Tanzania to analyze and disseminate data on the various levels of HIV/AIDS interventions in a timely fashion. The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to the National Institute for Medical Research, Tanzania. NIMR is mandated by Act No. 29 of 1979, passed by the Tanzanian Parliament, to undertake public health interventions and research in Tanzania. NIMR has experience and capacity to undertake national programs under the MOH. NIMR has demonstrated its capability in assisting all 120 local authorities in Tanzania to conduct needs assessment and develop plans to implement health sector reforms. NIMR is currently implementing the National Lymphatic Filariasis Control Program. Because of its experience and expertise, NIMR is currently the only appropriate and qualified organization to conduct a specific set of activities supportive of the CDC/GAP goals for enhancing HIV/AIDS prevention, care and treatment services in Tanzania because: Tanzania does not currently have a National Public Health Laboratory that would form the apex of and support to the HIV Laboratory network supporting HIV/AIDS interventions. Such activities would support the PEPFAR goals of diagnosing HIV infection, staging HIV/AIDS disease and monitoring antiretroviral therapy (ART). The MOH has assigned NIMR the responsibility of supporting the set up of a national HIV Laboratory Quality Assurance Center. NIMR will collaborate with a number of in-country partners to implement these activities.

The MOH has various initiatives and continuing interventions in HIV/AIDS in the country including prevention of mother to child transmission (PMTCT), Blood safety, voluntary counseling and testing (VCT) and sexually transmitted infection (STI) management in health facilities, and HIV and syphilis surveillance in antenatal (ANC) settings. In order to monitor and evaluate these programs, there is a need to strengthen information systems at the central level and at the sites where these services are implemented. The MOH, with support from CDC, has strengthened and improved the quality of sentinel surveillance data from ANC, STI and blood donors; behavioral surveillance was introduced in 2002. Currently, NIMR is supporting the MOH to implement the Integrated Disease Surveillance and Response Program supported by CDC. The MOH has requested NIMR to support the strengthening of strategic information systems to enable the Ministry to analyze and disseminate data on the various levels of HIV/AIDS interventions in a timely fashion to policy makers, health providers and the public at large and to link HIV/AIDS surveillance system with the integrated disease surveillance and response strategy.

NIMR has the ability to technically oversee the project, ensuring the activities implemented are integrated into the national strategy for combating HIV/AIDS in Tanzania.

C. Funding

Approximately $2,500,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before July 1, 2004, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Cecil Threat, Project Officer, Global AIDS Program, C/o American Embassy, 2140 Dar es Salaam Place, Washington, DC 20521–2140, Telephone: 255 22 212 1407, Fax: 255 22 212 1462, E-mail: *Cthreat@cdc.gov*.

Dated: June 4, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–13137 Filed 6–9–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

American Indian and Alaskan Native STD

Announcement Type: New.

Funding Opportunity Number: 04202.

Catalog of Federal Domestic Assistance Number: 93.977.

Key Dates:

Application Deadline: July 12, 2004.

Executive Summary: American Indian and Alaska Native (AI/AN) populations experience disproportionately high rates of sexually transmitted diseases (STDs). Compared to Caucasians, in 2002, AI/ANs were almost six times as likely to have chlamydia, four times as likely to have gonorrhea, and twice as likely to have syphilis; rates are higher among certain tribes (CDC Sexually Transmitted Disease Surveillance 2002). Chlamydia and gonorrhea can result in pelvic inflammatory disease, ectopic pregnancy, and infertility in women. Additionally, these diseases can result in pneumonia, eye infections and other complications in newborns. Syphilis can result in fetal death and stillbirths.

CDC currently provides Comprehensive STD Prevention Services grants to fund 65 project areas (50 States, seven cities, and eight territories) to carry out essential functions in the prevention of STDs. Additionally, a Memorandum of Agreement (MOA) with the Indian Health Service provides for disease surveillance and other STD programmatic support. Currently there is no direct STD funding for Indian communities. This program announcement will enable CDC to build new programs in a traditionally underserved area.

I. Funding Opportunity Description

Authority: This program is authorized under sub-Section 318 (a)(b)(c) of the Public Health Service Act [42 U.S.C. 247c (a), (b) and (c)], as amended. Regulations governing the implementation of this legislation are covered under 42 CFR Part 51b, subparts A and D.

Purpose: The purpose of the program is to strengthen local capacity of AI/AN communities on Native American reservations to screen and arrange for the treatment of sexually transmitted diseases; and to educate local populations about such diseases, the consequences thereof, and how the transmission of such diseases can be prevented.

This program addresses the "Healthy People 2010" focus area of Sexually Transmitted Diseases, which is aimed at addressing health disparities among racial and ethnic minority populations.

Measurable outcomes of the program will be in alignment with the following performance goals for the National Center for HIV, STD and TB Prevention (NCHSTP): (1) To reduce STD rates by providing Chlamydia and gonorrhea screening, treatment, and partner treatment to 50 percent of women in publicly funded clinics; (2) To reduce the incidence of primary and secondary syphilis; and (3) To reduce the incidence of congenital syphilis.

Activities: Awardee activities for this program are as follows:

1. Determine and describe the area's STD morbidity; identify available STD and related health programs; identify resources for STD prevention programs, including community partners that

serve the target population; and identify gaps in STD prevention programs.

2. Develop a three-year action plan, which includes objectives that are specific, measurable, achievable, relevant, and time-phased. Objectives should address the following: (a) Creating awareness among tribal or reservation councils about STD problems in their communities and how to prevent STDs; (b) working closely with CDC's Prevention Training Centers and developing collaborations with state and local health departments, regional infertility prevention programs, Indian Health Service, tribal epidemiological centers, and other relevant partners to share resources and information that could strengthen an STD program; (c) ensuring screening and treatment for STD either directly or by partnership with clinics that could provide screening and treatment; and (d) educating the local population about STDs, the consequences thereof, and how the transmission of such diseases can be prevented. The plan should consider culturally appropriate behavioral, policy, and community approaches to prevention of STDs.

3. Develop an evaluation plan to: (a) Monitor and measure the progress toward achieving each objective; and (b) determine how program activities affect the target population.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC activities for this program are as follows:

1. In collaboration with the recipient, provide training on developing prevention strategies (*e.g.*, building scientific capacity, collaboration and partnerships, implementing guidelines and modeling programs on disease prevention, etc.) that prepare tribes to mobilize and engage in STD prevention activities.

2. Provide technical assistance through site visits, conference calls, resource materials, strategic planning and updated information, as needed. Facilitate communications locally, regionally, and nationally regarding resources and other opportunities involving the implementation of the action plan activities.

3. Provide technical assistance and participate in the evaluation of the action plan objectives.

4. Facilitate linkages with State and Local STD Programs, Indian Health Service, STD/HIV Prevention Training Centers, and Tribal Epidemiological Centers.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $463,836.

Approximate Number of Awards: One to three awards.

Approximate Average Award: $154,612.

Floor of Award Range: $150,000.

Ceiling of Award Range: $463,836.

Anticipated Award Date: September 1, 2004.

Budget Period Length: Twelve months.

Project Period Length: Three 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

Eligible applicants are federally recognized AI/AN tribal governments and corporations; non-federally recognized tribes and other organizations that qualify under the Indian Civil Rights Act, State Charter Tribes, Urban Indian Health Programs, Indian Health Boards, Inter-Tribal Councils; and other tribal organizations, including urban and eligible inter-tribal consortia.

Tribal organizations, inter-tribal consortia, and urban organizations are eligible if incorporated for the primary purpose of improving AI/AN health and representing such interests for the tribes, Alaska Native Villages and corporations, or urban Indian communities located in its region. AI/AN tribes or urban communities represented may be located in one state or in multiple states. An urban organization is defined as a non-profit corporate body situated in an urban center eligible for services under Title V of the Indian Health Care Improvement Act, PL 94–437, as amended.

Eligibility is limited to the aforementioned applicants because they have the necessary knowledge of, experience with, and capacity to work within the AI/AN communities to perform the required activities, and have the experience needed to successfully perform the required activities.

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.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

CDC may choose to schedule pre-decisional site visits prior to the awarding of funds.

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 5161–1. Application forms and instructions are available on the CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

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

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 40

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
- Single spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed 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

The applicant should describe:

a. The tribe, organization, or consortia including purpose or mission (if

applicable), years of existence (if applicable), and experience in representing the health-related interests of the represented tribe(s).

b. The total population size of the tribe(s) represented, geographic location(s) and proximity to the applicant.

c. How affected community members will be included in the development and implementation of the Action Plan.

d. The applicant's capacity and ability to conduct the activities as evidenced by current and past experience in:

i. Providing leadership in the development of health-related programs, training programs or health promotion campaigns.

ii. Networking and building partnerships and alliances with other organizations.

iii. Providing STD or other public health disease prevention and control programs including descriptions of activities and initiatives developed and implemented.

2. Need

The applicant should document:

a. The need for building capacity to address STDs for the identified AI/AN population, including the impact of STDs on the community, discussion of morbidity rates (incidence, prevalence or positivity data) and any variations in rates among represented tribe(s), or other evidence of health disparity.

b. The need to strengthen existing data and add new data about STD in the community. Since reporting authority resides in the State Health Departments or Authorities, the recipient will be required to work with the States to ensure accuracy, and completeness of reporting.

c. The need for STD prevention and control strategies that are culturally appropriate including discussion of the challenges, limitations, and other opportunities for implementing effective STD prevention programs.

d. The need to develop a comprehensive and sustainable community action plan among the represented tribe(s), and community partners that serve the target population.

3. Action Plan and Implementation

The applicant should clearly describe how it will:

a. Work with the tribe(s) to ensure that leaders are committed to the need for strengthening local capacity.

b. Collaborate with appropriate partners (*e.g.*, Indian Health Service, tribal, state, local health departments, Tribal Epidemiological Centers, STD/HIV Prevention Training Centers, Infertility Prevention Programs, HIV, Drug and Alcohol programs, Community Health Representative Programs, and other relevant public or private organizations in carrying out the activities.

c. Provide screening and treatment for STD directly or through referral.

d. Develop and disseminate STD prevention education that meets the educational and cultural needs of the target population;

e. Provide culturally competent training and technical assistance programs to increase the skill-level of tribes and partners in areas such as surveillance, health education, and other relevant topics.

f. Communicate with and disseminate information and guidance to the represented tribe(s) and their memberships (*e.g.*, newsletters, conferences, and meeting minutes).

g. The applicant should provide time lines for initiation and completion of all proposed activities for the three-year project period. This should include who will be the target population and how each proposed activity will be achieved.

4. Evaluation Plan

a. Design and develop an evaluation plan that will monitor and measure the progress toward achieving each objective and determine how program activities affect the target population. Specifically, the applicant should describe:

i. How the applicant plans to measure the implementation and progress of the activities in achieving the objectives during the three-year project period (*e.g.*, commitment of leaders to strengthen STD prevention programs, development of partnerships with relevant partners, identification of resources to gather STD data, identification of clinics that could provide screening and treatment for STD, development of educational STD prevention campaigns, etc.);

ii. How the applicant will document success in developing an STD prevention program for the tribe(s) (*e.g.*, number of persons screened and treated for STD, number of providers attending culturally competent STD trainings, number of target community attending educational presentations, etc.); and

iii. How the applicant will assess the quantity and quality of networking efforts (*e.g.*, number of planning meetings, degree of collaboration with leadership and other STD prevention programs, degree of collaboration with other organizations, etc.).

5. Management Plan

The applicant should describe how the project will be managed to accomplish all proposed activities. Specifically, the applicant should:

a. Include a description of proposed staffing for the project, provide job descriptions, and indicate if the positions currently exist or are proposed. Staffing should include the commitment of at least one full-time staff member to provide direction for the proposed activities. Information should be provided that demonstrates that the staff has the professional background, experience, and organizational support needed to fulfill the proposed responsibilities. Where possible, the applicant should identify staff responsible for completing each activity.

b. Provide letters of commitment from represented tribe(s) leadership which indicates the tribe's willingness to participate in the program, as well as letters of collaboration describing specific activities to be provided for this effort with other public and private health entities including State Health Departments, State Laboratories, Indian Health Service, and Tribal Epidemiological Center. Signed originals should be provided in the Appendix.

c. Submit a copy of its organizational chart, and describe existing structure and how it supports the development of the proposed plan for STD prevention.

6. Performance Measures (Included in Page Limit)

The applicant is required to:

a. 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.

b. Measures must be objective and quantitative, and must measure the intended outcome.

c. These measures of effectiveness must be submitted with the application and will be an element of the evaluation process.

7. Budget Justification

a. The applicant should provide a one year detailed budget, with accompanying justification of all operating expenses that is consistent with the stated objectives and planned activities of the project.

b. Page limits will not apply to the budget justification.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curriculum Vitaes and resumes of staff
- Organizational Charts
- Letters of collaboration with Prevention Training Centers and other partners

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

Application Deadline Date: July 12, 2004.

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 send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application 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 application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your 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 application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by CDC officials must be requested in writing.
- The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).

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.

For all contracts, provide: (1) Name of contractor; (2) period of performance; (3) method of selection (*e.g.*, competitive or sole source); (4) description of activities; (5) reason for contracting activities; and (6) itemized budget.

Awards will not allow reimbursement of pre-award costs.

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

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management–PA 04202, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You 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:

Action Plan and Implementation (30 Points)

Does the plan address: (1) How the applicant will work with tribe(s) to assure leaders are committed to strengthening local capacity? (2) Appropriate collaborations with relevant partners to carry out activities? (3) How screening and treatment for STD will be provided? (4) The development and dissemination of STD-prevention education that meets the needs of the target population? (5) Training and technical assistance that is culturally competent for relevant topics identified? (6) Communication and dissemination of information and guidance to tribes and membership? (8) Time lines for initiation and completion of all proposed activities for the three-year project period that identifies the target population and how each proposed activity will be achieved?

Is the plan realistic and are its objectives specific, measurable, achievable, relevant, time-phased, and likely to be accomplished during the three-year project period?

Evaluation Plan (20)

Does the evaluation plan describe how the applicant plans to measure the implementation and progress of the activities in achieving the objectives during the three-year project period? Does the applicant describe how it will document success in developing an STD prevention program for the tribe(s)? Does the applicant describe how it will assess the quantity and quality of networking efforts?

Management Plan (20 points)

Does the applicant include a description of proposed staffing for the project, provide job descriptions and indicate if the positions exist or are proposed? Does the applicant include the commitment of at least one full-time staff member to provide direction for

proposed activities? Does the applicant provide staffing information including adequate background information to show qualifications of staff? Does the applicant identify staff responsible for completing each activity?

Does the application provide letters of commitment from represented tribal leadership indicating the tribe's willingness to participate in the program, as well as letters of collaboration with prevention training centers, other public health entities including state health departments, state laboratories, Indian health services, and tribal epidemiological centers? Signed originals should be provided in the Appendix.

Does the application include a copy of its organizational chart, and describe existing structure and how it supports the development of the proposed Capacity Building Plan for STD prevention?

Background (15 points)

Does the applicant describe the tribe, organization, or consortia, including purpose or mission (if applicable), years of existence (if applicable), and experience in representing the health-related interests of the represented tribe(s)? Does the applicant describe the total population size of the tribe(s) represented, geographic location(s) and proximity to the applicant? Does the applicant explain how affected community members will be included in the development and implementation of the Action Plan? Does the applicant describe its capacity and ability to conduct the activities as evidenced by current and past experience in providing leadership in the development of health-related programs, training programs or health promotion campaigns; networking and building partnerships and alliances with other organizations; and, providing STD or other public health disease prevention and control programs including descriptions of activities and initiatives developed and implemented?

Need (15 points)

Does the applicant document the need: (1) For building capacity to address STDs? (2) To strengthen existing data and add new data about STD, including a commitment to work with states to ensure accuracy and completeness of reporting? (3) For STD prevention and control strategies that are culturally appropriate including discussion of the challenges, limitations, and other opportunities for implementing effective STD prevention programs? (4) To develop a comprehensive and sustainable community action plan among represented tribes and community partners that serve the target population?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by staff in the NCHSTP. 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.

V.3. Anticipated Announcement and Award Dates

September 1, 2004

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–4 HIV/AIDS Confidentiality Provisions
- AR–5 HIV Program Review Panel Requirements
- AR–6 Patient Care
- AR–8 Public Health System Reporting Requirements
- AR–11 Healthy People 2010
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status
- AR–16 Security Clearance Requirement
- AR–21 Small, Minority, and Women-Owned Business
- AR–22 Research Integrity
- AR–24 Health Insurance Portability and Accountability Act Requirements

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report is required 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 or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general 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 program technical assistance, contact:

Kim Seechuk, Deputy Chief, Program Development and Support Branch, Division of STD Prevention, 1600 Clifton Road, NE, MS E–27, Atlanta, GA 30333, Telephone: 404–639–8339, E-mail: *kgs0@cdc.gov.*

For financial, grants management, or budget assistance, contact:

Gladys T. Gissentanna, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2753, E-mail: *gcg4@cdc.gov.*

Dated: June 4, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–13138 Filed 6–9–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04196]

Rapid Expansion of HIV/AIDS Prevention, Care and Treatment Activities by the Ministry of National Education of Cote d'Ivoire Under the President's Emergency Plan for AIDS Relief; Notice of Intent to Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to assist the Ministry of National Education (MEN) of Cote d'Ivoire to rapidly expand their efforts to prevent HIV/AIDS among students and staff members, and to provide, or link with, effective comprehensive care and treatment services for HIV-infected students and staff members. The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

The Ministry of National Education (MEN) of Cote d'Ivoire is the only organization that can apply for these funds. This Ministry is the only organization that is mandated by the Government of Cote d'Ivoire to train, supervise, and provide services and activities for all three target groups named in this announcement: students, school teachers, and school health professionals; and is, therefore, the most direct route to reach these populations with effective HIV prevention and care interventions.

C. Funding

Approximately $200,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before July 15, 2004, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact:

Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2700.

For program technical assistance, contact: Karen Ryder, Project Officer, CDC/Projet RETRO–CI, 2010 Abidjan Place, Dulles, Virginia 20189–2010, Telephone: (225) 21–25–41–89, E-mail: *kkr1@cdc.gov*.

For financial, grants management, or budget assistance, contact: Shirley Wynn, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–1515, E-mail: *zbx6@cdc.gov*.

Dated: June 4, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–13135 Filed 6–9–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Scale-Up of Home Based Care Activities for People Living With HIV/AIDS in the United Republic of Tanzania

Announcement Type: New.

Funding Opportunity Number: 04208.

Catalog of Federal Domestic Assistance Number: 93.941.

Key Dates: Application Deadline: July 26, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 307 and 317(k)(2) of the Public Health Service Act, [42 U.S.C. 242l and 247b(k)(2)], and Section 104 of the Foreign Assistance Act of 1961, 22 U.S.C. 215lb.

Purpose: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a cooperative agreement program in the United Republic of Tanzania to provide high quality and appropriate home based care (HBC) to individuals living with HIV/AIDS in Tanzania. This will be accomplished by cooperation between CDC, the Tanzania Ministry of Health National AIDS Control Program (MOH–NACP) and the funded organization.

The purpose of this project is to support the public health infrastructure in Tanzania to strengthen the capacity of MOH and partner institutions to coordinate, plan, monitor and evaluate an integrated TB/HIV program. This will be accomplished by cooperation and collaboration in implementing activities between CDC, the Tanzania (MOH–NACP) and the funded organization. These collaborative activities will improve national capacity to ensure the availability of a continuum of care for the chronically ill HIV/AIDS patients in Tanzania. These services will be used as entry points for antiretroviral therapy (ART) programs.

The Global AIDS Program (GAP) has established field operations to support national HIV/AIDS control programs in 25 countries. The CDC's GAP exists to help prevent HIV infection, improve care and support, and build capacity to address the global AIDS pandemic. GAP provides financial and technical assistance through partnerships with governments, community-based and faith-based organizations, the private sector, and national and international entities working in the 25 resource-constrained countries. CDC/GAP works with the Health Resources and Services Administration (HRSA), the National Institutes of Health (NIH), the U.S. Agency for International Development (USAID), the Peace Corps, the Departments of State, Labor and Defense, and other agencies and organizations. These efforts complement multilateral efforts, including UNAIDS, the Global Fund to Combat HIV, TB and Malaria, World Bank funding, and other private sector donation programs.

The U.S. Government seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia, and the Americas through the Presidential Emergency Plan for AIDS Relief (PEPFAR). Through this new initiative, CDC's GAP will continue to work with host countries to strengthen capacity and expand activities in the areas of: (1) Primary HIV prevention; (2) HIV care, support, and treatment; and (3) capacity and infrastructure development, especially for surveillance and training. Targeted countries represent those with the most severe epidemics where the potential for impact is greatest and where U.S. government agencies are already active. The United Republic of Tanzania is one of these targeted countries.

To carry out its activities in these countries, CDC is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic. CDC's program of assistance to Tanzania focuses on several areas of national priority including scaling up of prevention and care strategies for HIV prevention, care, and treatment.

The measurable outcomes of the program will be in alignment with goals of the GAP to reduce HIV transmission and improve care of persons living with HIV. They also will contribute to the goals of PEPFAR, which are: (1) Within five years, treat more than two million HIV-infected persons with effective

combination anti-retroviral therapy; (2) care for ten million HIV-infected and affected persons including those orphaned by HIV/AIDS; and (3) prevent seven million infections in 14 countries throughout the world.

Activities: Awardee activities for this program are as follows:

- Obtain the necessary staff, equipment, and supplies to enhance HBC services in Tanzania.
- Recruit and train staff in counseling, testing and HBC services according to national guidelines.
- Collaborate with the MOH–NACP to review and update HBC guidelines to include palliative care and other intervention for care and treatment of chronically ill HIV/AIDS patients.
- Plan, develop, conduct, and evaluate HBC training programs for home care providers and community based providers in collaboration with CDC and the MOH–NACP.
- Conduct a mapping exercise to identify the extent to which HBC is being implemented in Tanzania.
- Participate in district HIV Prevention Task Force and support communities to form/establish educational and support groups including AIDS committees.
- Procure, distribute and replenish drugs and supplies in the HBC kits.
- Develop and disseminate Information, Education and Communication (IEC) materials and messages for HBC and community mobilization events.
- Conduct Train-the-Trainer sessions on management of HIV including use of antiretrovirals in HBC settings.
- Develop a peer support mechanism for care providers.
- Provide VCT services and referrals for testing of low-income earners.
- Collaborate with private health providers to develop and introduce a model of low cost wards, in private health facilities, for low-income people living with HIV/AIDS (PLWHA).
- Provide treatment and prophylaxis for opportunistic infections, under continuum of care and support, to communities in target districts.
- Provide nutritional support and HBC services to TB/AIDS patients.

Awardee should ensure that all of the above activities integrate into the national HIV/AIDS strategy.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC activities for this program are as follows:

- Collaborate with the awardee, the Tanzania Ministry of Health and other in-country and international partners in the development of plans for program assistance based on the country needs, the CDC technical assistance portfolio, and HIV laboratory activities conducted by other partners.
- Provide consultation, scientific and technical assistance, based on the "CDC GAP Technical Strategies" document, to promote the use of best practices known at the time.
- Facilitate in-country planning and review meetings for the purpose of ensuring coordination of country-based program technical assistance activities. CDC will act as liaison and assist in coordinating activities as required between the applicant and other Non-governmental organizations (NGOs), government of Tanzania organizations, and other CDC, GAP partners.

Technical assistance and training may be provided directly by CDC staff, or through organizations that have successfully competed for funding, under a separate CDC contract.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $6,000,000 (This amount is for the entire five-year project period.)

Approximate Number of Awards: One.

Approximate Average Award: $1,200,000 (This amount is for the first 12-month budget period, and includes only direct costs.)

Floor of Award Range: None.

Ceiling of Award Range: $1,200,000.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private NGOs based in Tanzania.

Applicants must:

2. Have extensive experience in design, implementation, and evaluation of community-based activities for HIV/AIDS in Tanzania.

2. Have an established infrastructure and the ability to mobilize a network of volunteers and organizations to ensure local ownership of activities and long-term sustainability.

3. Have an established agreement or memorandum of understanding with the Tanzania MOH for collaboration in HIV/AIDS and/or health related intervention programs.

4. Have at least three years previous experience working on various community based initiatives in Tanzania, including experience working with public and private sector partners.

5. Have regional branches in all regions of Tanzania.

6. Have the ability to utilize support from international affiliations.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

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.*

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

Application: You must include 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
- Double spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.
- All pages should be numbered, and a complete index to the application and any appendices must be included.
- Applications must be submitted in English.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Background
- Documented needs
- Eligibility and Capacity
- Proposed Program Plan
- Goals & Objectives
- Methods
- Plan of Operation
- Collaboration
- Timeline
- Performance Measures
- Staffing Breakdown
- Summary budget by line item with justification (budget and justification not be counted in the page limit stated above.)

Guidance for completing your budget can be found on the United States government Web site at the following address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

Additional information is optional and may be included in the application appendices. The appendices will not be counted toward the narrative page limit. Additional information could include but is not limited to: Organizational charts, curriculum vitas, letters of support, etc.

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

Application Deadline Date: July 26, 2004.

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 send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application 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 application as having been received by the deadline.

This announcement is the definitive guide on application format, content, and deadlines. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your 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 application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Application

Executive Order 12732 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Antiretroviral Drugs—The purchase of antiretrovirals, reagents, and laboratory equipment for antiretroviral treatment projects require pre-approval from the GAP headquarters.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Funds may be spent for reasonable program purposes, including personnel, training, travel, supplies and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.
- The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).
- You must obtain an annual audit of these CDC funds (program-specific audit) by a U.S. "based audit firm with international branches and current licensure/authority in-country, and in accordance with standard(s) approved in writing by CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.
- Prostitution and Related Activities The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document ("recipient") cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical

prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides. A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any foreign recipient must have a policy explicitly opposing, in its activities outside the United States, prostitution and sex trafficking, except that this requirement shall not apply to the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative or to any United Nations agency, if such entity is a recipient of U.S. government funds in connection with this document.

The following definitions apply for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).
- A foreign recipient includes an entity that is not organized under the laws of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico. Restoration of the Mexico City Policy, 66 FR 17303, 17303 (March 28, 2001).

All recipients must insert provisions implementing the applicable parts of this section, "Prostitution and Related Activities," in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, acknowledge that each certification to compliance with this section, "Prostitution and Related Activities," are a prerequisite to receipt of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. In addition, all recipients must ensure, through contract, certification, audit, and/or any other necessary means, all the applicable requirements in this section, "Prostitution and Related Activities," are met by any other entities receiving U.S. government funds from the recipient in connection with this document, including without limitation, the recipients' sub-grantees, sub-contractors, parents, subsidiaries, and affiliates. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, "Prostitution and Related Activities."

All primary grantees receiving U.S. Government funds in connection with this document must certify compliance prior to actual receipt of such funds in a written statement referencing this document (*e.g.*, "[Recipient's name] certifies compliance with the section, "Prostitution and Related Activities."") addressed to the agency's grants officer. Such certifications are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, "Prostitution and Related Activities," is an express term and condition of receiving U.S. government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event it is determined by HHS that the recipient has not complied with this section, "Prostitution and Related Activities."

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to:

Technical Information Management-PA# 04208, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You 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. Technical Approach (25 Points)

Does the applicant's proposal include an overall design strategy, including measurable time lines? Does the proposal address regular monitoring and evaluation, and the potential effectiveness of the proposed activities in meeting objectives?

2. Understanding of the Problem (20 Points)

Does the applicant demonstrate a clear and concise understanding of the nature of the problem described in the Purpose section of this announcement? Does the proposal specifically include a description of the public health importance of the planned activities to be undertaken and realistic presentation of proposed objectives and projects?

3. Ability To Carry Out the Project (20 Points)

Does the applicant document demonstrated capability to achieve the purpose of the project?

4. Personnel (20 Points)

Are the professional personnel involved in this project qualified, including evidence of experience in working with HIV/AIDS, opportunistic infections, and HIV/STD surveillance?

5. Plans for Administration and Management of Projects (15 Points)

Are there adequate plans for administering the project?

6. Budget (Not Scored)

Is the itemized budget for conducting the project, along with justification, reasonable and consistent with stated objectives and planned program activities?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by National Center for HIV, STD and TB Prevention (NCHSTP). 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 "Criteria" section above.

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 their applications 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–10 Smoke-Free Workplace Requirements.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports in English:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities Objectives.
   b. Current Budget Period Financial Progress.
   c. New Budget Period Program Proposed Activity Objectives.
   d. Budget.
   e. Additional Requested Information.
   f. Measures of Effectiveness.
2. Financial status report no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general 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 program technical assistance, contact: Cecil Threat, Project Officer, Global AIDS Program, c/o American Embassy, 2140 Dar es Salaam Place, Washington, DC 20521–2140, Telephone: 255 22 212 1407, Fax: 255 22 212 1462, E-mail: *Cthreat@cdc.gov.*

For budget assistance, contact: Diane Flournoy, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2072, E-mail: *dmf6@cdc.gov.*

Dated: June 4, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–13136 Filed 6–9–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Comprehensive Community and Home-Based Care and Support for People Living With HIV and AIDS in India

Announcement Type: New.
Funding Opportunity Number: 04201.
Catalog of Federal Domestic Assistance Number: 93.941.
Key Dates:
Application Deadline: July 12, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under section 307 of the Public Health Service Act, [42 U.S.C. Section 2421], as amended.

Purpose: The purpose of the program is to improve the quality of life of people living with HIV/AIDS in India and their families. With the recent commitment by the government of India to provide antiretroviral (ARV) treatment to a large population of people living with HIV/AIDS, there is an urgent need to implement sustainable and comprehensive programs for comprehensive community and home-based care in areas of high prevalence and high risk. This is accomplished by supporting, sustaining and expanding current activities for comprehensive community and home-based care and support for people living with HIV and AIDS in India.

Measurable outcomes of the program will be in alignment with the following performance goal(s) for the National Center for HIV, STD and TB Prevention (NCHSTP): initiate, expand or strengthen HIV/AIDS prevention, care, treatment and support activities globally.

The measurable outcomes of the program will be in alignment with goals of the Global AIDS Program (GAP), NCHSTP to reduce HIV transmission and improve care of persons living with HIV.

The program will also contribute to the United States Federal Government's goals of:

- Increasing the proportion of HIV infected people who are linked to appropriate prevention, care and treatment services.
- Increasing the proportion of HIV infected persons who know they are infected.
- Decreasing the number of persons at high-risk for acquiring or transmitting HIV infection.

Activities:

Awardee activities for this program are as follows:

- Collaborate with CDC, the Government of India, the Indian Network of Positive People, Non-Governmental Organizations (NGOs) and other partners to ensure: (1) That there is country ownership of all activities; (2) that proposed activities complement existing efforts within India; and (3) that activities are supportive of indigenous expertise and institutions.
- Collaborate with CDC, the Government of India, the Indian Network of Positive People, NGOs and other partners for the development of capacity for the local and national level Ministries of Health, care providers, NGOs, groups and networks of HIV positive people and other in-country partners to deliver services.
- Develop and implement community and home level intervention programs with vulnerable populations such as youth (age 15–29 years old), women and migrant populations living in selected high prevalence (urban and rural) areas. Intervention programs may include: (1) Provision of voluntary counseling and testing for HIV/STD and/or tuberculosis; (2) provision of care and treatment for HIV/STD and/or tuberculosis; (3) Information, Education and Communication (IEC) campaigns; and (3) behavior change for HIV infected and uninfected persons.
- Focus on the following specific activities:

1. *Voluntary Counseling and Testing (VCT):* implement, monitor, and evaluate HIV counseling and testing programs. Identify barriers and concerns

raised in providing VCT. Implement and coordinate, with other national programs, to help reduce HIV-related fear, stigma, discrimination and isolation.

2. *STD prevention and care:* expand and improve the diagnosis and treatment of STDs, including risk reduction counseling and education, as a means of reducing the continued transmission of HIV.

3. *Prevention and Youth:* implement youth-focused prevention/intervention programs, testing prevention programs, secondary prevention for HIV-positive youth, and build youth development programs.

4. Implement HIV/AIDS care, support, and treatment, at the community level, and in the homes of persons and their families affected by HIV, to prevent and treat HIV and related opportunistic infections with a special emphasis on tuberculosis.

5. Design and implement palliative care programs for persons and their families affected by HIV.

6. Increase access to health care, build capacity, and strengthen linkages for follow up of individuals from the health care institutions to the community and home.

7. Increase access to psycho-social services, economic support, and prevention services for people living with HIV/AIDS and their families.

8. Increase community support for people living with HIV/AIDS and their families.

9. Develop and improve the capacity of local partners, Government and private health services, NGOs, groups and networks of people living with HIV, and other community groups to provide home-based care and support services.

10. Participate in specific India-based workgroups that develop and review ongoing country assistance activities. The product of these workgroups will define the activities of the collaborating agencies.

11. Develop activities to document critical components necessary for expansion and replication of community and home-based programs in other areas in India.

12. Develop and implement a program for monitoring and evaluation of all program components.

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:

• Collaborate with the Government of India, USAID India mission and other partners to assist recipient in the development of plans for program assistance based upon the needs of the selected communities, the CDC technical assistance portfolio, and HIV prevention activities conducted by other partners. This also includes the development of a strategic plan for expansion of activities into other high prevalence areas.

• Provide consultations and scientific and technical assistance based on the CDC GAP goals to promote the use of best practices known at this time. This may include provision of technical assistance including support from CDC staff and/or CDC/GAP partners for designing, planning, implementing and monitoring community and home-based care activities in selected high prevalence areas. This may also include support for assessment visits, direct technical reviews, and the review of existing materials available for people living with HIV; and development of information and education resources for people living with HIV/AIDS.

• Facilitate in-country planning and review meetings for the purpose of ensuring coordination of country-based program technical assistance activities. CDC will act as liaison and assist in coordinating activities as required between the applicant and other NGOs, government of India organizations, and other CDC, GAP partners.

Technical assistance and training may be provided directly by CDC staff or through organizations that have successfully competed for funding under a separate CDC contract.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: FY 2004.

Approximate Total Funding: $3,500,000. (This amount is for the entire five-year project period.)

Approximate Number of Awards: 1.

Approximate Average Award: $700,000. (This amount is for the first 12-month budget period, and includes only direct costs).

Floor of Award Range: $600,000.

Ceiling of Award Range: $700,000.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations, and by governments and their agencies, such as:

• Public nonprofit organizations.

• Private nonprofit organizations.

Organizations must be based in India.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Applicants must have:

1. At least five years of experience in delivering HIV, STD and/or TB prevention and care programs in India.

2. At least three years of experience implementing programs to deliver and monitor care and support for HIV/AIDS at both the community and the home-based level in India. These programs must be ongoing and established in high risk communities in high prevalence states in India.

In December of 2003, the government of India made a landmark commitment to collaborate with the World Health Organization in implementing their initiative of "Treating 3 Million People by 2005" by providing antiretroviral treatment to a large population of people living with HIV/AIDS in India. As a result an urgent immediate need exists to support, expand and sustain activities for comprehensive community and home-based care for HIV positive individuals and family members. Starting an effective community and home-based HIV care program from scratch, including establishing partnerships with key partners cannot be accomplished in the limited time required. To successfully address and meet the critical time sensitive need for rapid scale up, an established program with demonstrated partnerships within the HIV positive community and a proven track record must be identified and utilized to respond to the government's initiative and the CDC GAP.

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.*

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

Application: You must submit a project narrative with your application forms. Your 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.
- Double spaced.
- Font size: 12 point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- Must be submitted in English.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Plan.
- Objectives.
- Activities.
- Methods of Monitoring the Project.
- Methods of Project Evaluation.
- Summary Budget by line item along with a budget justification (this will not be counted against the stated page limit).

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Organizational Chart.
- Curriculum Vitae/Resumes of Current Staff.
- Proposed staffing pattern (include qualifications) required to carry out program activities.

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 Time

Application Deadline Date: July 12, 2004.

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 send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application 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 application as having been received by the deadline.

This announcement is the definitive guide on application format, content, and deadlines. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your 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 application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Funding restrictions, which must be taken into account while writing your budget are as follows:

- Antiretroviral Drugs—The purchase of antiretrovirals, reagents, and laboratory equipment for antiretroviral treatment projects require pre-approval from the GAP headquarters.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Funds may be spent for reasonable program purposes, including personnel, training, travel, supplies and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior written approval by CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organization regardless of their location.
- The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention and care services for which funds are required).
- You must obtain an annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

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.*

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—PA# 04201, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You 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. Ability to carry Out the Project (25 points)

Does the applicant provide documents, which demonstrate the organization's capability to achieve the purpose of the project?

2. Technical Approach (20 points)

Does the applicant's proposal include an overall design strategy, including measurable time lines? Does the proposal address regular monitoring and evaluation, and the potential effectiveness of the proposed activities in meeting objectives?

3. Understanding of the Problem (20 points)

Does the applicant demonstrate a clear and concise understanding of the nature of the problem described in the Purpose section of this announcement? Does the applicant include a description of the public health importance of the planned activities to be undertaken and realistic presentation of proposed objectives and projects?

4. Personnel (20 points)

Are professional personnel involved in this project qualified? Does the applicant include evidence of experience in working with HIV/AIDS, opportunistic infections, and HIV/STD surveillance?

5. Plans for Administration and Management of Projects (15 points)

Are plans for administering the projects adequate?

6. Budget (not scored)

Is the itemized budget for conducting the project, along with justification, reasonable and consistent with stated objectives and planned program activities?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by NCHSTP/GAP. 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.

V.3. Anticipated Announcement and Award Dates

September 1, 2004.

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–6 Patient Care
- AR–10 Smoke-Free Workplace Requirements

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two copies of the following reports in English:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness

2. Financial status report no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general 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 program technical assistance, contact: Jeanine Ambrosio, Project Officer, Centers for Disease Control and Prevention, NCHSTP/GAP, 1 Corporate Square, Atlanta, GA 30329, Telephone: (404) 639–6340, e-mail: *JAmbrosio@cdc.gov.*

For budget assistance, contact: Shirley Wynn, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–1515, e-mail: *SWynn@cdc.gov.*

Dated: June 4, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–13139 Filed 6–9–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Expansion of Routine HIV Counseling & Testing and the Provision of Basic Care in Clinics and Hospitals in the Republic of Uganda

Announcement Type: New.
Funding Opportunity Number: 04229.
Catalog of Federal Domestic Assistance Number: 93.941.
Key Dates:
Application Deadline: July 12, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under sections 301 and 307 of the Public Health Service Act, [42 U.S.C. Sections 241 and 242l], and section 104 of the Foreign Assistance Act of 1961, 22 U.S.C. 215lb, as amended.

Purpose: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a cooperative agreement program for the "Expansion of Routine HIV Counseling & Testing and the provision of Basic Care Provision in Clinics and Hospitals in the Republic of Uganda". This program addresses the "Healthy People 2010" focus area of HIV.

The overall aim of this program is to develop models of routine HIV counseling and testing in clinics and hospitals in district settings that would either directly provide, or refer those testing positive to, sources of basic preventative and palliative care. The provision of antiretroviral (ARV) therapy is not part of this program.

The United States Government seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia and the Americas. The President's Emergency Plan for AIDS Relief (PEPFAR) encompasses HIV/AIDS activities in more than 75 countries and focuses on 14 countries including Uganda to develop comprehensive and integrated prevention, care and ARV treatment programs. CDC has initiated its Global AIDS Program (GAP) to strengthen capacity and expand activities in the areas of: (1) HIV primary prevention; (2) HIV care, support and treatment; and (3) capacity and infrastructure development, including surveillance. Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential impact is greatest and where the United States government agencies are already active. Uganda is one of those countries.

CDC's mission in Uganda is to work with Ugandan and international partners to develop, evaluate, and support effective implementation of interventions to prevent HIV and related illnesses and improve care and support of persons with HIV/AIDS.

Voluntary counseling and testing (VCT) services are only available at 11 percent of health facilities (Uganda Health Facilities Survey 2002). To date there has been no routine counseling and testing (RCT) within clinical settings. Where HIV testing services are available in clinical settings only selected patients (28 percent in a recent study) are referred for testing, and counseling support is generally poor or absent. In the same study, 55 percent of those not tested said they would have wanted to be tested. The most recent Demographic and Health Survey in Uganda indicated that 70 percent of people would like to receive HIV testing, but only ten percent reported that they had been tested. An estimated 20–70 percent of patients in hospital wards, TB clinics, and sexually transmitted infections (STI) clinics are HIV infected, but HIV testing is not currently part of routine care.

The purpose of this program is to introduce RCT at hospitals or other clinically oriented institutions or programs providing services to a substantial portion of their surrounding population. The initial year would involve hospitals in two different districts and would result in roll-out in successive years to other districts. This program would focus its support to expand activities in future years to clinics and hospitals in other areas under-served by other VCT or RCT providers. The program would also support the capacity of the target hospitals and other local care providers to offer basic preventive care and palliative care by supporting appropriate training, networking, information exchange and planning, and when necessary, purchase of commodities, but without taking on principal responsibility for financial support of care provision.

It is currently proposed that the basic preventive care package includes: (1) Cotrimoxazole prophylaxis; (2) active TB screening and treatment or INH prophylaxis; (3) a safe water vessel with chlorine solution; (4) an insecticide-treated bed-net (ITN); and (5) prevention with positives counseling (PWPC). The palliative care package would include pain management and psychosocial support in addition to the basic care package elements.

The measurable outcomes of the program will be in alignment with goals of the GAP to reduce HIV transmission and improve care of persons living with HIV. They also will contribute to the PEPFAR goals, which are: (1) Within five years treat more than two million HIV-infected persons with effective combination anti-retroviral therapy; (2) care for seven million HIV-infected and affected persons including those orphaned by HIV/AIDS; and (3) prevent ten million new infections. Specific measurable outcomes of this program will be the number of clients receiving RCT and the percentage coverage of patients by RCT.

Activities: Awardee activities for this program are as follows:

a. Establish a project office(s) as required by the activities.

b. Identify project staffing needs; hire and train staff.

c. Identify furnishings, fittings, equipment, computers and other fixed assets procurement needs of the project and implementing partners and acquire from normal sources.

d. Establish suitable administrative and financial management structures.

e. Work with the Ministry of Health (MOH) and other stakeholders, as necessary, to develop RCT and care operational guidelines for hospitals and clinical settings.

f. Support the partner hospitals and clinics to implement RCT in all hospital units including the outpatient departments. If appropriate, develop a strong referral system for those testing positive to organizations providing effective care.

g. Train personnel from other clinical facilities in the same and neighboring under-served districts in conducting RCT.

h. Carry out work site follow up to training within the target districts.

i. Support the clinical facilities to develop a simple data collection system, integrated within the general Health Management Information System (HMIS) that reflects useful information specifically related to RCT activities including PEPFAR indicators.

j. Ensure that the commodities supply & management system is operational in respect to test kits, cotrimoxazole, TB diagnostic materials and drugs, and medicines for pain management, using existing hospital and public sector systems as far as possible, and project emergency re-supply only as necessary.

k. Publish reports, guidelines and training manuals relating to RCT testing in district clinical settings.

l. Plan to recruit additional RCT sites for roll out of the project in years two to five.

m. Ensure that the above activities are undertaken in manner consistent with the national HIV/AIDS strategic framework.

n. Monitor and evaluate project activities. In collaboration with the MOH and other stakeholders revise RCT guidelines based on evaluation findings as necessary.

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:

a. Provide technical assistance, as needed, in the development of training curricula, materials, and diagnostic therapeutic guidelines.

b. Collaborate with the recipient, as needed, in the development of an information technology system for medical record keeping and information access and in the analysis of data derived from those records.

c. Assist, as needed, in monitoring and evaluation of the program and in development of further appropriate initiatives.

d. Provide input, as needed, into the criteria for selection of staff and training candidates, and the hospitals and clinics to be included in the program.

e. Provide input into the overall program strategy.

f. Collaborate, as needed, with the awardee in the selection of key personnel to be involved in the activities to be performed under this agreement, including approval of the overall manager of the program.

Technical assistance and training may be provided directly by CDC staff or through organizations that have successfully competed for funding under a separate CDC contract.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $2,330,000. (This amount is for the entire five-year project period.).

Approximate Number of Awards: one.

Approximate Average Award: $466,000. (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: $466,000.

Anticipated Award Date: September 1, 2004.

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 nonprofit organizations, private nonprofit organizations, universities, colleges, research institutions, hospitals, and faith-based organizations that meet the following criteria:

1. Have at least three years of documented HIV/AIDS-related clinical experience and/or HIV/AIDS counseling and testing experience in Uganda.

2. Have agreements with the authorities representing the first two proposed hospital sites for operations of the program during the first year.

3. Applicant organization must be based in Uganda.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

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: *www.cdc.gov/od/pgo/forminfo.htm.*

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

Application: You must submit a project narrative with your application forms. Your 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.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- Must be submitted in English.

Your narrative should address activities to be conducted over the entire project period, and should consist of, as a minimum, in the order listed: a plan, objectives, activities, methods, an evaluation framework, a budget and budget justification highlighting any supplies mentioned in the Program Requirements and any proposed capital expenditure.

Additional information is optional and may be included in the application appendices. The appendices will not be counted toward the narrative page limit. Additional information could include but is not limited to: organizational charts, curriculum vitae, letters of support, etc.

The budget justification will not be counted in the page limit stated above.

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 *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 "Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: July 12, 2004.

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 send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application 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 application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your 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 application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Antiretroviral Drugs—The purchase of ARVs, reagents, and laboratory equipment for antiretroviral treatment projects (outside of PMTCT) require pre-approval from HHS/CDC officials.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Funds may be spent for reasonable program purposes, including personnel, training, travel, supplies and services. Equipment may be purchased and renovations completed if deemed necessary to accomplish program objectives; however, prior approval by CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization (WHO), Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organization regardless of their location.
- The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention and care services for which funds are required).
- You must obtain an annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.
- Prostitution and Related Activities.

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document ("recipient") cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides. A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any foreign recipient must have a policy explicitly opposing, in its activities outside the United States, prostitution and sex trafficking, except that this requirement shall not apply to the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative or to any United Nations agency, if such entity is a recipient of U.S. government funds in connection with this document.

The following definitions apply for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).
- A foreign recipient includes an entity that is not organized under the laws of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico. *Restoration of the Mexico City Policy,* 66 FR 17303, 17303 (March 28, 2001).

All recipients must insert provisions implementing the applicable parts of this section, "Prostitution and Related Activities," in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, acknowledge that each certification to compliance with this section, "Prostitution and Related Activities," are a prerequisite to receipt of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. In addition, all recipients must ensure, through contract, certification, audit, and/or any other necessary means, all the applicable requirements in this section, "Prostitution and Related Activities," are met by any other entities receiving U.S. government funds from the recipient in connection with this document, including without limitation,

the recipients' sub-grantees, sub-contractors, parents, subsidiaries, and affiliates. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, "Prostitution and Related Activities."

All primary grantees receiving U.S. Government funds in connection with this document must certify compliance prior to actual receipt of such funds in a written statement referencing this document (*e.g.*, "[Recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.'") addressed to the agency's grants officer. Such certifications are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, "Prostitution and Related Activities," is an express term and condition of receiving U.S. government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event it is determined by HHS that the recipient has not complied with this section, "Prostitution and Related Activities."

Funds may be used for:

- RCT at the facilities targeted by the project including required training, test kit purchase, simple laboratory refurbishment, additional staffing, and other related expenses.
- Strengthening hospital and care provider ability to provide basic preventive care and palliative care for people living with HIV/AIDS (PHAs) through training, improved referral, strengthening delivery of key elements of preventive and palliative care packages and purchasing of commodities if necessary.
- Evaluation and management of the activities.

Funding in the first year will be limited to activities at two facilities in different districts.

Awards will not allow reimbursement of pre-award costs.

Guidance for completing your budget can be found on the United States government Web site at the following address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management Section—PA 04229, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You 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. Understanding the issues, principles and systems requirements involved in delivering RCT and basic care for PHAs in a district clinical context in Uganda (25 points).

Does the applicant demonstrate an understanding of the ethical, clinical, social, managerial and other practical issues involved in delivering RCT and basic care effectively, sensitively and sustainably in the setting of Ugandan district health services and faith-based care providers?

2. Ability to carry out the proposal (25 points).

Does the applicant demonstrate the capability to achieve the purpose of this proposal?

3. Work Plan (20 points).

Does the applicant describe activities which are realistic, achievable, time-framed and appropriate to complete this program?

4. Personnel (15 points).

Are the personnel (including their qualifications, training, availability, and experience) adequate to carry out the proposed activities?

5. Administrative and Accounting Plan (15 points).

Is there a plan to account for, prepare reports, monitoring and audit expenditures under this agreement, manage the resources of the program and produce, collect and analyze performance data?

6. Budget (not scored).

Is the budget for conducting the activity itemized and well-justified and consistent with stated activities and planned program activities?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff and for responsiveness by NCHSTP/GAP. 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.

V.3. Anticipated Announcement and Award Dates

September 1, 2004.

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–10 Smoke-Free Workplace Requirements

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing

continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

f. Measures of effectiveness.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

4. Semi-annual progress reports, 30 days after the end of the budget period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general 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 program technical assistance, contact: Jonathan Mermin, MD, MPH, Global AIDS Program, Uganda Country Team, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention P.O. Box 49, Entebbe, Uganda, Telephone: +256–41320776, e-mail: *jhm@cdc.gov*.

For financial, grants management, or budget assistance, contact: Shirley Wynn, Contract Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–1515, e-mail address: *zbx6@cdc.gov*.

Dated: June 4, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–13141 Filed 6–9–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Laboratory Service Strengthening at Health Center IV and Above in the Republic of Uganda

Announcement Type: New.

Funding Opportunity Number: Program Announcement 04223.

Catalog of Federal Domestic Assistance Number: 93.941.

Key Dates:

Application Deadline: July 12, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under sections 301 and 307 of the Public Health Service Act, [42 U.S.C. 241 and 242l], and section 104 of the Foreign Assistance Act of 1961, 22 U.S.C. 215lb, as amended.

Purpose: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a cooperative agreement program for Laboratory Service Strengthening at Health Center IV and above in the Republic of Uganda. This program addresses the "Healthy People 2010" focus area of HIV.

The overall aim of this program is to improve the capacity of the laboratories within the Uganda health system to offer HIV testing and counseling, and other key tests related to opportunistic infections diagnosis and the basic care package for people living with HIV, such as TB screening. Strengthening laboratories to support provision of antiretroviral therapy (ART) is not a deliberate part of this program though the improvements made in facilities and personnel may provide benefits to planned and future programs of ARV therapy.

The United States Government seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia and the Americas. The President's Emergency Plan for AIDS Relief (PEPFAR) encompasses HIV/AIDS activities in more than 75 countries and focuses on 14 countries, including Uganda, to develop comprehensive and integrated prevention, care and treatment programs. CDC has initiated its Global AIDS Program (GAP) to strengthen capacity and expand activities in the areas of: (1) HIV primary prevention; (2) HIV care, support and treatment; and (3) capacity and infrastructure development, including surveillance. Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential impact is greatest and where the United States government agencies are already active. Uganda is one of those countries.

CDC's mission in Uganda is to work with Ugandan and international partners to develop, evaluate, and support effective implementation of interventions to prevent HIV and related illnesses and improve care and support of persons with HIV/AIDS.

Voluntary counseling and testing (VCT) services are available at a large number of private and government clinics across the country, but there are still many communities far from VCT providers. The most recent Demographic and Health Survey in Uganda indicated that 70 percent of people would like to receive HIV testing but only 10 percent reported that they had been tested. The absence of VCT, routine counseling and testing (RCT), and TB screening at many existing health facilities presents a major challenge in covering the whole population of Uganda with these key services. If all Health Centers IV and above can provide good quality laboratory services, this will represent a major contribution to both the Uganda HIV/AIDS prevention and care strategies.

The purpose of this program is to ensure that over five years all laboratories at Health Center IV facilities and above are rehabilitated, their staff provided with training and support supervision, and quality assurance systems are established such that these facilities are able to offer HIV testing to support VCT, TB screening, and diagnosis of other common opportunistic infections (OI) that is of reliable quality and is available without interruption. The program may also support scholarships for the training of staff, including HIV counselor training, for facilities lack of staff is a key impediment to service delivery. It is expected that the program would last five years and evolve gradually from a focus on rehabilitation and refresher training to concentrate on supervision and quality assurance. This program does not include any responsibility for financial support of care provision.

The measurable outcomes of the program will be in alignment with GAP goals to reduce HIV transmission and improve care of persons living with HIV. They also will contribute to the PEPFAR goals, which are: (1) Within five years treat more than two million HIV-infected persons with effective combination anti-retroviral therapy; (2) care for seven million HIV-infected and affected persons including those orphaned by HIV/AIDS; and (3) prevent 10 million new infections. Specific measurable outcomes of this program will be the percentage of units that have functioning integrated VCT services, the number of clients served with VCT and the number of persons trained in lab-related activities.

Activities:

1. Awardee Activities.

Awardee activities for this program are as follows:

a. Identify project staffing needs; hire and train staff.

b. Identify vehicles, furnishings, fittings, equipment, computers and other fixed assets procurement needs of the program and acquire from normal sources.

c. Establish suitable administrative and financial management structures and a project office, if required.

d. Conduct a comprehensive national assessment of laboratory facilities and personnel from Health Center IV and above, taking into account data already collected by the AIDS/HIV Integrated Model District Program (AIM) and other stakeholders. Use this assessment for the targeting and prioritizing of program activities.

e. Develop and implement a program of laboratory rehabilitation and equipment based on an agreed basic standard.

f. Plan, develop and implement, in coordination with stakeholders, an in-service training program for laboratory technicians focusing on rapid HIV testing, screening for TB and other common OIs, skills and practices required for good management of laboratory facilities and other relevant topics identified by needs assessment.

g. Provide scholarships for the training of counselors and laboratory staff for health units where under-staffing is found to be a critical issue.

h. Work with stakeholders and relevant authorities to support the development of improved supervision and quality assurance systems within the public and private laboratory system.

i. Support the collection and analysis of data to assess the scale of HIV counseling and testing and TB screening provision. Support improved laboratory management, supervision, and quality assurance. The data collection system should be integrated within the general Health Management Information System (HMIS).

j. Ensure that the commodities supplies management system is operational at the facilities level.

k. Ensure that the above activities are undertaken in a manner consistent with the national HIV/AIDS strategic framework.

2. CDC Activities

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:

a. Provide technical assistance, as needed, in the development of standards for laboratory facilities, training materials and programs, and quality assurance systems.

b. Collaborate with the awardee, as needed, in the development of an information technology system for tracking key laboratory activities and in the analysis of data derived from those records.

c. Assist, as needed, in the evaluation of the program and in the development of further appropriate initiatives.

d. Provide input, as needed, into the criteria for selection of staff and non-staff implementing the program and of those receiving either laboratory or counselor training.

e. Provide input into the overall program strategy.

f. Collaborate, as needed, with the awardee in the selection of key personnel to be involved in the activities to be performed under this agreement including approval of the overall manager of the program.

Technical assistance and training may be provided directly by CDC staff or through organizations that have successfully competed for funding under a separate CDC contract.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $3,500,000. (This amount is for the entire five year project period.).

Approximate Number of Awards: 1.

Approximate Average Award: $700,000. (This amount is for the first 12-month budget period, and includes only direct costs.).

Floor of Award Range: none.

Ceiling of Award Range: $700,000.

Anticipated Award Date: September 1, 2004.

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 nonprofit organizations, private nonprofit organizations, universities, colleges, research institutions, hospitals, and faith-based organizations that meet the following criteria:

1. Have at least three years of documented HIV/AIDS related laboratory programming experience in Uganda.

2. Have demonstrated expertise in health system development and management and knowledge of the health system in Uganda.

3. Have extensive knowledge in laboratory protocols relevant to the program.

4. The organization must be based in Uganda.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

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: *www.cdc.gov/od/pgo/forminfo.htm.*

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.

Content and Form of Submission

Application: You must submit a project narrative with your application forms. Your 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.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- Must be submitted in English.

Your narrative should address activities to be conducted over the entire project period, and should consist of, as a minimum, a plan, objectives, activities, methods, and an evaluation framework.

A budget and budget justification highlighting any supplies mentioned in the Program Requirements and any proposed capital expenditure must also be included. The budget justification will not be counted in the page limit stated above. Guidance for completing your budget can be found on the United States government Website at the following address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

Additional information is optional and may be included in the application appendices. The appendices will not be counted toward the narrative page limit. Additional information could include but is not limited to: organizational charts, curriculum vitae, letters of support, etc.

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 *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 "Administrative and National Policy Requirements."

IV.3. Submission Dates and Time

Application Deadline Date: July 12, 2004.

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 send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application 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 application as having been received by the deadline.

This announcement is the definitive guide on application format, content, and deadlines. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your 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 application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Use of Funds

Funds may be used for:

1. Assessment and rehabilitation of laboratory facilities including provision of basic requisite utilities and equipment.

2. Assessment and training of laboratory staff on a national basis; Provision of scholarships for the training of counselors and other laboratory staff.

3. Evaluation and management of the activities.

Funds may not be used for any new construction. The purchase of antiretrovirals (ARVs), reagents and laboratory equipment for ARV treatment is not a permitted use of these funds. Recurrent supplies and test kits will be available to laboratories through the normal medical supplies system.

Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Antiretroviral Drugs—The purchase of ARVs, reagents, and laboratory equipment for ARV treatment projects require pre-approval from HHS/CDC officials.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Funds may be spent for reasonable program purposes, including personnel, training, travel, supplies and services. Equipment may be purchased and renovations completed, however, prior written approval by CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organization regardless of their location.
- The applicant may contract with other organizations under this program, however, the applicant must perform a substantial portion of the activities, including program management and operations, and delivery of prevention and care services for which funds are requested.
- Prostitution and Related Activities.

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document ("recipient") cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides. A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to

endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any foreign recipient must have a policy explicitly opposing, in its activities outside the United States, prostitution and sex trafficking, except that this requirement shall not apply to the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative or to any United Nations agency, if such entity is a recipient of U.S. government funds in connection with this document.

The following definitions apply for purposes of this clause:

• Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

• A foreign recipient includes an entity that is not organized under the laws of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico. *Restoration of the Mexico City Policy,* 66 FR 17303, 17303 (March 28, 2001).

All recipients must insert provisions implementing the applicable parts of this section, "Prostitution and Related Activities," in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, acknowledge that each certification to compliance with this section, "Prostitution and Related Activities," are a prerequisite to receipt of U.S. Government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. In addition, all recipients must ensure, through contract, certification, audit, and/or any other necessary means, all the applicable requirements in this section, "Prostitution and Related Activities," are met by any other entities receiving U.S. Government funds from the recipient in connection with this document, including without limitation, the recipients' sub-grantees, sub-contractors, parents, subsidiaries, and affiliates. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, "Prostitution and Related Activities."

All primary grantees receiving U.S. Government funds in connection with this document must certify compliance prior to actual receipt of such funds in a written statement referencing this document (*e.g.*, "[Recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.' ") addressed to the agency's grants officer. Such certifications are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, "Prostitution and Related Activities," is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event it is determined by HHS that the recipient has not complied with this section, "Prostitution and Related Activities."

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management Section—PA#04223, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You 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. Understanding of the issues, principles and systems requirements involved in improving laboratory performance in Health Center IV facilities and above and in carrying out basic laboratory rehabilitation in the context of Uganda. (25 points)

Does the applicant demonstrate an understanding of the technical, managerial and other practical issues involved in delivering a cost effective and relevant program of laboratory rehabilitation, in-service training, and development of supervision and quality assurance systems focusing on VCT and screening for TB and other common OIs throughout Uganda?

2. Ability to carry out the proposal (25 points)

Does the applicant demonstrate the capability to achieve the purpose of this proposal?

3. Personnel (20 points)

Are the personnel (including their qualifications, training, availability, and experience) adequate to carry out the proposed activities?

4. Work Plan (15 points)

Does the applicant describe activities which are realistic, achievable, time-framed and appropriate to complete this program?

5. Administrative and Accounting Plan (15 points)

Is there a plan to account for, prepare reports, monitoring and audit expenditures under this agreement, manage the resources of the program and produce, collect and analyze performance data?

6. Budget (not scored)

Is the budget for conducting the activity itemized and well-justified and consistent with stated activities and planned program activities?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by NCHSTP/GAP. 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 "Criteria" section above.

V.3. Anticipated Announcement and Award Dates

Award Date: September 1, 2004.

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–10 Smoke-Free Workplace Requirements

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semi annual progress reports, 30 days after the end of the budget period.
2. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities Objectives.
   b. Current Budget Period Financial Progress.
   c. New Budget Period Program Proposed Activity Objectives.
   d. Detailed Line-Item Budget and Justification.
   e. Additional Requested Information.
3. Financial status report, no more than 90 days after the end of the budget period.
4. 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 or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general 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 program technical assistance, contact: Jonathan Mermin, MD, MPH, Global Aids Program [GAP], Uganda Country Team, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention [CDC], PO Box 49, Entebbe, Uganda. Telephone: +256–41320776, e-mail: *jhm@cdc.gov.*

For financial, grants management, or budget assistance, contact:

Shirley Wynn, Contract Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–1515, e-mail address: *zbx6@cdc.gov.*

Dated: June 4, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–13142 Filed 6–9–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Pediatric Environmental Health Specialty Unit (PEHSU) Program

Announcement Type: New.

Funding Opportunity Number: 04024.

Catalog of Federal Domestic Assistance Number: 93.161.

Key Dates:

Application Deadline: July 26, 2004.

Executive Summary: The Agency for Toxic Substances and Disease Registry (ATSDR) Pediatric Environmental Health Specialty Unit (PEHSU) Program was developed as a national resource for pediatricians, other health care providers, Federal staff, and the public. The mission is to: (1) Reduce environmental health threats to children; (2) improve access to expertise in pediatric environmental medicine; and (3) strengthen public health prevention capacity.

The three primary focus areas of the Program are education and health promotion, consultation, and referral of children who may have been exposed to environmental hazards.

I. Funding Opportunity Description

Authority: This program is authorized under sections 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 [42 U.S.C. 9604(i)].

Purpose: The grantee under this PEHSU Program will operate as a national resource for pediatricians, other health care providers, Federal staff, and the public. The purpose of the Program is to: (1) Reduce environmental health threats to children; (2) improve access to expertise in pediatric environmental medicine; (3) strengthen public health prevention capacity; and (4) assist pediatric patients, their families, health care providers, and Federal/regional staff. The grantee will also assist sites or local communities where the ATSDR and the PEHSU Program are intended to provide services to pediatric patients and their families, health care providers, and Federal/regional staff. The PEHSU will have a special focus to assist sites or local communities where ATSDR and Environmental Protection Agency (EPA) are involved. This program addresses the "Healthy People 2010" focus area of Educational and Community-Based Programs, Environmental Health, and Age-Related Objectives for Children.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the ATSDR: (1) Prevent ongoing and future exposures and resultant health effects from hazardous waste sites and releases; (2) Mitigate the risks of human health effects at toxic waste sites with documented exposures; and (3) Build and enhance effective partnerships.

Activities

Awardee activities for this program are as follows:

Manage and Oversee the PEHSU Services

- Establish and administer a PEHSU Program in each of the ten EPA regions. (Please see Attachment One for a list of these regions. Attachments are posted with this announcement on the CDC Web site at *http://www.cdc.gov/od/pgo/funding/grantmain.htm*).
- Provide oversight and technical assistance in the regional PEHSU organizational development and operations management.
- Work closely with ATSDR and EPA staff located in federal regional offices, as well as EPA staff in Washington, DC and ATSDR staff in Atlanta, Georgia.
- Monitor and report quantitatively and qualitatively on PEHSU program accomplishments. Reports should be compatible with the ATSDR management information system Site Tracking and Reporting System (STARS).
- Develop, coordinate and host an annual PEHSU conference to promote professional and organizational

development in pediatric environmental health and medicine.

• Identify and select appropriate staff, based on experience and capability, to successfully implement the program activities.

Education and Health Promotion

• Develop and present pediatric environmental health education events and support materials targeting health care providers, environmental health professionals, families, teachers, communities designated as superfund sites, and the general public.

• Assure that PEHSU educational presentations provide culturally relevant information to all groups, emphasizing prevention, the special vulnerability of children to environmental threats, and practical steps to protect children.

• Provide expert speakers on various topics in pediatric health.

Work with other organizations to define core competencies in pediatric environmental health.

• Provide a setting for Pediatric Environmental Medicine Fellowships and other training programs.

• Assist community self-empowerment in children's environmental health issues, and work with local authorities in developing prevention and intervention programs.

• Identify and promote environmental health policies that protect children.

• Assist with local public health infrastructure development and capacity building in all areas of pediatric environmental health, including biochemical terrorism and disaster preparedness.

Consultation

• Provide pediatric environmental health consultation to health care professionals and public health officials through an established toll-free telephone line with a mechanism for emergency consultation (24 hour per day/7 days per week).

• Provide consultation to parents and caregivers regarding environmental exposures and possible health effects through a toll-free telephone line.

• Provide a forum for pediatricians and environmental health specialists to combine knowledge to better serve children with environmental exposures and diseases of suspected environmental origin.

• Foster communication between existing medical resources as a means of improving pediatric health care.

• Provide communication and coordination with regional poison control centers.

Referral

• Provide medical referrals to pediatric patients and their families when the child is impacted by environmental exposures to potentially toxic agents.

• Maintain an accurate list of operating pediatric environmental health specialist clinics within each regional PEHSU.

In a cooperative agreement, ATSDR staff is substantially involved in the program activities, above and beyond routine grant monitoring.

ATSDR Activities for this program are as follows:

• Provide technical assistance in identifying needs for pediatric environmental health education targeting health care providers, environmental health professionals, families, teachers, and the general public.

• Provide information, instructional resources, technical assistance and collaboration needed to effectively work.

• Assist health care providers, environmental health professionals, families, teachers, and the general public in communities to understand health effects of known contaminants, and how to take appropriate action to protect the health of those impacted.

• Assist in the development of evaluation plans that address the effectiveness and impact of the overall project.

• Provide assistance in establishing communication and resource networks including such partners as other Federal agencies, State and local health departments, tribal governments, environmental and health professionals, non-governmental organizations, and academic, medical, and clinical associations.

• Provide technical assistance and collaboration in the dissemination of resource materials, such as providing guidance in the use of distance learning methods, outreach consultation, and educational design.

• Assist in providing training related to exposure assessment, health concerns response, and community involvement in contaminated sites.

II. Award Information

Type of Award: Cooperative Agreement. ATSDR involvement in this program is listed in the Activities section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $1,400,000.

Approximate Number of Awards: One.

Approximate Average Award: $1,400,000 (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: $1,400,000.

Anticipated Award Date: August 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, ATSDR'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 national professional organizations, comprised of health care practitioners in environmental and pediatric-related medicine, providing environmental health education, environmental medical guidance, and environmental public health promotion activities. To be a successful applicant, an organization must have:

• A national network of medical specialists with pediatric and environmental medicine experience and expertise.

• Expertise and experience in conducting both health care provider and community health education and promotion activities related to environmental exposure to toxic substances.

• Expertise and experience in providing pediatric medical consultation and clinical referral to children and other individuals who may have experienced environmental exposure to toxic substances.

• Documentation that supports the expertise, experience and maintenance of a national network of pediatric and environmental medical specialists and clinics.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements

listed in this section, it will not be entered in to the review process. You will be notified that your application did not meet submission requirements.

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.* 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

Application: You must include a project narrative with your application forms. Your narrative must be submitted in the following format:

- Maximum number of pages: 25 pages. 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.
- Paper size: 8.5 by 11 inches.
- Double spaced.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

You must submit a signed original and two copies of your application forms.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Project Plan:
  - Background: A brief discussion demonstrating an understanding of chemical and toxic contamination issues of communities in the U.S., including disproportionate risk to children and other vulnerable populations.
  - Target Populations and Their Health Education and Promotion Needs: An explanation of populations (*e.g.*, organizational members, partners, and community residents) that can be reached by the regional PEHSU Network and the perceived needs these populations have for health education and promotion services and environmental health resources.
  - Project Goals and Objectives: These sections should provide clearly stated project objectives that are realistic, measurable, and related to program requirements.
  - Activities and Timeline: The activities of the project should be clearly presented to demonstrate a sufficient time allocation, and chronology or sequence of events to be conducted. The activities should provide specificity and demonstrate feasibility of the proposed activities in the form of a plan of work and timeline for accomplishing the project activities.
  - Plan for Collaboration: The project plan should present the scope of activities that the applicant intends to undertake within the National PEHSU Network.
- Capacity for Health Education and Promotion: In this section, include a discussion of past and present activities that demonstrate a capability to:
  - Plan, conduct, and evaluate environmental health education and promotion initiatives.
  - Provide consultative services in environmental health education and promotion activities.
  - Develop and deliver resources that support environmental health education and promotion efforts.
  - Demonstrate a history of collaborative environmental health work.
- Personnel: This section should address the qualification, experience, and responsibilities of each individual working on the project. Adequate time and effort necessary to provide effective leadership should be demonstrated by the project lead. Any new staffing requirements should be addressed with inclusion of a recruitment plan and position descriptions. Vitas or resumes should be provided for all existing staff. (Curriculum vitas and resumes will not be counted toward the narrative page limit.)
- Evaluation Plan: The project evaluation plan should address the evaluation strategies and methods necessary to measure impacts and outcomes of the project interventions. It should present measures for the overall project and its impact and outcome, such as achievement of stated public health objectives and effect of the project on the stated population. Other project measures may be changes in the knowledge, attitudes, and behaviors or practices of the target population/audience, or community-wide changes intended to occur in programs, policies, or the physical environment that influences the health of the target populations. To the extent possible, the evaluation measures must be objective and quantitative and relate to the performance goals stated in section "B. Purpose" of this announcement.
- Budget Justification: A clearly justified budget narrative that is consistent with the purpose, relates directly to project activities, is clearly justified, and is consistent with intended use of funds is required. The budget justification will not be counted towards the narrative page limit.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Organizational chart
- Curriculum vitas or resume
- Letters of support
- Samples of health education/promotion materials, or Internet address for accessing these materials on the Web

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 *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 Date, and Time

Application Deadline Date: July 26, 2004.

Explanation of Deadlines: Applications must be received in the CDC PGO by 4 p.m. Eastern Time on the

deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application 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 application as having been received by the deadline.

This program announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your 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 application deadline. This will allow time for applications 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 be expended for reasonable program purposes, such as personnel, travel, supplies, and services, including contractual.
- ATSDR funding is generally not to be used for the purchase of furniture or equipment.
- Funds may not be used for clinical services.

The direct and primary recipient in a cooperative agreement program must perform a substantial role in carrying out project objectives and not merely serve as a conduit for an award to another party or provider who is an ineligible party.

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.

Awards will not allow reimbursement of pre-award costs.

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

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management–PA# 04024, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You 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. Proposed Project—40 percent

a. Clearly stated understanding of environmental public health problem(s); and a clear understanding of the types of exposures and health issues to be addressed; and the health education and promotion, consultation, and referral services to be provided, including any special risks to children as a susceptible population.

b. Clear and reasonable public health goals and clearly stated project objectives that are realistic, measurable, and related to program requirements.

c. Identification of specific target audiences and their environmental health education and promotion needs.

d. Specificity and feasibility of the proposed timeline for implementing project activities.

e. Appropriateness and thoroughness of the proposed activities for the proposed target groups.

f. Plans for collaborative efforts.

g. Appropriate letters of support.

2. Capability—20 percent

a. Capability to develop and distribute nationally environmental public health education and promotion initiatives and the supporting resource materials.

b. Demonstrated ability to plan, conduct, and evaluate environmental health education and promotion activities, including professional training and community education.

c. Capability to document and prove a multi-disciplinary, patient-centered public health prevention and consultative services approach nationally through the National Network of PEHSU.

d. Demonstrated ability to collaborate effectively with a variety of public health partners.

3. Proposed Personnel—20 percent

a. The ability of the applicant to provide consulting clinical staff in departments of pediatrics and occupational/environmental medicine. Clinics participating in site work should have staffs that are: Either board certified or have nationally recognized expertise in environmental medicine or occupational medicine; either board certified toxicologist or have nationally recognized expertise in toxicology; and board certified pediatricians.

b. The proposed staff should have experience and expertise in developing, distributing, implementing, and evaluating medical consultation, and health education and promotion initiatives along with supportive intervention materials.

4. Evaluation Plan—20 percent

a. Strategies and methods to measure impacts and outcomes of project interventions, such as changes in target population/audience knowledge, attitudes, and behaviors, or practices and community or organizational-wide environmental changes.

b. Specific evaluation plan to measure overall project impact and outcome, such as achievement of stated public health objectives and effect of the project on the stated population.

5. Proposed Budget—(not scored)

Is the budget reasonable, clearly justified with a budget narrative, and consistent with the intended use of cooperative agreement funds?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and

Grants Office (PGO) staff and for responsiveness by ATSDR. 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 your application according to the criteria listed section "V.1. Criteria" section above.

In addition, the following factor may affect the funding decision: Ability to provide site-specific educational consultation on environmental medicine and pediatric health concerns in locations such as superfund sites where ATSDR or the EPA is assisting communities to cope with hazardous contamination.

V.3. Anticipated Announcement Award Date

August 1, 2004

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC PGO. 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 Parts 74 and Part 92.

For more information on the Code of Federal Regulations, *see* the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*.

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–8 Public Health System Reporting Requirements
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- AR–18 Cost Recovery-ATSDR
- AR–19 Third Party Agreements-ATSDR

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 copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities Objectives.
   b. Current Budget Period Financial Progress.
   c. New Budget Period Program Proposed Activity Objectives.
   d. Detailed Line-Item Budget and Justification.
   e. Additional Requested Information.
   f. Measures of Effectiveness.
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 sent to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general 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 program technical assistance, contact:

Robert H. Johnson, MD, Medical Officer, Division of Health Education and Promotion, 1600 Clifton Road, N.E., Mailstop E–33, Atlanta, GA 30333, Telephone: (404) 498–0498, e-mail: *rdj2@cdc.gov*.

For budget assistance, contact: Edna Green, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2743, e-mail: *ecg4@cdc.gov*.

Dated: June 4, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–13140 Filed 6–9–04; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Breast and Cervical Cancer Early Detection and Control Advisory Committee

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: Breast and Cervical Cancer Early Detection and Control Advisory Committee (BCCEDCAC).

Times and Dates: 8 a.m.–5 p.m., June 23, 2004. 8 a.m.–3:30 p.m., June 24, 2004.

Place: Hyatt Regency New Orleans, Poydras Plaza at Loyola Ave., New Orleans, Louisiana, 70113–1805. Phone: 1–504–561–1234.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Secretary, Department of Health and Human Services, and the Director, CDC, regarding the early detection and control of breast and cervical cancer. The committee makes recommendations regarding national program goals and objectives; implementation strategies; and program priorities including surveillance, epidemiologic investigations, education and training, information dissemination, professional interactions and collaborations, and policy.

Matters To Be Discussed: The agenda will include discussion and review of National Breast and Cervical Early Detection Program (NBCCEDP) Programmatic issues related to the NBCCEDP Manual review/update, IMS (Information Management Services) update, Cervical cancer policy and new technologies, recruitment issues, Models of cancer registry, New mammography and CAD, Breast and Cervical issues, and Clinical Breast Exams issues; Comprehensive and Integrated Approaches Cancer Control; Health disparities within NBCCEDP; Building Better Partnerships; and discussion with NBCCEDP Program Directors related to implementation of the National Breast and Cervical Program.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Debra Younginer, Executive Secretary, BCCEDCAC, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, Mailstop K–57, Chamblee, Georgia 30316, telephone: 770–488–1074.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 4, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–13133 Filed 6–9–04; 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; Public Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following public meeting and request for information:

Name: Public Meeting to Seek Input on Gaps in Chronic Lymphocytic Leukemia Radiogenicity Research.

Time and Date: 9 a.m.–12 noon, July 21, 2004.

Place: Best Western Skyline Inn, 10 I Street, SW., Washington, DC 20024.

Status: Forum will include scientists and representatives from various government agencies, industry, labor, and other stakeholders, and is open to the public, limited only by the space available. The meeting room accommodates up to 100 people. Due to limited space, notification of intent to attend the meeting should be made with Patty Gudlewski, no later than Friday, July 16, 2004. Ms. Gudlewski can be reached by telephone at 513–841–4419, or by e-mail at *pkg1@cdc.gov*. Access to the meeting will be accommodated on a first-come basis.

Purpose: To discuss possible scientific research strategies to evaluate any relationship between exposure to ionizing radiation and chronic lymphocytic leukemia (CLL). Current scientific opinion, based largely on epidemiological data, holds that the incidence of CLL is not related to exposure to ionizing radiation. The U.S. Congress directed NIOSH to conduct epidemiological research and other activities to establish the scientific link between radiation exposure and the occurrence of CLL.

The public is invited to attend and will have an opportunity to provide limited comments. Written comments may be submitted to the address listed below by August 16, 2004, so that they may be considered by NIOSH in planning its research priorities.

Summary: CLL is the most common adult leukemia in the Western world, but its etiology is largely unknown. Exposures to some herbicides have been implicated in epidemiologic studies. Yet other studies to date largely have shown no evidence of an association between external ionizing radiation and CLL; however, a number of uncertainties remain and additional studies may be informative. Recent laboratory studies have identified sub-types of CLL and at least one familial form of B-cell CLL has been identified. In addition, new technologies including interphase fluorescence *in situ* hybridization, expression microarrays and flow cytometric analysis provide diagnostic and prognostic indicators of disease. This meeting will assist in identifying gaps in existing research needed to address the radiogenicity of CLL.

Addresses: Comments should be submitted to David F. Utterback, 4676 Columbia Parkway, M/S R–44, Cincinnati, Ohio 45226, or by e-mail to *dutterback@cdc.gov*. Any attachments should be formatted in Microsoft Word.

All information received in response to this notice will be available for public examination and copying.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 4, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–13134 Filed 6–9–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of New System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of new system of records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new SOR, titled "MMA Section 641 Prescription Drug Benefit Demonstration" (MMA641) System NO. 09–70–0545, HHS/CMS/ORDI. The primary purposes of the system of records are to maintain information on individual Medicare beneficiaries who voluntarily enroll in a demonstration project for coverage of certain prescription drugs and biologicals. This demonstration project is mandated in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 under section 641. The system of records will enable CMS to: Enroll and communicate with eligible Medicare beneficiaries who volunteer to participate in the demonstration project, communicate with clinicians and other providers and suppliers who submit claims payable under the demonstration project, review submitted claims and pay those conforming to applicable payment criteria and federal law, and develop, maintain, and analyze research information showing the potential impact of providing certain prescription drugs and biologicals.

Information retrieved from this system of records will also be disclosed to support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; support constituent requests made to a Congressional representative; support litigation involving the agency; support activities reasonably necessary to fulfill the provisions of the demonstration project and ensure appropriate use of Medicare trust fund and program funds; and third parties where the contact is expected to have information relating to the individual's capacity to manage his or her own affairs.

We have provided background information about the proposed system in the "Supplementary Information" section, below. CMS invites comments on all portions of this notice. See "Effective Dates" section for comment period.

EFFECTIVE DATES: CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on June 4, 2004. In any event, we will not disclose any information under a routine use until forty (40) calendar days after publication. We may defer implementation of this system of records or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Privacy Compliance Data Development (DPCDD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: James Coan, Division of Health Promotion and Disease Prevention Demonstrations (DHPDPD), Office of Research, Development, and Information, CMS, MS–S3–02–01, 7500 Security Boulevard, Baltimore,

Maryland 21244–1850. The telephone number is (410) 786–9168.

SUPPLEMENTARY INFORMATION:

I. Description of the New System of Records

A. Statutory and Regulatory Basis for System of Records

The authority for this system of records is Section 641 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173).

B. Background

Section 641 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) provides for a demonstration that would pay for drugs and biologicals that are prescribed as replacements for drugs currently covered under Medicare Part B. The legislation specifies that no more than 50,000 beneficiaries be covered under the demonstration and that funding is limited to $500 million.

The demonstration will apply to the 50 United States and the District of Columbia and will provide this coverage for the period up to December 31, 2005, or until legislated limitations have been reached. Provisions under the demonstration include enhanced low-income benefits for those unable to afford deductibles and cost sharing. Interested beneficiaries will be screened for eligibility and asked for basic information about diagnosis, treatment, and income. Once they are determined to be eligible, they will be assigned to a national pharmacy benefits manager where their individual prescription plan will be established.

Prescription drug and biological coverage will follow the conditions outlined in MMA for the new Part D prescription drug plan, including all deductibles, cost sharing percentages, and out-of-pocket expense limitations.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

MMA641 includes standard data for identification such as Name, Medicare Health Insurance Claim (HIC) Number, sex, race, date of birth, zip code, state and county for Medicare beneficiaries who are voluntarily participating in the Section 641 Demonstration. All of the included data is necessary to employ proper research methods and to verify eligibility criteria. It also includes claims information related to prescription drug claims, supplemental prescription drug coverage plans, income attestation, physician certification, answers to eligibility questions, answers to enrollment questionnaires and other information needed to confirm the beneficiaries eligibility for enrollment and ongoing participation in the demonstration, as well as other survey and research information needed to pay claims, administer the demonstration project, and develop research reports on the study's findings. Information collected is critical to implementing the demonstration as mandated in the legislation. Specifically, the demonstration must follow the new Part D Prescription Drug Benefit rules for participation, low-income subsidies, use of supplemental drug coverage plans, and enrollment. Furthermore, because this is a research demonstration project and a Report to Congress is required, evaluation of the effects of the demonstration must include scientifically relevant data and controls for comparative analysis.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release MMA641 information that can be associated with an individual as provided for under "Section III. Entities Who May Receive Disclosures Under Routine Use." Both identifiable and non-identifiable data may be disclosed under a routine use. Identifiable data includes individual records with MMA641 information and identifiers. Non-identifiable data includes individual records with MMA641 information and masked identifiers or MMA641 information with identifiers stripped out of the file.

CMS will only disclose the minimum personal data necessary to achieve the purpose of the MMA641. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data are being collected; *e.g.*, to maintain information on individual Medicare beneficiaries who voluntarily enroll in a demonstration project for coverage of certain prescription drugs and biologicals.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. there is a strong probability that the proposed use of the data would, in fact, accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. remove or destroy at the earliest time all individually, identifiable information; and

c. agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities That May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MMA641 without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. CMS proposes to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, or consultants that have been contracted by the agency to assist in the performance of a service related to this system of records and that need to have access to the records in order to perform the activity.

CMS contemplates disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing agency business functions relating to purposes for this system of records.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and

efficient operations. CMS must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than, that described in the contract and requires the contractor to return or destroy all information at the completion of the contract.

2. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

Individuals sometimes request the help of a Member of Congress in resolving some issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government;

is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

4. To an individual or organization engaged in, or assisting in: the appropriate submission of claims payments payable under the demonstration project; the screening, enrollment, communications, and research efforts related to beneficiary participation in the demonstration project (including summary analyses demonstrating the impact of the demonstration project); the inter-relationship of the demonstration claims processing system with other Medicare systems of records to beneficiary information and claims payment; and, other activities reasonably necessary to fulfill the provisions of the demonstration project and ensure appropriate use of Medicare trust fund and program funds.

5. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

Third party contacts require MMA641 information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

B. Additional Provisions Affecting Routine Use Disclosures

In addition, CMS policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the individual).

This System of Records contains Protected Health Information as defined by the Department of Health and Human Services' regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR Parts 160 and 164, 65 **Federal Register** 82462 as amended by 66 **Federal Register** 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, DHHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management Of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, DHHS, and CMS policies and standards include but are not limited to: all pertinent NIST publications; the DHHS Automated Information Systems Security Handbook and the CMS Information Security Handbook.

V. Effects of the New System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of MMA641 data. MMA641 information is submitted to CMS through standard systems. CMS will use a variety of onsite and offsite edits and audits to increase the accuracy of MMA641 data.

CMS will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of maintaining this system of records.

Dated: June 4, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0545

SYSTEM NAME:

"MMA Section 641 Prescription Drug Benefit Demonstration" (MMA641) System No. 09–70–0545, HHS/CMS/ORDI.

SECURITY CLASSIFICATION:

Level 3, Privacy Act Sensitive.

SYSTEM LOCATION:

Records are stored at the Office of Information System and the Office of Operations Management, CMS, 7500 Security Boulevard, Baltimore, Maryland 21244 and Trailblazer Health Enterprises, LLC, 1954 Greenspring Drive, Timonium, MD 21093.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system will contain claims and demographic information on Medicare beneficiaries who are voluntarily participating in the MMA641.

CATEGORIES OF RECORDS IN THE SYSTEM:

The MMA641 will contain information on Medicare beneficiaries who are voluntarily participating in the project including, standard data for identification such as Name, Medicare Health Insurance Claim (HIC) Number, sex, race, date of birth, zip code, state and county for Medicare beneficiaries who are voluntarily participating in the Section 641 Demonstration. It also includes claims information related to prescription drug claims, supplemental prescription drug coverage plans, income attestation, physician certification, answers to eligibility questions, answers to enrollment questionnaires and other information needed to confirm the beneficiaries eligibility for enrollment and ongoing participation in the demonstration, as well as other survey and research information needed to pay claims, administer the demonstration project, and develop research reports on the study's findings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system of records comes from the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), (Pub. L. 108–173) Title XVIII of the Social Security Act, Section 1860D, Subtitle D-Additional Demonstrations, Studies, and Other Provisions, Sec 641(a).

PURPOSE (S) OF THE SYSTEM:

The primary purposes of the system of records are to maintain information on individual Medicare beneficiaries who voluntarily enroll in a demonstration project for coverage of certain prescription drugs and biologicals. This demonstration project is mandated in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 under section 641. The system of records will enable CMS to: Enroll and communicate with eligible Medicare beneficiaries who volunteer to participate in the demonstration project, communicate with clinicians and other providers and suppliers who submit claims payable under the demonstration project, review submitted claims and pay those conforming to applicable payment criteria and federal law, and develop, maintain, and analyze research information showing the potential impact of providing certain prescription drugs and biologicals.

Information retrieved from this system of records will also be disclosed to support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; support constituent requests made to a Congressional representative; support litigation involving the agency; and to support activities reasonably necessary to fulfill the provisions of the demonstration project and ensure appropriate use of Medicare trust fund and program funds; and third parties where the contact is expected to have information relating to the individual's capacity to manage his or her own affairs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MMA641 System without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, CMS policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce personal identity).

1. To agency contractors, or consultants that have been contracted by the agency to assist in the performance of a service related to this system of records and that need to have access to the records in order to perform the activity.

2. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

4. To an individual or organization engaged in, or assisting in: The appropriate submission of claims payments payable under the demonstration project; the screening, enrollment, maintenance, communications, and research efforts related to beneficiary participation in the demonstration project (including summary analyses demonstrating the impact of the demonstration project); the inter-relationship of the demonstration claims processing system with other Medicare systems of records to beneficiary information and claims payment; and, other activities reasonably necessary to fulfill the provisions of the demonstration project and ensure appropriate use of Medicare trust fund and program funds.

5. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: The individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

Third party contacts require MMA641 information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic media. Some input data may arrive as paper enrollment applications as in the case of income attestations and physician certifications before transcription to magnetic media.

RETRIEVABILITY:

The Medicare records are retrieved by health insurance claim (HIC) number of the beneficiary.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, DHHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management Of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, DHHS, and CMS policies and standards include but are not limited to: all pertinent NIST publications; the DHHS Automated Information Systems Security Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

CMS will retain identifiable MMA641 data for a total period not to exceed 25 years. Data residing with the designated enrollment and claims payment contractor shall be returned to CMS at the end of the contract period, with all data then being the responsibility of CMS for adequate storage and security.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Research, Development, and Information, CMS, Room C3–20–11, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager, who will require the system name, the subject individual's name (woman's maiden name, if applicable), social security number (SSN) (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay), phone no., if known, address, date of correspondence and control number.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

1. Eligibility data on Medicare beneficiaries volunteering to participate in the MMA Prescription Drug Benefit Demonstration will come from input from beneficiaries who report to CMS officials or contractors, pursuant to information collection activities approved at the Office of Management and Budget and through an Institutional Review Board as required by law. Eligibility will be and crosschecked with information contained in the Common Working File (CWF). Enrollment application information and questionnaires for participants will also come directly from beneficiaries' voluntary reporting.

2. Income attestation information will come from beneficiaries who voluntarily report this information in an approved format and pursuant to information collection activities approved at the Office of Management and Budget and through an Institutional Review Board as required by law.

3. Physician certification information will come through voluntary submission of physicians or other health care providers who have the legal authority to provide such information.

4. Claims data will come through submissions provided by a pharmacy benefits manager who will be providing coverage for specified drugs and biologicals as discussed in the MMA legislation (section 641) in accordance with the provisions of the demonstration and the conditions of participation in the Medicare program.

5. Eligibility information as well as financial or quality reporting related to program integrity or other matters may also interact with existing CMS registries such as those relating to Medicare claims, provider registries, beneficiary enrollment databases, and national claims histories.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 04–13240 Filed 6–9–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirement Under Emergency Review By the Office of Management and Budget (OMB)

Title: Custodial Sponsorship Agreement.

OMB No.: New Request.

Description: Following the passage of the 2002 Homeland Security Act (Pub. L. 107–296), the Administration for Children and Families (ACF), Office of Refugee Resettlement, is charged with the placement and care of unaccompanied alien children in Federal custody, and implementing a policy for releasing these children, when appropriate, to eligible sponsors. In order for the Office of Refugee Resettlement to authorize the release of these children, the potential sponsors must agree to certain conditions pursuant to section 462 of the Homeland Security Act and the *Flores* v. *Reno* Settlement Agreement (C.D. Cal. 1997). In this Notice, ACF announces that it proposes to employ the usage of a collection of information to indicate the agreement of a sponsor to the terms of a custodial release of an unaccompanied alien child. The Office of Refugee Resettlement considers the eligibility of a sponsor based on their ability and agreement to provide for the physical, mental and financial well-being of an unaccompanied minor and ensure the appearance before immigration courts. Eligible sponsors may be parents close relatives, friends, or entities concerned with the child's welfare. This document will also require the child being considered for release to understand the conditions of the custodial release.

Respondents

Potential sponsors of unaccompanied alien children and unaccompanied alien children in Federal custody.

ANNUAL BURDEN ESTIMATE

Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
5000	1	.1	500

Estimated Total Annual Burden Hours: 500.

Additional Information: ACF is requesting that OMB grant a 90-day approval for this information collection under procedures for emergency processing by June 17, 2004. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Robert Sargis at (202) 690–7275. In addition, a request may be made by sending an e-mail request to: *grjohnson@acf.hhs.gov*.

Comments and questions about the information collection described above should be directed to the following address by June 17, 2004: Office of Information and Regulatory Affairs, Attn. OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503.

Dated: June 30, 2004.

Robert Sargis,

Reports Clearance Office.

[FR Doc. 04–13077 Filed 6–9–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Request for State Data Needed to Determine the Amount of a Tribal Family Assistance Grant.

OMB No.: 0970–0173.

Description: 42 U.S.C. 612 (section 412 of the Social Security Act) gives Federally recognized Indian Tribes the opportunity to apply to operate a Tribal Temporary Assistance for Needy Families (TANF) program. The Act specifies that the Secretary shall use state submitted data to determine the amount of the grant to the Tribe. This form (letter) is used to request those data from the states.

Respondents: States that have Indian Tribes applying to operate a TANF program.

ANNUAL BURDEN ESTIMATES.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Request for State data needed to determine the amount of a Tribal Family Assistance Grant	15	1	42	630

Estimated Total Annual Burden Hours: 630.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication

Dated: June 3, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–13078 Filed 6–9–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Loan Repayment and Scholarship; Proposed Collection; Comment Request; National Institutes of Health Undergraduate Scholarship Program for Individuals From Disadvantaged Backgrounds

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Loan Repayment and Scholarship, the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below.

Proposed Collection: Title: National Institutes of Health Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds (UGSP). *Type of Information Collection Request:* Extension of a previously approved collection (OMB No. 0925–0438, expiration date July 31, 2004). *Form Numbers:* NIH 2762–1, NIH 2762–2, NIH 2762–3, NIH 2762–4, and NIH 2762–5. *Need and Use of Information Collection:* The NIH makes available scholarship awards to students from disadvantaged backgrounds who are committed to careers in biomedical research. The scholarships pay for tuition and reasonable educational and living expenses up to $20,000 per academic year at an accredited undergraduate institution. In return, for each year of scholarship support, the recipient is obligated to serve as a full-time paid employee in an NIH research laboratory for 10 consecutive weeks during the months of June through August and for 1 year after graduation. If the recipient is enrolled in an undergraduate program or pursues a postgraduate degree (doctoral, medical, dental, or veterinarian school), the post-graduation service obligation may be deferred with the approval of the Secretary of Health and Human Services. The Office of Loan Repayment and Scholarship will use information proposed for collection to determine an applicant's eligibility for participation in the UGSP and a participant's eligibility to defer his or her service obligation. The UGSP is authorized by section 487D of the Public Health Service (PHS) Act (42 U.S.C. 288–2), as amended by the NIH Revitalization Act of 1993 (Public Law 103–43). *Frequency of Response:* Initial application and annual renewal application. *Affected Public:* Applicants (high school or undergraduate students), recommenders, undergraduate institution financial aid staff, participants wishing to defer their service obligation, and graduate or undergraduate registrar staff. The annual reporting burden estimates are as follows:

Type of respondent	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Applicant	300	1.0	3.167	950.10
Recommender	900	1.0	1.000	900.00
Financial Aid Staff	300	1.0	.500	150.00
UGSP Participant	40	1.0	.084	3.36
Registrar	40	1.0	.750	30.00
Totals	1,580			2,033.46

The annualized cost to respondents is estimated at $40,249.70. There are no capital costs, operating costs, or maintenance costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including

whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Alfred C. Johnson, Ph.D., Deputy Director, Office of Loan Repayment and Scholarship, National Institutes of Health, 2 Center Drive, Room 2E28 (MSC 0230), Bethesda, Maryland 20892–0230. Dr. Johnson may be contacted via e-mail at *ACJohnson@nih.gov* or by telephone at 301–402–6425.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: June 3, 2004.

Raynard S. Kington,

Deputy Director, National Institutes of Health.

[FR Doc. 04–13153 Filed 6–9–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Peptide That Elicits Neutralizing Antibodies Targeting the HIV Co-Receptor CCR5

Drs. Hana Golding and Surender Khurana (FDA)

U.S. Provisional Application filed 09 Apr 2004 (DHHS Reference No. E–150–2004/0–US–01)

Licensing Contact: Sally Hu; 301/435–5606; *hus@mail.nih.gov.*

This invention identifies a peptide sequence that closely mimics the conformational epitope in CCR5, recognized by the HIV neutralizing monoclonal antibody targeting the co-receptor, by using a random peptide phage display library. This peptide upon immunization of rabbits generated antibodies that bind to the HIV–1 co-receptor CCR5 resulting in blocking HIV transmission to target cells, including peripheral blood lymphocytes from human and monkeys. Thus, such antibodies could be directly used for preventing mother to child HIV transmission, for therapy of HIV–1 infected individuals, and may also have particular value when used in combination treatments with other antiviral therapies directed at viral targets, such as protease and reverse transcriptase. The peptide sequence can be used for potential vaccine development. This peptide can also be used for screening of human antibody phage display libraries to isolate human monoclonal with HIV entry-blocking potential. In addition, the peptide and antibodies recognizing it can be used as research tools for increasing the understanding of the mechanisms by which HIV, CCR5 and the HIV receptor, CD4, interact, and in general to understand mechanisms of HIV infectivity.

Inhibition of HIV Replication in Resting CD4+ Lymphocytes by Murr1

Gary J. Nabel et al. (NIAID)

U.S. Provisional Application No. 60/523,683 filed 21 Nov 2003 (DHHS Reference No. E–042–2004/0-US–01)

Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov.*

This technology describes the inhibition of HIV–1 growth in resting CD4+ T cells by Murr1, a highly conserved protein. This finding therefore could be used to prolong the asymptomatic phase of HIV infection. HIV–1 infects both proliferative and quiescent CD4+ T cells, although the virus replicates poorly in the latter. It has been demonstrated that Murr1 restricts HIV–1 replication by inhibiting basal and cytokine nuclear factor (NF)–κB activity. Short interfering RNAs (siRNAs) experiments that used specific Murr1 siRNAs resulted in lower levels of IκB–A and higher NF–κB activity and HIV–1 replication. These results allude to the potential for a more effective HIV therapeutic that uses Murr1 to regulate viral replication. A Murr1 anti-viral drug that can block viral replication in quiescent lymphocytes and latent cells with provirus might increase the number of patients that remain in the HIV–1 asymptomatic phase and thus lower the number that progress to the AIDS state.

This technology is further described in Ganesh *et al.*, Nature (18/25 December 2003), 426(6968): 853–857.

Mechanisms for Improving the Breadth of the Immune Response to Diverse Strains and Clades of HIV

Gary J. Nabel et al. (NIAID)

U.S. Provisional Application No. 60/503,509 filed 15 Sep 2003 (DHHS Reference No. E–335–2003/0-US–01)

Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov.*

This technology describes a multiclade Env vaccine candidate that elicited neutralizing antibodies to a diverse group of primary HIV–1 isolates as compared to antibodies generated from immunization with single clade vaccines. The immunogens of the vaccine included V3 loops from clades A, B, and C and had the cleavage site, fusion peptide, and interhelical regions deleted. Competition studies suggested that the neutralization activity is directed toward shared, conserved epitopes other than the V3 loop. Also described in this technology are immunogens involving deletion of the V3 loop that generated more potent neutralizing antibodies, suggesting that the highly conserved subregions within V3 may be relevant targets to elicit neutralizing antibody responses and increase the immunogenicity of HIV/AIDS vaccines. Such selective deletions in the V3 loop are effective in combination with deletions of other V loops. Immunogens with deletions of the V regions in general (V1—V4), including combinations of deletion immunogens, were also shown to elicit potent neutralizing antibodies. Previous studies of the cell-mediated immune response in mice using the multiclade vaccines of this current technology have shown that they induce Env-specific CD4 and CD8 immune response to

multiple clades. Thus, this technology offers promise in developing a globally effective HIV/AIDS vaccine, which must induce both cellular and humoral immunity to multiple strains from the various clades.

This work is described, in part, in Z. Yang *et al.*, J. Virol. (April 2004) 78(8): 4029–4036.

Methods for Inhibiting Proinflammatory Cytokine Expression Using Ghrelin

Drs. Vishwa D. Dixit, Dennis D. Taub, Eric Schaffer and Dzung Nguyen (NIA)

U.S. Provisional Patent Application filed 11 May 2004 (DHHS Reference No. E–016–2004/0–US–01)

Licensing Contact: Sally Hu; 301/435–5606; *hus@mail.nih.gov*.

Ghrelin, a recently described endogenous ligand for growth hormone secretagogue receptors (GHS–R), is produced from stomach serving as a potent circulating orexigen controlling energy expenditure, adiposity and GH secretion. We have discovered that ghrelin exerts anti-inflammatory effects by inhibiting the secretion of both acute and chronic cytokines including IL–1, IL–6, TNF–α, IFN–γ, IL–12 p40, , chemokines, and CSFs *in vitro* in human cells as well as *in vivo* in mouse model of sepsis and inflammation. We also found that ghrelin directly controls human growth hormone and insulin growth factor expression by human immune cells. This invention is useful for treatment of various inflammatory disorders including inflammatory bowel disease, Crohn's disease, rheumatoid arthritis, multiple sclerosis, atherosclerosis, endotoxemia and graft-versus-host disease.

Stem Cell Factor (SCF) Stimulates Neural Stem Cell Migration to Sites of Brain and Spinal Cord Injury

Howard A. Fine et al. (NCI)

U.S. Provisional Application No. 60/525,760 filed 26 Nov 2003 (DHHS Reference No. E–035–2004/0-US–01) and U.S. Provisional Application filed 19 Apr 2004 (DHHS Reference No. E–035–2004/1–US–01)

Licensing Contact: Fatima Sayyid; 301/435–4521; *ayyidf@mail.nih.gov*.

Endogenous neural stem/progenitor cells (NSPCs) have recently been recognized to hold the promise for therapeutics to combat neurodegenerative diseases, such as Parkinson's and Alzheimer's disease. Endogenous NSPCs have been shown to generate new functional neurons to replace the nerve cells that have been injured, lost, or destroyed in the diseases and recover brain functions. Such therapy, however, is limited due to lack of methods to mobilize endogenous NSPCs to the site of injury.

The present invention relates to methods for recruiting large numbers of NSPC to the specific site of neurological injury through local injection of recombinant or genetic vector-derived Stem Cell Factor (SCF). The inventors have identified that SCF secreted by nerve cells in the site of injury leads to migration of endogenous NSPCs to the site of injury and their proliferation to form neurons. The inventors have shown that local injection of recombinant SCF at the site of brain or spinal cord injury induces increased migration of NSPCs to the site of injury. Therefore, this invention could have significant commercial application in the development of therapeutic interventions including cell-based therapies for neurodegenerative diseases.

Dated: June 4, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–13100 Filed 6–9–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute. 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 Cancer Institute, including consideration of personal qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute; Subcommittee 2—Basic Sciences.

Date: July 12, 2004.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health; National Cancer Institute; Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Time: 7 p.m. to 9 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Holiday Inn Bethesda, Versailles IV; 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Florence E. Farber, PhD, Health Scientific Administrator, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2115, Bethesda, MD 20892, 301–496–7628, *ff6p@nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment 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. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396; Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13157 Filed 6–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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, National Cancer Institute.

The meeting will be open to the public as indicated below, with attendance limited to space avilable. 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 552(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs andp rojects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute; Subcommittee 1—Clinical Sciences and Epidemiology.

Date: July 12–13, 2004.

Closed: July 12, 2004, 7 p.m. to 9 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Holiday Inn Bethesda, Versailles IV, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Open: July 13, 2004, 8:30 a.m. to 9:30 a.m.

Agenda: Grand Rounds.

Place: National Institutes of Health, Warren G. Magnuson Clinical Center, Lipsett Auditorium, 10 Center Drive, Bethesda, MD 20892.

Closed: July 13, 2004, 9:30 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Abby B. Sandler, PhD, Scientific Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2114, Rockville, MD 20852, (301) 496–7628.

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 proecdures 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. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13158 Filed 6–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; 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 Center for Research Resources Special Emphasis Panel, Conference Grant.

Date: June 25, 2004.

Time: 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Office of Review, One Democracy Plaza, 6701 Democracy Blvd., 9th Floor Conference Room, Bethesda, MD 20892.

Contact Person: Sheryl K. Brining, PhD, Director, Office of Review, NCRR, National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1074, MSC 4874, Bethesda, MD 20892–4874, (301) 435–0809, *sb44k@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: June 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13093 Filed 6–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant application and the discussions could disclose confidential trade secrets or commercial proper 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Progression of Cardiovascular Disease in Type I Diabetes.

Date: July 7–8, 2004.

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: William J. Johnson, PhD., Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7184, MSC 7924, Bethesda, MD 20892, (301) 435–0275.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Research Demonstration and Dissemination Projects (R18s).

Date: July 7, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 16, 16 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Patricia A. Haggerty, PhD., Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892, (301) 435–0280.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Research Scientist Develop. Awards (K02s) and Mentored Clinical Investigator Awards (K08s).

Date: July 8–9, 2004.s

Time: 7:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Roy L. White, PhD., Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7192, MSC 7924, Bethesda, MD 20892, (301) 435–0287.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Mentored Clinical Scientist Development Awards (K02s).

Date: July 9, 2004.

Time: 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Nancy L. Di Fronzo, PhD., Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, (301) 435–0288, *difronzon@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13155 Filed 6–9–04; 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 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: Microbiology, Infectious Diseases and AIDS Initial Review Group, Acquired Immunodeficiency Syndrome Research Review Committee, AIDS Research Review Committee.

Date: June 28, 2004.

Time: 12 p.m. to 4 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: Roberta Binder, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, Rm. 3130, Bethesda, MD 20892–7616, (301) 496–7966, *rb169n@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: June 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13091 Filed 6–9–04; 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 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 Allergy and Infectious Diseases Special Emphasis Panel, NIAID Enhancement Awards for Underrepresented Minority Scientists.

Date: June 28–30, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Gregory P. Jarosik, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 496–0695, *gj67q@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: June 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13092 Filed 6–9–04; 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(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Children's Study Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Children's Study Advisory Committee.

Date: June 28–29, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: The primary purpose of this meeting will be to establish a series of recommendations concerning the overall sampling design for the National Children's Study. Additional goals will be to: (1) Provide protocol development updates; (2) review revised hypothesis; and (3) discuss the changing role of the NCSAC and Working Groups as the Study moves to the implementation phase.

Place: Holiday Inn Select Old Town Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Jan Leahey, Executive Secretary, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 4B09A, Bethesda, MD 20892, (301) 496–6593, *ncs@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(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: June 2, 2004.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13094 Filed 6–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Biomedical Research and Research Training Review Subcommittee A, June 14, 2004, 8 a.m. to June 15, 2004, 6 p.m. Maggiano's 5333 Wisconsin, NW., Washington, DC 20015 which was published in the **Federal Register** on May 27, 2004, 69 FR 30327.

The meeting will be held on June 14, 2004. The meeting is closed to the public.

Dated: June 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy

[FR Doc. 04–13095 Filed 6–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following 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 a patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Biobehavioral and Behavioral Sciences Subcommittee.

Date: June 30–July 1, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hotel George, 15 E Street, NW., Washington, DC 20001.

Contact Person: Marita R. Hopmann, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301)435–6911, *hopmannm@mail.nih.gov.*

(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: June 2, 2004

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13096 Filed 6–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following 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 Child Health and Human Development Special Emphasis Panel Developmental Consequences of Oxytocin.

Date: June 30, 2004.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institutes of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

(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: June 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13097 Filed 6–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Advanced Centers in Child Interventions.

Date: June 30, 2004.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, (301) 402–8152, *mbroitma@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: June 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13099 Filed 6–99–04; 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 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 Allergy and Infectious Diseases Special Emphasis Panel; Biodefense and Emerging Infectious Disease Research Opportunities.

Date: June 30, 2004.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, 3143, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Vassil St. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3126, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–8206, *vg8q@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: June 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13159 Filed 6–9–04; 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 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 section 552b(c)(4) and 552(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: Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases Research Committee.

Date: June 17–18, 2004.

Time: June 17, 2004, 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Time: June 18, 2004, 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Gary S. Madonna, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2149, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–3528, *gm12w@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. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 4, 2004

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13160 Filed 6–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclosed confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, GO8's/R01/K22.

Date: July 12, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Bethesda, MD 20892 (telephone conference call).

Contact Person: Hua-Chuan Sim, MD, Health Science Administrator, National Library of Medicine, Extramural Programs, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13154 Filed 6–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, IADL/Information Systems.

Date: July 9, 2004.

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: Hua–Chuan Sim, MD, Scientific Review Administrator, National Library of Medicine, Extramural Programs, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13156 Filed 6–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Shared Instrumentation: X-Ray.

Date: June 7, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gopa Rakhit, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721, *rakhitg@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.

Name of Committee: Center for Scientific Review Special Emphasis Panel Developmental Biology: Lack of Quorum.

Date: June 10–11, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 480 King Street, Alexandria, VA 22314.

Contact Person: Sherry L. Dupere, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7843, Bethesda, MD 20892, (301) 435–1021, *duperes@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Imaging Parameters.

Date: June 10, 2004.

Time: 1 p.m. to 3.p.m.

Agenda: To review and evaluate grant applications. National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Suzanne L. Forry-Schaudies, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 6192, MSC 7804, Bethesda, MD 20892, (301) 451–0131, *forryscs@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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biology of Rheumatoid Diseases and Novel Therapeutic Developments.

Date: June 15, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: Jeffrey E. DeClue, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7814, Bethesda, MD 20892, (301) 594–6376, *decluej@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.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Vascular Cell and Molecular Biology Study Section.

Date: June 21–22, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Anterior Eye Diseases.

Date: June 22, 2004.

Time: 2 p.m. to 2:40 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Christine A. Livingston, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, (301) 435–1172, *livingsc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Transcription in Myelopoiesis.

Date: June 25, 2004.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892, (301) 435–1739, *gangulyc@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: June 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13098 Filed 6–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Digestive Sciences Integrated Review Group, Xenobiotic and Nutrient Disposition and Action Study Section.

Date: June 14–15, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Rass M. Shayiq, PhD., Scientific Review Administrator, Center for Scientific Review. National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@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.

Name of Committee: Genetic Sciences Integrated Review Group, Genome Study Section.

Date: June 20–22, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Camilla E. Day, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1037, *dayc@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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Medical Devices SBIR.

Date: June 22, 2004.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Jerome R. Wujek, PhD., Science 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.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biology of Development and Aging SBIR.

Date: June 25, 2004.

Time: 8:30 a.m to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW, Washington, DC 20007.

Contact Person: Dan D. Gerendasy, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892, 301–594–6930, *gerendad@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Biology Development and Disease Study Section.

Date: June 27–29, 2004.

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 Rockeledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Biology Structure and Regeneration Study Section.

Date: June 28–29, 2004.

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: Daniel F. McDonald, PhD., Chief, Musculoskeletal, Oral and Skin Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 DIG C 02 M: Member Conflicts CIGP, GCMB, GMBP.

Date: June 28, 2004.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW, Washington, DC 20037.

Contact Person: Patricia Greenwel, PhD., Scientific Review Administrator, Central for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Visual Systems SBIR.

Date: June 28–29, 2004.

Time: 8 a.m. 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Jerome R. 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: Oncological Sciences Integrated Review Group, Developmental Therapeutics Study Section.

Date: June 28–29, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, Union Square, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Sharon K. Gubanich, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, (301) 435–1767, *gubanics@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biodata Management.

Date: June 28–29, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Virginian Suites, 1500 Arlington Boulevard, Arlington, VA 22209.

Contact Person: George W. Chacko, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7849, Bethesda, MD 20892, 301–435–1220, *chackoge@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunity and Host Defense.

Date: June 28–29, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Tina McIntyre, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Discovery and Development of Therapeutics Study Section.

Date: June 28–29, 2004.

Time: 8 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchhill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Eduardo A. Montalvo, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tumor Immunology/Immunotherapy.

Date: June 28–29, 2004.

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: Cathleen L. Cooper, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–435–3566, *cooperc@csr.nih.gov*.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Physical Biochemistry Study Section.

Date: June 28–29, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gopa Rakhit, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721, *rakhitg@csr.nih.gov*.

Name of Committee: Renal and Urological Studies Integrated Review Group, Urologic and Kidney Development and Genitourinary Diseases Study Section.

Date: June 28, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: M. Chris Langub, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112 MSC 7814, Bethesda, MD 20892, (301) 496–8551, *langubm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Development and Delivery.

Date: June 28–29, 2004.

Time: 8:30 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: Sergei Ruvinov, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1180, *ruvinser@csr.gov*.

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Immunopathology and Immunotherapy Study Section.

Date: June 28–29, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Marcia Litwack, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, (301) 435–1719, *litwackm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology: Small Business Applications.

Date: June 28–29, 2004.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Ave., 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: Center for Scientific Review Special Emphasis Panel, Fellowships in Cognition and Communication.

Date: June 28–29, 2004.

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: Dana Jeffrey Plude, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BMBI 01 Q: Biomaterials and Biointerfaces: Quorum.

Date: June 28–29, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alexander Gubin, PhD., Scientific Review Administrator Intern, 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: Center for Scientific Review Special Emphasis Panel, ZRG1 RES D (03) Special Review.

Date: June 28, 2004.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–20892, *sinnett@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Avian Embryonic Modeling.

Date: June 28, 2004.

Time: 11 a.m. to 2 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: James P. Harwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, 301–435–1256, *harwoodj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Visual System SBIR.

Date: June 28, 2004.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, 301–435–1246, *etcheber@csr.nih.gov*.

Name of Committee: Center for Scientific Review Emphasis Panel, Cognition, Language and Motor Processes.

Date: June 28, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Dana Jeffrey Plude, PhD., Scientific Review, Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Preconditioning Mechanisms.

Date: June 28, 2004.

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: Russell T. Dowell, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, HDL Apolipoprotein A1.

Date: June 28, 2004.

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: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–4522, *gibsonj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Review of AFM Resources.

Date: June 28–30, 2004.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Alexandra M. Ainsztein, PhD., Scientific Review Administrator, Center for Scientific Review, National

Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 451–3848, *ainszlea@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurosciences Fellowship Meeting (F02A) 20.

Date: June 28–29, 2004.

Time: 7 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Maribeth Champoux, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7759, Bethesda, MD 20892, (301) 594–3163, *champoum@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 DIG C 03 M: Member Conflicts: GMPB.

Date: June 28, 2004.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Patricia Greenwel, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Oral, Dental and Craniofacial Sciences Study Section.

Date: June 29–30, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: J. Terrell Hoffeld, DDS, PhD., Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301–435–1781, *hoffeldt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Urologic and Kidney Development Small Business.

Date: June 29, 2004.

Time: 8:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications and or proposals.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: M. Chris Langub, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7814, Bethesda, MD 20892, 301–496–8551, *langubm@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Biological Rhythms and Sleep Study Section.

Date: June 29, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard Marcus, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, *marcusr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Computational Biology.

Date: June 29, 2004.

Time: 9 a.m. to 12 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: Marc Rigas, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7826, Bethesda, MD 20892, 301–402–1074, *rigasm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cell-selective Research Tools and Methods for Studies of the Genitourinary Tract.

Date: June 29, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: M. Chris Langub, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7814, Bethesda, MD 20892, 301–496–8551, *langubm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Visual Systems SBIR Member Conflict,

Date: June 29, 2004.

Time: 12 p.m. 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Jay Joshi, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435–1184, *joshij@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Special Emphasis Panel to Review AIDS SBIR/STTR Applications.

Date: June 30, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Ave NW., Washington, DC 20009.

Contact Person: Kenneth A. Roebuck, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Shared Instruments Special Emphasis Panel.

Date: June 30–July 1, 2004.

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: 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, SBIR/STTR—Genes, Genomes and Genetics.

Date: June 30–July 1, 2004.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Michael A. Marino, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 2216, MSC 7890, Bethesda, MD 20892, 301–435–0601, *marinomi@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neuroendocrinology, Neuroimmunology, and Behavior Study Section.

Date: June 30–July 1, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard Marcus, PhD., Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, *marcusr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Dietary Prevention of Cancer.

Date: June 30, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eun Ah Cho, PhD., Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Prokaryotic and Eukaryotic Genetics and Molecular Biology.

Date: June 30–July 2, 2004.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesdsa, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary P. McCormick, PhD., Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, (301) 435–1047, *mccormim@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306; Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 3, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13161 Filed 6–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Retraction of Revocation Notice

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: The following Customs and Border Protection National Permits were erroneously included in a list of revocations. *See, Notice of Cancellation of Customs Broker Permit*, dated May 4, 2004 (69 FR 24656).

Name	Permit No.
D. J. Powers Company, Inc.	99–00012
Florence S. Hillman. dba Hillman International Services	99–00580
Rotra Brokerage Services Inc.	99–00162
John S. James Company	99–00155
Page International	99–00285
Cargo Brokers International, Inc.	99–00449
Jay A. Mittleman	99–00123

The above-identified National Permits remain valid.

Dated: June 2, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–13127 Filed 6–9–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker Permit

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker local permits are canceled without prejudice.

Name	Permit No.	Issuing port
Pro-Log Services, Inc	5301–010	Houston.
Ernesto Bustamante Dba Associate Brokerage	26–03–AQG	Nogales.
Alba F. Ibarrola	26–02–AND	Nogales.
Capin Brokerage Inc. Dba Capin Vyborny	26–016	Nogales.
Robert E. Finley	19–03–H28	Mobile.
Air Express International	3024	San Francisco.
Burlington Air Express	6963–P	San Francisco.
Columbia Shipping Inc. (SFO)	12259–P	San Francisco.
Pacific Freight Group International	A–827	San Francisco.
John L. Brun	4346	San Francisco.
Darrel J. Sekin & Co	6375	San Francisco.
Fracht FWO Inc	11887–P	San Francisco.
"K" Air Brokerage, Inc	9610–P	San Francisco.
Kinetsu Intermodal (USA)	9849 (SF)	San Francisco.
George W. Martin	10854	San Francisco.
SBA Consolidators, Inc	6622	San Francisco.
Dateline Forwarding Services, Inc		San Francisco.
Migeul Ramon Padilla Dba MR Padilla Co		San Francisco.
Sherri Linden		San Francisco.
Dale Melford Aldeous Zerda		San Francisco.
Howard Harty, Inc		San Francisco.
West Coast Customs Brokers (Los Angeles)		San Francisco.
Allan T. Low		San Francisco.
Diamond International		San Francisco.
Frank Cadenhead		San Francisco.
MSAS Cargo International Inc		San Francisco.
Richard G. Dumont & Associates		San Francisco.
SH Brogan Consulting Inc		San Francisco.
Surface Freight Corp		San Francisco.
Vital Int'l Freight Services. Inc		San Francisco.

Dated: June 1, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–13126 Filed 6–9–04; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license is canceled without prejudice.

Name	License No.	Issuing port
Secure Custom Brokers, Inc.	09213	New York.

Dated: June 2, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–13125 Filed 6–9–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–24]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible users to assist the homeless.

DATES: June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Burruss, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Todays' Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 3, 2004.

Mark R. Johnston,

Acting Director, Office of Special Needs Assistance Programs.

[FR Doc. 04–12955 Filed 6–9–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–3809]

Notice of Availability; Draft Supplemental Environmental Impact Statement; Pit Expansion Project; Proposed Expansion of Existing Gold Mining/Processing Operations; Lander County, NV

AGENCY: Bureau of Land Management, Interior.

Cooperating Agency: Nevada Department of Wildlife.

ACTION: Notice of availability of the draft supplemental environmental impact statement for the Pit Expansion Project, Lander County, Nevada.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and the Council on Environmental Quality Regulations found at 40 CFR 1500–1508, notice is hereby given of the availability of the Draft Supplemental Environmental Impact Statement for comment, prepared by the Battle Mountain Field Office of the Bureau of Land Management (BLM). The statement analyzes the environmental effects of the Proposed Action, Complete Backfill Alternative, No Backfill Alternative, and the No Action Alternatives.

DATES: Written comments must be postmarked or otherwise delivered by 4:30 p.m. (Pacific time zone) on July 26, 2004. Comments may also be presented at public meetings to be held in Battle Mountain, NV, and Crescent Valley, NV. Dates of public meetings will be announced through the local newspapers.

A limited number of copies of the Draft Supplemental EIS may be obtained at the Battle Mountain BLM Field Office.

ADDRESSES: Written comments should be addressed to the Bureau of Land Management, attn: Pam Jarnecke, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada 89820.

FOR FURTHER INFORMATION CONTACT: Pam Jarnecke, Battle Mountain BLM at (775) 635–4144.

SUPPLEMENTARY INFORMATION: Cortez Gold Mines (CGM) proposes to expand its current gold mining operations 30 miles southeast of Battle Mountain, Nevada. The proposed Pit Expansion Project would not result in an increase in surface disturbance beyond the 7,676 acres previously approved. Actions associated with the Project would consist of the following: Expand the South Pipeline open pit to the east, southeast, and southwest; increase the depth of the Pipeline/South Pipeline open pit; use resulting waste rock as backfill into portions of the Pipeline/South Pipeline open pit; increase the height of the approved South Area Heap Leach pad from a height of 250 feet to 300 feet above ground surface; increase the approved Area 28 tailings and heap leach facility height from 250 feet to 300 feet above ground surface; construct an additional waste rock dump on the backfilled portion of the open pit; construct the 125-acre Gap waste rock dump; increase the approved mining rate from an average 150,000 tons per day (tpd) with a maximum of 250,000 tpd to an average of 350,000 tpd with a maximum of 500,000 tpd; translocate waste rock within the Pipeline/South Pipeline open pit, including portions of the expanded open pit; conduct certain activities at the approved Cortez facility without modification to the facility; install ground water extraction wells (ground water extraction from the existing and planned wells would not exceed the approved annualized average rate of 34,500 gallons per minute); and continue management of mine dewatering as outlined in the Pipeline Infiltration Plan and South Pipeline EIS. The proposed additional development of the South Pipeline ore deposit would provide up to seven additional years of mining and processing. The combined life of the Pipeline Project, the South

Pipeline Project and the Proposed Action would be up to 25 years.

Gerald M. Smith,
Field Manager.
[FR Doc. 04–13267 Filed 6–9–04; 8:45 am]
BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–04–1310–DB]

Notice of Meetings of the Pinedale Anticline Working Group Adaptive Management Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group adaptive management advisory committee will meet in Pinedale, WY, on Monday, July 12, 2004, and again on Wednesday, August 11, 2004, for business meetings. The meetings are open to the public.

DATES: The Pinedale Anticline Working Group (PAWG) will meet July 12, 2004, and August 11, 2004. Both meetings will begin at 9 a.m. and continue until finished, as late as 5 p.m.

ADDRESSES: The July 12 and August 11 PAWG meetings will be held in the Lovatt Room of the Sublette County Public Library, 155 So. Tyler Avenue, Pinedale, WY.

FOR FURTHER INFORMATION CONTACT: Carol Kruse, BLM/PAWG Liaison, Bureau of Land Management, Pinedale Field Office, 432 E. Mill St., PO Box 768, Pinedale, WY 82941; (307) 367–5352 or *carol_kruse@blm.gov*.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG is to advise the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field (PAPA) proceeds, for the life of the field.

After the ROD was issued, Interior determined that a Federal Advisory Committees Act (FACA) charter was required for this group. The charter was signed by Secretary Norton on August 15, 2002. An announcement of committee initiation and call for nominations was published in the **Federal Register** on February 21, 2003 (68 FR 8522). PAWG members were appointed by Secretary Norton on May 4, 2004.

The first business meeting of the PAWG will begin at 9 a.m. on Monday, July 12, 2004, in the Lovatt Room of the Sublette County Public Library, 155 So. Tyler Ave., Pinedale, WY. Agenda topics will include: Introductions; review of PAWG and Task Group (subcommittee) organizational structure; review of the roles and responsibilities of the PAWG and it's Task Groups; election of chairman; establishment of Task Groups; discussion on staffing those Task Groups; presentation and discussion on the Questar Exploration and Development proposal to drill year-round in crucial winter range/sage-grouse habitat in the Pinedale Anticline natural gas field project area (PAPA); and discussion of a potential PAWG tour of the PAPA. Public comment will be heard in the last 30 minutes of the meeting.

The second business meeting will begin at 9 a.m. on Wednesday, August 11, 2004, in the Lovatt Room of the Sublette County Public Library, 155 So. Tyler Ave., Pinedale, WY. Agenda topics will include: Appointment of Task Group members; initiation of Task Group activities; discussion of and decision on PAWG recommendation to BLM regarding the Questar proposal; discussion of other issues raised for PAWG consideration; setting the next PAWG meeting date and place. Public comment will be heard in the last 30 minutes of the meeting.

Dated: June 4, 2004.

Priscilla E. Mecham,
Field Manager, Pinedale BLM.
[FR Doc. 04–13143 Filed 6–9–04; 8:45 am]
BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0104).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled "30 CFR Part 206, Subpart E—Indian Gas, Sections 206.172, 206.173, and 206.176, Accounting for Comparison [Dual Accounting] (Form MMS–4410)." We changed the title of this ICR to clarify the regulatory language we are covering under 30 CFR part 206. The previous title was "Accounting for Comparison (Dual Accounting) (Form MMS–4410)."

DATES: Submit written comments on or before August 9, 2004.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, or e-mail *sharron.gebhardt@mms.gov*.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 206, Subpart E—Indian Gas, Sections 206.172, 206.173, and 206.176, Accounting for Comparison [Dual Accounting] (Form MMS–4410).

OMB Control Number: 1010–0104.

Bureau Form Number: Form MMS–4410.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in carrying out the Department's Indian trust responsibility. Applicable citations of the laws pertaining to mineral leases on Indian

lands include 25 U.S.C. 369d (Chapter 12—Lease, Sale or Surrender of Allotted or Unallotted Lands); 25 U.S.C. 2103 (Indian Minerals Development Act); and Public Law 97–451—Jan. 12, 1983 (Federal Oil and Gas Royalty Management Act of 1982).

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to ensure that the royalties are paid appropriately.

Proprietary information submitted to MMS under this collection is protected.

The product valuation determination process is essential to ensuring that Indians receive payment on the proper value of the minerals being removed. Indian tribes and individual Indian mineral owners receive all royalties generated from their lands. The Indian tribal representatives have expressed concern that the Secretary properly ensures the correct royalty is received. Failure to collect the data described in this information collection could result in the under valuation of leased minerals.

Most Indian leases contain the requirement to perform accounting for comparison (dual accounting) for gas produced from the lease. According to 30 CFR 206.176, dual accounting is the greater of the following two values:

(1) The value of gas prior to processing less any applicable allowances, or

(2) The combined value of residue gas and gas plant products resulting from processing the gas less any applicable allowances plus any drip condensate associated with the processed gas recovered downstream of the point of royalty settlement without resorting to processing, less applicable allowances.

On August 10, 1999, MMS published a final rule titled "Amendments to Gas Valuation Regulations for Indian Leases" (64 FR 43506) with an effective date of January 1, 2000. This regulation applies to all gas produced from Indian oil and gas leases, except leases on the Osage Indian Reservation. The intent of the rule was to ensure that Indian mineral lessors receive the maximum revenues from mineral resources on their land, consistent with the Secretary's trust responsibility and with lease terms. The rule requires lessees to elect to perform either actual dual accounting under 30 CFR 206.176, or the alternative methodology for dual accounting under 30 CFR 206.173.

Form MMS–4410 Reporting Information

Payors use Form MMS–4410, Accounting for Comparison (Dual Accounting), to certify that dual accounting was not required on an Indian lease and to make an election for actual or alternative dual accounting.

In this information collection request, we are asking approval to continue using the Form MMS–4410 to clarify the lessee's justification for not performing dual accounting and for the lessee's separate election to use the actual or alternative dual accounting methodology.

Form MMS–4410, Part A, Certification for Not Performing Dual Accounting

Form MMS–4410, Part A, requires lessees to identify the MMS-designated areas where the leases are located and provide specific justification for not performing dual accounting. Part A is a one-time notification. To assist the lessees in identifying the reason(s) for not performing dual accounting, Part A lists acceptable reasons for not performing dual accounting including: (1) The lease terms do not require dual accounting; (2) none of the gas from the lease is ever processed; (3) gas has a Btu content of 1000 Btu's per cubic foot or less at lease's facility measurement point(s); (4) none of the gas from the lease is processed until after gas flows into a pipeline with an index located in an index zone; and (5) none of the gas from the lease is processed until after gas flows into a mainline pipeline not located in an index zone.

Form MMS–4410, Part B, Election to Perform Actual Dual Accounting or Alternate Dual Accounting

Effective January 2002, we collected elections to perform actual dual accounting or alternative dual accounting from lessees on Part B, "Election to Perform Actual Dual Accounting or Alternate Dual Accounting." A lessee makes an election by checking either the actual or alternative dual accounting box for each MMS-designated area where its leases are located. Part B also includes lease prefixes within each MMS-designated area to assist lessees in making the appropriate election. The election to perform actual or alternative dual accounting applies to all of a lessee's Indian leases in each MMS-designated area. The first election on Part B to use the alternative dual accounting is effective from the time of election through the end of the following calendar year. Thereafter, each election to use the alternative dual accounting methodology must remain in effect for 2 calendar years. However, lessees may return to the actual dual accounting method only at the beginning of the next election period or with written approval of MMS and the tribal lessors for tribal leases, and MMS for Indian allotted leases in the MMS-designated area (30 CFR 206.173(a)).

Frequency of Response: On occasion.

Estimated Number and Description of Respondents: 370 payors of Indian gas royalties.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 170 hours.

Since the previous renewal of this ICR, we have obtained more accurate estimates of the number of respondents and the time required to provide the information requested. There are approximately 370 payors of Indian gas royalties. The form related to this ICR is only required if the payor wants to change their dual accounting election. We have adjusted the burden hours accordingly. We reviewed actual data from past years to project burden hours for future years. We estimate that we will receive 60 responses from 50 payors of Indian gas royalties. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS CHART

30 CFR section	Reporting or recordkeeping requirement	Burden hours per response	Annual number of responses	Annual burden hours
206.172(b)(1)(ii)	How do I value gas produced from leases in an index zone?	4	25	100

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS CHART—Continued

30 CFR section	Reporting or recordkeeping requirement	Burden hours per response	Annual number of responses	Annual burden hours
	* * * (b) Valuing residue gas and gas before processing. (1) * * * (ii) Gas production that you certify on Form MMS–4410, Certification for Not Performing Accounting for Comparison (Dual Accounting), is not processed before it flows into a pipeline with an index but which may be processed later; * * *.			
	(Part A of revised Form MMS–4410)			
206.173(a)(1)	How do I calculate the alternative methodology for dual accounting?.	2	35	70
	(a) Electing a dual accounting method			
	(1) * * * You may elect to perform the dual accounting calculation according to either § 206.176(a) (called actual dual accounting), or paragraph (b) of this section (called the alternative methodology for dual accounting).			
	(Part B of revised Form MMS–4410)			
206.173(a)(2)	How do I calculate the alternative methodology for dual accounting?.	See 206.173 (a)(1) above.		
	(a) Electing a dual accounting method.			
	* * *			
	(2) You must make a separate election to use the alternative methodology for dual accounting for your Indian leases in each MMS-designated area.			
	* * *			
	(Part B of revised Form MMS–4410)			
206.176(b)	How do I perform accounting for comparison?	See 206.173 (a)(1) above.		
	* * * (b) If you are required to account for comparison, you may elect to use the alternative dual accounting methodology provided for in § 206.173 instead of the provisions in paragraph (a) of this section.			
	(Part B of revised Form MMS–4410).			
206.176(c)	How do I perform accounting for comparison?	See 206.172(b)(1)(ii) above.		
	* * * (c) * * * If you do not perform above. dual accounting, you must certify to MMS that gas flows into such a pipeline before it is processed.			
	(Part A of revised Form MMS–4410)			
Totals			60	170

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: We have identified no "non-hour" cost burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that 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. Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. The ICR also will be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We also will make copies of the comments available

for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state your request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: June 4, 2004.

Cathy J. Hamilton,

Acting, Associate Director for Minerals Revenue Management.

[FR Doc. 04–13162 Filed 6–9–04; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–512]

In the Matter of Certain Light-Emitting Diodes and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 6, 2004, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of OSRAM GmbH and OSRAM Opto Semiconductors GmbH, both of Germany. Letters supplementing the complaint were filed on May 25 and May 27, 2004. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain light-emitting diodes and products containing same by reason of infringement of claims 1, 3, 6–7, and 10–13 of U.S. Patent No. 6,066,861; claims 1, 3, 6–7, 10–13, and 15 of U.S. Patent No. 6,245,259; claims 1–2, 6–7, 11–12, and 15 of U.S. Patent No. 6,277,301; claims 1, 5–10, and 13–16 of U.S. Patent No. 6,376,902; claims 1 and 5–8 of U.S. Patent No. 6,469,321; claims 1, 5–8, 10–13, and 16–19 of U.S. Patent No. 6,573,580; claim 4 of U.S. Patent No. 6,576,930; claims 2–5, 7, and 10 of U.S. Patent No. 6,592,780; and claims 1, 3, 6–7, 10, 12–15, 17, and 21 of U.S. Patent No. 6,613,247. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a permanent general exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are 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., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 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*.

FOR FURTHER INFORMATION CONTACT: Benjamin D.M. Wood, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2582.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2003).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 4, 2004, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain light-emitting diodes or products containing same by reason of infringement of one or more of claims 1, 3, 6–7, and 10–13 of U.S. Patent No. 6,066,861; claims 1, 3, 6–7, 10–13, and 15 of U.S. Patent No. 6,245,259; claims 1–2, 6–7, 11–12, and 15 of U.S. Patent No. 6,277,301; claims 1, 5–10, and 13–16 of U.S. Patent No. 6,376,902; claims 1 and 5–8 of U.S. Patent No. 6,469,321; claims 1, 5–8, 10–13, and 16–19 of U.S. Patent No. 6,573,580; claim 4 of U.S. Patent No. 6,576,930; claims 2–5, 7, and 10 of U.S. Patent No. 6,592,780; and claims 1, 3, 6–7, 10, 12–15, 17, and 21 of U.S. Patent No. 6,613,247; and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—OSRAM GmbH, Hellabrunner Strasse 1, 81543 Munich, Germany.

OSRAM Opto Semiconductors GmbH, Wernerwerkstrasse 2, 93049 Regensburg, Germany.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Dominant Semiconductors Sdn. Bhd., Lot 6, Batu Berendam, FTZ Phase III, 75350 Melaka, Malaysia.

American Microsemiconductor Inc., 133 Kings Road, Madison, NJ 07940.

American Opto Plus Inc., 1206 E. Lexington Avenue, Pomona, CA 91766.

(c) Benjamin D.M. Wood, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be

deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

By order of the Commission.

Issued: June 7, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–13180 Filed 6–9–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Records of Acquisition and Disposition, Collectors of Firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 37, on page 8682 on February 25, 2004, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 12, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies 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; arid

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Records of Acquisition and Disposition, Collectors of Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection.* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: none. Abstract: The recordkeeping requirement is for the purpose of facilitating ATF's authority to inquire into the disposition of any firearm in the course of a criminal investigation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are 172,250 respondents. It is estimated that it takes 3 hours per year for line by line entry and that 172,250 licensees will participate.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 516,750 total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Clearance Officer Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building 601 D Street NW., Washington, DC 20530.

Dated: May 27, 2004.

Brenda E. Dyer,

Clearance Officer, United States Department of Justice.

[FR Doc. 04–13109 Filed 6–9–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: National Juvenile Probation Census Project.

The Department of Justice (DOJ), Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 9, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Janet Chiancone, (202) 353–9258, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies 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 to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New.

(2) *Title of the Form/Collection:* National Juvenile Probation Census Project which consists of two forms: Census of Juvenile Probation Supervision Offices (CJPSO) and Census of Juveniles on Probation (CJP).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Numbers: CJ–16 (CJPSO) and CJ–17 (CJP). Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Governments. Other: N/A. This project consists of two forms that will be sent to juvenile geographic probation supervision areas (GPSAs), on alternate years. The CJPSO will collect information regarding the activities of juvenile probation offices nationwide; and the CJP will collect information regarding the number and characteristics of juveniles on probation.

(5) *An estimate of the total number or respondents and the amount of time estimated for an average respondent to respond:* The CJPSO response burden is estimated at .75 hours per response. The study will first field test the CJPSO form on a sample of 336 juvenile GPSAs. Then the form will be sent to all 1,715 juvenile GPSAs. The following year, approximately 500 of the 1,715 will also be asked to complete the CJP, at an estimate of 5.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 4,289 public burden hours associated with the CJPSO and CJP collections.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 4, 2004.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 04–13110 Filed 6–9–04; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of Disability Employment Policy

[SGA 04–07]

Funding Opportunity: Chronic Homelessness Employment Technical Assistance (CHETA) Initiative; Solicitation for Cooperative Agreement

Announcement Type: Notice of availability of funds; solicitation for Cooperative Agreement applications for Chronic Homelessness Employment Technical Assistance Initiative.

Funding Opportunity Number: (SGA 04–07).

Catalogue of Federal Domestic Assistance (CFDA) Number: 17.720.

Dates: Proposals are due July 26, 2004.

Application and Amendments: If copies of the standard forms are needed, they can be downloaded from *http://www.whitehouse.gov/omb/grants/grant_forms.html.*

To received amendments to this solicitation (please reference SGA 04–07) all applicants must register their name and address in writing with the Grant Officer at the below listed address.

Cassandra Mitchell, Department of Labor: Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 693–4570.

Executive Summary: The U.S. Department of Labor (DOL), Office of Disability Employment Policy (ODEP), in cooperation with the Employment and Training Administration (ETA), announces the availability of $1.5 million to fund one (1) Cooperative Agreement award to operate the Chronic Homelessness Employment Technical Assistance (CHETA) Initiative. This $1.5 million award will be for a 36-month period of performance. In addition, this initiative may be funded for up to two (2) additional option years at approximately $500,000 per year, depending on performance, identified need and the availability of future funding.

I. Funding Opportunity Description and Authority

The overall purpose of CHETA is to create a technical assistance capability designed to assist DOL's currently funded "Ending Chronic Homelessness through Employment and Housing" awardees, an initiative cooperatively sponsored by ODEP and the Veterans Employment and Training Service (VETS), meet customized employment-related program goals and to collect and disseminate information on how best to meet the customized employment needs of persons who are chronically homeless. (*See* the full definition for persons who are chronic homeless and customized employment at the end of this section).

Authority: Consolidated Appropriations Resolution, 2004, Pub. L. 108–7, 117 Stat. 11 (2003).

The ODEP anticipates awarding one cooperative agreement for $1.5 million, for a 36-month period of performance. In addition this initiative may be funded for up to two (2) additional option years at approximately $500,000 per year, depending on performance, identified need, and the availability of future funding. CHETA will primarily support the delivery of intensive employment-related technical assistance services to DOL's five (5) "Ending Chronic Homelessness" awardees identified in this solicitation, and, in turn share what is learned through these grants with other interested entities, especially the workforce development system. In addition, CHETA's technical assistance efforts will help to inform policy efforts in this area of concern.

This ODEP Cooperative Agreement anticipates substantial involvement between ODEP and the awardee during the performance of this project. Involvement will include collaboration or participation by ODEP in the overall direction of the project throughout the period of the award. The ODEP will provide expertise and guidance in decisions involving strategic planning (including development of a proactive plan to deliver technical assistance to the "Ending Chronic Homelessness" awardees), allocation of resources, key personnel decisions, development of public information materials, and analysis and implementation of evaluation findings.

Recently, the DOL (ODEP and VETS), in cooperation with the Department of Housing and Urban Development (HUD), issued a solicitation for cooperative agreement applications, "Ending Chronic Homelessness Through Employment and Housing." *See* 68 FR 42818 (July 18, 2003) or visit *http://www2.dol.gov/odep/archives/archive.htm.* On September 30, 2003, five cooperative agreements were awarded under this competition to the cities of Portland, OR; San Francisco,

CA: Los Angeles, CA; Boston, MA; and Indianapolis, IN, *see http://www2.dol.gov/odep/media/press/recip.htm*, to deliver to persons with disabilities who are chronically homeless customized employment services and permanent housing services through the local One-Stop Career Center System, in collaboration with each city's homeless serving community.

For the last several years (Federal Fiscal Years 2001 and 2002), ODEP has also funded two additional types of customized employment demonstration grants ("Customized Employment" and "WorkFORCE Action") for persons with significant disabilities. These two grant-funded priorities are unique in that they apply a philosophy of "customizing employment" services, with enhanced coordination of these customized services with multiple partners, especially One-Stop Career Centers. As a result of these additional customized employment grants, improved employment outcomes for persons with disabilities are being realized.

These promising results offer the potential of increased employment outcomes for organizations serving the employment needs of persons who are chronically homeless. In view of this potential, DOL's "Ending Chronic Homelessness" awardees were funded to demonstrate the expanded potential of "customized employment" strategies for people with disabilities who are chronically homeless, in support of two important goals: ending chronic homelessness over the next decade and integrating persons with disabilities into the work force.

The "Ending Chronic Homelessness" Initiative provides an opportunity for DOL and HUD to combine their respective resources and expertise in a joint approach to provide employment and housing services to people with disabilities who are chronically homeless so that they can live and work independently within their communities. Further, these five projects are expected to increase the involvement of the local workforce development system by fostering partnerships with key disability and homeless serving organizations to meet the employment needs of persons with disabilities who are chronically homeless. This effort is therefore precedent setting, because it partners together the housing and workforce development systems, to serve the employment needs of people with disabilities who are chronically homeless.

In order to support these five projects, as well as the systems change that they represent, ODEP and its partners, ETA and VETS, strongly recognize the need for targeted and comprehensive technical assistance to provide direct and proactive support, training, dissemination of information on promising practices, etc., to the "Ending Chronic Homelessness" projects. Therefore, this CHETA initiative is being funded to provide technical assistance to bring together the workforce development system with the homeless-serving community to provide customized employment and permanent housing for people with disabilities who are chronically homeless.

The CHETA Initiative will also help to support the President's New Freedom Initiative. The New Freedom Initiative is designed to increase the number of people with disabilities who enter, re-enter, and/or remain in the workforce. By emphasizing the need to increase the capacity of federally-supported employment and training programs to serve persons who are chronically homeless, this award will further the New Freedom Initiative's goal of increased integration of Americans with disabilities into the workforce.

Recently, the Federal Government through the Interagency Council on Homelessness (*http://www.ich.gov*) has embarked on a collaborative effort to end chronic homelessness in the next decade. This solicitation supports that initiative by helping the "Ending Chronic Homelessness" awardees and, in turn, the workforce development system, establish and improve the partnerships between the workforce development system and key disability and homeless serving organizations and housing providers, so that the customized employment needs of people with disabilities who are chronically homeless can be met.

In addition, the CHETA Initiative will help support implementation of the coordinated workforce development system envisioned under the Workforce Investment Act of 1998 (WIA) (Public Law 105–220, 29 U.S.C. 2801 *et seq.*). The WIA established comprehensive reform of existing federal job training programs, consolidating multiple programs into a unified system and bringing multiple federal programs together as required partners in the One-Stop delivery system. The One-Stop Career Centers, which comprise the heart of this system, are well positioned to expand employment opportunities for persons who are disabled and chronically homeless, by helping to ensure that the workforce system is accessible both physically and programmatically.

The ODEP and its partners, ETA and VETS, strongly recognize the need for technical assistance to provide proactive support, training, dissemination of information on effective practices, *etc.*, to the awardees under the "Ending Chronic Homelessness" Initiative. These five awardees need proactive technical assistance and cross-connecting expertise to bring together the workforce development system with the homeless serving community to provide customized employment opportunities and permanent housing for persons with disabilities who are chronically homeless. Accordingly, the broad goals of this CHETA Initiative will be to:

- Provide the five DOL "Ending Chronic Homelessness" awardees with proactive and intensive, ongoing technical assistance support;
- Provide technical assistance on a limited basis to other DOL and HUD grantees involved in related initiatives;
- Inform ODEP about identified policy implications of combining employment-related services with permanent housing services for persons with disabilities who are chronically homeless; and,
- Develop strong linkages between the five project communities and collaborate with other national initiatives providing services and support for persons with disabilities who are chronically homeless.

The five DOL "Ending Chronic Homelessness" awardees to be served under this cooperative agreement are profiled as follows:

- *Portland, Oregon.* Worksystems, Inc. will organize a coalition of 17 local organizations, including faith based organizations, from the housing, disability, employment, employer and veteran communities, to coordinate permanent housing services with customized employment services in an effort to end the cycle of chronic homelessness for individuals within the Portland community. The key operational component of this project will be the Community Services Team (CST), which will use a strength-based assessment and treatment plans and motivational interviewing to engage individuals in self-determined service planning. The CST will deliver a full array of services in a facilitative manner, eliminating bureaucratic obstacles. Customized employment strategies such as job carving, micro-enterprise development, individual development accounts (ITA's), and peer mentors will be the hallmarks of this advanced effort.
- *Boston, Massachusetts.* The Boston Private Industry Council will organize a coalition of local organizations from the housing, disability, employment,

employer and veteran communities in a combined effort to coordinate permanent housing services with customized employment services so as to end the cycle of chronic homelessness for individuals within the Boston community. Through an extensive collaboration, the project will create a blend of housing and employment services that will be presented in a seamless and coordinated fashion, providing ease of access to consumers. The integration of housing and support services with customized employment services will help program participants more effectively to move towards self-sufficiency over time. The project will build a continuum of employment services. This effort will increase connections and capabilities of the One-Stop Career Centers and of other service systems to serve persons with disabilities who are chronically homeless, resulting in permanent systems change.

• *San Francisco, California.* Under the leadership of the Private Industry Council of San Francisco, Inc., this award will help the community implement the concept of offering "vocationalized" housing to a representative number of targeted individuals, in order to begin to create a culture of work with the hope of ending the cycle of chronic homelessness for individuals within the San Francisco community by offering new strategies for servicing this rapidly growing population. This effort will seek to better combine and coordinate the multiple services and agencies that deliver vocationalized housing in an effort to improve both the involvement of the area's workforce development system, including the area One-Stop Career Centers, and the employment options for the chronically homeless.

• *Indianapolis, Indiana.* Under this award, the Indianapolis Private Industry Council, Inc. will create a new "System of Care" approach designed to combine and coordinate the various service delivery partners, including in the employment and housing areas, in a way which offers the consumer no wrong doors for entry into the system. This approach will also organize a process that includes housing developers and employers as direct participants with service providers, consumers and community members to design, implement, manage and fund individual plans of care that support sustainable living with full participation in community life, including through employment. This CHETA Initiative will capitalize on the capabilities and systems changes already realized through two previous DOL employment grants.

• *Los Angeles, California.* Under the leadership of the Workforce Development Division of the Community Development Department, City of Los Angeles, ten Los Angeles agencies representing the public and private, community-based and faith-based sectors have joined together to better integrate the permanent housing, mental health and other workforce development programs serving persons with disabilities who are both chronically homeless and mentally ill. All partners are committed to improving and enhancing the coordination of activities among agencies that operate emergency shelters, provide support services to the homeless, offer mental health and substance abuse treatment programs, provide permanent, supportive, affordable housing, and develop employment opportunities. Customized employment services will be provided and coordinated with housing and other needed services in order to break the cycle of chronic homelessness.

For purposes of this solicitation, the terms applicable to this DOL Cooperative Agreement are as follows:

• *Customized Employment:* The term "customized employment" means individualizing the employment relationship between employees and employers in ways that meet the needs of both. It is based on an individualized determination of strengths, needs, and interests of the person with a disability and is also designed to meet the specific needs of the employer. It may include approaches such as supported employment; supported entrepreneurship; individualized job development; job carving and restructuring; use of personal agents (including individuals with disabilities and family members); development of micro-boards, micro-enterprises, cooperatives and small businesses; and use of personal budgets and other forms of individualized funding that provide choice and control to the person and promote self-determination. These and other job development or restructuring strategies result in job responsibilities that are customized and individually negotiated to fit the needs of individuals with disabilities. Customized employment assumes the provision of reasonable accommodations and supports necessary for the individual to perform the functions of a job that is individually negotiated and developed.

• *Persons who are Chronically Homeless:* A person who is "chronically homeless" is an unaccompanied homeless individual with a disabling condition who has either been continuously homeless for a year or more, OR who has had at least four (4) episodes of homelessness in the past three (3) years. In order to be considered chronically homeless, a person must have been sleeping in a place not meant for human habitation (*e.g.*, living on the streets) and/or in an emergency homeless shelter. A disabling condition is defined as a diagnosable substance use disorder, serious mental illness, developmental disability, or chronic physical illness or disability including the co-occurrence of two or more of these conditions. A disabling condition limits an individual's ability to work or perform one or more activities of daily living.

II. Award Information

The U.S. Department of Labor (DOL), Office of Disability Employment Policy (ODEP), in cooperation with the Employment and Training Administration (ETA), announces the availability of $1.5 million to fund one (1) Cooperative Agreement award to operate the Chronic Homelessness Employment Technical Assistance (CHETA) Initiative, designed to assist DOL's currently funded "Ending Chronic Homelessness through Employment and Housing" awardees, an initiative cooperatively sponsored by ODEP and the VETS. This $1.5 million award will be for a 36-month period of performance. In addition, this initiative may be funded for up to two (2) option years at approximately $500,000 per year, depending on performance, identified need, and the availability of future funding. This cooperative agreement will include substantial involvement between ODEP and the awardee during the period of performance. ODEP will provide project oversight throughout the period of the award. The ODEP will be involved in decisions involving strategic planning (including the plan to deliver pro-active technical assistance to the "Ending Chronic Homelessness" grantees), allocation of resources, development of public information materials, and analysis and implementation of evaluation findings.

III. Eligibility Information

1. Eligible Applicants

Eligible applicants for this DOL Cooperative Agreement are public/private non-profit or for profit organizations or consortia, including faith-based and community organizations, with appropriate capabilities, experience, and expertise. If the proposal includes multiple

consortia members, there must be a prime or lead member who is the responsible fiscal and programmatic agent. All applications must (1) clearly identify the lead grant recipient and fiscal agent, as well as all other members of the consortium applying for this cooperative agreement award; (2) provide a clear description of each member's roles and responsibilities; and (3) provide a detailed plan for how the award money will be allocated among the consortium. As a Department of Labor-funded initiative, it is expected that the lead grant recipient for any such consortium shall have primary expertise in employment-related areas.

2. Cost Sharing

Cost sharing and matching funds are not required under this SGA.

IV. Application and Submission Information

1. Address To Request Application

Applications, announcements, or forms will not be mailed. The **Federal Register** may be obtained from your nearest government office or library. In addition, a copy of this notice and the application requirements may be downloaded from the Office of Disability Employment Policy Web site at *http://www.dol.gov/odep* and at *http://www.fedgrants.gov*. If additional copies of the standard forms are needed, they can also be downloaded from: *http://www.whitehouse.gov/omb/grants/grantforms.html*.

2. Content and Form of Application Submission

General Requirements: To be considered responsive, all applications must be submitted on time to DOL at the address listed above. Applicants must submit one (1) paper copy with an original signature, and two (2) additional paper copies of the signed proposal. To aid with the review of applications, DOL also requires applicants to submit an electronic copy of their proposal's Sections II (Executive Summary) and III (Project Narrative) on compact disc (CD) or floppy disc using Microsoft Word. The application must be double-spaced with standard one-inch margins (top, bottom, and sides) on 8½ x 11 paper, and must be presented on single-sided and numbered pages. A font size of at least twelve (12) pitch is required throughout. All text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs must be double-spaced (no more than three lines per vertical inch); and, if using a proportional computer font, must be in at least a 12-point font, and must have an average character density no greater than 18 characters per inch (if using a non-proportional font or a typewriter, must not be more than 12 characters per inch). Applications that fail to meet these requirements will be considered non-responsive.

DOL Cooperative Agreement Requirements: The three required sections of the application are:

Section I—Project Financial Plan
Section II—Executive Summary—Project Synopsis
Section III—Project Narrative

Applications that fail to meet the mandatory requirements for each section stated below will be considered non-responsive:

• *Section I. Project Financial Plan (Budget)* (The Project Financial Plan will not count against the application page limits.) Section I of the application must include the following three required parts:

(a) Completed "SF–424—Application for Federal Assistance."

The DOL Cooperative Agreement application must include one SF–424 with the original signatures of the legal entity applying for Cooperative Agreement funding and two additional copies. The individual signing the SF–424 on behalf of the applicant must represent and be able to legally bind the responsible financial and administrative entity for a Cooperative Agreement should that application result in an award. Applicants shall indicate on the SF–424 the organization's IRS Status, if applicable. Under the Lobbying Disclosure Act of 1995, Section 18 (29 U.S.C. 1611), an organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, cooperative agreement, or loan. *See* 2 U.S.C. 1611; 26 U.S.C. 501(c)(4). For item 10 of the SF–424, the Catalog of Federal Domestic Assistance (CFDA) number for the program is 17.720. (*See* Appendix A of this SGA for required form). The organization unit section of Block 5 of the SF–424 must contain the Dun and Bradstreet Number of the applicant. Please note that beginning October 1, 2003, all applicants for federal grant opportunities are required to include a Dun and Bradstreet (DUNS) number with their application. See OMB Notice of Final Policy Issuance, 68 FR 38402 (June 27, 2003). Applicants' DUNS numbers should be entered into Block 5 of SF–424. The DUNS number is a nine-digit identification number that uniquely identifies business entities. There is no charge for obtaining a DUNS number (although it may take 14–30 days). To obtain a DUNS number, access the following Web site: *http://www.dunandbradstreet.com/* or call 1–866–705–5711. Requests for exemption from the DUNS number requirement must be made to OMB.

(b) Completed SF–424 A—"Budget Information Sheet" (Appendix B) must be included.

(c) DOL Budget Narrative and justification that provides sufficient information to support the reasonableness of the costs included in the budget in relation to the service strategy and planned outcomes, including continuous improvement activities. The DOL Budget Narrative and Justification must describe all costs associated with implementing the project that are to be covered with Cooperative Agreement funds. The applicant must support the travel and associated costs of sending at least one representative to periodic meetings with DOL staff in Washington, DC (at least once per quarter) and to the annual ODEP Policy Conference for its grantees, to be held in Washington, DC at a time and place to be determined. The applicant must comply with the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," (also known as OMB Circular A–102"), codified at 29 CFR part 97, or "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations" (also known as the "Common Rule" or OMB Circular A–110), codified at 29 CFR part 95 and must comply with the applicable OMB cost principles circulars, as identified in 29 CFR 95.27 and 29 CFR 97.22(b).

In addition, the DOL budget must include, on a separate page, a detailed cost analysis of each line item. Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The applicant must also include the Assurances and Certifications Signature Page (Appendix C) and the Survey on Ensuring Equal Opportunity for Applicants (Appendix D).

• *Section II. Executive Summary—Project Synopsis:* The Executive Summary is limited to no more than two single-spaced, single-sided pages on 8½ x 11 papers with standard margins throughout. Each application shall include a project synopsis that identifies the following:

(a) The applicant;

(c) The planned period of performance;

(d) The list of partners, as appropriate; and,

(e) An overview of how the applicant will provide the technical assistance and manage the repository of knowledge developed.

• *Section III. Project Narrative.* The DOL Cooperative Agreement Project Narrative is limited to no more than thirty (30), 8½ x 11 pages, double-spaced with standard one-inch margins (top, bottom, and sides), and must be presented on single-sided, numbered pages. [**Note:** The Financial Plan, the Executive Summary, and the Appendices, including letters of cooperation, resumes, *etc.*, are not included in this thirty-page limit]. It also requested that one (1) Micro Soft Word copy on a Computer Disk of the Project Narrative Section be submitted along with the three copies required. The requirements for the project narrative are described below under Part V—Application Review Information.

3. Submission Dates and Times (Acceptable Methods of Submission)

Applications will be accepted commencing June 10, 2004. The closing date for receipt of applications by DOL under this announcement is July 26, 2004. Applications, including those hand-delivered, must be received by 4:45 p.m. (e.t.) on July 26, 2004, at the address specified below. No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will be considered non-responsive.

Applications must be mailed or hand-delivered to: U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Mitchell, Reference SGA 04–07, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. Telefascimile (FAX) applications will not be accepted.

Withdrawal of Applications. An application that is timely submitted may be withdrawn by written notice or telegram (including mailgram) at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt of the proposal.

Hand-Delivered Proposals. It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 4:45 p.m. (e.t.) on July 26, 2004, at the specified address. Failure to adhere to the above instructions will serve as a basis for a determination of non-responsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and must be received by the above specified date and time.

4. Intergovernmental Review

This funding opportunity is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

5. Funding Restrictions

• Funding Levels—The total funding available for this solicitation is $1.5 million. Only one award will be made. The Department of Labor reserves the right to negotiate the amount to be awarded under this competition. Please be advised that requests exceeding the $1.5 million will be considered non-responsive. Further there will be no reimbursement of pre-award costs.

• Period of Performance—The period of performance will be for a 36-month period of performance from date of the award unless modified. It is expected that the successful applicant will begin program operations under this solicitation immediately upon receiving the "Notice of Award."

• Option Year Funding—In addition, this initiative may be funded for up to two (2) additional option years at approximately $500,000 per year, depending on performance, identified need and the availability of future funding. Since federal funds for years four (4) and five (5) will depend on Congressional funding for those fiscal years, these option years will only be executed, assuming other conditions are satisfactory to ODEP, one year at a time. Applications under this SGA should include general proposals and budgets for these two option years.

• Limitation on Indirect Costs—Indirect costs claimed by the applicant must be based on a federally approved rate. A copy of the negotiated approved, and signed indirect cost negotiated agreement must be submitted with the application. If the application does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. The successful applicant will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of the cooperative agreement award.

6. Other Submission Requirements

Applicants are advised that mail in the Washington, DC area may be delayed due to mail decontamination procedures and may wish to take this information into consideration when preparing to meet the application deadline.

Late Applications. Any application received after the exact date and time specified for receipt at the office designated in this notice will be considered non-responsive, unless it is received before awards are made and it: (a) Is determined that its late receipt was caused by DOL error after timely delivery to the Department of Labor; (b) was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (*e.g.*, an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been post marked by the 15th of that month); or (c) was sent by the U.S. Postal Service Express Mail Next Day Service to addressee not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of applications. The term "working days" excludes weekends and Federal holidays. "Post marked" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

V. Application Review Information

1. Program Criteria

The "primary objectives" of this technical assistance initiative are to:

• Provide comprehensive, pro-active technical assistance, training and on-site support to the five awardees under the DOL (ODEP, ETA, VETS) and HUD "Ending Chronic Homelessness" Cooperative Agreement awards described above, including assistance with:

(a) Strategic planning and implementation;

(b) Development of partnerships and linkages with other disability and homeless serving organizations;

(c) Coordination and leveraging of multiple resources and funding streams;

(d) Recruitment;

(e) Capacity-building, technical training and grant-specific assistance on implementation of customized employment strategies within a One-Stop Career Center;

(f) Assistance with sustainability and evaluation;

(g) Identification of state and local practice and policy issues; and

(h) Sponsorship of periodic combined technical assistance meetings for all five of the awardees.

These areas of technical assistance are designed to increase customized employment opportunities for people who are chronically homeless through One-Stop Career Centers. Technical assistance efforts will be coordinated with and will complement those of ODEP's National Center on Workforce and Disability for Adults (NCWD/A), as well as ODEP's other technical assistance efforts, including: the National Consortium on Workforce and Disability for Youth (NCWD/Y), Training and Technical Assistance for Providers (T–TAP), Job Accommodation Network (JAN), and Employer Assistance Referral Network (EARN). In addition, the awardee must agree to actively utilize the programs sponsored by the ODEP, including the Job Accommodation Network (*http://www.jan.icdi.wvu.edu/links/*), and the Employer Assistance Referral Network (*http://www.earnworks.com*).

- Develop a repository of expert knowledge and materials on promising practices and resources supporting the delivery of customized employment services to persons with disabilities who are chronically homeless through the workforce development systems, especially One-Stop Career Centers; and to disseminate this information to other DOL and HUD programs interested in similar initiatives through a Web-based technical assistance initiative;
- Collect and process employment policy-related information for ongoing feedback to ODEP; and, otherwise support ODEP and as requested in their efforts to advance policies which increase employment, personal choice, and wages for people who are chronically homeless;
- Develop strong linkages and collaborate with other national federal initiatives that provide services and supports for people who are chronically homeless in order to better coordinate efforts among the various initiatives.

In order to accomplish these "primary objectives", the CHETA Initiative must pursue the following "activities":

- Provide pro-active technical assistance, training, information assistance and knowledge transfer to each of the grantees under ODEP's "Ending Chronic Homelessness through Employment and Housing" cooperative agreements, in order to increase the awardees' capabilities and performance in securing customized employment for people who are chronically homeless. The CHETA Initiative will:

(a) Conduct a needs assessment of the five (5) "Ending Chronic Homelessness" awardees to determine the type and details of technical assistance that is necessary for these cooperative agreements to meet their goals and objectives;

(b) In cooperation with the "Ending Chronic Homelessness" awardees and with DOL's approval, prepare and implement a site-specific strategic planning, technical assistance and training plan for each awardee with projected timelines for delivering needed technical assistance;

(c) Review project applications, quarterly reports, and other documentation to identify potential areas of support;

(d) Identify, on an ongoing basis, materials and resources for use by the awardees;

(e) Conduct a minimum of two (2) technical assistance site visits per year per awardee; conduct a minimum of one (1) national or regional training per year for all awardees;

(f) Conduct monthly teleconferences with the "Ending Chronic Homelessness" awardees to facilitate knowledge transfer and networking among the awardees;

(g) Respond to "Ending Chronic Homelessness" awardees' requests for expert assistance by sponsoring and arranging on-site, phone, e-mail consultations, or other appropriate forms of knowledge-transfer.

These technical assistance efforts should be flexible so as to allow for the use of any necessary outside consultants who possess expertise beyond the capabilities of the CHETA staff.

- Provide a repository of information, primarily via electronic means (Web-based, e-mail messages, other distance learning and knowledge transfer techniques), on relevant training and technical assistance materials that are both collected and developed in order to meet CHETA's first program objective. This repository of information is to be shared with other interested organizations and agencies.
- Collect employment policy-related information for ongoing feedback to ODEP on policies and practices at the local, state and national level that act both as barriers and facilitators to securing customized employment for the targeted group. This information will be analyzed by ODEP and shared with appropriate DOL agencies for their consideration.
- Support ODEP, as requested, in its efforts to increase employment, personal choice, and wages for people who are chronically homeless through the workforce development system, including by responding to requests for information, analysis, and other assistance from ODEP; by researching, collecting, and disseminating information from states concerning effective and meaningful participation of people who are chronically homeless in One-Stop Centers; and by evaluating project goals, objectives, and activities to determine the effectiveness of project strategies and the overall impact of technical assistance, training, and information services.
- Develop linkages and collaborate working relationships with other associated federal technical assistance (T/A) initiatives, such as ODEP's five national T/A efforts (National Center on Workforce and Disability for Adults, National Collaborative for Workforce and Disability for Youth, Training and Technical Assistance for Providers, Job Accommodation Network, and the Employer Assistance Referral Network), as well as with other related federally-funded T/A initiatives, such as ETA's Technical Assistance and Evaluation Provider for the Work Incentive Grants and Disability Program Navigator Initiative projects (ETA's Division of Disability and Workforce Programs); Substance Abuse and Mental Health Services Administration's (SAMHSA's) T/A Center for PATH grants; and, VETS' National Veterans Training Institute (NVTI) Center. In addition, coordinate training and technical assistance efforts in ways that utilize or complement other related grant programs, such as ODEP's Customized Employment Grant program, ETA's Work Incentive Grant (WIG's) program, VETS Homeless Veterans Reintegration Program (HVRP) grants, Centers for Medicaid and Medicare Services Medicaid Infrastructure Grants, state level Medicaid Buy-In programs, and other federal and state related disability employment supports grant programs.

2. Panel Review Criteria

Applications will be reviewed for compliance with the requirements of this notice. A careful evaluation of applications will be made by a technical review panel, which will evaluate the applications against the rating criteria listed below. The panel results are advisory in nature and not binding on the Grant Officer. DOL may elect to award grants with or without discussion with the offeror. In situations without discussions, an award will be based on the offeror's signature on the SF–424, which constitutes a binding offer. The Grant Officer may consider any information that is available and will make final award decisions based on what is most advantageous to the Government, considering such factors as panel findings and availability of funds. In review of applications, proposals will be evaluated under the following evaluation criteria.

A. Project Design and Project Management (50 Points)

Under this section, the applicant must describe the project design and its management plan. The proposed project design must address how the applicant intends to respond to "primary objectives" and "activities" listed above in this Section. Also, under this section, the applicant must describe how the applicant will address the following DOL priorities for fiscal year 2004:

(1) Increase the availability of skills training, employment opportunities, and career advancement for persons with disabilities who are chronically homeless; and

(2) Develop comprehensive One-Stop Career Centers, that are welcoming and valued by customers who are chronically homeless seeking workforce assistance through ensuring availability of staff trained on homeless issues.

Applicants must also provide a detailed management plan that identifies the critical activities, time frames, and responsibilities for effectively implementing the project, including staff organization and management and the evaluation process for assuring successful implementation of Cooperative Agreement objectives. The management plan will be evaluated to determine whether the applicant has developed an adequate plan that to:

- Effectively carry out the goals and objectives of the proposed initiative, on time and within budget;
- Describe the predicted outcomes resulting from activities funded under the cooperative agreement; and
- Identify methods for gaining and incorporating customer and consumer feedback (both from the five chronically homelessness grantee programs to be served by CHETA, as well as from the homeless persons with disabilities they serve) that will be used by the applicant to make program adjustments and to determine success.

B. Staff Capacity (30 Points)

The applicant must describe the proposed staffing of the DOL CHETA Cooperative Agreement Initiative, including the key personnel and the roles each will play, their time commitments and the responsibilities each will assume. The applicant must also identify how it will ensure that trained and experienced staff or consultants will be available with the following expertise:

(1) Demonstrated knowledge of/ experience with diverse customized employment strategies, including individualized approaches to identification of strengths, needs and interests of the individual; customized employment planning; job development and negotiation; and development/use of micro-enterprises, self-employment, cooperatives and small businesses;

(2) Demonstrated knowledge of/ experience with various forms of self-directed accounts that provide personal control, choice and assistance to the individual including but not limited to Individual Training Accounts (ITA's), Individual Development Accounts (IDA's), and individual budgets;

(3) Demonstrated knowledge of diverse disabilities, especially persons with disabilities who are chronically homeless and mentally ill, substance abusers, and those who have veteran status;

(4) Demonstrated knowledge of and experience with workforce development systems, particularly One-Stop Career Centers and their administrative structures;

(5) Demonstrated knowledge of /experience with community-based strategic planning, methods for achieving sustainability of programs, development of essential partnerships (including WIA required and non-required partnerships) and systems change strategies, including strategies necessary for innovative blending of resources to achieve customized employment;

(6) Demonstrated knowledge of other employment-related support services and programs especially Medicaid, transportation, SSI, and SSDI; and

(7) Demonstrated knowledge of/ experience in successful delivery of technical assistance and knowledge transfer.

The staffing/consultant plan should:

(1) Summarize the qualifications, including relevant education, training, and experience of both key project personnel and project consultants or subcontractors. Attach copies of resumes in the Appendices.

(2) Describe the experience in serving persons with disabilities who are chronically homeless and in providing customized employment services.

(3) Describe the proposed staff/ consultant's experience in providing employment-related technical assistance and knowledge transfer to diverse audiences relevant to this solicitation.

(4) Describe the extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project; and how key personnel and consultants will be managed.

(5) Describe plans for recruiting persons with disabilities for employment, as well as in key consulting roles.

C. Evaluation and Continuous Improvement Strategies (10 Points)

The proposal must demonstrate how the goals, objectives, tasks and outcomes to be achieved by the proposed project are clearly specified and measurable; the extent to which performance feedback and continuous improvement are integral to the design of the proposed project; and the extent to which the applicant encourages involvement of people with disabilities and their families, experts and organizations, and other relevant stakeholders in project activities that lead to stronger evaluation and continuous improvement strategies. The proposal will be evaluated on:

(1) The extent to which the design of the proposed project is appropriate to, and will successfully address, the technical assistance needs to be met and other identified needs;

(2) The extent to which the design of the proposed project provides clear understanding of, and experience with, utilization of customized employment strategies for increasing employment, choice, and earnings of persons with disabilities, including those who are chronically homeless;

(3) The extent to which the management plans for project implementation is likely to achieve the objectives of the proposed project on time and within budget; and

(4) The extent to which the proposed project design features innovative strategies to deliver the required technical assistance supports and achieve sustainable knowledge transfer across project activities.

D. Documenting and Reporting (10 Points)

Applicants should outline their strategy for documenting and reporting the activities undertaken during the life of the Cooperative Agreement for ODEP's use. In evaluating this section, the following factors must be addressed and ODEP considers them to be of particular importance:

(1) The method by which the initiative will evaluate external technical assistance information and materials to ensure a high standard of quality about effective strategies suitable for replication or testing in other settings;

(2) The extent to which the methods of documentation and reporting include the objective use of performance measures that are clearly related to the intended outcomes of the project and

will produce quantitative and qualitative data; and

(3) The adequacy of mechanisms for measuring the quality of products and services developed by the proposed initiative.

3. Anticipated Announcement and Award Dates

N/A.

VI. Award Administration Information

1. Award Notices

A. Notice that an organization has been selected as the cooperative agreement recipient does not constitute approval of the cooperative agreement application as submitted. Before the actual cooperative agreement award, ODEP may enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Grant Officer reserves the right to terminate the negotiation and decline to fund the proposal.

B. A post-award conference will be held within the first month of the award, for the cooperative agreement award winner, in Washington, DC, with ODEP and other DOL representatives. The associated travel cost for this two-day meeting should be included as a part of their budget proposal. Both program and administrative matters will be reviewed. As a continuation of the post-award process, after this first meeting with DOL, CHETA will immediately organize and fund through its budget, a meeting for teams from each of the five "Chronic Homelessness" cooperative agreement sites, as described in Section I and V, above. This two-day post award meeting shall be held in Portland, OR (or one of the other five sites), and shall involve 4 to 5 representatives from each of the five cooperative agreement sites. In addition to supporting the travel and participation costs (hotel lodging, meeting space, per diem, travel costs) of these five teams, several key experts on customized employment, chronic homelessness should be provided for in the proposed budget. The purpose of this post award meeting is to both involve the five cooperative agreement awardees in the formation of CHETA's technical assistance plans and to provide the five sites with an opportunity for sharing and additional technical assistance.

2. Administrative and National Policy

A. Limitations on Administrative and Indirect Costs

(1) Indirect costs claimed by the applicant must be based on a federally approved rate. A copy of the negotiated approved, and signed indirect cost negotiated agreement must be submitted with the application.

(2) If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. The successful applicant will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of the cooperative agreement award.

B. Administrative Standards and Provisions

Unless specifically provided in the cooperative agreement, DOL's acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant/cooperative agreement requirements and/or procedures. For example, the OMB circulars require and an entity's procurement procedures must provide that all procurement transactions will be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL award does not provide the justification or basis to sole-source the procurement, *i.e.* avoid competition. This cooperative agreement will be subject to the following administrative standards and provisions:

- 29 CFR part 93—Lobbying.
- 29 CFR part 95—Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and With Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments, and International Organizations;
- 29 CFR part 96—Federal Standards for Audit of Federally Funded Grants, Contracts, and Other Agreements;
- 29 CFR part 97—Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments;
- 29 CFR part 98—Federal Standards for Government-wide Debarment and Suspension (non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants/Cooperative Agreements);
- 29 CFR part 99—Audit of States, Local Governments and Non-profit Organizations;
- 29 CFR parts 30, 31, 32, 33, and 36—Equal Employment Opportunity in Apprenticeship and Training, Nondiscrimination in Federally Assisted Programs of the Department of Labor, Effectuation of Title VI of the Civil Rights Act of 1964, Nondiscrimination on the Basis of Handicap in Programs and Activities, and Nondiscrimination on the Basis of Sex in Education Programs Receiving or Benefiting from Federal Financial Assistance.

C. Allowable Costs

Determinations of allowable costs shall be made in accordance with the following applicable federal cost principles:

- State and Local Government—OMB Circular A–87.
- Nonprofit Organizations—OMB Circular A–122.
- Profit-Making Commercial Firms—48 CFR Part 31.

Profit will not be considered an allowable cost in any case.

D. Cooperative Agreement Assurances

As a condition of the award, the applicant must certify that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

- 29 CFR part 31—Nondiscrimination in Federally-assisted programs of the Department of Labor, effectuation of Title VI of the Civil Rights Act of 1964;
- 29 CFR part 32—Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Assistance (Implementing Section 504 of the Rehabilitation Act, 29 U.S.C. 794);
- 29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (Implementing Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*); and

The applicant must include assurances and certifications that it will comply with these laws in its Cooperative Agreement application. The assurances and certifications are attached as Appendices C, D.

3. Reporting and Monitoring

The ODEP is responsible for ensuring the effective implementation of this Cooperative Agreement, in accordance with the provisions of this announcement and the terms of the Cooperative Agreement award document. Applicants should assume that ODEP staff will conduct on-site project reviews periodically. Reviews

will focus on timely project implementation, performance in meeting the Cooperative Agreement's objectives, tasks and responsibilities, expenditures of Cooperative Agreement funds on allowable activities, and administration of project activities. The CHETA Initiative may be subject to other additional reviews, at the discretion of the ODEP, and ODEP staff or their announced designees from ETA, VETS and/or HUD may conduct these reviews

The DOL Cooperative Agreement awardee, under this competition, will be required to submit to DOL quarterly financial and narrative program progress reports for each quarter funded. The awardee will be required to submit periodic financial and participation reports. Specifically, the following reports will be required:

A. *Quarterly reports:* The quarterly report is estimated to take ten hours to complete. The form for the Quarterly Report will be provided by the ODEP. The ODEP will work with the awardee to help refine the requirements of the report, which will, among other things, include measures of ongoing analysis for continuous improvement and customer satisfaction. Quarterly reports will be due 30 days after the close of the quarters of each federal fiscal year. This report will be filed using an on-line reporting system.

B. *Standard Form 269:* Financial Status Report Form (FSR) will be completed on a quarterly basis, using the on-line electronic reporting system.

C. *Final Project Report:* The final report will include an assessment of project performance and outcomes achieved. The final report is estimated to take 20 hours to complete. This report will be submitted in hard copy and on electronic disk complying with format and instructions provided by the ODEP. An outline of the final report is due to ODEP forty-five (45) days before termination of the Cooperative Agreement with a draft of the final report due to the ODEP thirty (30) days before the termination of the Cooperative Agreement. The final report is due to the DOL within 30 days following the termination of the Cooperative Agreement. If the two option years are exercised, the final report will be due upon their completion.

The awardee must agree to cooperate with independent evaluations to be conducted by ODEP. ODEP or its designee will arrange for and conduct this independent evaluation of the outcomes, impact, and accomplishments of the project. The awardee must agree to make available records on all parts of project activity, including participant employment and wage data, and to provide access to personnel, as specified by the evaluator(s), under the direction of the ODEP. This independent evaluation is separate from the any proposed ongoing evaluation for continuous improvement commissioned by the awardee. ODEP's evaluation of the CHETA award includes a process evaluation regarding extensive information pertaining to achievements under the Cooperative Agreement.

VII. Agency Contacts

For information on this DOL Cooperative Agreement and related items contact Cassandra Mitchell, U.S. Department of Labor, Procurement Services Center telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. Persons who are deaf or hard of hearing may contact Cassandra Mitchell, via the Federal Relay Service, (800) 877–8339.

Signed in Washington, DC, this 2nd day of June, 2004.

Johnny A. Arnold, II,

Acting Grant Officer.

BILLING CODE 4510–CX–P

Appendix A

APPLICATION FOR FEDERAL ASSISTANCE Version 7/03

1. TYPE OF SUBMISSION:		**2. DATE SUBMITTED**	Applicant Identifier
Application	Pre-application	**3. DATE RECEIVED BY STATE**	State Application Identifier
☐ **Construction**	☐ **Construction**	**4. DATE RECEIVED BY FEDERAL AGENCY**	Federal Identifier
☐ **Non-Construction**	☐ **Non-Construction**		

5. APPLICANT INFORMATION

Legal Name:		Organizational Unit:	
		Department:	
Organizational DUNS:		Division:	
Address:		**Name and telephone number of person to be contacted on matters involving this application (give area code)**	
Street:		Prefix:	First Name:
City:		Middle Name	
County:		Last Name	
State:	Zip Code	Suffix:	
Country:		Email:	
6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:		Phone Number (give area code)	Fax Number (give area code)
☐☐-☐☐☐☐☐☐☐			

8. TYPE OF APPLICATION:	**7. TYPE OF APPLICANT:** (See back of form for Application Types)
☐ **New** ☐ **Continuation** ☐ **Revision**	
If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐	Other (specify)
Other (specify)	**9. NAME OF FEDERAL AGENCY:**
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐	**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**
TITLE (Name of Program):	
12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:	
13. PROPOSED PROJECT	**14. CONGRESSIONAL DISTRICTS OF:**
Start Date: / Ending Date:	a. Applicant / b. Project
15. ESTIMATED FUNDING:	**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**
a. Federal $ .00	a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
b. Applicant $ .00	DATE:
c. State $ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
d. Local $ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
e. Other $ .00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**
f. Program Income $ .00	☐ Yes If "Yes" attach an explanation. ☐ No
g. TOTAL $ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative

Prefix	First Name	Middle Name
Last Name		Suffix
b. Title		c. Telephone Number (give area code)
d. Signature of Authorized Representative		e. Date Signed

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Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:	Item:	Entry:
1.	Select Type of Submission.	11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).	12.	List only the largest political entities affected (e.g., State, counties, cities).
3.	State use only (if applicable).	13	Enter the proposed start date and end date of the project.
4.	Enter Data Received by Federal Agency Federal identifier number: If this application is a continuation or revision to an existing award, enter the present Federal Identifier number. If for a new project, leave blank.	14.	List the applicant's Congressional District and any District(s) affected by the program or project
5.	Enter legal name of applicant, name of primary organizational unit (including division, if applicable), which will undertake the assistance activity, enter the organization's DUNS number (received from Dun and Bradstreet), enter the complete address of the applicant (including country), and name, telephone number, e-mail and fax of the person to contact on matters related to this application.	15	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.	16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
7.	Select the appropriate letter in the space provided. A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School District I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) O. Not for Profit Organization	17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
8.	Select the type from the following list: • "New" means a new assistance award. • "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. • "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision enter the appropriate letter: A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration	18	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)
9	Name of Federal agency from which assistance is being requested with this application.		
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.		

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Prescribed by OMB Circular A-102

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

Appendix C

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED June 4, 2004

Standard Form 424B (Rev. 7-97) Back

Appendix D

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

OMB No. 1890-0014 EXP. 1/31/2006

Purpose: The Federal government is committed to ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. In order for us to better understand the population of applicants for Federal funds, we are asking nonprofit private organizations (not including private universities) to fill out this survey.

Upon receipt, the survey will be separated from the application. Information provided on the survey will not be considered in any way in making funding decisions and will not be included in the Federal grants database. While your help in this data collection process is greatly appreciated, completion of this survey is voluntary.

Instructions for Submitting the Survey: If you are applying using a hard copy application, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it along with your application package. If you are applying electronically, please submit this survey along with your application.

Applicant's (Organization) Name: _____

Applicant's DUNS Number: _____

Grant Name: _____ **CFDA Number:** _____

1. Does the applicant have 501(c)(3) status?

   ☐ Yes ☐ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

   ☐ 3 or Fewer ☐ 15-50
   ☐ 4-5 ☐ 51-100
   ☐ 6-14 ☐ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

   ☐ Less Than $150,000
   ☐ $150,000 - $299,999
   ☐ $300,000 - $499,999
   ☐ $500,000 - $999,999
   ☐ $1,000,000 - $4,999,999
   ☐ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

   ☐ Yes ☐ No

5. Is the applicant a non-religious community-based organization?

   ☐ Yes ☐ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

   ☐ Yes ☐ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

   ☐ Yes ☐ No

8. Is the applicant a local affiliate of a national organization?

   ☐ Yes ☐ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

Provide the applicant's (organization) name and DUNS number and the grant name and CFDA number.

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 2202-4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, D.C. 20202-4725

OMB No. 1890-0014 Exp. 1/31/2006

[FR Doc. 04–13116 Filed 6–9–04; 8:45 am]
BILLING CODE 4510–CX–C

NATIONAL SCIENCE FOUNDATION

Notice of Intent to Seek Approval to Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than three years.

DATES: Written comments on this notice must be received by August 9, 2004 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send e-mail to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection:

OMB Number: 3145–New.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection.

Abstract:

Proposed Project:

The Science of Learning Centers (SLC) Program offers awards for large-scale, long term Centers that will extend the frontiers of knowledge on the science of learning, and create the intellectual, organizational and physical infrastructure needed for the long-term advancement of learning research. Support for these Centers is approximately 5 million/yr for 5 years, renewable for up to 10 years maximum. The goals of the Science of Learning Centers (SLC) Program are to advance the frontiers of all the science of learning through integrated research, to connect the research to specific scientific, technological, educational and workforce challenges; and to enable research communities to capitalize on new opportunities and discoveries and to respond to new challenges.

The SLC Program emerges from the intersections of diverse disciplines across the biological, cognitive, computational, mathematical, physical and social sciences, engineering and education. Thus the SLC Centers build intellectual and physical infrastructure within and between disciplines. Through creative integration of theoretical and empirical work, innovative models of research and dissemination of knowledge, and inventive uses of technology, the SLC Centers represent our nation's best investments to advance our understanding of what learning is, and how it is affected at all levels. Such advances in fundamental knowledge in the science of learning will have broad and significant societal impact.

World-class research is conducted at SLCs through a variety of partnerships, including: Academic institutions, national laboratories, industrial organizations, and/or other public/private entities. While they build on strong foundations of existing knowledge and expertise, each also has inherent risks associated with new directions, innovation, and the complexities of interdisciplinary, large scale collaborations.

SLCs enable and foster excellent education, integrate research and education, and create bonds between learning and inquiry so that discovery and creativity more fully support the learning process. SLCs capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

Centers selected will be required to submit annual reports on progress and plans, which will be used as a basis for performance review and for determining continuance of funding and the level of continued funding. To support this review and the management of a Center, SLCs will be required to develop a set of management and performance indicators for submission annually to NSF via an NSF evaluation technical assistance contractor. These indicators are both quantitative and descriptive and may include, for example, the characteristics of center personnel and students; sources of financial support and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students involved in Center activities; descriptions of significant advances and other outcomes of the SLC effort. Part of this reporting will take the form of a database which will be owned by the institution and eventually made available to an evaluation contractor. This database will capture specific information to demonstrate progress towards achieving the goals of the program. Such reporting requirements will be included in the cooperative agreement which is binding between the academic institution and the NSF.

Each Center's annual report will address the following categories of activities: (1) Research, (2) integration of research and education, (3) knowledge dissemination, (4) partnerships, (5) diversity, (6) management (7) Evaluation/Assessment and (8) budget issues. For each of the categories the report will describe overall objectives for the year, problems the Center has encountered in making progress towards goals and how they are being resolved, anticipated problems in the following year and how they will be mitigated, and specific outputs and outcomes.

Use of the Information: NSF will use the information to continue funding of the Centers, and to evaluate the progress of the program.

Estimate of Burden: In the first year, for the anticipated six centers' awards time estimate is total of 600 hours. In the subsequent years time estimate is 300 hours.

Respondents: Non-profit institutions; federal government.

Estimated Number of Responses per Report: One from each of the six centers.

Comments: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on 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.

Dated: June 7, 2004.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 04–13115 Filed 6–9–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 03033391]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Millipore Corporation's Facility in Lincoln Park, NJ

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability of Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Kathleen Modes, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5351, fax (610) 337–5269; or by e-mail: *kad@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Millipore Corporation's Materials License No. 29–30108–01, to authorize release of its facility in Lincoln Park, New Jersey for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed action is to authorize the release of the licensee's Lincoln Park, New Jersey facility for unrestricted use. Millipore Corporation (previously known as CPG, Inc.) was authorized by NRC from 1994, to use radioactive materials for research and development purposes at the site. On January 27, 2004, Millipore Corporation requested that NRC release the facility for unrestricted use. Millipore Corporation has conducted surveys of the facility and determined that the facility meets the license termination criteria in Subpart E of 10 CFR Part 20. The NRC staff has prepared an EA in support of the proposed license amendment.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. The NRC staff has evaluated Millipore Corporation's request and the results of the surveys and has concluded that the completed action complies with the criteria in Subpart E of 10 CFR Part 20. The staff has found that the environmental impacts from the proposed action are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities" (NUREG–1496). On the basis of the EA, the NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Nos. ML040300917, ML040710238, ML040860263 and ML041390178). These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania 19406. Persons who do not have access to ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, of by e-mail to *pdr@nrc.gov.*

Dated at King of Prussia, Pennsylvania this 3rd day of June, 2004.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 04–13114 Filed 6–9–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–13195]

Issuer Delisting; Notice of Application of Industrial Distribution Group, Inc. To Withdraw Its Ordinary Shares, $.01 Par Value, and Series A Participating Cumulative Preferred Stock Purchase Rights From Listing and Registration on the New York Stock Exchange, Inc.

June 4, 2004.

On May 26, 2004, Industrial Distribution Group, Inc., a Delaware corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Ordinary Shares, $.01 par value, and Series A Participating Cumulative Preferred Stock Purchase Rights ("Securities"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The Board of Directors ("Board") of the Issuer approved a resolution on April 28, 2004 to withdraw the Issuer's Securities from listing on the NYSE and to list the Securities on the NASDAQ National Market ("NASDAQ"). The Board believes that the change in the profile of the public ownership of the Issuer's Securities makes the NASDAQ a more appropriate market for the Issuer's Securities. The Board also believes that recent internal developments at the NYSE could adversely affect the Issuer and the listing and trading of its Securities. The application states that this includes uncertainty about the continued listing criteria the NYSE will apply in the future. In addition, the Issuer expects that it and its shareholders will derive positive benefits from listing on the NASDAQ. The Issuer believes such expected benefits include the potential for several broker-dealers to make a market in the Securities, which in its opinion, should result in enhanced liquidity, better price discovery, and additional sources of information for investors seeking to trade in the Securities. The Issuer believes that, as a result of the dynamics of the NASDAQ market, the differential between bid and ask prices in trading transactions will be improved, to the benefits of investors.

The Issuer stated in its application that it has complied with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

and registration. The Issuer's application relates solely to the Securities' withdrawal from listing on the NYSE and from registration under Section 12(b) of the Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before June 29, 2004, comment on the facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments:

• Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–13195 or; *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 1–13195. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [5]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–13168 Filed 6–9–04; 8:45 am]

BILLING CODE 8010–01–U

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–13866]

Issuer Delisting; Notice of Application of Kyzen Corporation To Withdraw Its Common Stock, $.01 Par Value, and Warrants From Listing and Registration on the Boston Stock Exchange, Inc.

June 4, 2004.

On June 1, 2004, Kyzen Corporation, a Tennessee corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value and Warrants ("Securities"), from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

On April 27, 2004, the Board of Directors ("Board") of the Issuer approved a resolution to withdraw the Securities from listing and registration on the BSE. The Issuer states that it has maintained its listing on the BSE to assure a national market for its Securities. However, in the last five years, there has been only one transaction on the BSE involving the Issuer's Common Stock, and only limited transactions involving the Issuer's Warrants, which have been trading at significantly less than their exercise price for several years. Therefore, the Issuer's Board determined that the annual cost of maintaining the listing is an unnecessary expense. The Issuer states that the Securities are currently quoted on the Over-the-Counter Bulletin Board.

The Issuer states in its application that it has complied with BSE's procedures for delisting by complying with all applicable laws in effect in the State of Tennessee, the state in which it is incorporated. The Issuer's application relates solely to withdrawal of the Securities from listing on the BSE and from registration under Section 12(b) of the Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before June 29, 2004, comment on the facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments:

• Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–13866 or;

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 1–13866. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–13169 Filed 6–9–04; 8:45 am]

BILLING CODE 8010–01–U

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–06314]

Issuer Delisting; Notice of Application of Perini Corporation to Withdraw its Common Stock, $1.00 Par Value, and Associated A Junior Participating Cumulative Preferred Stock Purchase Rights From Listing and Registration on the American Stock Exchange LLC

June 4, 2004.

On June 1, 2004, Perini Corporation, a Massachusetts corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of

[5] 17 CFR 200.30–3(a)(1).

1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $1.00 par value, and Associated Series A Junior Participating Cumulative Preferred Stock Purchase Rights ("Securities"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on March 10, 2004 to withdraw the Issuer's Securities from listing on the Amex, and to list the Securities on the New York Stock Exchange, Inc. ("NYSE"). The Issuer states that the trading of its Securities on the Amex ended at the close of trading on March 31, 2004. The Securities began trading on the NYSE on April 1, 2004. The Board states the reason for delisting its Securities from the Amex and listing on the NYSE is (1) to provide a market that the Issuer believes can better absorb the increased public float resulting from the Issuer's recent secondary offering of the Common Stock; and (2) potentially increase the trading volume in the Common Stock.

The Issuer stated in its application that is has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Massachusetts, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex, and shall not affect its continued listing on the NYSE or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before June 29, 2004, comment on the facts bearing upon whether the application has been made in accordance with the rules of the Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic comments:

• Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–06314, or

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 1–06314. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–13170 Filed 6–9–04; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [69 FR 31649, June 4, 2004].

STATUS: Open Meeting.

PLACE: 450 Fifth Street, NW., Room 1C30, Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, June 9, 2004 at 10 a.m.

CHANGE IN THE MEETINGS: Date and Time Change.

The Open Meeting scheduled for Wednesday, June 9, 2004 at 10 a.m., has been changed to Wednesday, June 23, 2004 at 9:30 a.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: June 8, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–13272 Filed 6–8–04; 11:37 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 14, 2004:

An open meeting will be held on Tuesday, June 15, 2004, at 10 a.m. in Room 6600; a closed meeting will be held on Tuesday, June 15, 2004, at 11 a.m.; and a Closed Meeting will be held on Thursday, June 17, 2004, at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (6), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meetings in closed sessions.

The subject matter for the Open Meeting scheduled for Tuesday, June 15, 2004, will be:

1. The Commission will hear oral argument on an appeal by Edgar B. Alacan ("Alacan"), a former registered representative of J.W. Barclay & Co., Inc., a former broker-dealer, from the decision of an administrative law judge. The law judge found that Alacan violated antifraud provisions of the Federal securities laws through unauthorized trading, unsuitable trading, churning, and failures to follow customers' instructions in connection with his handling of the accounts of several customers during 1997 and 1998.

Among the issues likely to be argued are:

a. Whether the evidence supports the law judge's findings that Alacan violated the antifraud provisions;

b. Whether and to what extent sanctions should be imposed in the public interest.

The subject matter for the closed meeting scheduled for Tuesday, June 15, 2004, will be: Post-argument discussion.

The subject matter for the closed meeting scheduled for Thursday, June 17, 2004, will be: Formal orders of investigation; Institution and settlement of injunctive actions; Institution and settlement of administrative proceedings of an enforcement nature; Litigation matter; and Amici.

At times, changes in Commission priorities require alterations in the

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: June 8, 2004.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–13353 Filed 6–8–04; 3:50 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27855]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

June 4, 2004.

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 29, 2004, 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 29, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

NU Enterprises, Inc., et al. (70–9637)

NU Enterprises, Inc. ("NUEI"), a nonutility holding company subsidiary of Northeast Utilities ("NU"), a registered holding company, and the following subsidiaries of NUEI and NU, Woods Network Services, Inc., Northeast Generation Company, Northeast Generation Services Company, E. S. Boulos Company, Woods Electrical Company, Inc.; Select Energy, Inc., Mode 1 Communications, Inc., R.M. Services, Inc., Yankee Financial Services, Inc. and Yankee Energy Services Company, all of 107 Selden Street, Berlin, Connecticut 06037; Select Energy Services Inc. and Select Energy Contracting Inc., 24 Prime Parkway, Natick, Massachusetts 01760; Select Energy New York, Inc., 507 Plum Street, Syracuse, New York 13204; and Reeds Ferry Supply Co. Inc., 605 Front Street, Manchester, New Hampshire 03102, and any to-be-formed direct or indirect nonutility subsidiary of NUEI (collectively, "Competitive Companies" or "Applicants") have filed an application-declaration ("Application") under section 13(b) of the Act and rules 54, 86, 87, 90 and 91 under the Act.

The Competitive Companies are all nonutility companies under the Act that provide various services to customers who are not affiliated with NU. In addition, some of the Competitive Companies, in the ordinary course of their business, may also provide services to affiliated companies (both utility affiliates and nonutility affiliates). The Competitive Companies seek authority to provide certain services in the ordinary course of their business (collectively, "Services") to each other, in certain circumstances described below, at any price they deem appropriate, including but not limited to cost or fair market prices. The Competitive Companies request an exemption under section 13(b) from the "at cost requirement" of rules 90 and 91 to the extent that a price other than "cost" is charged.[1] Any Services provided by the Competitive Companies to NU's regulated public utility subsidiaries will continue to be provided at "cost" consistent with rules 90 and 91. The Competitive Companies will not provide Services at other than cost to any other Competitive Company that, in turn, provides the same Services, directly or indirectly, to any other associate company that is not a Competitive Company, except according to the requirements of the Commission's rules and regulations under section 13(b) or an exemption from that section granted by the Commission.

The Competitive Companies request authorization to provide Services to each other at other than cost in any case where the Competitive Company receiving the Services is:

(i) A foreign utility company ("FUCO") or an exempt wholesale generator ("EWG") that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(ii) An EWG which sells electricity at market-based rates, which have been approved by the Federal Energy Regulatory Commission ("FERC"), provided that the purchaser of the electricity is not an associate utility company;

(iii) A "qualifying facility" ("QF") within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), that sells electricity exclusively (a) at rates negotiated at arms'-length to one or more industrial or commercial customers purchasing the electricity for their own use and not for resale, and/or (b) to an electric utility company (other than an affiliate utility company) at the purchaser's "avoided cost" as determined in accordance with the regulations under PURPA;

(iv) A domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser of the electricity is not an associate utility company; or

(v) A direct or indirect subsidiary of NU formed under rule 58 of the Act or any other nonutility company that (a) is partially owned by NU, provided that the ultimate recipient of the Services is not an associate utility company, or (b) is engaged solely in the business of developing, owning, operating and/or providing Services to Competitive Companies described in clauses (i) through (iv) immediately above, or (c) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public-utility company operating within the United States.

Allegheny Energy, Inc. (70–10230)

Allegheny Energy, Inc. ("Allegheny"), a registered holding company, 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, has filed a declaration under sections 6(a) and 7 of the Act and rule 54 under the Act.

Allegheny requests authority to issue shares of common stock, $1.25 par value ("Common Stock"), according to a Stock Unit Plan ("Plan"). Allegheny proposes to issue up to 4,500,000 shares of Common Stock to settle stock units ("Units") issued to certain employees. Specifically, upon vesting of each Unit, participants in the Plan ("Participants") will receive one share of Allegheny Common Stock for each Unit, as well as dividends paid by Allegheny during the period the Unit was held.

The Plan became effective upon its approval by Allegheny's Board of Directors on May 14, 2004.[2] At that

[1] By order dated March 7, 2000 (Holding Co. Act Release No. 27148) jurisdiction was reserved by the Commission over the authority for Northeast Generation Services Company to provide certain services to Northeast Generation Company at other than at-cost. The request in that filing is replaced by this request.

[2] The Plan will remain in effect until terminated by the Board or until Units are no longer available for grants of awards under the Plan, whichever

time, 3,414,048 Units that had previously been granted to certain of Allegheny's executive officers under employment agreements ("Outstanding Units") were made subject to the Plan, as consented to by each of the relevant executive officers. Subject to adjustment as provided under the Plan, the total number of Units authorized under the Plan is 4,500,000, inclusive of the Outstanding Units.[3] If any award under the Plan is forfeited or otherwise terminated, or is cancelled prior to the vesting of any Units, then the Units covered by the award will again be available under the Plan.

Allegheny maintains that implementation of the Plan is necessary to attract and retain employees who are essential for Allegheny's growth and profitability. The Plan will be administered by Allegheny's Board of Directors, which will determine the individuals to whom Units shall be granted, the conditions under which Units may become vested and/or forfeited, and other terms and conditions as the Board may establish. Each Participant in the Plan will enter into an agreement ("Stock Unit Agreement") providing that, upon vesting, each Participant shall be entitled to one share of Allegheny Common Stock and shall be subject to the terms and conditions of the Plan. A Stock Unit Agreement may grant a Participant rights with respect to dividends paid by Allegheny during the period a Unit was held, as well as a right to defer payments with respect to vested Units.

The Outstanding Units, as originally issued, entitled holders to the market value of a share of Allegheny Common Stock payable, at Allegheny's option, in cash or Common Stock at each vesting date. Because the Outstanding Units originally provided for payment in either cash or Common Stock and because Allegheny does not have authority to settle the Outstanding Units through the issuance of Common Stock, Allegheny has been required to use the variable method of accounting for the Units. As a result, Allegheny is recording an accrued expense liability for the cash amount payable to Participants at the vesting dates of issued Units, and compensation expense increases or decreases as the market value of stock increases or decreases.

The Plan provides that all Units, including the Outstanding Units, will be settled only through the issuance of Common Stock. Once Allegheny receives Commission authorization to issue Common Stock, the fixed method of accounting will replace the variable method of accounting for all Units, including the Outstanding Units that have become subject to the Plan. Under the fixed method of accounting, total compensation expense to be recorded over the vesting period of an award is equal to the market price of Allegheny stock on the date of the award multiplied by the number of Units awarded. Under this method of accounting, total compensation expense for each award is calculated and fixed at the grant date (or the date of the Commission's authorization for Outstanding Units). This fixed total compensation expense will be recorded over the vesting period on a straight-line basis, and will not vary regardless of subsequent increases or decreases in the market price of Allegheny stock.

Allegheny maintains that the requested authority will benefit the company by reducing the volatility associated with accounting for the Units, will permit Allegheny to conserve cash in its administration of the Plan, redeeming Units through the issuance of stock, rather than cash payments, and will result in increased Common Stock capitalization in the amount of compensation expense that would otherwise be paid to participants in cash.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13167 Filed 6–9–04; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

Order of Suspension of Trading

June 8, 2004.

In the Matter of CathayOne, Inc. F/k/a Premier Brands, Inc., J. A. B. International, Inc. F/k/a Brush Creek Mining & Development Co.. Inc., Maxx International, Inc. F/k/a Area Investment & Development Co., Oasis Resorts International, Inc. F/k/a Flexweight Corp., Rollerball International, Inc., U.S. Homes & Properties, Inc., Wichita Development Corp. F/k/a Cyberbotannical, Inc., Youthline USA, Inc., and ATC II, Inc.; File No. 500–1

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CathayOne, Inc. because it is delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934, having not filed a periodic report since the period ending September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of J. A. B. International, Inc., because it is delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934, having not filed a periodic report since the period ending September 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Maxx International, Inc., because it is delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934, having not filed a periodic report since the period ending September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Oasis Resorts International, Inc., because it is delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934, having not filed a periodic report since the period ending December 31, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Rollerball International, Inc., because it is delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934, having not filed a periodic report since the period ending September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of U.S. Homes & Properties, Inc., because it is delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934, having not filed a periodic report since the period ending June 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wichita Development Corp., because it is delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934, having not filed a periodic report since the period ending September 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information

occurs first. Unless otherwise expressly provided, any award granted prior to termination shall survive the termination.

[3] The number of Units authorized under the Plan may be adjusted to reflect a distribution, recapitalization, split, or other similar transaction.

concerning the securities of Youthline USA, Inc., because it is delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934, having not filed a periodic report since the period ending September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ATC II, Inc., because it is delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934, having not filed a periodic report since the period ending December 30, 1996.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed companies is suspended for the period from 9:30 a.m. EDT on June 8, 2004, through 11:59 p.m. EDT on June 21, 2004.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–13273 Filed 6–8–04; 1:11 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Order of Suspension of Trading

June 8, 2004.

In the matter of Alcohol Sensors Int'l, Ltd., Beachport Entertainment Corp., Biosonics, Inc., Compressent, Inc., Eye Cash Networks, Inc., F/k/a eConnect F/k/a Betting, Inc., Hamilton-Biophile Companies, Holly Holdings, Inc., Intelligent Decision Systems, Inc., Long Distance Direct Holdings, Inc., LRG Restaurant Group, Inc., Nevada Manhattan Group, Inc., Parallel Technologies, Inc., Quadratech, Inc., Redneck Foods, Inc., Safetech Industries, Inc. F/k/a Bernstein Leibstone Associates, Inc., Viking Resources International, Inc., and Xavier Corp.; File No. 500–1

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Alcohol Sensors Int'l, Ltd. because despite a November 6, 1998 permanent injunction enjoining the company from failing to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934, the company has not filed a periodic report since the period ending September 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Beachport Entertainment Corp. because despite a March 22, 2000 permanent injunction enjoining the company from failing to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934, the company has not filed a periodic report since the period ending December 30, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Biosonics, Inc. because despite a February 9, 2001 permanent injunction enjoining the company from failing to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934, the company has not filed a periodic report since the period ending June 30, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Compressent, Inc. because despite a March 27, 2000 permanent injunction enjoining the company from failing to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934, the company has not filed a periodic report since the period ending June 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Eye Cash Networks, Inc. because despite a March 16, 1999 permanent injunction enjoining the company from failing to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934, the company has not filed its annual report for 2002, nor its quarterly reports for 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Hamilton-Biophile Companies because despite a June 4, 1999 permanent injunction enjoining the company from failing to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934, the company has not filed a periodic report since the period ending September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Holly Holdings, Inc. because despite a January 8, 1998 permanent injunction enjoining the company from failing to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934, the company has not filed a periodic report since the period ending December 31, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Intelligent Decision Systems, Inc. because despite a January 2, 2001 permanent injunction enjoining the company from failing to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934, the company has not filed a periodic report since the period ending March 31, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Long Distance Direct Holdings, Inc. because despite a March 13, 2000 permanent injunction enjoining the company from failing to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934, the company has not filed a periodic report since the period ending September 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of LRG Restaurant Group, Inc. because despite a August 26, 1998 permanent injunction enjoining the company from failing to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934, the company has not filed a periodic report since the period ending August 31, 1996.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Nevada Manhattan Group, Inc. because despite a March 10, 2000 permanent injunction enjoining the company from failing to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934, the company has not filed a periodic report since the period ending May 31, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Parallel Technologies, Inc. because despite a August 30, 1996 permanent injunction enjoining the company from failing to file timely periodic reports with the Commission in violation of Section

13(a) of the Securities Exchange Act of 1934, the company has not filed a periodic report since the period ending September 30, 1994.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Quadratech, Inc. because despite a June 16, 1998 permanent injunction enjoining the company from failing to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934, the company has not filed a periodic report since the period ending September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Redneck Foods, Inc. because despite a June 12, 2001 permanent injunction enjoining the company from failing to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934, the company has not filed a periodic report since the period ending September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Safetech Industries, Inc. because despite a December 2, 1998 permanent injunction enjoining the company from failing to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934, the company has not filed a periodic report since the period ending September 30, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Viking Resources International, Inc. because despite a March 10, 1998 permanent injunction enjoining the company from failing to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934, the company has not filed a periodic report since the period ending March 31, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Xavier Corp. because despite a April 16, 1998 permanent injunction enjoining the company from failing to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934, the company has not filed a periodic report since the period ending September 30, 1996.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed companies is suspended for the period from 9:30 a.m. EDT on June 8, 2004, through 11:59 p.m. EDT on June 21, 2004.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–13274 Filed 6–8–04; 1:11 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49797; File No. SR–Amex–2004–41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Implement a Quote Assist Feature in Options on a Pilot Program Basis

June 3, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 28, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 950(g) to implement a quote-assist feature on a pilot program basis until April 30, 2005. The text of the proposed rule change appears below. New text is in *italics*.

Rule 950

(a) through (f) No change.

(g) The provisions of Rule 156, together with the following additional provision, shall apply to Exchange option transactions:

A broker who has been given a spread order, or a straddle order or a combination order shall not be held responsible for an execution based upon transaction prices that are established at the opening or close of trading.

*** * *Commentary**

.01 The specialist shall maintain and keep active the limit order quote assist feature. The Exchange will establish the time frame within which the quote assist feature will display eligible customer limit orders, which in no event will be longer than 30 seconds. Use of the quote assist feature will be on a pilot program basis until April 30, 2005, or until all option classes have begun trading on the Exchange's new trading system known as ANTE, whichever occurs first.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently requires all option specialists to execute or display customer limit orders that improve the bid or offer by price or size immediately upon receipt, unless an exception to the requirement applies. The Exchange currently looks to Amex Rule 156 regarding the representation of orders and Article V, Section 4(h) of the Amex Constitution regarding conduct inconsistent with just and equitable principles of trade for its authority to enforce this requirement and will continue to do so until its proposal pending with the Commission to adopt a specific limit order display rule is approved.[3] That pending proposed rule change amends Amex Rule 958A by adding a new paragraph (e), which would require specialists to either execute or display customer limit orders immediately upon receipt, unless one of the exceptions set forth in the proposed rule applies.[4] The pending proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See File* No. SR–Amex–00–27.

[4] *Id.*

rule change defines "immediately upon receipt" to mean "as soon as practicable which shall mean, under normal market conditions, no later than 30 seconds after receipt." [5]

To assist specialists in complying with their current and future regulatory obligations as described above, the Exchange proposes to provide specialists with an automated quote assist feature as part of the Amex Options Display Book (also referred to as "AODB") on a pilot program basis until April 30, 2005. The quote assist feature would automatically display eligible limit orders within a configurable time that can be set only on a floor-wide basis by the Exchange. While all customer limit orders are expected to be displayed immediately, the quote assist feature can be set to automatically display limit orders at or close to the end of the 30-second time frame or within any other shorter time frame established by the Exchange. In the event there are instances where the specialist has not yet addressed the order within the applicable 30-second period, the quote assist feature would automatically display the eligible customer limit order in the limit order book at or close to the end of that period. The quote assist feature would help to ensure that eligible customer limit orders are displayed within the required time period then in effect. Proposed commentary to Amex Rule 950(g) would require specialists to maintain and keep active the limit order quote assist feature. The Exchange will establish the time frame within which the quote assist feature will display eligible customer limit orders, which time frame will not exceed the customer limit order display requirement then in effect.

The quote assist feature is proposed to be used on a pilot program basis until April 30, 2005. Thus, use of the quote assist feature will expire either (i) on April 30, 2005 or (ii) when all option classes have begun trading on the Exchange's new trading system known as the ANTE System,[6] whichever occurs first.

Unlike the quote assist feature proposed for the ANTE System, the specialist would not have the ability to deactivate the quote assist feature under the instant proposal. The Exchange would have the ability to deactivate the quote assist feature in AODB only on a floor-wide basis. Should the Exchange wish to deactivate the quote assist feature for a particular trading day, it would be required to do so after the close of trading on the previous trading day.[7]

The Exchange notes that the proposed quote assist feature would not relieve the specialists of their obligation to display customer limit orders immediately. To the extent that a specialist excessively relies on the quote assist feature to display eligible limit orders without attempting to address the orders immediately, the specialist could be violating his due diligence obligation. However, brief or intermittent reliance on the quote assist feature by a specialist during an unexpected surge in trading activity in an option class would not violate the specialist's obligation if used when the specialist is not physically able to address all the eligible limit orders within 30 seconds. Upon effectiveness of this rule filing, the Exchange will issue a regulatory notice discussing the issue of excessive reliance on the quote assist feature.

The Exchange would continue to conduct surveillance to ensure that specialists comply with their obligation to execute or book all eligible limit orders within the time period prescribed by Exchange rules or policy. The Exchange commits to conduct surveillance designed to detect whether specialists as a matter of course rely on the quote-assist feature to display all eligible limit orders. A practice of excessive reliance upon the quote assist feature would be reviewed by Member Firm Regulation as a possible due diligence violation. The Exchange commits to run its limit order display exception report at various display intervals in an attempt to detect a pattern suggestive of undue reliance on the quote assist feature. The Exchange commits to report to the Commission every three months the statistical data it uses to determine whether there has been impermissible reliance on the quote assist feature by specialists.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [8] in general and furthers the objectives of Section 6(b)(5) of the Act [9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 [11] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b–4(f)(6)(iii) of the Act,[12] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange requested that the Commission accelerate the 30-day operative date to May 31, 2004, so that it might implement the proposed rule change on that date to assist and facilitate specialists' compliance with their regulatory obligation and ensure that eligible customer limit orders are displayed in the disseminated quotations immediately. The Exchange

[5] *See id.*

[6] *See* Securities Exchange Act Release No. 49747 (May 20, 2004) 69 FR 30344 (May 27, 2004) (Order Approving File No. SR–Amex–2003–89).

[7] The quote assist feature cannot be activated or deactivated while trading is in session. Telephone conversation between Claire McGrath, Senior Vice President and Deputy General Counsel, Amex, and Nathan Saunders, Attorney, Division of Market Regulation, Commission (May 19, 2004).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

states that the implementation of the proposed quote-assist feature in the AODB will be completed on or about May 31, 2004. The Exchange contends that this proposed rule is substantially similar to comparable rules the Commission approved for the Chicago Board Options Exchange, Inc. ("CBOE"), and the New York Stock Exchange, Inc., ("NYSE"), which were published for public notice and comment.[13] As a result, the Exchange believes that the proposed rule change does not raise any new regulatory issues. The Commission, consistent with the protection of investors and the public interest, has determined to accelerate the 30-day operative date to June 3, 2004,[14] and, therefore, the proposal is effective and operative on that date.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2004–41 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2004–41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–41 and should be submitted on or before July 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13089 Filed 6–9–04; 8:45 am]

BILLING CODE 8010–01–P

[13] *See* Securities Exchange Act Release Nos. 42952 (June 16, 2000), 65 FR 39210 (June 23, 2000) (Commentary .10 to Amex Rule 170); 41386 (May 10, 1999), 64 FR 26809 (May 17, 1999) (Supplementary Material .15 to NYSE Rule 79A); and 47701 (April 18, 2004), 69 FR 22426 (April 28, 2004) (CBOE Rule 8.85(b)(vii)).

[14] For purposes only of accelerating the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49800; File No. SR–Amex–2004–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to a Change in the Options Transaction Fee Reductions for Non-Member Broker-Dealers in Connection With Cabinet and Spread Trades

June 3, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 19, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On May 28, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 27, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange corrected a typographical error in the text of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to lower the amount of the reductions of options transaction fees that are available to non-member broker-dealers in connection with equity options and QQQ options contracts executed as part of an accommodation or cabinet trade ("Cabinet Trades") and reversals and conversions, dividend spreads, box spreads and butterfly spreads ("Spread Trades").

The text of the proposed rule change, as amended, is available at the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex states that it currently imposes charges for transactions in equity and QQQ options executed on the Exchange by non-member broker-dealers. Amex states that the current charges for non-member broker-dealers in equity options are $0.26 per contract side, consisting of an options transaction fee of $0.19, an options comparison fee of $0.04 and an options floor brokerage fee of $0.03.

Amex represents that, in connection with the recent proposal to reduce options transaction fees for specialists and registered options traders ("ROTs"), it also proposed to lower the amount of the reductions of options transaction fees for specialists, ROTs and member broker-dealers (*i.e.*, firms) in connection with Cabinet Trades and Spread Trades.[4] Amex states that, for the purpose of uniformity, this proposed rule change seeks to similarly lower the amount of the reductions of options

[4] *See* Securities Exchange Act Release No. 49763 (May 24, 2004), 69 FR 30967 (June 1, 2004) (File No. SR–Amex–2004–28).

transaction fees for equity and QQQ options contracts executed as part of Cabinet Trades or Spread Trades that are transacted by non-member broker-dealers. Amex states that this change will effectively increase transaction fees for non-member broker-dealers' executions of equity option and QQQ option contracts that are either Cabinet Trades or Spread Trades.

Amex represents that the current fee reductions [5] applicable to non-member broker-dealers for equity options and QQQ options transactions executed as either Cabinet Trades or Spread Trades will be reduced from $0.12 to $0.06 per contract side and from $0.18 to $0.12 per contract side, respectively.[6] The $2,000 per trade fee cap currently in place in connection with Cabinet Trades and Spread Trades will continue to apply. This fee cap was recently adopted by the Exchange and implemented in February 2004.[7]

Amex believes that this proposal to lower the amount of the reductions of options transaction fees for non-member broker-dealers in connection with Cabinet and Spread Trades will better reflect the actual cost of transactions on the Amex. In addition, Amex represents that the proposed fee change for non-member broker-dealers will provide the same options fee reductions for Cabinet Trades and Spread Trades that exist for specialists, ROTs and member broker-dealers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [8] in general and furthers the objectives of 6(b)(4) of the Act [9] in particular regarding the equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using Exchange facilities.

[5] *See* Securities Exchange Act Release Nos. 46026 (June 4, 2002), 67 FR 40034 (June 11, 2002) and 48219 (July 23, 2003), 68 FR 44823 (July 30, 2003).

[6] The lowering of the fee reductions for equity options transactions in connection with Cabinet Trades and Spread Trades will now result in reductions of the options transaction fee, options comparison fee and options floor brokerage fee of $0.03, $0.01 and $0.02 per contract side, respectively. With respect to QQQ option transactions only, the lowering of the fee reductions in connection with Cabinet Trades and Spread Trades will result in reductions of the options transaction fee, options comparison fee and options floor brokerage fee of $0.09, $0.01 and $0.02 per contract side, respectively.

[7] *See* Securities Exchange Act Release No. 49358 (March 3, 2004), 69 FR 11469 (March 10, 2004).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2004–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2004–37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–37 and should be submitted on or before July 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13090 Filed 6–9–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49806; File No. SR–BSE–2004–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. To Extend a Pilot Program Under Which it Lists Options on Selected Stocks Trading Below $20 at One-Point Intervals Until June 5, 2005

June 4, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 3, 2004, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to extend its pilot program under which it lists options on selected stocks trading below $20 at $1 strike price intervals ("Pilot Program") until June 5, 2005. The text of the proposed rule change is available at the Office of the Secretary, the BSE, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE 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

The purpose of the proposed rule change is to extend the Pilot Program under the Rules of the Boston Options Exchange (the "BOX Rules") relating to the interval between strike prices of series of options on individual stocks. Chapter IV, Section 6 of the Box Rules establishes guidelines regarding the addition of series for trading on BOX. The BOX Rules include a Pilot Program that expires on June 5, 2004, which allows Boston Options Exchange Regulation, LLC ("BOXR"), the wholly owned subsidiary of the BSE that has been delegated regulatory authority over BOX,[3] list options on up to five underlying equities trading below $20 at one-point intervals and to list $1 strike prices on any equity option included in the $1 strike price pilot program of any other options exchange.[4] This proposal seeks to extend the operation of the Pilot Program until June 5, 2005.

In sum, for options selected for the Pilot Program, BOXR may list strike prices at $1 intervals from $3 to $20, but no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day. BOXR also may list $1 strikes on any other option class designated by another securities exchange that employs a similar Pilot Program under their respective rules. BOXR cannot list long-term option series ("LEAPS"®) at $1 strike price intervals for any class selected for the Pilot Program. BOXR also is restricted from listing any series that would result in strike prices being $0.50 apart.

2. Statutory Basis

The BSE believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] specifically, in that it is designed 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 is not designed to permit unfair discrimination between customers, brokers, or dealers, or to regulate by virtue of any authority matters not related to the administration of the BSE.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe that the proposed rule change will impose any burden on competition 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

The BSE has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4[8] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and BSE has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b–4(f)(6)(iii) of the Act,[9] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and BSE is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. BSE has requested that the Commission waive the five-day pre-filing notice requirement and 30-day operative delay so that the Pilot Program may continue without interruption after it would have otherwise expired on June 5, 2004. For this reason, the Commission, consistent with the protection of investors and the public interest, has determined to waive the five-day pre-filing notice requirement and 30-day operative delay,[10] and, therefore, the proposal is effective and operative upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[3] See Securities Exchange Act Release No.49065 (January 13, 2004) 69 FR 2768 (January 20, 2004).

[4] See Securities Exchange Act Release No. 49292 (February 20, 2004), 69 FR 8993 (February 26, 2004) (Notice of Filing and Immediate Effectiveness of File No. SR–BSE–2004–01).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] For purposes only of waiving the five-day pre-filing notice requirement and 30-day operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] In the event that the BSE proposes to extend the Pilot Program beyond June 5, 2005, expand the number of options eligible for inclusion in the Pilot Program, or seek permanent approval of the Pilot Program, it should submit a Pilot Program report to the Commission along with the filing of such proposal. The report must cover the entire time the Pilot Program was in effect, and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of $1 strike price intervals for the options the BSE selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the BSE's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the BSE addressed them; (6) any complaints that the BSE received during the operation of the Pilot Program and how the BSE addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program. The Commission expects the BSE to submit a proposed rule change at least 60 days before the expiration of the Pilot Program in the event the BSE wishes to extend, expand, or seek permanent approval of the Pilot Program.

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

• Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BSE–2004–22 on the subject line.

Paper comments:

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–BSE–2004–22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2004–22 and should be submitted on or before July 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13171 Filed 6–9–04; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49799; File No. SR–CBOE–2004–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. to Extend a Pilot Program Under Which it Lists Options on Selected Stocks Trading Below $20 at One-Point Intervals Until June 5, 2005

June 3, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 24, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by CBOE. CBOE filed Amendment No. 1 the proposal on May 28, 2004.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to extend its pilot program under which it lists options on selected stocks trading below $20 at $1 strike price intervals ("Pilot Program") until June 5, 2005. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from James M. Flynn, Attorney II, Legal Division, CBOE, to Christopher Solgan, Attorney, Division, Commission, dated May 26, 2004 ("Amendment No. 1"). In Amendment No. 1, CBOE changed the file number of the proposed rule change from SR–CBOE–2004–32 to SR–CBOE–2004–34.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to extend the Pilot Program for an additional year until June 5, 2005.[4] The current Pilot Program allows CBOE to select a total of 5 individual stocks on which option series may be listed at $1 strike price intervals. To be eligible for selection into the Pilot Program, the underlying stock must close below $20 in its primary market on the previous trading day. If selected for the Pilot Program, CBOE may list strike prices at $1 intervals from $3 to $20, but no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day. CBOE also may list $1 strikes on any other option class designated by another securities exchange that employs a similar Pilot Program under their respective rules. CBOE cannot list long-term option series ("LEAPS"®) at $1 strike price intervals for any class selected for the Pilot Program. CBOE also is restricted from listing any series that would result in strike prices being $0.50 apart.

CBOE believes that listing of one point strike price intervals in selected equity options provides investors with more flexibility in the trading of equity options overlying stocks trading at less than $20 by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. CBOE has conducted a study into the impact that $1 strikes has made on the participating Pilot Program classes ("Pilot Program Report").[5] Specifically, in the Pilot Program Report, CBOE compared the average daily trading volume ("ADV") for the three month period immediately preceding the listing of $1 strikes to the most recent three month period (ending March 31, 2004) for each of the classes selected to the Pilot Program to date. According to CBOE's Pilot Program Report, the trading volume in a wide majority of the classes selected to the Pilot Program has increased. In ten of the twenty-two classes selected since the inception of the program, the ADV has increased over 100%, while in some

[4] The Commission approved the Pilot Program on June 5, 2003. *See* Securities Exchange Act Release No. 47991 (June 5, 2003); 68 FR 35243 (June 12, 2003). Under Interpretation and Policy .01(a) to CBOE Rule 5.5, the Pilot Program is scheduled to expire on June 5, 2004.

[5] CBOE attached the Pilot Program Report as an exhibit to this proposed rule change. Copies of the Pilot Program Report are available at CBOE and the Commission's Public Reference Room.

classes, the ADV has more than tripled since the respective selection date. The Pilot Program Report also suggests that the impact on CBOE's, the Options Price Reporting Authority's ("OPRA"), and market data vendors' respective automated systems has been minimal. Specifically, in May 2003, activity in the 22 Pilot classes represented 2.01% of all OPRA quotes and 3.22% of all OPRA series being quoted. In March 2004, those same classes represented 3.00% of all quotes and 3.31% of all series being quoted. In addition to $1 strikes, CBOE believes that other factors may have an impact on capacity, including the implementation of CBOE's Hybrid trading system and quoting in strike prices other than $1 strike price intervals.

2. Statutory Basis

According to CBOE, an extension of the Pilot Program is warranted because it believes the data provided in its Pilot Program Report indicates that there is strong investor demand for $1 strikes and that the Pilot Program has not adversely impacted capacity. For these reasons, CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[6] Specifically, CBOE believes the proposed rule change is consistent with the requirement of Section 6(b)(5)[7] that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(6) of Rule 19b–4[9] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and CBOE has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

Under Rule 19b–4(f)(6)(iii) of the Act,[11] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and CBOE is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. CBOE has requested that the Commission waive the requirement that the proposal not become operative for 30 days after the date of its filing so that the Pilot Program may continue without interruption after it would have otherwise expired on June 5, 2004. For this reason, the Commission, consistent with the protection of investors and the public interest, has determined to waive requirement that the proposal not become operative for 30 days after the date of its filing,[12] and, therefore, the proposal is effective and operative upon filing with the Commission.[13]

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–CBOE–2004–34 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-CBOE–2004–34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] For purposes of calculating the 60-day abrogation date, the Commission considers the 60-day period to have commenced on May 28, 2004, the date CBOE filed Amendment No. 1.

[11] 17 CFR 240.19b-4(f)(6)(iii).

[12] For purposes only of accelerating the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] In the event that CBOE proposes to extend the Pilot Program beyond June 5, 2005, expand the number of options eligible for inclusion in the Pilot Program, or seek permanent approval of the Pilot Program, it should submit a Pilot Program report to the Commission along with the filing of such proposal. The report must cover the entire time the Pilot Program was in effect, and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of $1 strike price intervals for the options the CBOE selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the CBOE's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the CBOE addressed them; (6) any complaints that the CBOE received during the operation of the Pilot Program and how the CBOE addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program. The Commission expects the CBOE to submit a proposed rule change at least 60 days before the expiration of the Pilot Program in the event the CBOE wishes to extend, expand, or seek permanent approval of the Pilot Program.

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–34 and should be submitted on or before July 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13085 Filed 6–9–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49798; File No. SR–CBOE–2004–23]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. to Permanently Approve the Modified ROS Opening Procedure Pilot Program, Which Occurs on the Settlement Date of Futures and Options on Volatility Indexes

June 3, 2004.

I. Introduction

On April 21, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permanently approve its modified Rapid Opening System ("ROS") opening procedure, which was approved by the Commission on a pilot basis through November 17, 2004.[3] On April 23, 2004, CBOE filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on April 30, 2004.[5] The Commission received no comment letters on the proposed rule change. On May 13, 2004, CBOE filed Amendment No. 2 to the proposed rule change.[6] This order approves the proposed rule change, as amended.

II. Description of the Proposal

On March 24, 2004, the Commission approved the implementation of a modified ROS procedure on a pilot basis through November 17, 2004.[7] CBOE now proposes that the modified ROS opening procedure pilot program be approved on a permanent basis. According to CBOE, the modified ROS opening procedure pilot program facilitates the trading of options and futures on volatility indexes ("Volatility Indexes") by modifying certain of the CBOE rules that govern ROS for index option series whose prices are used to derive the Volatility Indexes on which options and futures are traded.

According to CBOE, in general, Volatility Indexes provide investors with up-to-the-minute market estimates of expected near-term volatility of the prices of a broad-based group of stocks by extracting volatilities from real-time index option bid/ask quotes. Volatility Indexes are calculated using real-time quotes of the nearby and second nearby index puts and calls on established broad-based market indexes, referred to herein as a "Market Index." The futures and options on a Volatility Index expire on the Wednesday immediately prior to the third Friday of the month that immediately precedes the month in which the options used in the calculation of that index expire ("Settlement Date"). Generally, the modified ROS opening procedure allows, in part, broker-dealer orders, other than contingency orders, to be incorporated into the electronic book for purposes of the ROS opening for any index options series with respect to which a Volatility Index is calculated. The modified ROS opening procedure is used only on the final Settlement Date of the options and futures contracts on the applicable Volatility Index in each expiration month, which is when Volatility Index settlement values are determined.[8]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act [10] that the rules of a national securities exchange, in part, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

The Commission notes that futures and options on Volatility Indexes with contract months that expire beyond November 2004 are currently being traded.[11] Therefore, the Commission believes that permanent approval of the modified ROS opening procedure pilot program should provide market participants with greater certainty as to the settlement process for those futures and options. The Commission also continues to believe that the modified ROS opening should ensure that broker-dealer orders are fairly incorporated into the opening,[12] and thereby enable market participants that hedge Volatility Index futures or options contract positions against option positions in the

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49468 (March 24, 2004), 69 FR 17000 (March 31, 2004) (SR–CBOE–2004–11) ("Modified ROS Opening Procedure Pilot Program Approval Order").

[4] *See* letter from David Doherty, Attorney, Legal Division, CBOE, to Terri Evans, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 23, 2004 ("Amendment No. 1").

[5] *See* Securities Exchange Act Release No. 49614 (April 26, 2004), 69 FR 23837 ("Notice").

[6] *See* letter from David Doherty, Attorney, Legal Division, CBOE, to Terri Evans, Assistant Director, Division, Commission, dated May 12, 2004 ("Amendment No. 2"). In Amendment No. 2, CBOE amended the proposed rule text to reflect the immediate effectiveness of SR–CBOE–2004–27, which amended the modified ROS opening procedure pilot program to change the cut-off time for the submission of orders to the electronic book from 8:25 am to 8:28 am. *See* Securities Exchange Act Release No. 49679 (May 11, 2004), 69 FR 27957 (May 17, 2004) (Notice of Filing and Immediate Effectiveness of SR–CBOE–2004–27). The Commission notes that this is a technical, non-substantive amendment and not subject to notice and comment.

[7] *See* Modified ROS Opening Procedure Pilot Program Approval Order, *supra* note 3.

[8] For a detailed description on how the modified ROS opening procedure operates, *see* Notice, *supra* note 5.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] Telephone conversation between David Doherty, Attorney, CBOE, and Christopher Solgan, Attorney, Division, Commission, on May 24, 2004.

[12] The Commission notes that it had previously required that CBOE develop a workable plan for the electronic incorporation of non-bookable orders in ROS. This requirement was waived in light of the limited number of non-bookable orders that are present at the open and CBOE's forthcoming ability to record information on non-bookable orders under the Consolidated Options Audit Trail ("COATS") Plan when Phase V of COATS is implemented. CBOE has represented as part of this filing that it is still unable to incorporate non-bookable orders on a daily basis because of certain technological limitations with respect to index products. Telephone conversation between David Doherty, Attorney, CBOE, and Christopher Solgan, Attorney, Division, Commission, on March 24, 2004. The Commission expects that CBOE will continue to actively monitor the quality of executions received by non-bookable orders that are not incorporated into the modified ROS opening and that CBOE will continue to explore methods to electronically incorporate non-bookable orders in the standard ROS opening in the event that non-bookable orders are more actively represented in the opening.

related Market Index to ensure convergence of the value of those two positions at the time of settlement. The ROS modified opening procedure should allow this convergence by allowing market participants to close out their open Market Index option positions and obtain the exact price (*i.e.*, the opening price) for those series that will be used to calculate the Volatility Index settlement value. The Commission notes that the modified ROS opening procedure was used on May 19, 2004 and that CBOE represented that generally no problems or issues arose regarding its use.[13]

The Commission notes that CBOE has also submitted supplemental surveillance procedures designed to ensure, among other things, that market-makers exercise their discretion to set certain AutoQuote values consistent with their obligation to price options fairly and that identify whether any accounts have engaged in manipulative or violative activity.[14]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–CBOE–2004–23) and Amendment Nos. 1 and 2 thereto, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13088 Filed 6–9–04; 8:45 am]

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[13] Telephone conversation between David Doherty, Attorney, CBOE, and Christopher Solgan, Attorney, Division, Commission, on May 28, 2004. CBOE noted that there were two minor issues that arose regarding the May 19, 2004 opening. First, that while 138 market makers were able to log on to ROS for the modified opening, two market makers were unable to participate in the opening because they failed to log onto ROS in a timely manner. Second, CBOE is investigating whether a broker-dealer violated CBOE Rule 6.2A by failing to cancel a broker-dealer order that was not executed during the opening as explicitly required by the rule. CBOE has represented that these problems did not affect the performance of the modified ROS opening. Further, CBOE has represented that it will work with market makers to ensure their timely participation in ROS.

[14] CBOE has represented, and the Commission expects, that CBOE will work with the Commission's Office of Compliance Inspections and Examinations ("OCIE") to finalize any surveillance reports used in connection with the modified ROS opening in a manner acceptable to OCIE. The Commission also expects CBOE to assess its surveillance procedures from time to time to determine whether they are adequate to ensure that market makers do not engage in manipulative or improper trading practices. Further, the Commission expects CBOE to consider whether any additional surveillance procedures are necessary to prevent manipulative or other improper practices. In addition, CBOE stated, and the Commission expects, that it will modify the ROS system software to prevent a market-maker who is logged on to ROS from trading against an order on behalf of the market-maker or the market-maker firm that may be resting in the electronic book. CBOE has also represented and the Commission expects that prior to implementation of this system change, CBOE will file a rule change with the Commission to reflect this system change. See Notice, *supra* note 5.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49793; File No. SR–CHX–2004–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Automatic Execution of Orders

June 2, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on February 11, 2004, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XX, Rule 37 of the CHX Rules, which governs, among other things, automatic execution of market and marketable limit orders, to eliminate the existing 100-share minimum automatic execution threshold. The text of the proposed rule change is available from the Office of the Secretary of the CHX or at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Article XX, Rule 37 and Rule 43 of the CHX Rules, which governs, among other things, automatic execution of market and marketable limit orders, to eliminate the existing 100-share minimum automatic execution threshold.

Background

The vast majority of orders received by a CHX specialist are routed from order-sending firms via the Exchange's MAX" system, which provides for the electronic routing and automatic execution of orders. CHX rules require that the MAX system automatically execute orders at the national best bid or offer ("NBBO") if certain conditions are met.[3] In order to manage his position and prudently limit his auto-execution exposure, each CHX specialist designates an "auto-execution threshold" for each issue.[4] The auto-execution threshold is the number of shares that the specialist is willing to execute automatically. Under the current rule, the minimum auto-execution threshold is 100 shares.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See CHX Article XX, Rule 37(b)(6)(automatic execution of orders in listed securities); CHX Article XX, Rule 37(b)(7)(automatic execution of orders in OTC securities).

[4] Article XX, Rule 37(b)(1).

[5] The CHX believes that it is important to note that under the current version of the CHX rules governing automatic execution, a CHX specialist is required to permit MAX system execution of an unlimited number of orders at the then-prevailing NBBO price, until the consolidated quotation stream reflects a change in the NBBO price. As a consequence, if a large number of orders are routed to the CHX specialist simultaneously, before the consolidated quotation is updated, the CHX specialist would be obligated to fill all of the orders at the NBBO price, despite the fact that the aggregate number of shares vastly exceeded the NBBO size. The CHX represents that this virtually unlimited liability is an unintended, and unwarranted, consequence of automatic execution guarantees like the Exchange's current rule.

For example, if the national best bid ("NBB") was 50 x 1000 shares, the CHX specialist would be obligated to execute an unlimited number of customer sell orders at 50, as long as each order was 1000 shares or less in size, until the consolidated quotation information indicated a change in the NBB. Continuing this hypothetical example, assume

Continued

If an order exceeds the specialist's auto-execution threshold, the order is automatically directed into the specialist's book for manual execution.[6] Orders that are executed manually must be executed in accordance with CHX Article XX, Rule 37(a), commonly referred to as the "BEST Rule," which currently requires that manually executed orders be executed by the CHX specialist as principal at the NBBO or, if the CHX specialist elects to act as agent for the order, at the best available price in the marketplace.[7]

A number of the Exchange's specialist firms have developed and are implementing a remote pricing functionality ("RFP") that permits their specialists to better respond to orders that are dropped for manual handling. This RFP functionality provides the MAX system with automated execution instructions for orders that otherwise would require the manual intervention of a CHX specialist.[8] Of course, a specialist firm may also continue to act as agent for an order or manually execute orders using more manual processes.

Proposal

The Exchange's current rule requires a minimum auto-execution threshold of 100 shares, thus ensuring that all 100-share orders are executed automatically by the MAX system. The CHX believes, however, that in many cases a CHX specialist might prefer to act as agent for the order or manually execute the order, rather than having the order (or a large number of 100-share orders) executed against him automatically at the NBBO. Accordingly, the Exchange proposes to eliminate the requirement of a 100-share minimum auto-execution threshold, so that a CHX specialist may use his or her discretion in determining how best to handle these 100-share orders.

This change is principally intended to permit CHX specialists to utilize their RFP functionalities to price 100-share orders.[9] Although the elimination of the 100-share minimum automatic execution threshold would also permit specialists to switch to manual execution mode on the CHX floor without using an RFP functionality, the Exchange does not anticipate that this would occur very often, if at all; in today's fast-paced trading environment, a specialist would not be able to manually manage his order flow for any sustained period of time.

Significantly, the Exchange represents that orders will continue to be subject to surveillance by the CHX Department of Market Regulation and members will remain subject to CHX rules relating to order execution requirements.

The CHX would further note that in today's market environment, where specialists are required to make public their quality-of-execution statistics and broker-dealers are bound as fiduciaries to make order-routing decisions in accordance with best execution practices, there exist sufficient market-based incentives for specialists to continue to provide execution prices and liquidity akin to the best available in the national market.[10] The CHX believes that these incentives render a rule-based requirement largely obsolete, and amply support the rule change that the Exchange now proposes.

The Exchange also is seeking to delete CHX Article XX, Rule 37, Interpretation and Policy .04, which currently governs the procedures by which specialists are to obtain permission to switch from automatic execution mode to manual execution mode. Because deletion of the 100-share minimum automatic execution threshold would effectively permit CHX specialists to switch to manual execution mode, it is no longer necessary to include procedures for seeking floor official approval.

2. Statutory Basis

The proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[11] In particular, the proposed rule is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[12]

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2004–02 on the subject line.

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that 200 sell orders, each for 100 shares, were routed to the CHX before a change in the NBB to 49 one second later. Notwithstanding the one-second pendency of the 50 NBB, the CHX specialist would be obligated to buy 20,000 shares at 50, when such liquidity at that price was not truly present anywhere in the national market system. In today's decimal environment, such extraordinary results, which could not have been anticipated when the Exchange's automatic execution provisions were enacted, occur often.

[6] An exception to this general rule occurs if the order-sending firm has elected to receive partial automatic executions, in which case a portion of the order will automatically execute, up to the size of the auto-execution threshold, and the balance of the order will be placed in the specialist's book for manual execution. See CHX Article XX, Rules 37(b)(6),(7).

[7] The CHX has filed a proposal to modify the BEST Rule's requirement that specialists, when acting as principal, manually-execute orders at the NBBO. See SR-CHX–2004–03.

[8] The REP systems are proprietary to the specialist firms and are not facilities of the Exchange.

[9] CHX specialists believe that use of their RFP technology for 100-share orders will, among other things, better enable them to address situations in which a co-specialist simultaneously receives a large number of 100-share orders.

[10] Specialists would of course remain free to increase their auto execution thresholds to larger sizes if they believe that business/marketing considerations so demand; in fact, a number of specialists have indicated that they would reduce their auto execution threshold below 100 shares only in very limited instances, or for the sole purpose of routing 100-share orders to their RFP functionalities.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

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–CHX–2004–02. 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 offices of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2004–02 and should be submitted on or before July 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13086 Filed 6–9–04; 8:45 am]

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[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49810; File No. SR–PCX–2003–35]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to Corporate Governance of Listed Issuers

June 4, 2004.

I. Introduction

On July 14, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary, PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Corporate Governance and Disclosure Policies. On October 14, 2003, the Exchange filed Amendment No. 1 to the proposal.[3] On October 31, 2003, the proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register**.[4] On November 18, 2003, the Exchange filed Amendment No. 2 to the proposal.[5] On December 1, 2003, the Commission partially approved the proposal as modified by Amendment No. 1, granted accelerated approval to Amendment No. 2, and solicited comments from interested persons on Amendment No. 2.[6] Specifically, the Commission approved the portions of the proposed rule change that implemented the requirements of Rule 10A–3 under the Act relating to audit committees of listed issuers.[7] The Commission received no comments on the proposal and Amendment No. 2.

On May 4, 2004, the Exchange filed Amendment No. 3 to the proposed rule change.[8] In Amendment No. 3, PCX proposed additional enhancements to the proposal and revisions to a number of its provisions that were not approved in the Partial Approval Order.[9] The substantive changes to the proposal made by Amendment No 3 are summarized in Section II below. On June 3, 2004, the Exchange filed Amendment No. 4 to the proposed rule change, making additional, minor clarifications.[10] On June 4, 2004, the Exchange filed Amendment No. 5 to the proposed rule change.[11] This Order approves the proposed rule change in its entirety, as amended; grants accelerated approval to Amendment Nos. 3 and 4; and solicits comments from interested persons on Amendment Nos. 3 and 4.

II. Description of the Proposal

In addition to the provisions of the proposed rule change implementing the requirements of Rule 10A–3 under the Act, which were approved in the Partial Approval Order, PCX proposes further amendments to its rules, set forth in PCXE Rule 5.3, relating to the governance of issuers that list securities on the Exchange. The proposed rule change further includes related changes to PCXE Rule 5.4, regarding suspension of securities from trading privileges, and PCXE Rule 5.5, regarding maintenance requirements and delisting procedures.[12] The new corporate governance standards would apply to all listed companies, including Tier I and Tier II companies,[13] with certain exceptions for registered management investment companies, preferred and debt listings, passive business organizations (such as royalty trusts),

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steven B. Matlin, Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 8, 2003 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 48700 (October 24, 2003), 68 FR 62146 (October 31, 2003) ("Notice").

[5] *See* letter from Steven B. Matlin, Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 17, 2003 ("Amendment No. 2").

[6] Securities Exchange Act Release No. 48861 (December 1, 2003), 68 FR 68440 (December 8, 2003) ("Partial Approval Order").

[7] 17 CFR 240.10A–3.

[8] *See* letter from Steven B. Matlin, Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 3, 2004 ("Amendment No. 3").

[9] The proposed revisions include some modifications to the text as approved in the Partial Approval Order.

[10] *See* letter from Steven B. Matlin, Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 2, 2004 ("Amendment No. 4"). The revisions made in Amendment No. 4 are discussed *infra*, at notes 17 and 29.

[11] *See* letter from Steven B. Matlin, Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 4, 2004 ("Amendment No. 5"). Amendment No. 5 was a technical amendment and is not subject to notice and comment.

[12] The changes to PCXE Rule 5.5, which were approved in the Partial Approval Order, referenced PCXE Rule 5.3 in its entirety and Rule 5.3(k)(5) in particular. Approval of the remaining proposed changes to PCXE Rule 5.3 that are the subject of this Order will thus affect the application of Rule 5.5.

[13] *See* Amendment No. 3, which eliminated the distinction between Tier I and Tier II companies with respect to the enhanced corporate governance standards that are the subject of this Order.

and derivative or special purpose securities.[14] Subject to these exceptions, the proposed rule change would incorporate the following requirements in addition to those approved in the Partial Approval Order:

Majority of Independent Directors

The proposed amendments generally would require each domestic issuer to have a majority of independent directors on its board of directors, except that a domestic issuer of which more than 50% of the voting power is held by an individual, a group or another company ("controlled company"), a limited partnership and a company in bankruptcy would not be subject to this requirement.[15] However, all such controlled companies, limited partnerships, and companies in bankruptcy would be required to maintain at least a minimum three-person audit committee and otherwise comply with the audit committee requirements set forth separately in the rules as described below.

Definition of "Independent Director"

Under the proposal, no director would qualify as independent unless the board of directors of the listed company affirmatively determines that the director has no material relationship with the company, either directly or as a partner, shareholder, or officer of an organization that has a relationship with the company. Companies would be required to disclose these determinations. The basis for a board determination that a relationship is not material would be required to be disclosed in the company's annual proxy statement (or, if the issuer does not file a proxy, in its Form 10–K, 20–F or N–CSR).[16]

In addition, the proposed rule change would specifically identify six categories of persons who could not be considered independent. Persons who would not qualify as independent directors would include: (i) A director who is a present or former employee of the listed company whose employment ended within the past three years;[17] (ii) a director who is, or in the past three years has been, affiliated with or employed by a (present or former) auditor of the company (or of an affiliate); (iii) a director who is, or in the past three years[18] has been, part of an interlocking directorate in which an executive officer of the listed company serves on the compensation committee of another company that concurrently employs the director; (iv) a director with an immediate family member in any of the foregoing categories, with immediate family member defined to include a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law,[19] and anyone other than employees who shares such person's home; (v) a director who is, or in the past three years has been, an executive officer or an employee—or whose immediate family member is or has been an executive officer—of a company that makes payments to, or receives payments from, the listed company for property or services in an amount which, in any single fiscal year, exceeds the greater of $200,000 or 5% of such other company's consolidated gross revenues;[20] (vi) a director who receives, or whose immediate family member receives, more than $100,000 per year in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service).[21] Such director would not be independent until three years after he or she ceases to receive more than $100,000 in such compensation. In the case of an investment company, in lieu of the above criteria, the proposal would provide that a director is not independent if the director is an "interested person" of the company as defined in section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee.[22] Under the proposal, PCX would phase in the three-year "look-back" provisions described above by applying only a one-year look-back period for the first year after adoption of the new standards.[23]

Executive Sessions of Non-Management Directors

The proposal would also require non-management directors of each listed company to meet at regularly scheduled executive sessions without management. A listed company also would be required to disclose a method for interested parties to communicate directly with the presiding director of such sessions or with the non-management directors as a group.[24] Nominating/Corporate Governance and Compensation CommitteesThe proposal would further require generally that each listed company have a Nominating Committee/Corporate Governance Committee and a Compensation Committee. Each such committee would be required to be composed entirely of independent directors.[25] However, the proposal would provide that if the committee is made up of three or more individuals, then one member of the committee would not be required to be an independent director when certain conditions apply.[26] Specifically, the director who is not independent could not be a current officer or employee or immediate family member of an officer or employee and could be appointed to the Nominating/Corporate Governance Committee or Compensation Committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best

[14] *See* Amendment No. 3. Registered management investment companies would be required to comply with the new requirements described below relating to audit committees and certification and notification procedures, among others, but would be excepted from other provisions, such as those requiring a majority of independent directors, nominating/corporate governance and compensation committees, and corporate guidelines and codes of conduct.

Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that act, would be required to comply with all of the requirements of Rule 5.3 applicable to domestic issuers. Preferred and debt listings, passive business organizations (such as royalty trusts), derivative or special purpose securities would only be required to comply with the new requirements to the extent required by Rule 10A–3 under the Act.

[15] *See* Amendment No. 3, which added the exception for limited partnerships and companies in bankruptcy. *See also supra* note 14.

[16] *See* Notice for a more complete description of the disclosure requirements. *See also* Amendment No. 3, which, in several places in the proposed rules, added alternative forms on which a listed company would be required to make the requisite disclosures if the company does not file a proxy.

[17] *See* Amendment No. 3, which changed the proposed look-back period from five years to three years. Amendment No. 4 clarified that current employees are not independent.

[18] *See* Amendment No. 3, which changed the proposed look-back period from five years to three years.

[19] *See* Amendment No. 3, which added brothers-in-law and sisters-in-law to the proposed definition of "immediate family member" for the purposes of determining independence.

[20] *See* Amendment No. 3, which added this proposed provision with a qualified exemption for charitable organizations.

[21] *See* Amendment No. 3, which added this proposed provision.

[22] *See* Amendment No. 3, which added this provision.

[23] *See* Amendment No. 3.

[24] *See* Notice for a more complete description of these requirements. See also Amendment No. 3, which added a proposed provision stating that if the non-management directors include directors who are not independent, then the company should at least once a year schedule an executive session including only independent directors.

[25] *See* Notice for further nominating and compensation committee requirements. See also supra note 14.

[26] *See* Amendment No. 3, which added these conditions.

interests of the company and its shareholders, and the board discloses, in the proxy statement for the next annual meeting subsequent to such determination (or, if the issuer does not file a proxy, in its Form 10–K or 20–F), the nature of the relationship and the reasons for the determination. The member appointed under this exception could not serve for longer than two years. Controlled companies, limited partnerships, and companies in bankruptcy would not be subject to the nominating and compensation committee requirements.[27]

Audit Committee and Internal Audit Function

The proposed amendments would expand existing PCX requirements relating to audit committee composition and would include new requirements relating to that committee's role and authority.[28] The Partial Approval Order approved portions of the proposed rule change that require each listed issuer to establish and maintain an audit committee that complies with the requirements of Rule 10A–3 under the Act and is composed entirely of independent directors as defined in current PCXE rules and who meet the criteria of Rule 10A–3. The proposal would further require that the audit committee consist of at least three members, each of whom meets the enhanced definition of independent director described above.[29] Each member of the audit committee would be required to be financially literate, or become financially literate within a reasonable period of time after his or her appointment to the audit committee, and at least one member of the audit committee would be required to have accounting or related financial management expertise. In addition, the audit committee would be required to have a written charter that addresses the committee's purpose, duties and responsibilities, and an annual performance review of the audit committee.[30]

Moreover, as part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company would be required to provide the Exchange written confirmation regarding any determination that the company's board of directors had made regarding the independence of directors; the financial literacy of the audit committee member; the determination that at least one of the audit committee members has accounting or related financial management expertise; and the annual review and reassessment of the adequacy of the audit committee charter.[31]

As set forth in the audit committee provisions approved in the Partial Approval Order, audit committees for investment companies additionally are required to establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company. The PCX further proposes that this responsibility must be addressed in the audit committee's charter.[32]

In addition, the proposal generally would require each listed company to have an internal audit function.[33]

Corporate Governance Guidelines and Code of Conduct

The proposal generally would require each listed company to adopt corporate governance guidelines, and disclose on its Web site these guidelines and the charters of the company's most important committees (including at least the audit, compensation and nominating committees). The proposal generally would further require each listed company to adopt and disclose a code of business conduct and ethics for directors, officers, and employees, and promptly disclose any waivers of the code for directors or executive officers.[34]

CEO Certification and Disclosure

The proposal would require the Chief Executive Officer ("CEO") of each listed company to certify to the Exchange each year that he or she is not aware of any violation by the company of the Exchange's corporate governance listing standards. The certification filed with the Exchange, as well as the CEO and Chief Financial Officer certifications required to be filed with the Commission regarding the quality of the company's public disclosure, would be required to be disclosed in the listed company's annual report to shareholders. Each listed company's CEO would be required to promptly notify the PCXE after any executive officer of the listed company becomes aware of any material noncompliance with any applicable provision of PCXE Rule 5.3 covering Corporate Governance and Disclosure Policies.[35]

Listed Foreign Private Issuers

Listed foreign private issuers would be required to comply with the provisions of Rule 5.3(k)(5) relating to audit committees. Such issuers would be required to disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under the Exchange's other listing standards.

Public Reprimand

The proposed rule change would amend PCXE Rule 5.4 to provide that the Exchange may issue a public reprimand letter to any listed company that violates an Exchange listing standard and that PCXE will remove any security from listed or unlisted trading privileges if the listed company violates any provisions of PCXE Rule 5.3(k)(5) relating to audit committees.

The proposal also includes changes, approved in the Partial Approval Order, that amend PCXE Rule 5.5, regarding the Exchange's listing maintenance and delisting procedures, to refer to the corporate governance standards of Rule 5.3. These changes provide, in particular, that the Exchange will initiate a delisting of a company's securities for a violation of the audit committee requirements of Rule 5.3(k)(5), and that all classes of a security will be delisted for such violation.

Deadline for Compliance

The provisions of the proposed rule change that were approved in the Partial Approval Order, implementing the audit committee requirements of Rule 10A–3 under the Act, require compliance by listed issuers, other than foreign private issuers and small business issuers, by the earlier of (1) their first annual shareholders meeting after January 15,

[27] *See* Amendment No. 3, which added the exception for limited partnerships and companies in bankruptcy.

[28] *See* proposed PCXE Rule 5.3(k)(5).

[29] *See supra* notes—and accompanying text. *See also* Amendment No. 4, which clarified that upon the effective date of this provision, each listed company would be required to have at least three independent directors.

[30] *See* Notice for a more complete description.

[31] *See* Amendment No. 3, which clarified that such written confirmations would be a requirement.

[32] This proposed requirement was added in Amendment No. 3.

[33] *See* Notice for a more complete description.

[34] *See* Notice for a more complete description of the corporate governance guidelines and code of conduct requirements. *See also supra* note regarding entities excepted from these requirements.

[35] This notification requirement, which would apply to the entire Rule 5.3, was proposed in Amendment No. 3. The notification provision relating specifically to audit committee requirements, required by Rule 10A–3 under the Act, was approved in the Partial Approval Order.

2004, or (2) October 31, 2004. Foreign private issuers and small business issuers must be in compliance with these provisions by July 31, 2005.

With respect to the applicable sections of Rule 5.3 that are the subject of this Order, the proposal would require listed issuers, other than foreign private issuers and small business issuers, to be in compliance by the earlier of (1) their first annual shareholders meeting after July 31, 2004, or (2) December 31, 2004.[36] If a company with a classified board is required (other than by virtue of a requirement under Rule 5.3(k)(5)) to change a director who would not normally stand for election in such annual meeting, the company could continue such director in office until the second annual meeting after such date, but in no event later than December 31, 2005.[37] Foreign private issuers and small business issuers would be required to be in compliance with all applicable sections of Rule 5.3 by July 31, 2005.

Under the proposed amendments, companies listing in conjunction with their initial public offering would be permitted to phase in their independent nomination and compensation committees generally on the same schedule as is permitted pursuant to Rule 10A–3 under the Exchange Act for audit committees, that is, one independent member at the time of listing, a majority of independent members within 90 days of listing, and fully independent committees within one year. It should be noted, however, that investment companies are not afforded these exemptions under Rule 10A–3. Such companies would be required to meet the majority of independent board requirement within 12 months of listing. For purposes of Rule 5.3 other than Rule 5.3(k)(5), regarding audit committees, and Rule 5.3(m), regarding CEO certification and notification, a company would be considered to be listing in conjunction with an initial public offering if, immediately prior to listing, it does not have a class of common stock registered under the Exchange Act. PCX would also permit companies that are emerging from bankruptcy or have ceased to be controlled companies within the meaning of Rule 5.3 to phase in independent nomination and compensation committees and majority independent boards on the same schedule as companies listing in conjunction with an initial public offering. However, for purposes of Rule 5.3(k)(5) and Rule 5.3(m), a company would be considered to be listing in conjunction with an initial public offering only if it meets the conditions of Rule 10A–3(b)(1)(iv)(A) under the Act, namely, that the company was not, immediately prior to the effective date of a registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.

Companies listing upon transfer from another market would have 12 months from the date of transfer in which to comply with any requirement to the extent the market on which they were listed did not have the same requirement. To the extent the other market has a substantially similar requirement but also had a transition period from the effective date of that market's rule, which period had not yet expired, the company would have the same transition period as would have been available to it on the other market. This transition period for companies transferring from another market would not apply to the requirements of Rule 5.3(k)(5) unless a transition period is available pursuant to Rule 10A–3 under the Act.

Proposed PCXE Rule 5.3(k)(5)(E) ("Ongoing Compliance"), added in Amendment No. 3, would set forth the standards regarding audit committee requirements that are applicable to certain listed companies in the interim period before the proposed rule change takes effect.

Summary of Revisions Made by Amendment No. 3

The discussion above reflects amendments to the proposed rule change made by Amendment No. 3, the most significant of which are summarized below.[38] Amendment No. 3 revised the proposal to:

- Eliminate the distinction between Tier I and Tier II companies for the purposes of corporate governance.[39]
- Provide that registered management investment companies, preferred and debt listings, passive business organizations, and derivative or special purpose securities are required to comply with some, but not all of the new corporate governance provisions.[40]
- Provide that limited partnerships and companies in bankruptcy do not need to have a majority of independent directors on their board or have nominating/corporate governance and compensation committees composed of independent directors.[41]
- Allow an issuer that does not file a proxy to disclose any required information in its Form 10–K, 20–F or N–CSR.[42]
- Reduce the look-back periods in the proposed tests of director independence from five years to three years.[43]
- Expand the definition of immediate family member to include brothers and sisters-in-laws.[44]
- Provide that a director who is, or in the past three years has been, an executive officer or an employee, or whose immediate family member is or has been an executive officer, of a company that makes payments to, or receives payments from, the listed company for property or services in an amount which, in any single fiscal year, exceeds the greater of $200,000 or 5% of such other company's consolidated gross revenues, is not independent.[45]
- Provide that a director who receives, or whose immediate family member receives, more than $100,000 per year in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service) is not considered independent until three years after he or she ceases to receive more than $100,000 per year in such compensation.[46]
- Phase in the three-year look-back provisions by applying only a one-year look back for the first year after adoption of the new standards.[47]
- Provide that, in the case of an investment company, in lieu of the criteria for independence set forth in proposed PCXE Rule 5.3(k)(i)(A)–(F), a director who is an "interested person" of the company as defined in section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee, shall not be considered independent.[48]
- State that if the non-management directors of a listed company include

[36] The revised timetable for compliance was proposed in Amendment No. 3.

[37] This provision, as well as the provision described below relating to companies listing in conjunction with an initial public offering, emerging from bankruptcy, ceasing to be a controlled company, or transferring from another market, were added by Amendment No. 3.

[38] Amendment No. 4 made only clarifying changes. *See supra* note 10.

[39] *See supra* note 13.

[40] *See supra* note 14.

[41] *See supra* notes 15 and 27.

[42] *See supra* note 16.

[43] *See supra* notes 17 and 18.

[44] *See supra* note 19.

[45] *See supra* note 20.

[46] *See supra* note 21.

[47] *See supra* note 23.

[48] *See supra* note 22.

directors who are not independent, then the company should at least once a year schedule an executive session including only independent directors.[49]

• Allow the Nominating/Corporate Governance Committee and the Compensation Committee to have one member who is not independent, so long as that person is not a current officer or employee or immediate family member of an officer or employee only under specified limited circumstances and conditions.[50]

• Require that each listed company's CEO must promptly notify the Corporation after any executive officer of the listed company becomes aware of any material noncompliance with any applicable provision of the corporate governance and disclosure policies of Rule 5.3.[51]

• Set forth a timetable for listed companies to be in compliance with the new rules, and provide phase-in periods for companies listing in conjunction with and initial public offering, companies emerging from bankruptcy, companies ceasing to be controlled companies, and companies transferring from other markets.[52]

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[53] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act[54] in that it is designed, among other things, to facilitate transactions in securities, 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, and does not permit unfair discrimination among issuers.

In the Commission's view, the proposed rule change, as amended, will foster greater transparency, accountability, and objectivity in the oversight by, and decision-making processes of, the boards and key committees of PCX-listed issuers. The proposal, as amended, also will promote compliance with high standards of conduct by the issuers' directors and management. The Commission notes that the PCX has amended its proposal in a way that largely harmonizes it with rule changes recently approved by the Commission for other self-regulatory organizations.[55]

The PCX has requested that the Commission grant accelerated approval to Amendment Nos. 3 and 4 to the proposed rule change. The Commission believes that the revisions proposed in Amendment Nos. 3 and 4 significantly align the corporate governance standards proposed for companies listed on the PCX with the standards approved by the Commission for companies listed on other SROs.[56] The Commission believes it is appropriate to accelerate approval of Amendment Nos. 3 and 4 so that the comprehensive set of strengthened corporate governance standards for companies listed on the PCX may be implemented on generally the same timetable (with some modification of certain deadlines) as that for similar standards adopted for issuers listed on other SROs. The Commission therefore finds good cause, consistent with Section 19(b)(2) of the Act,[57] to approve Amendment Nos. 3 and 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether the Amendment 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–PCX–2003–35 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–PCX–2003–35. 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 PCX. 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–PCX–2003–35 and should be submitted on or before July 1, 2004.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[58] that the proposed rule change (PCX–2003–35), as amended, be, and hereby is, approved, and that Amendment Nos. 3 and 4 to the proposed rule change be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[59]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13172 Filed 6–9–04; 8:45 am]

BILLING CODE 8010–01–P

[49] *See supra* note 24.

[50] *See supra* note 26.

[51] *See supra* note 35.

[52] *See supra* notes 36 and 37.

[53] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[54] 15 U.S.C. 78f(b)(5).

[55] See Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approving changes to the corporate governance listing standards of the Nasdaq Stock Market, Inc. and the New York Stock Exchange, Inc.).

[56] *See supra* note 55.

[57] 15 U.S.C. 78s(b)(2).

[58] 15 U.S.C. 78s(b)(2).

[59] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49801; File No. SR–Phlx–2004–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend a Pilot Program Under Which it Lists Options on Selected Stocks Trading Below $20 at One-Point Intervals Until June 5, 2005

June 3, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 27, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to extend its pilot program under which it lists options on selected stocks trading below $20 at $1 strike price intervals ("$1 Pilot Program") until June 5, 2005. The text of the proposed rule change is available at the Office of the Secretary, Phlx, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx 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. Phlx 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

The purpose of the proposed rule change is to extend the term of the $1 Pilot Program to June 5, 2005 so that Phlx can continue to list options at $1 strike price intervals within the parameters specified in Commentary .05 to Phlx Rule 1012.

According to the Phlx, a large number of stocks have precipitously declined in price over the last three years and the number of options overlying this lowest tier of stocks has increased. On June 11, 2005, the Commission approved the $1 Pilot Program which allows Phlx to list strike prices for options at $1 intervals for securities trading under $20.[3] Phlx proposes to extend the $1 Pilot Program until June 5, 2005. The Phlx does not propose any changes to the $1 Pilot Program. Under the $1 Pilot Program, the Phlx can establish $1 strike price intervals on options classes overlying no more than five (5) individual stocks designated by the Phlx where the underlying stock closes below $20 on the primary market on the trading day before selection; the $1 strike price is from $3 to $20; the $1 strike price is no more than $5 from (*i.e.*, $5 above or below) the closing price of the underlying stock on the preceding day; the $1 strike price will not be listed within $0.50 of an existing $2.50 strike price within the same series; and the $1 strike price will not be applied to LEAPS. Lastly, pursuant to the $1 Pilot Program, the Phlx can multiply list those option classes specifically designated to be listed at $1 strike price intervals by another options exchanges that has a similar $1 Pilot Program pursuant to its rules.

In July 2003, the Phlx chose and listed five (5) option classes at $1 strike price intervals.[4] Thereafter, the Phlx listed, on a multiple listed basis, options at $1 strike price intervals on classes that were listed by the other option exchanges pursuant to their $1 Pilot Programs. The Phlx currently lists a total of twenty-two (22) option classes at $1 strike price intervals. The Phlx believes that its ability to list options at $1 strike price intervals pursuant to the $1 Pilot Program has given investors the opportunity to more closely and effectively tailor their options investments to the price of the underlying stock, has allowed the Phlx to take advantage of competitive opportunities to list options at $1 strike prices, and, lastly, has stimulated price competition among the options exchanges in those options classes.

In its order approving the $1 Pilot Program, the Commission stated that if the Phlx seeks to extend, expand, or permanently approve the $1 Pilot Program, that it must include a Pilot Program Report with its filing.[5] Phlx's $1 Pilot Program Report ("Report") reviews Phlx's experience with the $1 Pilot Program and supports Phlx's belief that extending the $1 Pilot Program is proper.[6] Among other things, the Phlx believes that the Report shows the strength and efficacy of the $1 Pilot Program based upon the steady increase in volume and open interest of options traded on Phlx at $1 strike price intervals. Based upon its Report, the Phlx further believes that the $1 Pilot Program has not and, in the future, should not create capacity problems for the Phlx or the Options Price Reporting Authority ("OPRA") systems. Lastly, the Phlx states that most of those delisted $1 strike price option series were delisted to ensure that the options chosen for the $1 Pilot Program remained within the parameters of the $1 Pilot Program.

2. Statutory Basis

Phlx believes that its proposal is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(5) of the Act,[8] specifically, in that it is designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest and promotes just and equitable principles of trade. The Phlx believes that the proposal would achieve this by allowing listing of $1 strike price intervals, thereby stimulating customer interest in options overlying the lowest tier of stocks and creating greater trading opportunities and flexibility and providing customers with the ability to more closely tailor investment strategies to the precise movement of the underlying stocks.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Release No. 48013 (June 11, 2003), 68 FR 35933 (June 17, 2003) (Order approving File No. SR–Phlx–2002–55).

[4] The Phlx chose the following options classes for its $1 Pilot Program: TYCO International, LTD (TYC), Micron Tech. (MU), Oracle Co. (ORQ), Brocade Comm. (UBF), and Juniper Networks (JUP).

[5] *See* Securities Exchange Release No. 48013, *supra* note 3.

[6] The Phlx attached the Pilot Program Report as an exhibit to this proposed rule change. Copies of the Pilot Program Report are available at Phlx and the Commission's Public Reference Room.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4[10] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and Phlx has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b–4(f)(6)(iii) of the Act,[11] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and Phlx is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. Phlx has requested that the Commission waive the five-day pre-filing notice requirement and 30-day operative delay so that the $1 Pilot Program may continue without interruption after it would have otherwise expired on June 5, 2004. For this reason, the Commission, consistent with the protection of investors and the public interest, has determined to waive the five-day pre-filing notice requirement and 30-day operative delay,[12] and, therefore, the proposal is effective and operative upon filing with the Commission.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2004–38 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–Phlx–2004–38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of Phlx. 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–Phlx–2004–38 and should be submitted on or before July 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13087 Filed 6–9–04; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the five-day pre-filing notice requirement and 30-day operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] In the event that the Phlx proposes to extend the Pilot Program beyond June 5, 2005, expand the number of options eligible for inclusion in the Pilot Program, or seek permanent approval of the Pilot Program, it should submit a Pilot Program report to the Commission along with the filing of such proposal. The report must cover the entire time the Pilot Program was in effect, and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of $1 strike price intervals for the options the Phlx selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the Phlx's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Phlx addressed them; (6) any complaints that the Phlx received during the operation of the Pilot Program and how the Phlx addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program. The Commission expects the Phlx to submit a proposed rule change at least 60 days before the expiration of the Pilot Program in the event the Phlx wishes to extend, expand, or seek permanent approval of the Pilot Program.

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3585]

State of Indiana

As a result of the President's major disaster declaration on June 3, 2004, I find that Crawford, Clark, Marion, Miami, and Washington Counties in the State of Indiana constitute a disaster area due to damages caused by severe storms, tornadoes, and flooding occurring on May 27, 2004, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 2, 2004, and for economic injury until the close of business on March 3, 2005, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Boone, Cass, Dubois, Floyd, Fulton, Grant, Hamilton, Hancock, Harrison, Hendricks, Howard, Jackson, Jefferson, Johnson, Lawrence, Morgan, Orange, Perry, Scott, Shelby, and Wabash Counties in the State of Indiana; and Jefferson, Meade, Oldham, and Trimble Counties in the State of Kentucky.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.750
Homeowners without credit available elsewhere	2.875
Businesses with credit available elsewhere	5.500
Businesses and non-profit organizations without credit available elsewhere	2.750
Others (including non-profit organizations) with credit available elsewhere	4.875
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.750

The number assigned to this disaster for physical damage is 358512. For economic injury the number is 9ZG800 for Indiana; and 9ZG900 for Kentucky.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: June 4, 2004. Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–13183 Filed 6–9–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3578; Amdt. #1]

State of Iowa

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 2, 2004, the above numbered declaration is hereby amended to include Adair, Adams, Allamakee, Audubon, Benton, Black Hawk, Boone, Buena Vista, Calhoun, Cedar, Chickasaw, Clay, Clinton, Dallas, Dubuque, Floyd, Franklin, Greene, Grundy, Guthrie, Hardin, Howard, Iowa, Jackson, Jasper, Johnson, Kossuth, Madison, Marshall, Montgomery, Palo Alto, Polk, Pottawattamie, Poweshiek, Sac, Shelby, Story, Tama, Warren, Webster, Winnebago, Winneshiek, Worth and Wright Counties as disaster areas due to damages caused by severe storms, tornadoes, and flooding occurring on May 19, 2004, and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Carroll, Cherokee, Clarke, Crawford, Dickinson, Emmet, Fremont, Hamilton, Harrison, Ida, Keokuk, Louisa, Lucas, Mahaska, Marion, Mills, Muscatine, O'Brien, Osceola, Page, Ringgold, Scott, Taylor, Union and Washington in the State of Iowa; Carroll, Jo Daviess, Rock Island, and Whiteside in the State of Illinois; Faribault, Fillmore, Freeborn, Houston, and Martin Counties in the State of Minnesota; Douglas, Sarpy, and Washington Counties in the State of Nebraska; and Vernon County in the State of Wisconsin may be filed until the specified date at the previously designated location. All other counties contiguous to the above-named primary counties have been previously declared.

The number assigned to this disaster for economic injury is 9ZG600 for Illinois; and 9ZG700 for Nebraska.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 26, 2004, and for economic injury the deadline is February 25, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: June 3, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–13184 Filed 6–9–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3576; Amdt. #1]

State of Missouri

The above-numbered declaration is hereby amended to change the declaration number for the contiguous State of Kansas to 358406.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 26, 2004, and for economic injury the deadline is February 26, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 4, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–13182 Filed 6–9–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3577; Amdt. #1]

State of Nebraska

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 1, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on May 20, 2004, and continuing through June 1, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 26, 2004, and for economic injury the deadline is February 25, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 3, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–13185 Filed 6–9–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3586]

State of Ohio

As a result of the President's major disaster declaration on June 3, 2004, I find that Athens, Columbiana, Cuyahoga, Lorain, Medina, Noble, Perry and Summit Counties in the State of Ohio constitute a disaster area due to damages caused by severe storms, and flooding occurring on May 18, 2004, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 2, 2004, and for economic injury until the close of business on March 3, 2005, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Ashland, Belmont, Carroll, Erie, Fairfield, Geauga, Guernsey, Hocking, Huron, Jefferson, Lake, Licking, Mahoning, Meigs, Monroe, Morgan, Muskingum, Portage, Stark, Vinton, Washington and Wayne Counties in the State of Ohio; Beaver and Lawrence Counties in the Commonwealth of Pennsylvania; and Hancock and Wood Counties in the State of West Virginia.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.750
Homeowners without credit available elsewhere	2.875
Businesses with credit available elsewhere	5.500
Businesses and non-profit organizations without credit available elsewhere	2.750

	Percent
Others (including non-profit organizations) with credit available elsewhere	4.875
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.750

The number assigned to this disaster for physical damage is 358606. For economic injury the number is 9ZH100 for Ohio; 9ZH200 for Pennsylvania; and 9ZH300 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: June 4, 2004.

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–13181 Filed 6–9–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4733]

International Joint Commission; Boundary Waters Treaty of 1909

By letters dated May 7, 2004, and May 11, 2004, respectively, the Canadian and United States federal governments asked the International Joint Commission (IJC) to review plans by the State of Vermont to modernize the Alburg-Swanton Bridge, involving the partial removal of the existing causeway, and to provide advice on whether this complies with the terms of the Boundary Waters Treaty of 1909 as concerns causing pollution to the injury of health or property in Canada. The Alburg-Swanton Bridge is wholly located in Vermont and crosses the waters connecting Missisquoi Bay with Lake Champlain.

The request from governments was made as a reference under Article IX of the Boundary Waters Treaty. While further discussions between the IJC and the governments may refine the issues to be examined, the governments asked that the IJC review include:

1. Whether the original causeway affects water levels/flows in Canada;
2. Whether the original causeway in the U.S. causes pollution to the injury of health or property in Canada;
3. Whether the removal of the original causeway in the U.S. might cause pollution to the injury of health or property in the United States; and
4. Whether the proposed project in the U.S. will cause pollution to the injury of health or property in Canada.

The governments have asked the IJC to complete its review by the end of summer. The IJC anticipates holding public hearings on this matter at dates and locations to be announced in the local news media and on the IJC's Web site.

In addition to the public hearings, the IJC invites all interested parties to submit written comment over the course of this investigation to the addresses below: Secretary, Canadian Section, 234 Laurier Avenue West, 22nd Floor, Ottawa, Ontario K1P 6K6, Fax: (613) 993–5583, E-mail: *Commission@ottawa.ijc.org.* Secretary, United States Section, 1250 23rd Street, NW., Suite 100, Washington, DC 20440, Fax: (202) 467–0746, E-mail: *Commission@washington.ijc.org.*

The International Joint Commission is a binational Canada-U.S. organization established by the Boundary Waters Treaty of 1909. It assists the governments in managing waters along the border for the benefit of both countries in a variety of ways including examining issues referred to it by the two Federal governments.

More information, including the full text of the governments' letters of reference, may be found on the Commission's Web site, at *http://www.ijc.org.*

Dated: June 1, 2004.

Elizabeth C. Bourget,

Secretary, United States Section, Department of State.

[FR Doc. 04–13194 Filed 6–9–04; 8:45 am]

BILLING CODE 4710–14–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2004–17920]

Agency Information Collection Activities; Request for Comments; Renewed Approval of Four Information Collections

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew the four information collections, which are summarized below under **SUPPLEMENTARY INFORMATION.** We are required by the Paperwork Reduction Act of 1995 to publish this notice in the **Federal Register.**

DATES: Please submit comments by August 9, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA–2004–17920 by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time, or go to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

1. *Title:* Voucher for Federal-aid Reimbursements.

OMB Control Number: 2125–0507 (Expiration Date: August 31, 2004).

Abstract: The Federal-aid Highway Program provides for the reimbursement to States for expenditure of State funds for eligible Federal-aid highway projects. The Voucher for Work Performed Under Provisions of the Federal Aid and Federal Highway Acts, As Amended (Form PR–20), is utilized by the States to provide project financial data regarding the expenditure of State funds and to request progress payments from the FHWA.

Respondents: 50 State Transportation Departments, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

Estimated Total Annual Burden: The respondents electronically submit an estimated total of 12,300 vouchers each year. Each voucher requires an estimated average of 30 minutes to complete. The total annual burden for all respondents is estimated to be 6,150 hours.

For Further Information Contact: Ms. Bobette Meads, 202–366–2881, Department of Transportation, Federal Highway Administration, Office of Budget and Finance, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

2. *Title:* Develop and Submit Utility Accommodation Policies.

OMB Control Number: 2125–0514 (Expiration Date: August 31, 2004).

Abstract: State Departments of Transportation are required to develop

and submit to the FHWA a policy statement on the authority of utilities to use and occupy highway rights-of-way; the State's authority to regulate such use; and the policies and/or procedures employed for accommodating utilities within the rights-of-way of Federal-aid highway projects. Upon FHWA's approval of the policy statement, the State DOT may take any action required in accordance with the approved policy statement without a case-by-case review by the FHWA. In addition, the utility accommodation policy statements that have been approved previously by the FHWA are periodically reviewed by the State DOTs to determine if updating is necessary to reflect policy changes.

Respondents: 50 State Transportation Departments, the District of Columbia and Puerto Rico.

Frequency: Periodic updates for review as required at the States' discretion.

Estimated Total Annual Burden: The average burden for updating an existing policy is 280 hours per response. The total annual burden, based upon an estimated five States submitting updated policy statements per year, is 1,400 hours.

For Further Information Contact: Mr. Roger McClellan, 202–366–6765, Department of Transportation, Federal Highway Administration, Office of Program Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

3. *Title:* Eligibility Statement for Utility Adjustments.

OMB Control Number: 2125–0515 (Expiration Date: August 31, 2004).

Abstract: State Departments of Transportation are required to submit to the FHWA a statement, which establishes the State DOT's legal authority or obligation to pay for utility adjustments. The FHWA has previously reviewed and approved these eligibility statements for each State DOT. The statements are used as a basis for Federal-aid reimbursement in utility relocation costs under the provisions of 23 U.S.C. 123. The updated statements may be submitted for review at the States' discretion where circumstances have modified (for example, a change in State statute) the extent to which utility adjustments are eligible for reimbursement by the State or those instances where a local State DOT's legal basis for payment of utility adjustments differs from that of the State.

Respondents: 50 State Transportation Departments, the District of Columbia and Puerto Rico.

Frequency: Periodic updates for review as required at the States' discretion.

Estimated Total Annual Burden: The average burden for preparing and submitting an updated eligibility statement is 18 hours per response. The total annual burden, based upon an estimated five updated eligibility statements per year, is 90 hours.

For Further Information Contact: Mr. Roger McClellan, 202–366–6765, Department of Transportation, Federal Highway Administration, Office of Program Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

4. *Title:* Certificate of Enforcement of Heavy Vehicle Use Tax.

OMB Control Number: 2125–0541 (Expiration Date: August 31, 2004).

Abstract: Title 23, United States Code, Section 141(c), provides that a State's apportionment of funds under 23 U.S.C. 104(b)(5) shall be reduced in an amount up to 25 percent of the amount to be apportioned during any fiscal year beginning after September 30, 1984, if vehicles subject to the Federal heavy vehicle use tax are lawfully registered in the State without having presented proof of payment of the tax. The annual certification by the State Governor or designated official regarding the collection of the heavy vehicle use tax serves as the FHWA's primary means of determining State compliance. The FHWA has determined that an annual certification of compliance by each State is the least obtrusive means of administering the provisions of the legislative mandate. In addition, States are required to retain for one year Schedule 1, IRS Form 2290, Heavy Highway Vehicle Use Tax Return (or other suitable alternative provided by regulation). The FHWA periodically conducts compliance reviews to determine if the annual certification is adequate to ensure effective administration of 23 U.S.C.141(c).

Respondents: 50 State Transportation Departments, and the District of Columbia.

Frequency: Annually.

Estimated Total Annual Burden: The average burden to submit the certification and to retain required records is 12 hours per respondent. The estimated total annual burden is 612 hours.

For Further Information Contact: Ms. Gloria Williams, 202–366–5032, Department of Transportation, Federal Highway Administration, Office of Highway Policy Information, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Public Comments Invited: You are asked to comment on any aspect of these information collections, including: (1) Whether the proposed collections are necessary for the FHWA's performance; (2) the accuracy of estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of these information collections.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: June 4, 2004.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 04–13150 Filed 6–9–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Suffolk County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this Notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the development of the Long Island Rail-Truck Intermodal Facility (LIRTIF) on a portion of the Pilgrim State Hospital property, located in the Town of Islip, Suffolk County, New York.

FOR FURTHER INFORMATION CONTACT: Robert Arnold, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 7th Floor, Clinton Avenue and North Pearl Street, Albany, New York

12207, Telephone: 518–431–4125 or, Subimal Chakraborti, P.E., Regional Director, New York State Department of Transportation, Region 10, State Office Building, 250 Veterans Memorial Highway, Hauppauge, NY 11788, Telephone: 631–952–6632.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT), will prepare an EIS that will study and document the proposed development of the LIRTIF (Project Identification Number 0339.12). An overview of the need for the project and the environmental process to be followed is provided below.

Long Island is one of the nation's largest consumer markets, with its population of over 2.4 million expected to increase to over 3 million in the next 25 years. Freight movement on Long Island is currently handled almost exclusively by truck, with roughly 1% of freight (by tonnage) handled by rail compared to a national average of over 15%. The development of the LIRTIF would improve the efficiency of freight service, generate economic benefit, reduce Long Island's dependence on truck freight and improve site access. The Pilgrim site was determined to be the best of the possible locations based on its (1) accessibility to the Long Island Expressway; (2) central location near the core of Long Island's main developed areas; (3) direct access to the Long Island Rail Road; and (4) available parcel size of roughly 120 acres, which provides sufficient space to meet potential intermodal freight demand.

The intent of the LIRTIF EIS is to develop a feasible design and operating plan for an intermodal freight facility at the project site, disclose any potentially significant adverse impacts associated with the project's construction or operation, and identify and assess the effectiveness of measures to mitigate such impacts. The EIS will consider all reasonable alternative designs and configurations to meet the need for a modern, efficient intermodal facility that will mitigate and reduce any adverse impacts. During the public scoping process, based on input from other agencies, elected officials, community and business groups and the general public, reasonable alternatives will be developed and screened for their ability to meet the project's needs and objectives and to determine the scope of issues to be addressed. The feasible alternatives will be evaluated in detail in the Draft EIS (DEIS).

Options to be considered as part of the EIS are a No Build alternative, with no changes made at the site, and various Build alternatives. In defining the various Build alternatives, factors to be considered include various site configurations to provide the required bulk, intermodal and specialty shipment operations combined with different truck access routes from the site to the Long Island Expressway. Options being considered for access to the site include (a) the local roadways that currently allow truck traffic, (b) creating direct connections to the adjacent Sagtikos State Parkway, and (c) developing a direct connector road to the Long Island Expressway within the Sagtikos State Parkway right-of-way.

Rail access to the facility is expected to be along the existing spur from the LIRR, with a number of alignment variations to be considered within the existing rail corridor directly south of the project site.

The EIS will assess the potential for the proposed project alternatives to have a significant adverse impact in a wide range of socioeconomic, transportation and environmental impact areas, include traffic and transit operations, noise and air quality, water quality, terrestrial ecology and wetlands, hazardous waste and visual resources, land use and neighborhood character, cultural and historic resources, and community facilities and services, including parkland. These studies will focus primarily on the project site and the immediately surrounding communities.

The formal scoping process will involve the following:

1. A Public Scoping Meeting, to be held on June 30, 2004 to provide the public with information about the project, and to assist in formulating the scope of the environmental studies in the EIS. NYSDOT will provide information about the project and the scope of the EIS. Comments on the project and on the scope of the EIS will then be received from the public. NYSDOT personnel and project team members will be available at the meeting to answer questions. The public scoping meeting will be at:

Date & Time: June 30, 2004, 4 p.m.–8 p.m.

Location: Brentwood North Middle School, 350 Wicks Road, Brentwood, NY 11717

This meeting will be run in an informal, open-house style and will allow the general public the opportunity to make comments both in writing and in person.

2. Scoping discussions with other agencies, particularly those with a direct or indirect involvement in the proposed project, the project area and the rail corridor serving the project site.

Scoping Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who may have interest in this project.

The LIRTIF EIS will include an extensive public involvement process to maximize the opportunities for interested stakeholders to find out about the project, to follow its progress through the DEIS process, and to comment on issues of concern. A key part of the public involvement process will be the distribution of the DEIS for public and agency review and comment, including a DEIS public hearing to obtain comments on the project and the conclusions presented in that document. Public notice will be given of the time and place of that hearing.

Throughout the scoping process, comments and suggestions are invited on the scope of issues to be addressed and the proposed LIRTIF project from any interested parties. Comments or questions concerning this proposed action and the EIS should be directed to NYSDOT or FHWA at the addresses provided above. Comments can also be faxed to Thomas Daley, P.E., NYSDOT, at 631–952–6569.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372, which foster State and local government coordination and review of proposed Federal financial assistance and direct Federal development, apply to this program).

Authority: 23 U.S.C. 315; 23 CFR 771.123.

Issued on: May 25, 2004.

Douglas P. Conlan,

District Operations Engineer, Federal Highway Administration, New York Division, Albany, NY.

[FR Doc. 04–13166 Filed 6–9–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–384 (Sub–No. 1X)]

Delta Southern Railroad, Inc.—Abandonment Exemption—Between Lake Village, AR, and Shelburn, LA

Delta Southern Railroad, Inc. (DSR), has filed a notice of exemption under 49 CFR 1152 Subpart F–*Exempt Abandonments* to abandon a 30.0-mile portion of its Lake Providence Line, between milepost 433.0, near Lake Village, AR, and milepost 463.0, near Shelburn, LA. The line traverses United States Postal Service Zip Codes 70653, 71254, and 71640.

DSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 10, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 21, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 30, 2004, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to DSR's representative: Thomas F. McFarland, P.C., 208 South LaSalle Street—Suite 1890, Chicago, IL 60604–1112.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by June 15, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), DSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by DSR's filing of a notice of consummation by June 10, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: June 3, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–13130 Filed 6–9–04; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4868; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice and request for comments.

SUMMARY: This document contains a correction to a notice and request for comments, which was published in the **Federal Register** on Friday, May 21, 2004 (69 FR 29349). This notice relates to a comment request on proposed collection on Form 4868.

FOR FURTHER INFORMATION CONTACT: Allan Hopkins (202) 622–6665 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice and request for comments that is the subject of this correction is required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Need for Correction

As published, the comment request for Form 4868 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the comment request for Form 4868, which was the subject of FR Doc. 04–11584, is corrected as follows:

On page 29349, column 2, under the caption **SUPPLEMENTARY INFORMATION:**, the language, "*Title:* Mortgage Interest Credit." is corrected to read "*Title:* Application for Automatic Extension of Time to File U.S. Individual Income Tax Return."

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures and Administration).

[FR Doc. 04–13186 Filed 6–9–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 89–102

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 89–102, Treatment of Acquisition of Certain Financial Institutions; Tax Consequences of Federal Financial Assistance.

DATES: Written comments should be received on or before August 9, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Treatment of Acquisition of Certain Financial Institutions; Tax Consequences of Federal Financial Assistance.

OMB Number: 1545–1141.

Notice Number: Notice 89–102.

Abstract: Section 597 of the Internal Revenue Code provides that the Secretary of the Treasury shall provide guidance concerning the tax consequences of Federal financial assistance received by certain financial institutions. Notice 89–102 provides that qualifying financial institutions that receive Federal financial assistance prior to a planned sale of their assets or their stock to another institution may elect to defer payment of any net tax liability attributable to the assistance. Such financial institutions must file a statement describing the assistance received, the date of receipt and any amounts deferred.

Current Actions: There are no changes to this notice at this time.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 2, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–13187 Filed 6–9–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 7018–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 7018–C, Order Blank for Forms.

DATES: Written comments should be received on or before August 9, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Order Blank for Forms.

OMB Number: 1545–1022. Form Number: Form 7018–C.

Abstract: Form 7018–C allows taxpayers who must file information returns a systematic way to order the forms and instructions they need.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 868,432.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 43,422.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–13188 Filed 6–9–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 29, 2004.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 (toll-free), or 718–488–3557 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, June 29, 2004 from 11 a.m. e.d.t. to 12 p.m. e.d.t. via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557 or, write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557. Comments may also be posted to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: June 1, 2004.

Bernard E. Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–13189 Filed 6–9–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Cancellation of Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel is cancelled in Washington, DC.

DATES: The meeting Friday, June 11, 2004, and Saturday, June 12, 2004, has been cancelled.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227 (toll-free), or 954–423–7977 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel on Friday, June 11, 2004 from 8 a.m. to 12 p.m. and from 1 p.m. to 5 p.m. EDT and Saturday, June 12, 2004 from 8 a.m. to 12 p.m. EDT in Washington, DC at One Washington Circle Hotel, One Washington Circle NW., Washington, DC 20037, has been cancelled. For information contact Inez De Jesus. Ms. De Jesus may be reached at 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

Dated: June 7, 2004.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 04–13328 Filed 6–8–04; 2:46 pm]

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June 10, 2004

Part II

Department of Defense

32 CFR Part 57
Provision of Early Intervention and Special Education Services to Eligible DoD Dependents; Interim Final Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 57

RIN 0790–AH70

Provision of Early Intervention and Special Education Services to Eligible DoD Dependents

AGENCY: Department of Defense.

ACTION: Interim final rule.

SUMMARY: The Department of Defense (DoD) school systems [DoD Dependents Schools (DoDDS) and the Defense Dependents Elementary and Secondary Schools (DDESS)] are required by law to provide services and safeguards to children with disabilities consistent with the "Individuals With Disabilities Education Act" IDEA brings the DoDDS and DDESS under a single rule codified at 32 CFR part 57. The rule integrates previous DoD policy memoranda.

DATES: This rule is effective on June 10, 2004. Comments may be received by August 9, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca Posante, Department of Defense, Educational Opportunity Directorate, 1745 Jefferson Davis Highway, Suite 302, Arlington, VA 22203–5190, 703–602–4949 x114.

SUPPLEMENTARY INFORMATION: See 20 U.S.C. 927(c) and 10 U.S.C. 2164 (f). This final rule updates and amends the DoD implementation of the IDEA within the DoD school systems, as follows: Requires the DoD Education Activity to report annually on the rate (a) special education students participate in system-wide or alternative testing, are (b) disciplined, (c) suspended, or (d) expelled; and to compare these rates with students who are not disabled; clarifies requirements for three year re-evaluation of special education students; requires individualized education programs to consider special circumstances in the IEP; strengthens the requirement for the school system notice to parents about change of placement or refusal for change of placement; strengthens the protections for students with a disability when facing disciplinary action that might result in suspension or expulsion; requires the schools to provide special education in an interim alternative educational setting for special education students who have been suspended or expelled from school; strengthens requirements for documenting behavioral intervention when disciplining special education students; clarifies the students who must be treated as students with a disability when considering disciplinary action that may result in suspension or expulsion; allows the use of paraprofessionals and assistants (*e.g.*, Certified Occupational Therapy Assistants, Physical Therapy Assistants) to assist in the provision of early intervention services and special education; requires the schools to advise students of their rights one year prior to the age of majority; sets the age of majority for students in the DoDDS as 18, for students in the DDESS as the age of majority for the State in which the DDESS is located; consolidates the former National Advisory Panel and the Domestic Advisory Panel into one and requires the majority of advisory panel members be persons with disabilities or the parents of children with disabilities.

Executive Order 12866, "Regulatory Planning and Review'

It has been determined that 32 CFR part 57 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section 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 this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule pertains only to the provision of special education and early intervention by Department of Defense entities not by any other entity.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that this rule does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Federalism (Executive Order 13132)

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 57

Education of individuals with disabilities; Elementary and secondary education; Government employees; Military personnel.

■ Accordingly 32 CFR part 57 is revised as follows:

PART 57—PROVISION OF EARLY INTERVENTION AND SPECIAL EDUCATION SERVICES TO ELIGIBLE DOD DEPENDENTS

Sec.

Authority: 20 U.S.C. 921 and 1400.

§57.1 Purpose.

This part:

(a) Implements policy, assigns responsibilities, and prescribes procedures under 20 U.S.C. chapter 33 and 20 U.S.C. 921–932, 10 U.S.C. 2164,

DoD Directive 1342.6 [1], DoD Directive 1342.21, DoD Instruction 1342.26, DoD Directive 1342.13, and DoD Directive 5105.4 for the following:

(1) Provision of early intervention services (EIS) to infants and toddlers with disabilities (birth through 2 years, inclusive) and their families, and special education and related services (hereafter referred to as "special services") to children with disabilities (ages 3 through 21 years, inclusive) entitled to receive special services from the Department of Defense in accordance with 10 U.S.C. 2164, DoD Directive 1342.6, DoD Directive 1342.21, DoD Instruction 1342.26, DoD Directive 1342.13, and DoD Directive 5105.4.

(2) Implementation of a comprehensive, multidisciplinary program of EIS for infants and toddlers (birth through 2 years, inclusive) with disabilities, and their families.

(3) Provision of a free, appropriate public education (FAPE) including special education and related services for children with disabilities enrolled in the DoD school systems, as specified in their Individualized Educational Programs (IEP).

(4) Monitoring of DoD programs providing EIS, special education, and related services for compliance with this part.

(5) Establishment of a DoD Advisory Panel (DoD–AP) on Early Intervention, Special Education, and Related Services and a DoD Coordinating Committee (DoD–CC) on Early Intervention, Special Education, and Related Services in accordance with DoD Directive 5105.4.

(b) Authorizes implementing instructions, a DoD Manual entitled "Standard Operating Procedures for the Provision of Early Intervention, Special Education and Related Services," consistent with DoD 5025.1–M and DoD forms consistent with DoD 8910.1–M, DoD Instruction 7750.7, and Hospital Accreditation Standards.

§ 57.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as "the DoD Components").

[1] All unclassified DoD Directives, DoD Instructions, and DoD Publications mentioned in this part may be obtained via Internet at *http://www.dticmil/whs/directives.*

(b) Applies to infants, toddlers, and children receiving or entitled to receive special services from the Department of Defense, and their parents.

(c) Applies to DoD Domestic Dependents Elementary and Secondary Schools (DDESS) operated by the Department of Defense within the continental United States, Alaska, Hawaii, and territories, commonwealths and possessions of the United States (hereafter referred to as "domestic").

(d) Applies to DoD Dependents Schools (DoDDS) operated by the Department of Defense outside the continental United States and its territories, commonwealths and possessions (hereafter referred to as "overseas").

(e) Does not create any rights or remedies and may not be relied upon by any person, organization, or other entity to allege a denial of such rights or remedies.

§ 57.3 Definitions.

(a) *Age of Majority.* The age when a person acquires the rights and responsibilities of being an adult. For purposes of this part, a child attains majority at age 18.

(b) *Alternate Assessment.* A process that measures the performance of students with disabilities unable to participate, even with accommodations provided, in system-wide assessment.

(c) *Alternative Educational Setting (AES).* A temporary setting other than the school (*e.g.*, home, installation library) normally attended by the student. The interim AES shall:

(1) Be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that shall enable the child to meet the goals set out in that IEP; and

(2) Include services and modifications to address the behavior that resulted in the child being considered or placed in an AES.

(d) *Assessment.* The ongoing procedures used by appropriately qualified personnel throughout the period of a child's eligibility determination to identify the child's unique needs; the family's strengths and needs related to development of the child; and the nature and extent of early intervention services that are needed by the child and the child's family to meet their unique needs.

(e) *Assistive Technology Device.* Any item, piece of equipment, or product system, whether acquired commercially or off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of children with disabilities.

(f) *Assistive Technology Service.* Any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. The term includes the following:

(1) The evaluation of the needs of an individual with a disability, including a functional evaluation in the individual's customary environment.

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities.

(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices.

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing educational and rehabilitative plans and programs.

(5) Training or technical assistance for an individual with disabilities or the family of an individual with disabilities.

(6) Training or technical assistance for professionals (including individuals providing educational rehabilitative services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of an individual with a disability.

(g) *Attention Deficit Disorder (ADD).* As used in this part, encompasses attention-deficit hyperactivity disorder (ADHD) and ADD without hyperactivity. The essential features of the disorder are developmentally inappropriate degrees of inattention, impulsiveness, and in some instances, hyperactivity.

(1) Either diagnosis must be made by appropriate medical personnel.

(2) ADD and ADHD are not specific disabling conditions under this part, although a child with either may be eligible for EIS and/or special education and related services as "other health impaired" by reason of the disability if the child's alertness or vitality is sufficiently compromised. The majority of children with ADD/ADHD generally do not meet the eligibility criteria as outlined in this part.

(h) *Audiology.* A service that includes the following:

(1) Identification of children with hearing loss.

(2) Determination of the range, nature, and degree of hearing loss, and communication functions including referral for medical or other professional attention for the habilitation of hearing.

(3) Provision of habilitative activities, such as language habilitation, auditory training, speech-reading (lip-reading), hearing evaluation, and speech conservation.

(4) Creation and administration of programs for the prevention of hearing loss.

(5) Counseling and guidance of children concerning the prevention of hearing loss.

(6) Determination of a child's need for group and individual amplification, selecting and fitting an aid, and evaluating the effectiveness of amplification.

(i) *Autism.* A developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3 years that adversely affects educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance as defined in paragraph (z) of this section.

(j) *Case Study Committee (CSC).* A school-level team comprised of, among others, an administrator or designee who is qualified to supervise or provide special education, one or more of the child's regular education teachers, one or more special education teachers, parents, and related service providers (if appropriate) who do the following:

(1) Oversee screening and referral of children who may require special education.

(2) Oversee the multidisciplinary evaluation of such children.

(3) Determine the eligibility of children for special education and related services.

(4) Formulate individualized instruction as reflected in an IEP, in accordance with this part.

(5) Monitor the development, review, and revision of IEPs.

(k) *Child-Find.* An outreach program used by the DoD school systems, the Military Departments, and the other DoD Components to seek and identify children from birth to age 21, inclusive, who may require EIS or special education and related services. Child-find includes all children who are eligible to attend a DoD school. Child-find activities include the dissemination of information to military members and DoD employees, the identification and screening of children, and the use of referral procedures.

(l) *Children with Disabilities (Ages 3 through 21, Inclusive).* Children, before graduation from high school or completion of the General Education Degree, who have one or more impairments, as determined by a CSC and who need and qualify for special education and related services.

(m) *Consent.* The permission obtained from the parent or legal guardian. This includes the following:

(1) The parent is fully informed of all information about the activity for which consent is sought in the native language or in another mode of communication, if necessary.

(2) The parent understands and agrees in writing to the implementation of the activity for which permission is sought. That consent describes the activity, lists the child's records (if any) to be released outside the Department of Defense, and specifies to whom the records shall be sent.

(i) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

(ii) If a parent revokes consent, that revocation is not retroactive (*i.e.*, it does not negate an action that has occurred after the consent was given and before the cognizant authorities received the notice of revocation of the consent).

(n) *Continuum of Alternative Placements.* Instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions; includes provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(o) *Counseling Service.* A service provided by a qualified social worker, psychologist, guidance counselor, or other qualified personnel.

(p) *Deaf-Blindness.* Concomitant hearing and visual impairments, the combination of which causes such severe communication, developmental, and educational problems that it cannot be accommodated in special education programs solely for children with deafness or blindness.

(q) *Deafness.* A hearing loss or deficit so severe that it impairs a child's ability to process linguistic information through hearing, with or without amplification, and affects the child's educational performance adversely.

(r) *Developmental Delay.* A significant discrepancy in the actual functioning of an infant, toddler, or child, birth through age 5, when compared with the functioning of a non-disabled infant, toddler, or child of the same chronological age in any of the following areas: physical, cognitive, communication, social or emotional, and adaptive development as measured using standardized evaluation instruments and confirmed by clinical observation and judgment. A child classified with a developmental delay before the age of 5 may maintain that eligibility classification through the age 8.

(1) *A Significant Discrepancy.* The child is experiencing a developmental delay as measured by diagnostic instruments and procedures of 2 standard deviations below the mean in at least one area, or by a 25 percent delay in at least one area on assessment instruments that yield scores in months, or a developmental delay of 1.5 standard deviations below the mean in two or more areas, or by a 20 percent delay on assessment instruments that yield scores in months in two or more of the following areas of development: cognitive, physical, communication, social or emotional, or adaptive.

(2) *High Probability for Developmental Delay.* An infant or toddler, birth through age 2, with a diagnosed physical or mental condition, such as chromosomal disorders and genetic syndromes, that places the infant or toddler at substantial risk of evidencing a developmental delay without the benefit of EIS.

(s) *DoD Dependents Schools (DoDDS).* The overseas schools (kindergarten through grade 12) established by 20 U.S.C. 921. The DoDDS are operated under DoD Directive 1342.6.

(t) *DoD Domestic Dependent Elementary and Secondary Schools (DDESS).* The schools (pre-kindergarten through grade 12) established by 20 U.S.C. 921–932. The DoD DDESS are operated under DoD Directive 1342.21.

(u) *DoD School Systems.* The DDESS and DoDDS school systems.

(v) *Early Identification and Assessment.* The implementation of a formal plan for identifying a disability as early as possible in a child's life.

(w) *Early Intervention Services.* Developmental services that meet the following criteria:

(1) Are provided under the supervision of a Military Medical Department.

(2) Are provided using Military Health Services System resources at no cost to the parents.

(3) Evaluation, Individualized Family Service Plan (IFSP) development and revision, and Service coordination services are provided at no cost to the infant's or toddler's parents. Parents may be charged incidental fees (identified in Service guidance) that are normally charged to infants, toddlers,

and children without disabilities or to their parents.

(4) Are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas:

(i) Physical.

(ii) Cognitive.

(iii) Communication.

(iv) Social or emotional.

(v) Adaptive development.

(5) Meet the standards developed or adopted by the Department of Defense.

(6) Are provided by qualified personnel including early childhood special educators, speech and language pathologists and audiologists, occupational therapists, physical therapists, psychologists, social workers, nurses, nutritionists, family therapists, orientation and mobility specialists, pediatricians and other physicians, and certified and supervised paraprofessional assistants, such as certified occupational therapy assistants.

(7) Maximally, are provided in natural environments including the home and community settings where infants and toddlers without disabilities participate.

(8) Are provided in conformity with an IFSP.

(9) Developmental services include, but are not limited to, the following services: Family training, counseling, and home visits; special instruction; speech pathology and audiology; occupational therapy; physical therapy; psychological services; Service coordination services; medical services only for diagnostic or evaluation purposes; early identification, screening and assessment services; vision services; and social work services. Also included are assistive technology devices and assistive technology services; health services necessary to enable the infant or toddler to benefit from the above EIS; and transportation and related costs necessary to enable an infant or toddler and the family to receive EIS.

(x) *Educational and Developmental Intervention Services (EDIS).* Programs operated by the Military Medical Departments to provide EIS and related services in accordance with this part.

(y) *Eligible.* Children who meet the age, command sponsorship, and dependency requirements established by 10 U.S.C. 2164, DoD Directive 1342.6, DoD Directive 1342.13, and DoD Directive 5105.4.

(1) In DoDDS, children without disabilities who meet these requirements, and are ages 5 to 21 years, inclusive, are entitled to receive educational instruction.

(2) In DDESS, children without disabilities who meet these requirements, and are ages 4 to 21 years, inclusive, are entitled to receive educational instruction.

(3) In both DoDDS and DDESS, children with disabilities, ages 3 through 21 years, inclusive, are authorized to receive educational instruction. Additionally, an eligible infant or toddler with disabilities is a child from birth through age 2 years who meets either the DoDDS or DDESS eligibility requirements except for the age requirement.

(z) *Emotional Disturbance.* A condition confirmed by clinical evaluation and diagnosis and that, over a long period of time and to a marked degree, adversely affects educational performance, and exhibits one or more of the following characteristics:

(1) Inability to learn that cannot be explained by intellectual, sensory, or health factors.

(2) Inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(3) Inappropriate types of behavior or feelings under normal circumstances.

(4) A tendency to develop physical symptoms or fears associated with personal or school problems.

(5) A general pervasive mood of unhappiness or depression. Includes children who are schizophrenic, but does not include children who are socially maladjusted unless it is determined they are seriously emotionally disturbed.

(aa) *Evaluation.* The synthesis of assessment information by a multidisciplinary team used to determine whether a particular child has a disability, the type and extent of the disability, and the child's eligibility to receive early intervention or special education and/or related services.

(bb) *Family Training, Counseling, and Home Visits.* Services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of a child eligible under this part in understanding the special needs of the child and enhancing the child's development.

(cc) *Free Appropriate Public Education (FAPE).* Special education and related services that:

(1) Are provided at no cost to parents of a child with a disability, and are under the general supervision and direction of the DoDDS or DDESS, including children with disabilities who have been suspended or expelled from school.

(2) Are provided in the least restrictive environment at a preschool, elementary, or secondary school.

(3) Are provided in conformity with an IEP.

(4) Meet the requirements of this part.

(dd) *Functional Behavioral Assessment.* A process for identifying the events that predict and maintain patterns of problem behavior.

(ee) *Functional Vocational Evaluation.* A student-centered appraisal process for vocational development and career decision-making. It allows students, educators, and others to gather information about such development and decision-making. Functional vocational evaluation includes activities for transitional, vocational, and career planning; instructional goals; objectives; and implementation.

(ff) *General Curriculum.* The curriculum adopted by the DoD school systems for all children from preschool through secondary school. To the extent applicable to an individual child with a disability, the general curriculum can be used in any educational environment along a continuum of alternative placements, described in paragraph (l) of this section.

(gg) *Health Services.* Services necessary to enable an infant or toddler to benefit from the other EIS being received under this part. That term includes the following:

(1) Services such as clean intermittent catheterization, tracheotomy care, tube feeding, changing of dressings or colostomy collection bags, and other health services.

(2) Consultation by physicians with other service providers about the special healthcare needs of infants and toddlers with disabilities that need to be addressed in the course of providing other EIS.

(3) That term does not include the following:

(i) Services that are surgical or solely medical.

(ii) Devices necessary to control or treat a medical condition.

(iii) Medical services routinely recommended for all infants or toddlers.

(hh) *Hearing Impairment.* An impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance, but is not included under the definition of deafness.

(ii) *Illegal Drug.* Means a controlled substance as identified in the Controlled Substances Act (21 U.S.C. 812(c)) but does not include a substance that is legally possessed or used under the supervision of a licensed healthcare professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(jj) *Independent Evaluation.* An evaluation conducted by a qualified

examiner who is not employed by either the DoD school or EDIS that conducted the initial evaluation.

(kk) *Individualized Education Program (IEP).* A written document defining specially designed instruction for a student with a disability, ages 3 through 21 years, inclusive. That document is developed and implemented in accordance with appendix B of this part.

(ll) *Individualized Family Service Plan (IFSP).* A written document for an infant or toddler, age birth through 2 years, with a disability and the family of such infant or toddler that is developed, reviewed, and revised in accordance with appendix A of this part.

(mm) *Infants and Toddlers with Disabilities.* Children, ages birth through 2 years, who need EIS because they:

(1) Are experiencing a developmental delay, defined at paragraph (r) of this section.

(2) Have a high probability for developmental delay as defined at paragraph (r)(2) of this section.

(nn) *Inter-Component.* Cooperation among DoD organizations and programs, ensuring coordination and integration of services to infants, toddlers, children with disabilities, and their families.

(oo) *Medical Services.* Those evaluative, diagnostic, therapeutic, and supervisory services provided by a licensed and/or credentialed physician to assist CSCs and to implement IEPs. Medical services include diagnosis, evaluation, and medical supervision of related services that, by statute, regulation, or professional tradition, are the responsibility of a licensed and credentialed physician.

(pp) *Meetings to Determine Eligibility or Placement of a Child.* All parties to such a meeting shall appear personally at the meeting site on issuance of written notice and establishment of a date convenient to the concerned parties. When a necessary participant is unable to attend, electronic communication suitable to the occasion may be used to involve the unavailable party. Parents generally shall be responsible for the cost of travel to personally attend meetings about the eligibility or placement of their child.

(qq) *Mental Retardation.* Significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior. This disability is manifested during the developmental period and adversely affects a child's educational performance.

(rr) *Multidisciplinary.* The involvement of two or more disciplines or professions in the integration and coordination of services, including evaluation and assessment activities, and development of an IFSP or an IEP.

(ss) *Native Language.* When used with reference to an individual of limited English proficiency, the home language normally used by such individuals, or in the case of a child, the language normally used by the parents of the child.

(tt) *Natural Environments.* Settings that are natural or normal (*e.g.*, home or day care setting) for the infant, toddler, or child's same-age peers who have no disability.

(uu) *Non-DoD Placement.* An assignment by the DoD school system of a child with a disability to a non-DoD school or facility. The term does not include a home schooling arrangement, except pursuant to an IEP.

(vv) *Non-DoD School or Facility.* A public or private school or other institution not operated by the Department of Defense. That term includes DDESS special contractual arrangements.

(ww) *Nutrition Services.* Those services to infants and toddlers that include, but are not limited to, the following:

(1) Conducting individual assessments in nutritional history and dietary intake; anthropometric, biochemical, and clinical variables; feeding skills and feeding problems; and food habits and food preferences.

(2) Developing and monitoring plans to address the nutritional needs of infants and toddlers eligible for EIS.

(3) Making referrals to community resources to carry out nutrition goals.

(xx) *Occupational Therapy.* Services provided by a qualified occupational therapist or a certified occupational therapist assistant (under the supervision of a qualified occupational therapist). That term includes services to address the functional needs of children (birth through age 21, inclusive) related to adaptive development; adaptive behavior and play; and sensory, motor, and postural development. Those services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include the following:

(1) Identification, assessment, and intervention.

(2) Adaptation of the environment and selection, design, and fabrication of assistive and orthotic devices to help development and promote the acquisition of functional skills.

(3) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(yy) *Orthopedic Impairment.* A severe orthopedic impairment that adversely affects a child's educational performance. That term includes congenital impairments such as club foot or absence of some member; impairments caused by disease, such as poliomyelitis and bone tuberculosis; and impairments from other causes such as cerebral palsy, amputations, and fractures or burns causing contractures.

(zz) *Orientation and Mobility.* Services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home and community; and includes teaching students the following, as appropriate:

(1) To understand spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) orientation and mobility to establish, maintain, or regain orientation and line of travel (*e.g.*, using sound at a traffic light to cross the street);

(2) To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

(3) To understand and use remaining vision and distance low vision aids; and other concepts, techniques, and tools.

(aaa) *Other Health Impairment.* Limited strength, vitality, or alertness due to chronic or acute health problems that adversely affect a child's educational performance. Such impairments may include ADD, heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, seizure disorder, lead poisoning, leukemia, or diabetes.

(bbb) *Parent.* The biological father or mother of a child; a person who, by order of a court of competent jurisdiction, has been declared the father or mother of a child by adoption; the legal guardian of a child; or a person in whose household a child resides, if such person stands in loco parentis to that child and contributes at least one-half of the child's support.

(ccc) *Parent Counseling and Training.* A service that assists parents in understanding the special needs of their child's development and that provides them with information on child development and special education.

(ddd) *Personally Identifiable Information.* Information that would make it possible to identify the infant, toddler, or child with reasonable certainty. Information includes:

(1) The name of the child, the child's parent, or other family member; the address of the child;

(2) A personal identifier, such as the child's social security number or student number; or

(3) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(eee) *Physical Therapy.* Services provided by a qualified physical therapist or a certified physical therapist (under the supervision of a qualified physical therapist). That term includes services to children (birth through age 21, inclusive) to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. Those services include the following:

(1) Screening, evaluation, and assessment to identify movement dysfunction.

(2) Obtaining, interpreting, and integrating information to appropriate program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

(3) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

(fff) *Primary Referral Source.* Parents and the DoD Components, including child development centers, pediatric clinics, and newborn nurseries, that suspect an infant or toddler has a disability and bring the child to the attention of the EDIS.

(ggg) *Psychological Services.* Services that include the following:

(1) Administering psychological and educational tests and other assessment procedures.

(2) Interpreting test and assessment results.

(3) Obtaining, integrating, and interpreting information about a child's behavior and conditions relating to learning.

(4) Consulting with other staff members, including service providers, to plan programs to meet the special needs of children, as indicated by psychological tests, interviews, and behavioral evaluations.

(5) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(hhh) *Public Awareness Program.* Activities or print materials focusing on early identification of infants and toddlers with disabilities. Materials may include information prepared and disseminated by a military medical department to all primary referral sources and information for parents on the availability of EIS. Procedures to determine the availability of information on EIS to parents are also included in that program.

(iii) *Qualified.* A person who meets the DoD-approved or recognized certification, licensing, or registration requirements or other comparable requirements in the area in which the person provides special education or related services or EIS to an infant, toddler, or child with a disability.

(jjj) *Recreation.* A related service that includes the following:

(1) Assessment of leisure function.

(2) Therapeutic recreational activities.

(3) Recreational programs in schools and community agencies.

(4) Leisure education.

(kkk) *Rehabilitation Counseling.* Services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of the student with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(lll) *Related Services.* Transportation and such developmental, corrective, and other supportive services, as required, to assist a child, age 3 through 21 years, inclusive, with a disability to benefit from special education under the child's IEP. The term includes speech-language pathology and audiology, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in children, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluative purposes. That term also includes school health services, social work services in schools, and parent counseling and training. The sources for those services are school, community, and medical treatment facilities.

(mmm) *Related Services Assigned to the Military Medical Departments Overseas.* Services provided by EDIS to DoDDS students, under the development or implementation of an IEP, necessary for the student to benefit from special education. Those services may include medical services for diagnostic or evaluative purpose, social work, community health nursing, dietary, occupational therapy, physical therapy, audiology, ophthalmology, and psychological testing and therapy.

(nnn) *School Health Services.* Services provided by a qualified school nurse or other qualified person.

(ooo) *Separate Facility.* A school or a portion of a school, regardless of whether it is operated by the Department of Defense, attended exclusively by children with disabilities.

(ppp) *Service Coordination.* Activities of a service coordinator to assist and enable an infant or toddler and the family to receive the rights, procedural safeguards, and services that are authorized to be provided under appendix B of this part. Those activities include the following:

(1) Coordinating the performance of evaluations and assessments.

(2) Assisting families to identify their resources, concerns, and priorities.

(3) Facilitating and participating in the development, review, and evaluation of IFSPs.

(4) Assisting in identifying available service providers.

(5) Coordinating and monitoring the delivery of available services.

(6) Informing the family of support or advocacy services.

(7) Coordinating with medical and health providers.

(8) Facilitating the development of a transition plan to preschool services.

(qqq) *Service Provider.* Any individual who provides services listed in an IEP or an IFSP.

(rrr) *Social Work Services in Schools.* A service that includes the following:

(1) Preparing a social or developmental history on a child with a disability.

(2) Counseling a child and the family on a group or individual basis.

(3) Working with those problems in a child's home, school, or community that adversely affect adjustment in school.

(4) Using school and community resources to enable a child to benefit from the educational program.

(sss) *Special Education.* Specially designed instruction, including physical education, which is provided at no cost to the parent or guardians to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings.

(1) That term includes speech-language pathology or any other related

service if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

(2) That term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

(3) *At No Cost.* For a child eligible to attend a DoD school without paying tuition, specially designed instruction and related services are provided without charge. Incidental fees normally charged to non-disabled students or their parents as a part of the regular educational program may be imposed.

(4) *Physical Education.* The development of the following:

(i) Physical and motor fitness.

(ii) Fundamental motor skills and patterns.

(iii) Skills in aquatics, dance, and individual and group games and sports, including intramural and lifetime sports.

(iv) A program that includes special physical education, adapted physical education, movement education, and motor development.

(ttt) *Specially Designed Instruction.* That term means adapting content, methodology or delivery of instruction to:

(1) Address the unique needs of an eligible child under this part; and

(2) Ensure access of the child to the general curriculum, so that she or he can meet the educational standards within the DoD school systems.

(uuu) *Specific Learning Impairment.* A disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language that may manifest itself as an imperfect ability to listen, think, speak, read, write, spell, remember, or do mathematical calculations. That term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term, commonly called, "specific learning disability," does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; mental retardation; emotional disturbance; or environmental, cultural, or economic differences.

(vvv) *Speech and Language Impairments.* A communication disorder, such as stuttering, impaired articulation, voice impairment, or a disorder in the receptive or expressive areas of language that adversely affects a child's educational performance.

(www) *Speech-Language Pathology Services.* Services provided by a qualified speech/language therapist or a certified speech/language assistant (under the supervision of a qualified speech/language therapist), that include the following:

(1) Identification of children with speech or language impairments.

(2) Diagnosis and appraisal of specific speech or language impairments.

(3) Referral for medical or other professional attention for the habilitation or prevention of speech and language impairments.

(4) Provision of speech and language services for the habilitation or prevention of communicative impairments.

(5) Counseling and guidance of children, parents, and teachers for speech and language impairments.

(xxx) *Supplementary Aids and Services.* Include aids, services, and other supports that are provided in regular education classes or other educational-related settings to enable children with disabilities to be educated with non-disabled children to the maximum extent appropriate.

(yyy) *Transition Services.* (1) A coordinated set of activities for a student that may be required to promote movement from early intervention, preschool, and other educational programs into different educational settings or programs.

(2) For students 14 years of age and older, transition services are designed in an outcome-oriented process that promotes movement from school to post-school activities; including, related services, post-secondary education, vocational training, integrated employment; and also including supported employment, continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities are based on the individual student's needs, considering the student's preferences and interests, and include instruction, community experiences, the development of employment and other post-school adult living objectives, and acquisition of daily living skills and functional vocational evaluation.

(zzz) *Transportation.* A service that includes the following:

(1) Transportation and related costs for EIS includes the cost of travel (*e.g.*, mileage or travel by taxi, common carrier, or other means) and other costs (*e.g.*, tolls and parking expenses) that are necessary to enable an eligible child and the family to receive EIS.

(2) Services rendered under the IEP of a child with a disability:

(i) Travel to and from school and between schools, including travel necessary to permit participation in educational and recreational activities and related services.

(ii) Travel in and around school buildings.

(3) Specialized equipment, including special or adapted buses, lifts, and ramps, if required to provide transportation for a child with a disability.

(aaaa) *Traumatic Brain Injury.* An acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment that adversely affects educational performance. That term includes open or closed head injuries resulting in mild, moderate, or severe impairments in one or more areas including cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychosocial behavior, physical function, information processing, and speech. That term does not include brain injuries that are congenital or degenerative, or brain injuries that are induced by birth trauma.

(bbbb) *Vision Services.* Services necessary to habilitate or rehabilitate the effects of sensory impairment resulting from a loss of vision.

(cccc) *Visual Impairment.* An impairment of vision that, even with correction, adversely affects a child's educational performance. That term includes both partial sight and blindness.

(dddd) *Vocational Education.* Organized educational programs for the preparation of individuals for paid or unpaid employment or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(eeee) *Weapon.* Items carried, presented, or used in the presence of other persons in a manner likely to make reasonable persons fear for their safety. They include, but are not limited to, guns, look-alike (replica) guns, knives, razors, box or carpet cutters, slingshots, nunchucks, any flailing instrument such as a fighting chain or heavy studded or chain belt, objects designed to project a missile, explosives, mace, pepper spray, or any other similar propellant, or any other object concealed, displayed, or brandished in a manner that reasonably provokes fear.

§ 57.4 Policy.

It is DoD policy that:

(a) Eligible infants and toddlers with disabilities and their families shall be provided EIS consistent with appendix A of this part.

(b) Eligible children with disabilities, ages 3 through 21 years, inclusive, shall be provided a FAPE in the least restrictive environment, consistent with appendix B of this part.

(c) The Military Medical Departments and DoDDS shall cooperate in the delivery of related services to eligible children with disabilities, ages 3 through 21 years, inclusive, that require such services to benefit from special education. Related services assigned to the Military Medical Departments are defined in § 57.3 and are provided in accordance with appendix C of this part. DDESS is responsible for the delivery of all related services to eligible children with disabilities, ages 3 through 21 years, inclusive, served by DDESS.

(d) The Military Medical Departments shall provide EIS in both domestic and overseas areas, and related services assigned to them in overseas areas, at the same priority as medical care is provided to active duty military members.

§ 57.5 Responsibilities.

(a) *The Under Secretary of Defense (Personnel and Readiness)* (USD (P&R)) shall:

(1) Establish a DoD–AP consistent with appendix D of this part.

(2) Establish and chair, or designate a "Chair," of the DoD–CC consistent with appendix E of this part.

(3) Ensure that inter-Component agreements or other mechanisms for inter-Component coordination are in effect between the DoD Components providing services to infants, toddlers and children.

(4) Ensure the implementation of procedural safeguards consistent with appendix F of this part.

(5) In consultation with the General Counsel of the Department of Defense (GC, DoD) and the Secretaries of the Military Departments:

(i) Ensure that eligible infants and toddlers with disabilities and their families are provided comprehensive, coordinated and multidisciplinary EIS under 20 U.S.C. 921–932 and 10 U.S.C. 2164 as provided in appendix A of this part.

(ii) Ensure that eligible children with disabilities (ages 3 through 21 years, inclusive) are provided a FAPE under U.S.C. 921–932 and 10 U.S.C. 2164 as provided in appendix A of this part.

(iii) Ensure that eligible DoDDS students are provided related services, as provided in appendix C of this part.

(iv) Ensure that all eligible DDESS students are provided related services by DDESS.

(v) Ensure the development of a DoD-wide comprehensive child-find system to identify eligible infants, toddlers, and children ages birth through 21 years, inclusive, under DoD Directive 1342.6 who may require early intervention or special education services.

(vi) Ensure that personnel are identified to provide the mediation services specified in appendix 7 of this part.

(vii) Ensure that transition services are available to promote movement from early intervention, preschool, and other educational programs into different educational settings and post-secondary environments.

(viii) Ensure compliance with this Part in the provision of special services, in accordance with appendix H of this part and other appropriate guidance.

(ix) Ensure that personnel are identified and trained to provide the monitoring specified in appendix H of this part

(x) Ensure that the Military Departments deliver the following:

(A) In overseas and domestic areas, a comprehensive, coordinated, and multidisciplinary program of EIS for eligible infants and toddlers (birth through 2 years, inclusive) with disabilities.

(B) In overseas areas, the related services as defined in § 57.3 for eligible children with disabilities, ages 3 through 21 years, inclusive.

(xi) Ensure the development and implementation of a comprehensive system of personnel development in the area of special services for the Department of Defense Education Activity (DoDEA) and the Military Departments. That system shall include professionals, paraprofessionals, and primary referral source personnel in the areas of special services, and may also include:

(A) Implementation of innovative strategies and activities for the recruitment and retention of personnel providing special services, ensuring that personnel requirements are established consistent with recognized certification, licensing, registration, or other comparable requirements for personnel providing special services, and allow the use of paraprofessionals and assistants who are appropriately trained and supervised to assist in the provision of special services.

(B) Training personnel to coordinate transition services for infants and toddlers from an early intervention program to preschool or other appropriate services

(C) Ensuring that training is provided in and across disciplines.

(xii) Develop procedures to compile data on the numbers of eligible infants and toddlers with disabilities and their families in need of EIS, and children in need of special education and related services, in accordance with DoD Directives 5400.7 and 5400.11. Those data elements shall include, at a minimum, the following:

(A) The number of infants and toddlers and their families served.

(B) The number of children served.

(C) The types of services provided.

(D) Other information required to evaluate and monitor the provision of services.

(xiii) Resolve disputes among the DoD Components involving appendix A of this part.

(xiv) Ensure the assigned responsibilities for the delivery of special services are reviewed at least every 5 years to determine the most appropriate distribution of responsibilities.

(b) The *Assistant Secretary of Defense (Health Affairs)* (ASD(HA)), under the *Principal Deputy Under Secretary of Defense for Personnel and Readiness* (PDUSD(P&R)), shall:

(1) Ensure the provision of advice and consultation about the provision of EIS and related services to the USD(P&R) and the GC, DoD.

(2) Ensure the development of healthcare provider workload standards and performance levels to determine staffing requirements of designated centers. These standards shall take into account the provider training needs, the requirements of this part, and the additional time required to provide EIS (in domestic and overseas areas) and related services (in overseas areas) as defined in § 57.3 for assessment and treatment and for coordination with other DoD Components, such as the DoD school systems.

(3) Assign the Military Medical Departments geographical areas of responsibility for providing related services and EIS under paragraph (c)(1) of this section. Periodically review the alignment of geographic areas to ensure that base closures and other resourcing issues are considered in the cost effective delivery of services.

(4) Establish a system for compiling data required by this part.

(c) The *Secretaries of the Military Departments* shall:

(1) In consultation with DoDEA, establish Educational and Developmental Intervention Services (EDIS) within the following areas:

(i) Designated overseas areas of geographical responsibility, capable of providing necessary related services and EIS to support the needs of eligible beneficiaries.

(ii) Domestic areas, capable of providing necessary EIS to support the needs of eligible beneficiaries.

(2) Staff EDIS with appropriate professional staff, as necessary based on services required, which should include occupational therapist(s) with pediatric experience; physical therapist(s) with pediatric experience; audiologist(s) with pediatric experience; child psychiatrist(s); clinical psychologist(s) with pediatric experience; social worker(s) with pediatric experience; speech language pathologists; community health nurse(s) or the equivalent; pediatrician(s) with experience and/or training in developmental pediatrics; certified assistants (for example, certified occupational therapy assistants or physical therapy assistants); and early childhood special educators.

(3) Provide a comprehensive, coordinated, inter-Component, community-based system of EIS for eligible infants and toddlers with disabilities (birth through 2 inclusive) and their families using the procedures established by this part and guidelines from the ASD(HA) on staffing and personnel standards.

(4) Provide related services, as defined in § 57.3 to DoDDS students who are on IEPs using the procedures established by this part and guidelines from the ASD(HA) on staffing and personnel standards.

(5) To DoDDS students, provide transportation to and from the site where related services are provided by the Military Medical Department, if not provided at the school.

(6) Provide transportation to and from the site where EIS is provided, if it is not provided in the home or some other natural environment.

(d) The *Surgeons General of the Military Departments* shall:

(1) Ensure the development of policies and procedures for providing, documenting, and evaluating EIS and related services assigned to the Military Medical Departments, as defined in § 57.3 (mmm).

(2) Ensure that EDIS participates in the existing military treatment facility (MTF) quality assurance program, which monitors and evaluates the medical services for children receiving such services as described by this part. Standards used by the Joint Commission on Accreditation of Health Organizations or equivalent standards shall be used, where applicable, to ensure accessibility, acceptability, and adequacy of the medical portion of the program provided by EDIS.

(3) Ensure that each program providing EIS is monitored for compliance with this part at least once every 3 years in accordance with appendix H of this part.

(4) Ensure that resources are allocated in accordance with the healthcare provider workload standards and performance levels developed under the direction of the ASD(HA).

(5) Ensure the cooperation and coordination between their respective offices, the offices of other Surgeons General, and DoDEA with respect to the implementation of this Part.

(6) Ensure that training is available for each healthcare professional providing EIS or related services. This training shall include information about the roles and responsibilities of the providers and the development of an Individualized Family Service Plan (IFSP) or an IEP.

(7) Ensure the provision of in-service training on EIS and related services to educational, legal, and other suitable personnel, if requested and feasible.

(8) Provide professional supervision of the EDIS provision of EIS and related services in the overseas areas, as designated in (b)(3) of this section and of EIS in domestic areas of responsibility.

(9) Submit to the DoD-CC a report not later than July 31 of each year certifying that all EDIS are in compliance with this part and other DoD guidance in accordance with appendix H of this part.

(e) The *Director, Department of Defense Education Activity* under the *Deputy Under Secretary of Defense (Military Community and Family Policy),* and the PDUSD(P&R), shall ensure that the Directors of the DoD school systems shall:

(1) Ensure that eligible children with disabilities, ages 3 through 21 years, inclusive, are provided a FAPE.

(2) Ensure that the educational needs of children with and without disabilities are met comparably, consistent with appendix B of this part.

(3) Ensure that educational facilities and services operated by the DoD school systems for children with and without disabilities are comparable.

(4) Maintain records on special education and related services provided to eligible children with disabilities, ages 3 through 21 years, inclusive, consistent with 21 U.S.C. 812(c).

(5) Provide any or all special education and related services required by a child with a disability, ages 3 through 21 years, inclusive, other than those furnished by the Secretaries of the Military Departments through inter-Agency, intra-Agency, and inter-Service arrangements, or through contracts with private parties when funds are authorized and appropriated.

(6) Provide transportation, which is a related service under this Part, to students with disabilities when transportation is prescribed in the student's IEP. The DoD school systems shall furnish transportation between the student's home (or another location specified in the IEP) and the DoD school.

(7) Provide transportation to and from the site where DDESS provides related services, if not provided at the school.

(8) Participate in the development and implementation of a comprehensive system of personnel development.

(9) Ensure that all programs providing special education and related services, including those provided by the Military Medical Departments, are monitored for compliance with this part in accordance with appendix H of this part.

(10) Provide physical space for the provision of occupational therapy, physical therapy, and psychological services in those DoDDS facilities where EDIS shall provide related services.

(11) Provide physical space for the provision of occupational therapy, physical therapy, psychological services, and therapists' offices in construction of DoDDS facilities at those locations where EDIS shall provide related services. The DoDDS shall determine the specifics of space design in consultation with the responsible Military Department's medical authorities concerned and the Defense Medical Facilities Office, Office of the ASD(HA).

(12) The DoDDS shall provide repair and maintenance support, custodial support, and utilities to the areas described in paragraphs (e)(10) and (e)(11) of this section.

(13) The DoDDS shall maintain operational control of therapy and office space.

(14) Ensure that all newly constructed or renovated DoD school facilities are fully accessible to persons with mobility impairments including those in wheelchairs.

(15) Report not later than July 31 of each year to the DoD–CC on the following:

(i) Number of children with disabilities participating in regular and alternate system-wide assessment.

(ii) Performance of children with disabilities on the regular system-wide assessment and on the alternate system-wide assessment.

(iii) By district, rate of suspension and expulsion of students with disabilities compared to regular education students.

(f) The *Director, Defense Office of Hearings and Appeals* (DOHA), under the *General Counsel of the Department of Defense,* shall ensure impartial due process hearings are provided consistent with appendix G of this part.

§ 57.6 Procedures.

(a) The procedures for EIS for infants and toddlers with disabilities and their families are prescribed in appendix A of this part.

(b) The procedures for educational programs and services for children with disabilities, ages 3 through 21 years, inclusive, on IEPs are prescribed in appendix B of this part.

(c) The procedures for the provision of related services for DoDDS students with disabilities, ages 3 through 21, inclusive, are prescribed in appendix C of this part

(d) Procedural safeguards and parent and student rights are prescribed in appendix F of this part.

(e) The procedures for conducting mediation and due process hearings are prescribed in appendix G of this part.

(f) The procedures for conducting compliance monitoring are prescribed in appendix H of this part.

Appendix A to Part 57—Procedures for the Provision of Early Intervention Services for Infants and Toddlers With Disabilities and Their Families

A. Identification and Screening

(1) Each Military Department shall develop and implement in its assigned geographic area a comprehensive child-find public awareness program that focuses on the early identification of children who are eligible to receive EIS under this part. The public awareness program must inform the public about:

(i) The EDIS early intervention program;

(ii) The child-find system, including:

(*A*) The purpose and scope of the system;

(*B*) How to make referrals to service providers that includes timelines and provides for participation by primary referral sources; and

(*C*) How to gain access to a comprehensive, multidisciplinary evaluation and other EIS; and

(*D*) A central directory that includes a description of the EIS and other relevant resources available in each military community overseas.

(2) EDIS must prepare and disseminate materials for parents on the availability of EIS to all primary referral sources, especially hospitals, physicians, and child development centers.

(3) Upon receipt of a referral, EDIS shall appoint a service coordinator.

(4) Procedures for Identification and Screening. All children referred to the EDIS for EIS shall be screened to determine the appropriateness of the referral and to guide the assessment process.

(i) Screening does not constitute a full evaluation. At a minimum, screening shall include a review of the medical and developmental history of the referred child through a parent interview and/or a review of medical records.

(ii) If screening was conducted prior to the referral, or if there is a substantial or obvious biological risk, screening may not be necessary.

B. Assessment and Evaluation

(1) The assessment and evaluation of each child must:

(i) Be conducted by a multidisciplinary team.

(ii) Be based on informed clinical opinion; and

(iii) Include the following:

(*A*) A review of pertinent records related to the child's current health status and medical history.

(*B*) An evaluation of the child's level of functioning in each of the following developmental areas:

(*i*) Cognitive development.

(*ii*) Physical development, including vision and hearing.

(*iii*) Communication development.

(*iv*) Social or emotional development.

(*v*) Adaptive development.

(iv) An assessment of the unique needs of the child in terms of each of the developmental areas in paragraph B.(1)(iii)(*B*) of this appendix, including the identification of services appropriate to meet those needs.

(2) *Family Assessment*

(i) Family assessments must be family-directed and designed to determine the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child.

(ii) Any assessment that is conducted must be voluntary on the part of the family.

(iii) If an assessment of the family is carried out, the assessment must:

(*A*) Be conducted by personnel trained to utilize appropriate methods and procedures.

(*B*) Be based on information provided by the family through a personal interview; and

(*C*) Incorporate the family's description of its resources, priorities, and concerns related to enhancing the child's development.

(3) *Standards for Assessment Selection and Procedures.* EDIS shall ensure, at a minimum, that:

(i) Tests and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so.

(ii) Any assessment and evaluation procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory.

(iii) No single procedure is used as the sole criterion for determining a child's eligibility under this part; and

(iv) Evaluations and assessments are conducted by qualified personnel.

(4) With the parent's consent, EIS may begin before the completion of the assessment and evaluation when it has been determined by a multidisciplinary team that the child and/or the child's family needs the service immediately. Although all assessments have not been completed, an IFSP must be developed before the start of services. The remaining assessments must then be completed in a timely manner.

C. Eligibility

(1) Eligibility shall be determined at an EIS team meeting that includes parents.

(i) The EIS team shall document the basis for eligibility on an eligibility report.

(ii) A copy of the eligibility report shall be provided to the parent at the eligibility meeting.

(2) Children with disabilities from birth through age 2 are eligible for EIS if they meet one of the following criteria:

(i) The child is experiencing a developmental delay as defined in § 57.3(r).

(ii) The child has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay, as defined in § 57.3(s).

D. Timelines

(1) The initial evaluation and assessment of each child (including the family assessment) must be completed within a timely manner.

(2) The Military Department responsible for providing EIS shall develop procedures to ensure that in the event of exceptional circumstances that make it impossible to complete the evaluation and assessment within a timely manner (*e.g.,* if a child is ill), EDIS shall:

(i) Document those circumstances; and

(ii) Develop and implement an interim IFSP, to the extent appropriate and consistent with this part.

E. IFSP

(1) Each Military Department shall ensure that the EDIS develop and implement an IFSP for each child, birth through 2 years of age, who meets the eligibility criteria for EIS in section B of this appendix.

(2) *The IFSP Meeting.* The EDIS shall establish and convene a meeting to develop the IFSP of a child with a disability. That meeting shall be scheduled as soon as possible following a determination by the EDIS that the child is eligible for EIS, but not later than 45 days from the date of the referral for services.

(3) Meetings to develop and review the IFSP must include the following participants:

(i) The parent or parents of the child.

(ii) Other family members, as requested by the parent, if feasible.

(iii) An advocate or person outside of the family, if the parent requests that person's participation.

(iv) The services coordinator who has worked with the family since the initial referral of the child or who has been designated as responsible for the implementation of the IFSP.

(v) The person(s) directly involved in conducting the evaluations and assessments.

(vi) As appropriate, persons who shall provide services to the child or family.

(4) If a person listed in paragraph E.(3) of this appendix is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including the following:

(i) Participating in a telephone conference call.

(ii) Having a knowledgeable, authorized representative attend the meeting.

(iii) Making pertinent records available at the meeting.

(5) The IFSP shall be written in a reasonable time after assessment and shall contain the following:

(i) A statement of the child's current developmental levels including physical, cognitive, communication, social or emotional, and adaptive behaviors based on professionally acceptable objective criteria.

(ii) With the concurrence of the family, a statement of the family's resources, priorities, and concerns about enhancing the child's development.

(iii) A statement of the major outcomes expected to be achieved for the child and the family. Additionally, the statement shall contain the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modification or revision of the outcomes and services are necessary.

(iv) A statement of the specific EIS necessary to meet the unique needs of the child and the family including the frequency, intensity, and method of delivering services.

(v) The projected number of sessions necessary to achieve the outcomes listed in the IFSP.

(vi) A statement of the natural environments in which EIS shall be provided, and a justification of the extent, if any, to which the services shall not be provided in a natural environment.

(vii) The projected dates for initiation of services and the anticipated duration of those services.

(viii) The name of the service coordinator who shall be responsible for the implementation of the IFSP and coordination with other agencies and persons. In meeting these requirements, EDIS may:

(*A*) Assign the same service coordinator who was appointed at the time that the child was initially referred for evaluation to be responsible for implementing a child's and family's IFSP; or

(*B*) Appoint a new service coordinator.

(*C*) Appoint a service coordinator requested by the parents.

(ix) The steps to be taken supporting the transition of the toddler with a disability to preschool or other services. These steps must include:

(*A*) Discussions with, and training of, parents regarding future placements and other matters related to the child's transition;

(*B*) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting; and

(*C*) The transmission of information about the child to the DoD school system, to ensure continuity of services, including evaluation and assessment information, and copies of IFSPs that have been developed and implemented in accordance with this Part.

(6) The contents of the IFSP shall be explained to the parents and an informed, written consent from the parents shall be obtained before providing EIS described in that plan.

(7) If a parent does not provide consent for participation in all EIS, the services shall still be provided for those interventions to which a parent does give consent.

(8) The IFSP shall be evaluated at least once a year and the family shall be provided an opportunity to review the plan at 6-month intervals (or more frequently, based on the child and family needs). The purpose of the periodic review is to determine the following:

(i) The degree to which progress toward achieving the outcomes is being made; and

(ii) Whether modification or revision of the outcomes or services is necessary.

(9) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

F. Maintenance of Records

(1) The EDIS officials shall maintain all EIS records, in accordance with DoD Directive 5400.11.

(2) The IFSP and the documentation of services delivered in accordance with the IFSP are educational records and shall be maintained accordingly.

Appendix B to Part 57—Procedures for the Provision of Educational Programs and Services for Children With Disabilities, Ages 3 Through 21 Years, Inclusive

A. Identification

(1) It is the responsibility of the DoD school system officials to engage in child-find activities to locate, identify, and with informed parental consent, evaluate all children who are eligible to enroll in the DDESS under DoD Directive 1342.26 or in the DoDDS under DoD Directive 1342.13 who may require special education and related services.

(2) *Referral of a Child for Special Education or Related Services.* The DoD school system officials, related service providers, parents, or others who suspect that a child has a possible disabling condition shall refer that child to the CSC.

(3) *Procedures for Identification and Screening.* The DoD school system officials shall conduct the following activities to determine if a child needs special education and related services:

(i) Screen educational records.

(ii) Screen students using system-wide or other basic skill tests in the areas of reading, math, and language arts.

(iii) Screen school health data such as reports of hearing, vision, speech, or language tests and reports from healthcare personnel about the health status of a child.

(iv) Analyze school records to obtain pertinent information about the basis for suspensions, exclusions, withdrawals, and disciplinary actions.

(v) Coordinate the transition of children from early intervention to preschool.

(4) In cooperation with the Military Departments, conduct on-going child-find activities and publish, periodically, any information, guidelines, and direction on child-find activities for eligible children with disabilities, ages 3 through 21 years, inclusive.

B. Assessment and Evaluation

(1) Every child eligible to attend a DoD school who is referred to a CSC shall receive a full and comprehensive diagnostic evaluation of educational needs. An evaluation shall be conducted before an IEP is developed or placement is made in a special education program.

(2) *Procedures for Assessment and Evaluation.* A CSC shall ensure that the following elements are included in a comprehensive assessment and evaluation of a child:

(i) Assessment of visual and auditory acuity.

(ii) A plan to assess the type and extent of the disability. A child shall be assessed in all areas related to the suspected disability. When necessary, the assessment plan shall include the following:

(*A*) Assessment of the level of functioning academically, intellectually, emotionally, socially, and in the family.

(*B*) Observation in an educational environment.

(*C*) Assessment of physical status including perceptual and motor abilities.

(*D*) Assessment of the need for transition services for students 14 years and older, the acquisition of daily living skills, and functional vocational assessment.

(iii) The involvement of parents.

(3) The CSC shall use all locally available community, medical, and school resources to accomplish the assessment. At least one specialist with knowledge in the area of the suspected disability shall be a member of the multidisciplinary assessment team.

(4) Each assessor shall prepare an individual assessment report that includes:

(i) Demographic information about the student and the assessor.

(ii) The problem areas constituting the bases for a referral.

(iii) A behavioral observation of the child during testing.

(iv) The instruments and techniques used for the assessment.

(v) A description of the child's strengths and limitations.

(vi) The results of the assessment; and

(vii) The instructional implications of the findings for educational functioning.

(5) *Standards for Assessment Selection and Procedures.* All DoD elements, including the CSC and related services providers, shall ensure that assessment materials and evaluation procedures are in compliance with the following criteria:

(i) Selected and administered so as not to be racially or culturally discriminatory.

(ii) Administered in the native language or mode of communication of the child, unless it clearly is not possible to do so.

(iii) Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.

(iv) Validated for the specific purpose for which they are used or intended to be used.

(v) Administered by trained personnel in compliance with the instructions of the testing instrument.

(vi) Administered such that no single procedure is the sole criterion for determining eligibility or an appropriate educational program for a child with a disability.

(vii) Selected to assess specific areas of educational needs and strengths and not merely to provide a single general intelligence quotient.

(viii) Administered to a child with impaired sensory, motor, or communication skills so that the results reflect accurately a child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(6) *Review of Existing Evaluation Data.* As part of an initial evaluation (if appropriate) and as part of any reevaluation, the CSC shall review existing evaluation data on the child, including:

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based assessments and observations;

(iii) Observations by teachers and related services providers; and

(iv) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:

(*A*) Whether the child has a particular category of disability, or in the case of a reevaluation of a child, whether the child continues to have such a disability.

(*B*) The present levels of performance and educational needs of the child.

(*C*) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(*D*) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

(v) The CSC may conduct its review without a meeting.

(vi) The CSC shall administer tests and other evaluation materials as may be needed to produce the data identified under paragraph B.(2) of this appendix.

C. Eligibility

(1) The CSC shall:

(i) Ensure that the full comprehensive evaluation of a child is accomplished by a multidisciplinary team. The team shall be comprised of teachers or other specialists with knowledge in the area of the suspected disability.

(ii) Convene a meeting to determine the eligibility of a child for special education and related services.

(iii) Meet as soon as possible after a child has been assessed to determine the eligibility of the child for services.

(iv) Afford the child's parents the opportunity to participate in the CSC eligibility meeting.

(v) Issue a written eligibility report that contains the following:

(*A*) Identification of the child's disabling condition.

(*B*) A synthesis of the formal and informal findings of the multidisciplinary assessment team.

(*C*) A summary of information from the parents, the child, or other persons having significant contact with the child.

(*D*) A determination of eligibility statement.

(*E*) A list of the educational areas affected by the child's disability, a description of the child's educational needs, and a statement of the child's present level of performance.

(2) *Reevaluation for Eligibility.* School officials shall reevaluate the eligibility of a child with a disability every 3 years, or more frequently, if conditions warrant.

(i) The scope and type of the reevaluation shall be determined individually based on a child's performance, behavior, and needs during the reevaluation and the review of existing data in accordance with paragraph B.(6) of this appendix.

(ii) The CSC is not required to conduct assessments unless requested to do so by the child's parents.

(iii) If the CSC determines that no additional data are needed to determine whether the child continues to be a child with a disability, the CSC shall notify the parents of:

(*A*) The determination that no additional assessment data are needed and the reasons for their determination; and

(*B*) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability.

D. IEP

(1) The DoD school system officials shall ensure that the CSC develop and implement an IEP for each child with a disability who:

(i) Is enrolled in the DoD school system;

(ii) In DoDDS, is home-schooled, eligible to enroll in DoDDS on a space-required, tuition-free basis and whose sponsors have completed a registration form and complied with other registry procedures and requirements of the school;

(iii) In DDESS, is home-schooled and eligible to enroll on a tuition-free basis and whose sponsors have completed a registration form and complied with other registry procedures and requirements of the school; or

(iv) Is placed in another institution by the DoD school system.

(2) The CSC shall convene a meeting to develop, review, or revise the IEP of a child with a disability. That meeting shall:

(i) Be scheduled as soon as possible following a determination by the CSC that the child is eligible for special education and related services.

(ii) Include minimally as participants the following:

(*A*) An administrator or school representative other than the child's teacher who is qualified to provide or supervise the provision of special education and is knowledgeable about the general curriculum and available resources.

(*B*) The child's teacher (if the child is, or may be, participating in the regular education environment);

(*C*) A special education teacher or provider.

(*D*) One or both of the child's parents.

(*E*) The child, if appropriate.

(*F*) For a child with a disability who has been evaluated for the first time, a representative of the evaluation team who is knowledgeable about the evaluation procedures used and is familiar with the results of the evaluation.

(*G*) Other individuals invited at the discretion of the parent or school who have knowledge or special expertise regarding the child, including related services personnel, as appropriate.

(3) *Development of the IEP.* The CSC shall prepare the IEP with the following:

(i) A statement of the child's present levels of educational performance including a description of:

(*A*) How the child's disability affects involvement and progress in the general curriculum or for preschoolers, how the disability affects participation in appropriate activities.

(*B*) A description of the child's participation in the regular classroom (if the child participates in the regular education environment), extracurricular and other non-academic activities; and

(*C*) If necessary, an explanation of the extent to which the child shall not participate with children who are not disabled in these activities.

(ii) A statement of measurable annual goals including benchmarks or short-term instructional objectives related to meeting:

(*A*) The child's needs that result from the disability to enable the child to be involved in and progress in the general curriculum;

(*B*) Each of the child's other needs resulting from his or her disability.

(iii) A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child and a statement of the program modifications or supports for school personnel that shall be provided for the child to:

(*A*) Advance appropriately toward attaining the annual goals.

(*B*) Be involved in and progress in the general curriculum in accordance with this part and to participate in extracurricular and other non-academic activities; and

(*C*) Be educated and participate with other children with or without disabilities.

(iv) A statement of any individual modifications in the administration of system-wide or district-wide assessment of student achievement that are needed for the child to participate in the assessment.

(v) If the CSC determines that the child shall not participate in a particular system-wide or district-wide assessment of student achievement (or part of an assessment), a statement of:

(*A*) Why that assessment is not appropriate for the child; and

(*B*) How the child shall be assessed using alternate assessments to measure student progress.

(vi) A statement explaining how the child's progress towards annual goals shall be measured.

(vii) A statement explaining how parents shall be informed, at least as often as parents

are informed of progress of children who are not disabled, of:

(*A*) Their child's progress toward annual goals; and

(*B*) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

(viii) A statement of special education, related services, and modifications necessary for the child to advance appropriately toward the annual goals.

(ix) A statement of the amount of time that each service shall be provided to the child, to include the projected date for beginning of services and location and duration of those services (including adjusted school day or an extended school year) and modifications.

(x) A statement of the physical education program provided in one of the following settings:

(*A*) In the regular education program.

(*B*) In the regular education program with adaptations, modifications, or the use of assistive technology.

(*C*) Through specially designed instruction based on the goals and objectives included in the IEP.

(xi) Beginning at age 14, and updated annually:

(*A*) A statement of transition service needs under applicable components of the child's IEP that focuses on his or her course of study and augments the standard transition requirements.

(*B*) A statement of needed transition services, including inter-Agency responsibilities.

(xii) Beginning at least one year before the child reaches the age of majority, a statement that the child has been informed of those rights that transfer to him or her under this Part.

(xiii) A statement of special transportation requirement, if any.

(xiv) A statement of the vocational education program for secondary students. If a specially designed instructional program is required, the necessary goals and objectives in the IEP shall be included.

(4) *Consideration of Special Factors.* The CSC shall consider:

(i) Assistive technology needs for all children.

(ii) Language needs for the limited English proficient child.

(iii) Providing Braille instruction, unless the CSC determines that the use of Braille is not appropriate, for a child who is blind or visually impaired.

(iv) Interventions, strategies, and supports including behavior management plans to address behavior for a child whose behavior impedes learning.

(v) Language and communication needs, opportunities for communication in the child's language and communication mode, including direct instruction in that mode, for the child who is deaf or hard of hearing.

(5) The CSC shall ensure that at least one parent understands the special education procedures including the due process procedures described in appendix G of this part and the importance of the parent's participation in those processes. School officials shall use devices or hire interpreters or other intermediaries who might be necessary to foster effective communications between the school and the parent about the child.

(6) The CSC shall ensure that all provisions developed for any child entitled to an education by the DoD school system are fully implemented in DoD schools or in non-DoD schools or facilities including those requiring special facilities, other adaptations, or assistive devices.

(7) The CSC shall afford the child's parents the opportunity to participate in every CSC meeting to determine their child's initial or continuing eligibility for special education and related services, or to prepare or change the child's IEP or to determine or change the child's placement.

(8) In developing each child's IEP, the CSC shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child.

E. Implementation of the IEP

The CSC shall:

(1) Obtain parental agreement and signature before implementation of the IEP.

(2) Provide a copy of the child's IEP to the parents.

(3) Ensure that the IEP is in effect before a child receives special education and related services.

(4) Ensure that the IEP is implemented as soon as possible following the meetings described under paragraph D.(2) of this appendix.

(5) Provide special education and related services, in accordance with the IEP. The Department of Defense, the DoD school systems, and DoD personnel are not accountable if a child does not achieve the growth projected in the annual goals of the IEP, as long as services have been provided in accordance with the IEP.

(6) Ensure that the child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation, and that each teacher and provider is informed of:

(i) His or her specific responsibilities related to implementing the child's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

(7) Review the IEP for each child at least annually in a CSC meeting to determine whether the annual goals for the child are being achieved.

(8) Revise the IEP, as appropriate, to address:

(i) Any lack of progress toward the annual goals and in the general curriculum, where appropriate.

(ii) The results of any reevaluation.

(iii) Information about the child provided by the parents.

(iv) The child's anticipated needs.

F. Transferring Students

(1) When a student transfers to a DoD school with a current IEP from a non-DoD school, the CSC shall convene promptly an IEP meeting to address eligibility and special education services as described in sections C and D of this appendix. The CSC may:

(i) Accept the child's current IEP by notifying and obtaining consent of the parents to use the current IEP and all elements contained in it.

(ii) Initiate a CSC meeting to revise the current IEP, if necessary.

(iii) Initiate an evaluation of the child, if necessary.

(2) When a student with a current IEP transfers from one DoD school to another, the CSC shall accept the child's eligibility and current IEP by notifying and obtaining consent of the parents to use the current IEP and all elements contained in it.

G. Least Restrictive Environment

(1) To the maximum extent, a child with a disability should be placed with children who are not disabled. Special classes, separate schooling, or other removal of a child with a disability from the regular education environment shall occur only when the type or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) A child shall not be placed by the DoD school system in any special education program unless the CSC has developed an IEP. If a child with a disability is applying for initial admission to a school, the child shall enter on the same basis as a child without a disability. A child with an IEP, and with the consent of a parent and school officials, may receive an initial placement in a special education program under procedures listed in section F of this appendix.

(3) A placement decision requires the following:

(i) Parent participation in the decision and parent consent to the placement before actual placement of the child, except as otherwise provided in paragraph H.(2) of this appendix.

(ii) Delivery of educational instruction and related services in the least restrictive environment.

(iii) The CSC to base placements on the IEP and to review the IEP at least annually.

(iv) The child to participate, to the maximum extent appropriate to the needs and abilities of the child, in school activities including meals, assemblies, recess periods, and field trips with children who are not disabled.

(v) Consideration of factors affecting the child's well-being, including the effects of separation from parents.

(vi) A child to attend a DoD school that is located as close as possible to the residence of the parent who is sponsoring the child's attendance. Unless otherwise required by the IEP, the school should be the same school that the child would have attended had he or she not been disabled.

H. Discipline

(1) All regular disciplinary rules and procedures applicable to children attending a DoD school shall apply to children with disabilities who violate school rules and regulations or disrupt regular classroom activities, subject to the following provisions. School personnel may remove a child with a disability from the child's current placement (to the extent removal would be applied to children who are not disabled):

(i) On an emergency basis for the duration of the emergency when it reasonably appears that the child's behavior may endanger the health, welfare, or safety of self or any other child, teacher, or school personnel.

(ii) For not more than 10-cumulative school days in a school year for any violation of school rules.

(2) *Change of Placement.* If a child is removed from his or her current placement for more than 10-cumulative school days in a school year, it is considered a change of placement.

(i) Not later than the date on which the decision to make a change in placement is made, the school must notify parents of the decision and of all procedural safeguards, as described in section B of appendix F of this part.

(ii) Not later than 10 days following the change of placement, the CSC must:

(*A*) Convene a meeting of the IEP team and other qualified personnel to conduct a manifestation determination as described in paragraph H.(5) of this appendix and

(*B*) Convene an IEP meeting to review the IEP to develop appropriate behavioral interventions to address the child's behavior and implement those interventions. This review may be conducted at the same meeting that is convened under paragraph H.(2)(ii)(*A*) of this appendix.

(*i*) If the child has a behavioral intervention plan, the CSC must review the plan and its implementation, and modify the plan and its implementation as necessary, to address the behavior.

(*ii*) If the child does not have a behavioral intervention plan, the CSC must develop an assessment plan to include a functional behavioral assessment.

(*iii*) As soon as practicable after developing the assessment plan and completing the assessments required by the plan, the CSC must convene an IEP meeting to develop a behavioral intervention plan to address that behavior, and shall implement the plan.

(3) After a child with a disability has been removed from his or her current placement for more than 10-cumulative school days in a school year, during any subsequent days of removal the DoD school system must provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP.

(4) *Alternative Education Setting (AES).* School personnel may order a change in placement of a child with a disability in accordance with the requirements of paragraph H.(2) of this appendix to an appropriate interim AES for the same amount of time that a non-disabled child would be subject to discipline, but for not more than 45 days, if:

(i) The child carries a weapon to school or to a school function under the jurisdiction of the DoD school system; or

(ii) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or at a school function under the jurisdiction of a DoD school system.

(5) *Manifestation Determination.* The CSC shall determine whether the child's behavior is the result of the child's disability by considering all relevant information including evaluation results, observation of the child, information provided by the parents of the child, and the child's IEP and placement.

(i) Unless all of the following are evident, the CSC must consider the child's behavior to be a manifestation of the disability:

(*A*) IEP and placement were appropriate and the special education services, supplementary aides and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

(*B*) The child's disability did not impair his or her ability to understand the impact and consequences of the behavior subject to the disciplinary action; and

(*C*) The child's disability did not impair his or her ability to control the behavior subject to disciplinary action.

(ii) If the CSC determines that the child's behavior was a manifestation of the disability, the child is not subject to removal from current educational placement as a disciplinary action, except as provided for in paragraph H.(1)(i) of this appendix.

(*A*) The child's parents shall be notified of the right to have an IEP meeting before any changes in the child's placement.

(*B*) The CSC shall address the behavior that was the subject of the disciplinary action, by:

(*i*) Reviewing the child's educational placement to ensure that it is appropriate in consideration of the child's behavior.

(*ii*) Revising the IEP to include goals, services, and modifications that address the behavior subject to disciplinary action, as necessary.

(iii) If the CSC determines that the child's behavior was not the result in whole or part of the disability, relevant disciplinary procedures may be applied to the child in the same manner in which it would be applied to a child without a disability, except as provided in FAPE.

I. Parent Appeal

(1) If the parent disagrees with the manifestation determination or with any decision regarding placement, the parent may request a hearing.

(2) The school system shall arrange for an expedited hearing in accordance with appendix G of this part.

(3) *Placement During Appeal.* When a parent requests a hearing challenging placement in an interim AES, the child shall remain in the interim AES pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph H.(3) of this appendix whichever comes first, unless the parent and the school system agree otherwise.

(i) After expiration of the interim AES, during the pendency of any proceedings to challenge the proposed change in placement, the child shall return and remain in the child's placement prior to the interim AES.

(ii) If the school personnel maintain that it is dangerous for the child to return to his or her placement prior to the interim AES, the DoD school system may request an expedited hearing.

J. Order by a Hearing Officer

A hearing officer may order a change in the placement of a child with a disability to an interim AES for not more than 45 days, if the hearing officer:

(1) Determines that the DoD school system has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

(2) Considers the appropriateness of the child's current placement.

(3) Considers whether the school system has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

(4) Determines that the interim AES meets the requirements of section A of this appendix.

K. Children Not Yet Determined Eligible for Special Education

Children who have not yet been determined eligible for special education and who have violated the disciplinary rules and procedures may assert the protections of the IDEA if the DoD school system had knowledge that the child had a disability before the behavior occurred.

(1) The DoD school system is considered to have had knowledge if:

(i) The parents expressed concern in writing to the school system personnel that the child needed special education or related services.

(ii) The child's behavior or performance indicated a need for services.

(iii) The child's parents requested an evaluation; or

(iv) The child's teacher or other DoD school system personnel expressed concern about the behavior or performance to the CSC, the school principal, assistant principal, or district special education coordinator.

(2) If the DoD school system does not have knowledge of a disability prior to disciplinary action, the child shall be subject to the regular disciplinary rules and procedures.

(3) If an evaluation were requested during the time the child is subjected to disciplinary action, the evaluation shall be expedited. The child shall remain in his or her current placement until determined eligible for special education or related services.

(4) The DoD school system is not constrained from reporting crime to the appropriate law enforcement authorities and shall ensure that special education and disciplinary records are transmitted to the appropriate law enforcement and judicial authorities.

L. Children With Disabilities Who Are Placed in a NON-DoD School or Facility

(1) Children with disabilities who are eligible to receive a DoD school system education, but are placed in a non-DoD school or facility by a DoD school system, shall have all the rights of children with disabilities who are enrolled in a DoD school.

(2) A child with a disability may be placed in a non-DoD school or facility only if required by the IEP.

(3) Placement by DoDDS in a host-nation non-DoD school or facility shall be made under the host-nation requirements.

(4) Placement by DoDDS in a host-nation non-DoD school or facility is subject to all treaties, executive agreements, and status of forces agreements between the United States and the host nations, and all DoD and DoD school system regulations.

(5) If a DoD school system places a child with a disability in a non-DoD school or facility as a means of providing special education and related services, the program of that institution, including non-medical care and room and board, as prescribed in the child's IEP, must be provided at no cost to the child or the child's parents. The DoD school system or the responsible DoD Component shall pay the costs in accordance with this part.

(6) DoD school officials shall initiate and conduct a meeting to develop an IEP for the child before placement. A representative of the non-DoD school or facility should attend the meeting. If the representative cannot attend, the DoD school system officials shall communicate in other ways to ensure participation including individual or conference telephone calls. The IEP must meet the following standards:

(i) Be signed by an authorized DoD school system official before it becomes valid.

(ii) Include a determination that the DoD school system does not currently have or cannot reasonably create an educational program appropriate to meet the needs of the child with a disability.

(iii) Include a determination that the non-DoD school or facility and its educational program and related services conform to the requirements of this part.

(7) *Cost of Tuition for Non-DoD School or Facility.* The Department of Defense is not authorized to reimburse the costs of special education if a parent unilaterally places the student in a non-DoD school without approval of the cognizant CSC and the Superintendent, in coordination with the Director of the DoD school system. A valid IEP must document the necessity of the placement in a non-DoD school or facility.

(i) Reimbursement may be required if a hearing officer determines that the DoD school system had not made FAPE available in a timely manner prior to enrollment in the non-DoD school and that the private placement is appropriate.

(ii) Reimbursement may be reduced or denied if the parents did not inform the CSC that the placement determined by the CSC was rejected, including a statement of their concerns, and that they intended to place a child in a non-DoD school; or if 10 business days (Monday through Friday, except for Federal holidays) prior to the parents' removal of the child from the school, the parents failed to provide written notice to the DoD school system of their rejection of the placement decision concerning the child, the reasons for their rejection, and their intent to remove the child; or if the CSC informed parents of its intent to evaluate the child, but parents did not make the child available.

(iii) Reimbursement may not be reduced or denied for failure to provide the required notice if the parents cannot read and write in English; compliance would result in physical or emotional harm to the child; the DoD school prevented the parent from providing notice; or the parents had not received notice of a requirement to provide required notice.

M. Confidentiality of the Records

The DoD school system and EDIS officials shall maintain all student records in accordance with DoD Directive 5400.11.

N. Dispute Resolution

A parent, teacher, or other person covered by this part may file a written complaint about any aspect of this part that is not a proper subject for adjudication by a due process hearing officer, in accordance with DSR 2500.11.

Appendix C to Part 57—Procedures for the Provision of Related Services by the Military Medical Departments to DoDDS Students on IEPs

A. Evaluation Procedures

(1) Upon request by a DoDDS CSC, the responsible EDIS shall ensure that a qualified medical authority conducts or verifies a medical evaluation for use by the CSC in determining the medically related disability that results in a child's need for special education and related services, and oversees an EDIS evaluation used in determining a child's need for related services.

(i) This medical or related services evaluation, including necessary consultation with other medical personnel, shall be supervised by a physician or other qualified healthcare provider.

(ii) This medical evaluation shall include a review of general health history, current health assessment, systems evaluation to include growth and developmental assessment, and, if pertinent, detailed evaluation of gross motor and fine motor adaptive skills, psychological status, and visual and audiological capabilities, including details of present level of performance in each of these areas affecting the student's performance in school.

(iii) The EDIS-related services evaluation shall be specific to the areas addressed in the referral by the CSC.

(2) EDIS shall provide a summary evaluation report to the CSC that responds to the questions posed in the original referral. The written report shall include:

(i) Demographic information about the child.

(ii) Behavioral observation of the child during testing.

(iii) Instruments and techniques used.

(iv) Evaluation results.

(v) Descriptions of the child's strengths and limitations.

(vi) Instructional implications of the findings; and

(vii) The impact of the child's medical condition(s), if applicable, on his or her educational performance.

(3) If EDIS determines that in order to respond to the CSC referral the scope of its assessment and evaluation must be expanded beyond the areas specified in the initial parental permission, EDIS must:

(i) Obtain parental permission for the additional activities.

(ii) Complete their initial evaluation by the original due date; and

(iii) Notify the CSC of the additional evaluation activities.

(4) When additional evaluation information is submitted by EDIS, the CSC shall review all data and determine the need for program changes and/or the reconsideration of eligibility.

(5) An EDIS provider shall serve on the CSC when eligibility, placement, or requirements for related services that EDIS provides are to be determined.

(6) Related services provided by EDIS, pursuant to an IEP, are educational and not medical services.

B. IEP

(1) EDIS shall be provided the opportunity to participate in the IEP meeting.

(2) EDIS shall provide related services assigned to EDIS that are listed on the IEP.

C. Liaison With DoDDS

Each EDIS shall designate an EDIS Liaison Officer to:

(1) Provide liaison between the EDIS and DoDDS schools.

(2) Offer, on a consultative basis, training for DoDDS personnel on medical aspects of specific disabilities.

(3) Offer consultation and advice as needed regarding the health services provided at school (for example, tracheostomy care, tube feeding, occupational therapy).

(4) Participate with DoDDS and legal personnel in developing and delivering in-service training programs that include familiarization with various conditions that impair a child's educational endeavors, the relationship of medical findings to educational functioning, related services, and this part.

Appendix D to Part 57—The DoD–AP

A. Membership

(1) The DoD Advisory Panel on Early Intervention and Special Education shall meet as needed in publicly announced, accessible meetings open to the general public and shall comply with DoD Directive 5105.4. The DoD-AP members, appointed by the Secretary of Defense, or designee, shall include at least one representative from each of the following groups:

(i) Persons with disabilities.

(ii) Representatives of the Surgeons General of the Military Departments.

(iii) Representatives of the family support programs of the Military Departments.

(iv) Special education teachers from the DoD school system.

(v) Regular education teachers from the DoD school system.

(vi) Parents of children, ages 3 through 21 years, inclusive, who are receiving special education from the DoD school system.

(vii) Parents of children, ages birth through 2 years, inclusive, who are receiving EIS from EDIS.

(viii) Institutions of higher education that prepare early intervention, special education, and related services personnel.

(ix) Special education program managers from the DoD school systems.

(x) Representatives of the Military Departments and overseas commands, including providers of early intervention and related services.

(xi) Representatives of vocational community, or business organizations concerned with transition services.

(xii) Other appropriate persons.

(2) A majority of panel members shall be individuals with disabilities or parents of children, ages birth through 2 years, inclusive, who are receiving EIS from EDIS and children, ages 3 through 21 years, inclusive who are receiving special education from the DoD school system.

(3) The DoD-AP members shall serve under appointments that shall be for a term not to exceed 3 years.

B. Responsibilities

(1) Advise the USD(P&R) of unmet needs within the Department of Defense in the provision of special services to infants, toddlers, and children with disabilities.

(2) Advise and assist the Military Departments in the performance of their responsibilities, particularly the identification of appropriate resources and agencies for providing EIS and promoting inter-Component agreements.

(3) Advise and assist the DoD schools systems on the provision of special education and related services, and on transition of toddlers with disabilities to preschool services.

C. Activities

The DoD–AP shall perform the following activities:

(1) Review information about improvements in service provided to children with disabilities, ages birth through 21, inclusive, in the Department of Defense.

(2) Receive and consider comments from parents, students, professional groups, and individuals with disabilities.

(3) Review policy memoranda on effective inter-Department and inter-Component collaboration.

(4) Review the findings of fact and decisions of each impartial due process hearing conducted under appendix G of this part.

(5) Review reports of technical assistance and monitoring activities.

(6) Make recommendations based on program and operational information for changes in policy and procedures and in the budget, organization, and general management of the programs providing special services.

(i) Identify strategies to address areas of conflict, overlap, duplication, or omission of services.

(ii) When necessary, establish committees for short-term purposes comprised of representatives from parent, student, professional groups, and individuals with disabilities.

(iii) Assist in developing and reporting such information and evaluations as may assist the Department of Defense.

(iv) Comment publicly on rules or standards about EIS for infants and toddlers, ages birth through 2 years, and special education of children with disabilities, ages 3 through 21 years, inclusive.

(v) Perform such other tasks as may be requested by the USD(P&R).

D. Reporting Requirements

(1) Submit an annual report of the DoD–AP's activities and suggestions to the DoD Coordinating Committee, by July 31 of each year.

(2) That report is exempt from formal review and licensing under section 5 of DoD Instruction 7750.7

Appendix E to Part 57—DoD–CC on Early Intervention, Special Education, and Related Services

A. Committee Membership

The DoD–CC shall meet at least yearly to facilitate collaboration in early intervention, special education, and related services in the Department of Defense. The DoD–CC shall consist of the following members, appointed by the Secretary of Defense or designee:

(1) A representative of the USD(P&R) or designee, who shall serve as the Chair.

(2) Representatives of the Secretaries of the Military Departments.

(3) A representative of the TRICARE Management Activity.

(4) Representatives from the DoD school systems.

(5) A representative from the GC, DoD.

B. Responsibilities

(1) Advise and assist the USD(P&R) in the performance of his or her responsibilities.

(2) At the direction of the USD(P&R), advise and assist the Military Departments, and the DoD school systems in the coordination of services among providers of early intervention, special education, and related services.

(3) Ensure compliance in the provision of EIS for infants and toddlers and special education and related services for children ages 3 through 21 years, inclusive.

(4) Review the recommendations of the DoD–AP to identify common concerns, ensure coordination of effort, and forward issues requiring resolution to the USD(P&R).

(5) Assist in the coordination of assignments of sponsors who have children with disabilities who are or who may be eligible for special education and related services in the DoDDS or EIS through the Military Departments.

(6) Perform other duties as assigned by the USD(P&R), including monitoring the delivery of services under this part.

Appendix F of Part 57—Parent and Student Rights

A. Parental Consent

(1) The consent of a parent of a child with a disability or suspected of having a disability shall be obtained before any of the following:

(i) Initiation of formal evaluation procedures or re-evaluation.

(ii) Provision of EIS or initial educational placement.

(iii) Change in EIS or educational placement.

(2) If a parent of an infant or toddler (birth through 2 years of age) does not provide consent for participation in all EIS, the services shall still be provided for those interventions to which a parent does give consent.

(3) If the parent of a child 3 through 21 years, inclusive, refuses consent to initial evaluation, reevaluation, or initial placement in a special education program, the DoD school system or the parent may do the following:

(i) Request a conference between the school and parents.

(ii) Request mediation.

(iii) Initiate an impartial due process hearing under appendix G of this part to show cause as to why an evaluation or placement in a special education program should or should not occur without such consent. If the hearing officer sustains the DoD school system's position in the impartial due process hearing, the DoD school system may evaluate or provide special education and related services to the child without the consent of a parent, subject to the further exercise of due process rights.

(4) The Department of Defense shall protect the child's rights, by assigning an individual to act as a surrogate for the parents, when after reasonable effort the Department of Defense cannot locate the parents.

B. Procedural Safeguards

Parents of children with disabilities are afforded the following procedural safeguards, consistent with appendix G of this part to ensure that their children receive appropriate special services:

(1) The timely administrative resolution of parental complaints, including hearing procedures with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of EIS for an infant or toddler, age birth through 2 years, or a free appropriate public education for the child, age 3 through 21 years, inclusive.

(2) The right to confidentiality of personally identifiable information under DoD Directive 5400.11.

(3) The right to provision of written notice and to have furnished consent prior to the release of relevant information outside the Department of Defense.

(4) The right to determine whether they, their child, or other family members shall accept or decline any portion of EIS, without jeopardizing the provision of other EIS.

(5) The opportunity to examine records on assessment, screening, eligibility determinations. and the development and implementation of the IFSP and IEP.

(6) *Written Notice.* The right to prior written notice when the EDIS or school proposes, or refuses, to initiate or change the identification, evaluation, placement or provision of special services to the child with a disability.

(i) The notice must be in sufficient detail to inform the parents about:

(A) The action that is being proposed or refused;

(B) The reasons for taking the action;

(C) All procedural safeguards that are available under this part as described in paragraph B.(7) of this appendix; and

(D) Conflict resolution procedures, including a description of mediation and due

process hearings procedures and applicable timelines, as defined in appendix G of this part.

(ii) The notice must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(7) *Procedural Safeguards Notice.* Parents must be given a Procedural Safeguards Notice, at a minimum, upon initial referral for evaluation, upon each notification of an IFSP or IEP meeting, upon reevaluation of the child, and upon receipt of a request for due process.

(i) The procedural safeguards notice must include a full explanation of all of the procedural safeguards available with regard to the matters in paragraph B.(7) of this appendix including the right to:

(*A*) Independent educational evaluation for school-aged children.

(*B*) Prior written notice.

(*C*) Parental consent.

(*D*) Access to educational or early intervention records.

(*E*) Opportunity to present complaints.

(*F*) The child's placement during pendency of due process proceedings.

(*G*) Procedures for children (3 through 21 years, inclusive) who are subject to placement in an interim alternative educational setting.

(*H*) Requirements for unilateral placement by parents of children in private schools at public expense.

(*I*) Mediation.

(*J*) Due process hearings, including requirements for disclosure of evaluation results and recommendations.

(*K*) Civil actions.

(*L*) The DoD complaint system, including a description of how to file a complaint and the timelines under those procedures.

(ii) The procedural safeguards notice must be:

(*A*) Written in language understandable to the general public.

(*B*) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the school system shall take steps to ensure that:

(*i*) The notice is translated orally or by other means to the parent in his or her native language or other mode of communication.

(*ii*) The parent understands the content of the notice; and

(*iii*) There is written evidence that the requirements in paragraph B.(7)(ii)(*A*) and paragraph B.(7)(ii)(*B*) of this appendix have been met.

(8) *Independent Educational Evaluation.* A parent of a child (3 through 21 years, inclusive) may be entitled to an independent educational evaluation of the child at the expense of the DoD school system if the parent disagrees with the DoD school system's evaluation of the child.

(i) If a parent requests an independent educational evaluation at the school system's expense, the DoD school system must, without unnecessary delay, either:

(*A*) Initiate an impartial due process hearing to show that its evaluation is appropriate; or

(*B*) Ensure an independent evaluation is provided at the DoD school system's expense. Unless the DoD school system demonstrates in an impartial due process hearing that an independent evaluation obtained by the parent did not meet DoD school system criteria. In such cases, the parents must bear the cost of the evaluation.

(ii) If the DoD school system initiates a hearing and the decision is that the DoD school system's evaluation is appropriate, the parents still have the right to an independent evaluation, but not at the school system's expense.

(iii) An independent educational evaluation provided at the DoD school system's expense must do the following:

(*A*) Conform to the requirements of this part.

(*B*) Be conducted, when possible, in the area where the child resides.

(*C*) Meet DoD standards governing persons qualified to conduct an educational evaluation, including an evaluation for related services.

(9) The DoD school system, the CSC, and a hearing officer appointed under this part shall consider any evaluation report presented by a parent.

(10) *Access to Records.* The parents of a child with a disability shall be afforded an opportunity to inspect and review educational records about the identification, evaluation, and educational placement of the child, and the provision of a free public education for the child.

(11) *Due Process Rights.* (i) The parent of a child with a disability, the Military Department, or the DoD school system has the opportunity to file a written petition for an impartial due process hearing under appendix G of this part. The petition may concern issues affecting a particular child's identification, evaluation, or placement, or the provision of EIS or a free and appropriate public education.

(ii) While an impartial due process hearing or judicial proceeding is pending, unless the EDIS or the DoD school system and the parent of the child agree otherwise, the child shall remain in his or her present educational setting, subject to the disciplinary procedures prescribed in section H of appendix B of this part.

(12) *Transfer of Parental Rights at Age of Majority.* (i) In the DoD school systems, a child reaches the age of majority at age 18.

(ii) When a child with a disability reaches the age of majority (except for a child with a disability who has been determined to be incompetent under State law) the rights accorded to parents under this Part transfer to the child.

(iii) When a child reaches the age of majority, the DoD school system shall notify the individual and the parents of the transfer of rights.

(iv) When a child with a disability who has reached the age of majority, who has not been determined to be incompetent, but who does not have the ability to provide informed consent with respect to his or her educational program, the Department of Defense shall establish procedures for appointing the parent of the child to represent the educational interests of the child throughout the period of eligibility for special education services.

Appendix G to Part 57—Mediation and Hearing Procedures

A. Purpose

This appendix establishes requirements for the resolution of conflicts through mediation and impartial due process hearings. Parents of infants, toddlers, and children who are covered by this Part and, as the case may be, the cognizant Military Medical Department or the DoD school system are afforded impartial mediation and/or impartial due process hearings and administrative appeals about the provision of EIS, or the identification, evaluation, educational placement of, and the FAPE provided to, such children by the Department of Defense, in accordance with sections 927 and 1400 of 20 U.S.C. and section 2164 of 10 U.S.C.

B. Mediation

(1) Mediation may be initiated by either a parent or the Military Medical Department concerned or the DoD school system to resolve informally a disagreement on any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to such child.

(i) The DoD school system shall participate in mediation involving special education and related services.

(ii) The cognizant Military Medical Department shall participate in mediation involving EIS.

(2) The party initiating mediation must notify the other party to the mediation of its request to mediate. The initiating party's request must be written, include a written description of the dispute and bear the signature of the requesting party. Formal acknowledgement of the request for mediation shall occur in a timely manner. The parties may jointly request mediation.

(3) Upon agreement of the parties to mediate a dispute, the Military Medical Department or DoD school shall forward a request for a mediator to higher headquarters, or request a mediator through the Director, Defense Office of Hearings and Appeals (DOHA).

(i) The cognizant DoDDS Area Special Education Coordinator or the DDESS District Superintendent shall promptly appoint a mediator. The Director, DOHA, through the DoHA Office of Alternate Dispute Resolution (ADR), shall maintain a roster of mediators trained in ADR methods, knowledgeable in laws and regulations related to special education, and available to mediate disputes upon request. When requested, the Director, DOHA, through the Office of ADR, shall appoint a mediator within 15 business days of receiving the request for a due process hearing, unless a party provides written notice to the Director, DOHA that the party refuses to participate in mediation.

(ii) The mediator assigned to a dispute shall not be employed by the Military Medical Department or the DoD school system involved, unless the parties agree otherwise.

(4) Unless both parties agree otherwise, mediation shall commence in a timely manner after both parties agree to mediation.

(5) The parents of the infant, toddler or child and 2 representatives of the EDIS or DoD school may participate in mediation. With the consent of both parties, other persons may participate in mediation. Either party may recess a mediation session to consult advisors, whether or not present, or to consult privately with the mediator.

(6) If the parties resolve the dispute or a portion of the dispute, or agree to use another procedure to resolve the dispute, the mediator shall ensure that the resolution or agreement is reduced to writing and that it is signed and dated by the parties and that a copy is given to each party. The resolution or agreement is legally binding upon the parties.

(7) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. Unless the parties and the mediator agree, no person may record a mediation session, nor should any written notes be taken from the room by either party. The mediator may require the parties to sign a confidentiality pledge before the commencement of mediation.

(8) Parents must be provided an opportunity to meet with appropriate EDIS or DoD school system staff in at least one mediation session, if they request a due process hearing in accordance with sections A through H of this appendix. The parents and the Military Medical Department or DoD school system must participate in mediation, unless a party objects to mediation.

(9) Mediation shall not delay hearings or appeals related to the dispute. All mediation sessions shall be held in a location that is convenient to the parties. The Military Medical Department in mediations concerning EIS or the DoD school system in mediations concerning special education and related services shall bear the cost of the mediation process.

(10) Any hearing officer or adjudicative body may draw no negative inference from the fact that a mediator or a party withdrew from mediation or that mediation did not result in settlement of a dispute.

C. Hearing Administration

(1) The Defense Office of Hearings and Appeals (DOHA) shall have administrative responsibility for the proceedings authorized by sections D through H of this appendix.

(2) This appendix shall be administered to ensure that the findings, judgments, and determinations made are prompt, fair, and impartial.

(3) Impartial hearing officers, who shall be DOHA Administrative Judges, shall be appointed by the Director, DOHA, and shall be attorneys in good standing of the bar of any State, the District of Columbia, or a commonwealth, territory or possession of the United States, who are also independent of the DoD school system or the Military Medical Department concerned in proceedings conducted under this appendix. A parent shall have the right to be represented in such proceedings by counsel or by persons with special knowledge or training with respect to the challenges of individuals with disabilities. The DOHA Department Counsel normally shall appear and represent the DoD school system in proceedings conducted under this appendix, when such proceedings involve a child age 3 to 21, inclusive. When an infant or toddler is involved, the Military Medical Department responsible under this part for delivering EIS shall either provide its own counsel or request counsel from the DOHA.

D. Hearing Practice and Procedure

(1) *Hearing.* (i) Should mediation be refused or otherwise fail to resolve the issues on the provision of EIS to an infant or toddler or the identification or evaluation of such an individual, the parent may request and shall receive a hearing before a hearing officer to resolve the matter. The parents of an infant or toddler and the Military Medical Department concerned shall be the only parties to a hearing conducted under this appendix.

(ii) Should mediation be refused or otherwise fail to resolve the issues on the provision of a FAPE to a child with a disability, age 3 to 21, inclusive, or the identification, evaluation, or educational placement of such an individual, the parent or the school principal, for the DoD school system, may request and shall receive a hearing before a hearing officer to resolve the matter. The parents of a child age 3 to 21, inclusive, and the DoD school system shall be the only parties to a hearing conducted under this appendix.

(2) The parents and the Military Medical Department or DoD school system must have an opportunity to obtain an impartial due process hearing, if the parents object to:

(i) A proposed formal educational assessment or proposed denial of a formal educational assessment of their child.

(ii) The proposed placement of their child in, or transfer of their child to a special education program.

(iii) The proposed denial of placement of their child in a special education program or the transfer of their child from a special education program.

(iv) The proposed provision or addition of special education services for their child; or

(v) The proposed denial or removal of special education services for their child.

(3) The parent or the attorney representing the child shall include in the petition, the name of the child, the address of the residence of the child, the name of the school the child is attending, a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including the facts relating to the problem, and a proposed resolution of the problem to the extent known and available to the parents at the time.

(4) The DoD school system may file a written petition for a hearing to override a parent's refusal to grant consent for an initial evaluation, a reevaluation or an initial educational placement of the child. The DoD school system may also file a written petition for a hearing to override a parent's refusal to accept an IEP.

(5) The party seeking the hearing shall submit the petition to the Director, DOHA, at P.O. Box 3656, Arlington, Virginia 22203. The petitioner shall deliver a copy of the petition to the opposing party (*i.e.*, the parent or the school principal, for the DoD school system, or the military MTF commander, for the Military Medical Department), either in person or by first-class mail, postage prepaid. Delivery is complete on mailing. When the DoD school system or the Military Medical Department petitions for a hearing, it shall inform the other parties of the deadline for filing an answer under paragraph D.(6) of this appendix and shall provide the other parties with a copy of this part.

(6) An opposing party shall submit an answer to the petition to the Director, DOHA, with a copy to the petitioner, at the latest by the 15th business day after receipt of the petition. The answer shall be as full and complete as possible, addressing the issues, facts, and proposed relief. The submission of the answer is complete upon mailing.

(7) By 10 business days after receipt of the petition, the Director, DOHA, shall assign a hearing officer, who then shall have jurisdiction over the resulting proceedings. The Director, DOHA, shall forward all pleadings to the hearing officer.

(8) The party requesting the hearing shall plead with specificity as to what issues are in dispute and all issues not specifically pleaded with specificity is deemed waived. Parties must limit evidence to the issues specifically pleaded. A party may amend a pleading if the amendment is filed with the hearing officer and is received by the other parties at least 10 business days before the hearing.

(9) The Director, DOHA, shall arrange for the time and place of the hearing, and shall provide administrative support. The hearing shall be held in the DoD school district attended by the child or at the military base location of the EDIS clinic, unless the parties agree otherwise or upon a showing of good cause.

(10) The purpose of a hearing is to establish the relevant facts necessary for the hearing officer to reach a fair and impartial determination of the case. Oral and documentary evidence that is relevant and material may be received. The technical rules of evidence shall be relaxed to permit the development of a full evidentiary record with the Federal Rules of Evidence, title 28, United States Code serving as guide.

(11) The hearing officer shall be the presiding officer, with judicial powers to manage the proceeding and conduct the hearing. Those powers shall include the authority to order an independent evaluation of the child at the expense of the DoD school system or the Military Medical Department concerned and to call and question witnesses.

(12) Those normally authorized to attend a hearing shall be the parents of the individual with disabilities, the counsel or personal representative of the parents, the counsel and professional employees of the DoDDS or the Military Medical Department concerned, the hearing officer, and a person qualified to transcribe or record the proceedings. The hearing officer may permit other persons to attend the hearing, consistent with the privacy interests of the parents and the

individual with disabilities. The parents have the right to an open hearing on waiving in writing their privacy rights and those of the individual with disabilities who is the subject of the hearing.

(13) A verbatim transcription of the hearing shall be made in written or electronic form and shall become a permanent part of the record. A copy of the written transcript or electronic record of the hearing shall be made available to a parent on request and without cost. The hearing officer may allow corrections to the written transcript or electronic recording for conforming it to actual testimony after adequate notice of such changes is given to all parties.

(14) The hearing officer's decision of the case shall be based on the record, which shall include the petition, the answer, the written transcript or the electronic recording of the hearing, exhibits admitted into evidence, pleadings or correspondence properly filed and served on all parties, and such other matters as the hearing officer may include in the record, if such matter is made available to all parties before the record is closed under paragraph D.(16) of this appendix.

(15) The hearing officer shall make a full and complete record of a case presented for adjudication.

(16) The hearing officer shall decide when the record in a case is closed.

(17) The hearing officer shall issue findings of fact and conclusions of law in a case not later than 50 business days after being assigned to the case, unless a request for discovery is made by either party, as provided for in paragraph D.(5) of this appendix in which case the time required for such discovery does not count toward the 50 business days. The hearing officer may grant a specific extension of time for good cause either on his or her own motion or at the request of either party. Good cause includes the time required for mediation under section B of this appendix. If the hearing officer grants an extension of time, he or she shall identify the length of the extension and the reason for the extension in the record of the proceeding.

E. Discovery

(1) Full discovery shall be available to parties to the proceeding, with the Federal Rules of Civil Procedure, Rules 26–37, codified at 28 U.S.C. serving as a guide.

(2) If voluntary discovery cannot be accomplished, a party seeking discovery may file a motion with the hearing officer to accomplish discovery. The hearing officer shall grant an order to accomplish discovery upon a showing that the requested evidence is relevant and necessary. Relevant evidence is necessary when it is not cumulative and when it would contribute to a party's presentation of the case in some positive way on a matter in issue. A matter is not in issue when it is admitted or stipulated as a fact. An order granting discovery shall be enforceable as is an order compelling testimony or the production of evidence.

(3) Records compiled or created in the regular course of business, which have been provided to a party prior to hearing in accordance with paragraph E.(2) of this appendix may be received and considered by the officer without authenticating witnesses.

F. Witnesses; Production of Evidence

(1) All witnesses testifying at the hearing shall be advised that it is a criminal offense knowingly and willfully to make a false statement or representation to a Department or Agency of the U.S. Government as to any matter in the jurisdiction of that Department or Agency. All witnesses shall be subject to cross-examination by the parties.

(2) A party calling a witness shall bear the witness' travel and incidental expenses associated with testifying at the hearing. The DoD school system or the Military Medical Department concerned shall pay such expenses when a witness is called by the hearing officer.

(3) The hearing officer may issue an order compelling the attendance of witnesses or the production of evidence on the hearing officer's own motion or, if good cause can be shown, on motion of either party.

(4) When the hearing officer determines that a person has failed to obey an order to testify or to produce evidence, and such failure is in knowing and willful disregard of the order, the hearing officer shall so certify.

(5) The party or the hearing officer seeking to compel testimony or the production of evidence may, based on the certification provided for in paragraph F.(4) of this appendix file an appropriate action in a court of competent jurisdiction to compel compliance with the hearing officer's order.

(6) At least 5 business days prior to a hearing, the parties shall exchange lists of all documents and materials that each party intends to use at the hearing, including all evaluations and reports. Each party also shall disclose the names of all witnesses it intends to call at hearing along with a proffer of the anticipated testimony of each witness.

(7) At least 10 business days in advance of hearing, each party must provide the name, title, curriculum vitae, and summary of proposed testimony of any expert witness it intends to call at hearing.

(8) Failure to disclose documents, materials, or witnesses pursuant to paragraphs F.(6) and F.(7) of this appendix may result in the hearing officer barring their introduction at the hearing.

G. Hearing Officer's Findings of Fact and Decision

(1) The hearing officer shall make written findings of fact and shall issue a decision setting forth the questions presented, the resolution of those questions, and the rationale for the resolution. The hearing officer shall file the findings of fact and decision with the Director, DOHA, with a copy to the parties.

(2) The Director, DOHA, shall forward to the Director, of the DoD school system, or to the Military Medical Department concerned, copies with all personally identifiable information deleted, of the hearing officer's findings of fact and decision or, in cases that are administratively appealed, of the final decision of the DOHA Appeal Board.

(3) The findings of fact and decision of the hearing officer shall become final unless a notice of appeal is filed under section I of this appendix. The DoD school system or the Military Medical Department concerned shall implement the decision as soon as practicable after it becomes final.

H. Determination Without Hearing

(1) At the request of a parent of an infant, toddler, or child age 3 to 21, inclusive, when early intervention or special educational (including related) services are at issue, the requirement for a hearing may be waived, and the case may be submitted to the hearing officer on written documents filed by the parties. The hearing officer shall make findings of fact and conclusions of law in the period fixed by paragraph D.(17) of this appendix.

(2) The DoD school system or the Military Medical Department concerned may oppose a request to waive a hearing. In that event, the hearing officer shall rule on that request.

(3) Documents submitted to the hearing officer in a case determined without a hearing shall comply with paragraph F.(6) of this appendix. A party submitting such documents shall provide copies to all other parties.

I. Appeal

(1) A party may appeal the hearing officer's findings of fact and decision by filing a written notice of appeal with the Director, DOHA, at P.O. Box 3656, Arlington, Virginia 22203, within 15 business days of receipt of the findings of fact and conclusions of law. The notice of appeal must contain the appellant's certification that a copy of the notice of appeal has been provided to all other parties. Filing is complete on mailing.

(2) Within 30 business days of receipt of the notice of appeal, the appellant shall submit a written statement of issues and arguments to the Director, DOHA, with a copy to the other parties. The other parties shall submit a reply or replies to the Director, DOHA, within 20 business days of receiving the statement, and shall deliver a copy of each reply to the appellant. Submission is complete on mailing.

(3) The Director, DOHA, shall refer the matter on appeal to the DOHA Appeal Board. It shall determine the matter, including the making of interlocutory rulings, within 45 business days of receiving timely submitted replies under paragraph I.(2) of this appendix.

(4) The determination of the DOHA Appeal Board shall be a final administrative decision and shall be in written form. It shall address the issues presented and set forth a rationale for the decision reached. A determination denying the appeal of a parent in whole or in part shall state that the parent has the right under sections 921–932 and chapter 33 of title 20, United States Code to bring a civil action on the matters in dispute in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

(5) No provision of this part or other DoD guidance may be construed as conferring a further right of administrative review. A party must exhaust all administrative remedies afforded by this appendix before seeking judicial review of a determination made under this appendix.

J. Publication and Indexing of Final Decisions

The Director, DOHA, shall ensure that final decisions in cases arising under this

appendix are published and indexed to protect the privacy rights of the parents who are parties in those cases and the children of such parents, in accordance with DoD Directive 5400.11.

Appendix H to Part 57—Monitoring

A. Monitoring

(1) The DoDEA and the Military Medical Departments shall establish procedures for monitoring special services requiring:

(i) Periodic on-site monitoring at each administrative level.

(ii) The DoD school systems to report annually that the provision of special education and related services is in compliance with this part.

(iii) The Military Medical Departments to report annually that the provision of EIS is in compliance with this part.

(2) The Director, DoDEA, and the Surgeons General of the Military Medical Departments shall submit reports to the DoD–CC not later than July 31 each year that summarize the status of compliance. The reports shall:

(i) Identify procedures conducted at Headquarters and at each subordinate level, including on-site visits, to evaluate compliance with this part.

(ii) Summarize the findings.

(iii) Describe corrective actions required of the programs that were not in compliance and the technical assistance that shall be provided to ensure they reach compliance.

B. USD(P&R) Oversight

(1) On behalf of the USD(P&R), the DoD–CC or designees, shall make periodic unannounced visits to selected programs to ensure the monitoring process is in place and to validate the compliance data and reporting. The DoD–CC may use other means in addition to the procedures in this section to ensure compliance with the requirements established in this part.

(2) For DoD–CC monitoring visits, the Secretaries of the Military Departments, or designees, shall:

(i) Provide necessary travel funding and support for their respective team members.

(ii) Provide necessary technical assistance and logistical support to monitoring teams during monitoring visits to facilities for which they are responsible.

(iii) Cooperate with monitoring teams, including making all pertinent records available to the teams.

(iv) Address monitoring teams' recommendations concerning early intervention and related services for which the Secretary concerned has responsibility, including those to be furnished through an inter-Service agreement, are promptly implemented.

(3) For DoD–CC monitoring visits, the Director, DoDEA shall:

(i) Provide necessary travel funding and support for team members from the Office of the Under Secretary (P&R); the Office of GC, DoD; and DoD school systems.

(ii) Provide necessary technical assistance and logistical support to monitoring teams during monitoring visits to facilities for which he/she is responsible.

(iii) Cooperate with monitoring teams, including making all pertinent records available to the teams.

(iv) Address the monitoring teams' recommendations concerning special education and related services for which the DoD school system concerned has responsibility.

(4) The ASD(HA), or designee, shall provide technical assistance to the DoD monitoring teams when requested.

(5) The GC, DoD, or designee, shall:

(i) Provide legal counsel regarding monitoring activities conducted pursuant to this part to the USD(P&R), the ASD(HA), and, where appropriate, to DoDEA, monitored Agencies, and monitoring teams.

(ii) Provide advice about the legal requirements of this part and Federal law to the DoD school systems, military medical commanders, and military installation commanders, and to other DoD personnel as appropriate, in connection with monitoring activities conducted pursuant to this part.

Dated: May 26, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–12497 Filed 6–9–04; 8:45 am]

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June 10, 2004

Part III

Environmental Protection Agency

40 CFR Parts 51, et al.
Supplemental Proposal for the Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 72, 73, 74, 77, 78 and 96

[OAR–2003–0053; FRL–7667–1]

RIN 2060–AL76

Supplemental Proposal for the Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: Today's action is a supplemental notice of proposed rulemaking (SNPR) to EPA's January 30, 2004 (69 FR 4566) notice of proposed rulemaking (NPR). The NPR requires certain States to submit State implementation plan (SIP) measures to ensure that emissions reductions are achieved as needed to mitigate transport of fine particulate matter (PM2.5) and/or ozone pollution and its main precursors—emissions of sulfur dioxide (SO_2) and oxides of nitrogen (NO_X)—across State boundaries. Today's action includes proposed rule language and supplemental information for the January 2004 proposal, consisting of further discussion on establishing State-level emissions budgets, proposed State reporting requirements and SIP approvability criteria, proposed model cap-and-trade rules, and a more thorough discussion of how this proposal interacts with existing Clean Air Act (CAA) programs and requirements.

The EPA intends to produce a final rule by the end of calendar year 2004.

DATES: Comments must be received on or before July 26, 2004. A public hearing will be held on June 3, 2004 in Alexandria, Virginia. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period and the public hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0053, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *A-and-R-Docket@epa.gov*.
- Mail: Air Docket, Clean Air Interstate Rule.
- Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: EPA Docket Center, 1301 Constitution Avenue, NW., Room B108, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2003–0053. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Unit I of 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 material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For general questions concerning today's action, please contact Scott Mathias, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, C539–01, Research Triangle Park, NC, 27711, telephone (919) 541–5310, e-mail at *mathias.scott@epa.gov*. For legal questions, please contact Howard J. Hoffman, U.S. EPA, Office of General Counsel, Mail Code 2344A, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, telephone (202) 564–5582, e-mail at *hoffman.howard@epa.gov*. For questions regarding air quality analyses, please contact Brian Timin, U.S. EPA, Office of Air Quality Planning and Standards, Emissions Modeling and Analysis Division, D243–01, Research Triangle Park, NC, 27711, telephone (919) 541–1850, e-mail at *timin.brian@epa.gov*. For questions regarding emissions reporting requirements, please contact Bill Kuykendal, U.S. EPA, Office of Air Quality Planning and Standards, Emissions Modeling and Analysis Division, Mail Code D205–01, Research Triangle Park, NC, 27711, telephone (919) 541–5372, e-mail at *kuykendal.bill@epa.gov*. For questions regarding the model cap-and-trade programs, please contact Sam Waltzer, U.S. EPA, Office of Atmospheric Programs, Clean Air Markets Division, Mail Code 6204J, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, telephone (202) 343–9175, e-mail at *waltzer.sam@epa.gov*. For questions regarding analyses required by statutes and executive orders, please contact Linda Chappell, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Mail Code C339–01, Research Triangle Park, NC, 27711, telephone (919) 541–2864, e-mail at *chappell.linda@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Additional Information on Submitting Comments

A. How Can I Help EPA Ensure That My Comments Are Reviewed Quickly?

To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Douglas Solomon, U.S. EPA, Office of Air Quality Planning and Standards, Emissions Modeling and Analysis Division, Mail Code C304–01, Research Triangle Park, NC, 27711, telephone (919) 541–4132, e-mail *iaqrcomments@epa.gov*.

B. 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. Send or deliver information identified as CBI only to the following address: Roberto Morales, U.S. EPA, Office of Air Quality Planning and Standards, Mail Code C404–02, Research Triangle Park, NC 27711, telephone (919) 541–0880, e-mail at *morales.roberto@epa.gov*, Attention Docket ID No. OAR–2003–0053.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. 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.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Regulated Entities

This action does not propose to directly regulate emissions sources. Instead, it proposes to require States to revise their SIPs to include control measures to reduce emissions of NO_X and SO_2. The proposed emissions reductions requirements that would be assigned to the States are based on controls that are known to be highly cost effective for EGUs.

III. Website for Rulemaking Information

The EPA has also established a web site for this rulemaking at *http://www.epa.gov/interstateairquality/* which will include the rulemaking actions and certain other related information that the public may find useful.

IV. Public Hearing

The EPA will hold a public hearing on today's proposal on June 3, 2004. The hearing will be held at the following location: Holiday Inn Select, Old Town Alexandria, 480 King Street, Alexandria, Virginia 22314, Telephone: (703) 549–6080.

The public hearing will begin at 9 a.m. and continue until 5 p.m., or later if necessary depending on the number of speakers. Oral testimony will be limited to 5 minutes per commenter. The EPA encourages commenters to provide written versions of their oral testimonies either electronically (on computer disk or CD–ROM) or in paper copy. Verbatim transcripts and written statements will be included in the rulemaking docket. If you would like to present oral testimony at the hearing, please notify Joann Allman, U.S. EPA, Office of Air Quality Planning and Standards, C539–02, Research Triangle Park, NC 27711, telephone (919) 541–1815, email *allman.joann@epa.gov*, by May 31, 2004. For updates and additional information on the public hearing please check EPA's website for this rulemaking.

The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rule. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations or comments at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at a public hearing.

Outline

I. Background

The EPA's January 30, 2004 proposal (69 FR 4566–4650) [1] proposed to find that emissions of SO_2 and NO_X from 28 States and DC, and emissions of NO_X alone from 25 States and DC, violate the provisions of CAA section 110(a)(2)(D) by contributing significantly to nonattainment downwind of, respectively, the annual PM2.5 and the 8-hour ozone national ambient air quality standards (NAAQS).

As a result, EPA proposed to require SIP revisions containing measures to ensure that necessary emissions reductions are achieved. The EPA proposed SIP submittal deadlines and other aspects of the SIP submittals. Further, the January 2004 proposal identified the appropriate NO_X and SO_2 emissions that each of the affected jurisdictions would be required to eliminate. The January 2004 proposal explained that the affected States could choose to control any sources they wish to achieve those emissions reductions, and generally discussed the methodologies for determining the

[1] The EPA signed the January 30, 2004 proposal on December 17, 2003 and made it immediately available to the public on EPA's Web site at *http://www.epa.gov/interstateairquality*.

appropriate amount of emissions reductions on a State-by-State basis. The January 2004 proposal further explained that the emissions reductions may most cost effectively be achieved by controls on electric generating units (EGUs), and, in particular, through regionwide cap-and-trade programs for EGUs. Accordingly, the January 2004 proposal indicated the methods for determining the allowable amounts of SO_2 and NO_X emissions from EGUs, and offered a sketch of the model cap-and-trade programs, which EPA would offer to administer, that States may choose to adopt.

This supplemental proposal fills in certain gaps in the January 2004 proposal and revises it or its supporting information in specific ways. This section of the SNPR provides background on this supplemental proposal and summarizes its contents.

Section II of the SNPR provides additional detail on establishing State emissions budgets (*i.e.*, emissions reduction requirements) on which we are requesting comment.

Section III discusses the interaction of the January 2004 proposal with existing CAA programs and requirements. It includes discussion of specific SIP criteria and emissions reporting requirements. It also discusses the interactions of the Clean Air Interstate Rule (CAIR) with the Acid Rain Program that also requires SO_2 and NO_X emissions reductions—and the NO_X SIP Call, which was a 1998 rulemaking that required States in the eastern U.S. to submit SIPs reducing NO_X emissions to eliminate adverse impacts on the 1-hour ozone NAAQS. Section III also discusses the implications of the CAIR for compliance with regional haze requirements. It also discusses Tribal issues in more detail than was contained in the January 2004 proposal.

Section IV provides significant additional details concerning the EPA's model cap-and-trade program for EGUs.

Section V includes clarifications to the January 2004 proposal with respect to preamble language that was unclear, incomplete, inadvertently omitted, or inadvertently incorrect.

Section VI addresses the required statutory and executive order reviews for this SNPR.

Section VII lists the sections of proposed regulatory language that are included in today's supplemental proposal. (The January 2004 proposal was not accompanied by proposed regulatory language).

Under CAA section 307(d)(1)(J), the procedural requirements of section 307(d) apply to this proposal. In addition, under section 307(d)(1)(U), the Administrator is authorized to include any other actions as covered under section 307(d). The EPA is including the proposals in today's SNPR and in the January 2004 proposal under section 307(d)(1)(U). Therefore, section 307(d) applies to all components of the rulemaking of which this action is a component.

II. State-by-State Emissions Reductions Requirements and EGU Budgets

In the January 2004 proposal, EPA proposed methods for determining the SO_2 and NO_X emission reduction requirements or budgets for each affected State. Today, EPA proposes corrections to the proposals in the NPR. Additional details are included in a technical support document.[2]

Also, in the January 2004 proposal, EPA proposed methods for determining regionwide budgets. Today, EPA is not proposing any revisions to this methodology. However, in this SNPR, EPA used updated heat input data to develop the regionwide NO_X budgets, yielding a slight difference.

The choice of method to impose State-by-State emissions reduction requirements makes little difference in terms of the overall cost of the regionwide SO_2 and NO_X reductions. Assuming that allowances can be freely traded, the cap-and-trade framework would encourage least-cost compliance over the entire region, an outcome that does not depend on the relative levels of individual State budgets.

A. SO_2 Emissions Budgets

1. Approaches for Integrating SO_2 Title IV Program with CAIR

As described in the January 2004 proposal and other places in today's preamble, EPA is proposing to integrate the title IV Acid Rain SO_2 program with the trading program proposed in today's notice by requiring facilities to comply with this rule using title IV allowances at a greater retirement ratio than one allowance for every one ton of emissions. In the January 2004 proposal, EPA proposed that, to meet the 65 percent reduction required under Phase II (which begins in 2015), EPA could require an affected EGU to retire three 2015 and beyond allowances for every ton of SO_2 that it emits. However, this 3-to-1 ratio results in slightly more reductions than EPA has proposed are necessary to eliminate the significant contribution of an upwind State. This section of today's SNPR proposes two basic alternatives for addressing this issue.

Under the first alternative EPA solicits comment on requiring affected EGUs to retire vintage 2015 and beyond title IV allowances at a rate of 2.86-to-1 rather than 3-to-1. This alternative effectively eliminates the difference between the proposed cap levels and the resulting reductions. The EPA solicits comment on the use of this retirement ratio and specifically on whether the use of a fractional retirement ratio (2.86-to-1 instead of 3-to-1) raises practical implementation concerns for States or affected EGUs or whether a fractional retirement ratio is preferable to the two-step process described below.

Alternatively, EPA proposes requiring the retirement of 2015 and beyond vintage allowances at a 3-to-1 ratio, and permitting States to convert these additional reductions into allowances in their rules. That is, the States would retain special "CAIR SO_2 allowances" equivalent to the difference between the 3-to-1 retirement ratio and the effective 2015 cap. Thus, an amount of allowances (assuming allowances would be retired at a 3-to-1 ratio) equivalent to three times the number that represents the margin of difference in the retirement ratio for 2015 would then be made available to States. Under this approach, these reserved allowances would be distributed to the States based on the same methodology used to distribute title IV allowances, and States would have flexibility to further distribute them however they deem appropriate. The States might choose, for example, to distribute them to EGUs using the same methodology that had been used for distributing the original title IV allowances, or use them as a set-aside for new sources or for sources that did not receive title IV allowances originally, or they might distribute them as incentives for achieving other policy goals each State may have.

Some States may want to use these reserved allowances to create an incentive for additional local emission reductions that will be needed to bring all areas into attainment with the PM2.5 NAAQS. The EPA projects that the proposed CAIR, along with other Federal and State programs already in place, will bring most areas of the country into attainment with the PM2.5 NAAQS by 2015 without the need for additional local controls. These regional and national programs, however, are not designed to deal with all local pollution problems, and we expect that there will be a small number of areas that will need additional local emissions reductions to reach attainment. In such cases, States could use their reserved

[2] See, "State Emission Budget Calculation Technical Support Document for the Proposed Clean Air Interstate Rule (May 2004)."

allowances to create an incentive for additional local reductions—perhaps by providing reserved allowances to affected EGUs based on their proposals for achieving additional reductions in areas that are projected to need further local emissions reductions to come into attainment with the PM2.5 NAAQS.

Mechanisms that States could use for allocating these reserved allowances could range from basic financial incentives to more aggressive and innovative approaches. In its simplest form, the EGUs could choose to complement or expand existing control measures, or perhaps fund new ones. Under the latter approach, a specific value could be applied to a ton of local emissions to be reduced depending on one or more specific criteria such as: The accuracy and technical validity of emissions monitoring used to characterize emissions or demonstrate compliance, seasonal timing or location of the reductions, population exposure, or other considerations.

For example, reducing PM2.5 from a sector in a nonattainment area might receive a greater allowance value than reductions from a sector that is downwind of the nonattainment area most of the year, due to the relative effectiveness of the measures at reducing population exposure and monitoring of PM2.5. Another example could be one in which the EGUs receive allowances in exchange for reductions in other pollutants causing PM2.5, based on using technically appropriate air quality models to demonstrate superior environmental results. Nevertheless, States would have discretion on whether and how to use any reserved allowances to achieve additional local emission reductions.

2. Proposed SO_2 State Emission Budget Methodology

a. Overview. In this section, EPA discusses the methodology for apportioning regionwide SO_2 emissions reductions requirements or budgets to the individual States. In the January 2004 proposal we proposed State EGU SO_2 budgets based on each State's allowances under title IV of the CAA Amendments with specified retirement ratios. This continues to be EPA's proposal for determining State SO_2 budgets. In addition, we discussed an alternate method of relying on Title IV allowances that would provide for some EGU allowances that could be redistributed to account for changes to the electric generation sector since the title IV allocations were created (using a two-part budget methodology). In this SNPR, EPA identifies some problems with the two-part method as described in the January 2004 proposal, withdraws the January 2004 proposal on this point, and is re-proposing that all States use the same retirement ratios for Title IV allowances.

b. NPR discussion. The EPA discussed its proposed SO_2 emission budget methodology at length in the January 2004 proposal. In that discussion, EPA outlined the various reasons for tying the SO_2 requirements of the proposed CAIR to the title IV program. Without carefully integrating the CAIR and title IV programs, emissions may increase prior to implementation of the CAIR and emissions may shift to outside the control region. In addition, because the regulated community has relied on the title IV program in the past, and is planning on continued reliance for the future, lack of integration could give rise to concerns about the stability of EPA's regulatory efforts and the accompanying allowance market.

Under the approach proposed for SO_2, the State budgets would be based on the initial allocation of allowances to individual sources established by title IV of the 1990 CAA Amendments. The budgets are shown in Table II–1, revised to correct a slight calculation error in the January 2004 proposal,[3] as explained in the technical support document.[4]

TABLE II–1.—28-STATE AND DISTRICT OF COLUMBIA ANNUAL EGU SO_2 BUDGETS

State	28-State SO_2 Budget 2010 (tons)	28-State SO_2 Budget 2015 (tons)
Alabama	157,582	110,307
Arkansas	48,702	34,091
Delaware	22,411	15,687
District of Columbia	708	495
Florida	253,450	177,415
Georgia	213,057	149,140
Illinois	192,671	134,869
Indiana	254,599	178,219
Iowa	64,095	44,866
Kansas	58,304	40,812
Kentucky	188,773	132,141
Louisiana	59,948	41,963
Maryland	70,697	49,488
Massachusetts	82,561	57,792
Michigan	178,605	125,024
Minnesota	49,987	34,991
Mississippi	33,763	23,634
Missouri	137,214	96,050
New Jersey	32,392	22,674
New York	135,139	94,597
North Carolina	137,342	96,139
Ohio	333,520	233,464
Pennsylvania	275,990	193,193
South Carolina	57,271	40,089
Tennessee	137,216	96,051
Texas	320,946	224,662
Virginia	63,478	44,435

[3] As in the SO_2 State budgets included in the January 2004 proposal, these budgets include the 250,000 allowances in the Special Allowance Reserve, prorated to the individual States in proportion to the sum of the 2010 individual units allocations for the State.

[4] See, "State Emission Budget Calculation Technical Support Document for the Proposed Clean Air Interstate Rule (May 2004)."

TABLE II–1.—28-STATE AND DISTRICT OF COLUMBIA ANNUAL EGU SO_2 BUDGETS—Continued

State	28-State SO_2 Budget 2010 (tons)	28-State SO_2 Budget 2015 (tons)
West Virginia	215,881	151,117
Wisconsin	87,264	61,085
Total Regional Budget	3,863,566	2,704,490

Note: As explained in the proposed January 2004 proposal (69 FR 4618) the regionwide budgets for the years 2010–2014 are based on a 50 percent reduction from title IV allocations for all units in affected States. The regionwide budget for 2015 and beyond is based on a 65 percent reduction.

c. Problems with the methodology proposed in the NPR. In the Model Trading section of the January 2004 proposal, EPA proposed giving States the option of deciding whether to adopt a two-part budget approach, making available additional SO_2 allowances through the use of higher retirement ratios (69 FR 4620,4632). However, upon further assessment, it has become evident that problems could arise if various States implemented this approach differently. Specifically, the level of the regional cap on SO_2 emissions could increase or decrease, depending on which individual States tightened the retirement ratios.

An example could best illustrate this point. Assume State A in the proposed CAIR region has a State SO_2 budget of 300,000 tons in 2010, reflecting a 50 percent reduction from its 600,000 2010 title IV SO_2 allowances. Assume also that State A decides to implement a 3-to-1 retirement ratio for its 600,000 title IV SO_2 allowances in 2010, but all other States in the proposed CAIR region continue requiring 2-to-1 retirement ratios. Assume further that EPA allocates State A additional CAIR allowances for 100,000 tons of emissions, which reflect the difference between State A's 3-to-1 retirement ratio (200,000 tons) and the overall 2-to-1 retirement ratio (300,000 tons). With one CAIR allowance equivalent to one title IV allowance, State A, with its 3-to-1 ratio, would thus receive 300,000 CAIR allowances. Assume that State A allocates all of these new CAIR allowances to its sources. To illustrate most vividly the problem that may result, assume the extreme case in which State A's emissions in 2010 approach zero (due to efficiencies in implementing controls or lower generation levels) and therefore that its sources sell all their title IV allowances as well as its additional CAIR allowances to sources in other States. In this example, the total amount of State A's allowances (600,000 title IV allowance plus 300,000 CAIR allowances) would be available for complying with the 2-to-1 ratio required by the other States. Consequently, the additional CAIR allowances allocated by EPA would effectively raise the overall regional cap by 150,000 tons, reflecting the 300,000 CAIR allowances retired at a 2-to-1 ratio.

To illustrate how this same case could lead to the opposite problem of a lower regional cap, assume that State A's emissions were to remain very high or to increase, so that its sources purchase allowances from other States and then retire them at a 3-to-1 ratio in 2010. State A sources would have to purchase more allowances than the amount State A had redistributed as additional CAIR allowances. This would mean the total amount of allowances for 2010, and thus the total regional cap, would in effect be lower.

In fact, in these examples, in any year that State A's emissions are not exactly one-third of their title IV allocations, the level of the overall regional cap would be impacted. This lack of certainty about the cap is unacceptable for a cap-and-trade program, as it undermines both the environmental certainty and economic stability of the program. Therefore, EPA is withdrawing the January 2004 proposal on this point and re-proposing that all States use the same retirement ratio.

3. SIP Approvability

In section III.A, EPA outlines the proposed SIP approvability criteria if EPA adopts a requirement to retire allowances at ratios of greater than 1-to-1. Specifically, (1) all States must use the same retirement ratios whether or not they participate in the trading program and whether or not they achieve all the required emissions reductions through controls on EGUs, (2) if a State does not require all of the emissions reductions through requirements on EGUs, they may create extra CAIR allowances which would be calculated by multiplying the reductions required from the other sources by the required retirement ratio for that given year, and (3) the overall reduction requirement for a State would be set at the difference between a State's 2010 title IV allowance allocations and the EPA-determined CAIR SO_2 State budgets for the two phases. Please note, as described in section IV, that if a State chooses to achieve emissions reductions from non-EGUs, then that State's EGUs may not participate in the EPA administered cap-and-trade program.

B. NO_X Emissions Budgets

1. Overview

In this section, EPA discusses the apportioning of proposed regionwide NO_X emission reduction requirements or budgets to the individual States. In the January 2004 proposal we proposed State EGU NO_X budgets based on each State's average share of recent historic heat input. In today's SNPR, we propose the same heat input based methodology, but we propose revised budgets based on more complete heat input data.

In addition to the proposed heat input based method, in this SNPR we also discuss a different approach suggested by commenters for apportioning regionwide NO_X budgets to the States. As discussed in section IV of this SNPR, we propose that States have the discretion in choosing a methodology to distribute allowances from their NO_X budgets to individual sources.

2. NO_X Emission Budget Methodology Proposed in the NPR

a. NPR discussion. In the January 2004 proposal, we proposed annual NO_X budgets for a 28-State (and D.C.) region based on each jurisdiction's average heat input—using heat input data from Acid Rain Program units—over the years 1999 through 2002. We summed the average heat input from each of the applicable jurisdictions to obtain a regional total average annual heat input. Then, each State received a pro rata share of the regional NO_X emissions budget based on the ratio of its average annual heat input to the regional total average annual heat input.

b. Today's revised proposal. In this SNPR, the use of average heat inputs is still our preferred approach. However, State budgets based on heat input data

from Acid Rain Program units only would not reflect the heat input of non-Acid Rain units. For example, a State with a large number of non-Acid Rain units would not have the heat input from those units reflected in the percent of regional average annual heat input that the State's generation represents. Therefore, today EPA proposes to revise its determination of State NO_X budgets by supplementing Acid Rain Program unit data with annual heat input data from the U.S. Energy Information Administration (EIA), for the non-Acid Rain unit data. Table II–2 contains the proposed revised annual State NO_X budgets. Note that the Acid Rain Program data for 2002 has been updated since our analysis for the January 2004 proposal was completed and was included in the calculation of these budgets.

TABLE II–2.—28-STATES AND DISTRICT OF COLUMBIA ANNUAL EGU NO_X BUDGETS—BASED ON HEAT INPUT

State	State NO_X Budget 2010 (tons)	State NO_X Budget 2015 (tons)
Alabama	67,422	56,185
Arkansas	24,919	20,765
Delaware	5,089	4,241
District of Columbia	215	179
Florida	115,503	96,253
Georgia	63,575	52,979
Illinois	73,622	61,352
Indiana	102,295	85,246
Iowa	30,458	25,381
Kansas	32,436	27,030
Kentucky	77,938	64,948
Louisiana	47,339	39,449
Maryland	26,607	22,173
Massachusetts	19,630	16,358
Michigan	60,212	50,177
Minnesota	29,303	24,420
Mississippi	21,932	18,277
Missouri	56,571	47,143
New Jersey	9,895	8,246
New York	52,503	43,753
North Carolina	55,763	46,469
Ohio	101,704	84,753
Pennsylvania	84,552	70,460
South Carolina	30,895	25,746
Tennessee	47,739	39,783
Texas	224,314	186,928
Virginia	31,087	25,906
West Virginia	68,235	56,863
Wisconsin	39,044	32,537
Total Regional Budget	1,600,799	1,333,999

Note: NO_X control requirements for Connecticut were discussed in the January 2004 proposal.

Commenters have also suggested adjusting the heat input data for existing units used to determine State budgets by multiplying it by different factors, established regionwide based on fuel type. The factors would reflect the inherently higher emissions rate of coal-fired plants, and consequently the greater burden on coal plants to control emissions. In contrast to allocations based on historic emissions, the factors would also not penalize coal-fired plants that have already installed pollution controls. States shares would be determined by the amount of State heat input, as adjusted, in proportion to the total regional heat input. The factors could be based on average historic emissions rates (in lbs/mmBtu) by fuel type (coal, gas, and oil) for the years 1999–2002.

The EPA also discussed in the January 2004 proposal a methodology used in the NO_X SIP Call (67 FR 21868) that applied State-specific growth rates for heat input in setting State budgets. With a methodology similar to that used in the NO_X SIP Call, annual NO_X budgets would be set by using a base heat input data, then adjusting it by a calculated growth rate for each jurisdiction's annual EGU heat inputs. The EPA is not proposing to use this method for the CAIR because we believe that the other methods that we are proposing (or taking comment on) are more reasonable due to the inherent difficulties in predicting growth in heat input over a lengthy period, especially for jurisdictions that are only a part of a larger regional electric power dispatch region.

III. Integration With Clean Air Act Programs

This section details how the rules that States develop to meet the requirements of the proposed CAIR must be structured to conform with CAA programs. It proposes: Specific criteria that SIPs submitted to meet the requirements of the proposed CAIR must meet; emissions inventory reporting requirements; revisions to the title IV Acid Rain regulations to integrate them with the proposed CAIR emissions trading programs; requirements to ensure that requirements of the existing NO_X SIP Call continue to be met; that BART-eligible EGUs in any State affected by CAIR may be exempted from BART if that State complies with the CAIR requirements through adoption of the CAIR cap-and-trade program for SO2 and NO_X emissions. Finally, this section

provides additional discussion on the implications of the CAIR for tribes.

A. SIP Criteria

1. Introduction

This section describes (1) the dates for submittal and implementation of the SIPs that we propose to require under the CAIR, and (2) the criteria we propose to use in determining completeness and approvability of such SIPs.

2. Schedule for Submission and Implementation of SIPs

a. SIP submission schedule. In the January 2004 proposal, EPA proposed that States must submit the SIP revisions required under the CAIR as expeditiously as practicable but no later than 18 months from the date of promulgation of the final rule. The proposed regulatory text at the end of this SNPR, 40 CFR 51.123 (for NO_X emissions) and 40 CFR 51.124 (for SO2 emissions), contains this proposed submittal date.

b. Implementation Schedule. In the January 2004 proposal, EPA proposed that States must implement the control measures in their CAIR SIP revisions by January 1, 2010. The proposed regulatory text at the end of this SNPR, 40 CFR 51.123 (for NO_X emissions) and 40 CFR 51.124 (for SO_2 emissions), contains this proposed implementation date.

i. Relationship to attainment dates. On April 15, 2004, the Administrator signed a rule to designate and classify areas under the 8-hour ozone NAAQS. (69 FR 23858, April 30, 2004). Under the CAA, all areas designated as nonattainment are required to come into attainment with the NAAQS "as expeditiously as practicable." In addition, specific maximum attainment dates apply to different areas depending on their classification. In the Eastern U.S., all 8-hour ozone areas are classified as subpart 1 areas, marginal areas, or moderate areas. For subpart 1 areas, the attainment date is no later than June 2009, although EPA can extend this date by up to five years based on certain statutory criteria. The attainment dates for marginal and moderate areas are June 2007 and June 2010, respectively. State implementation plans must achieve reductions required for attainment by the beginning of the complete ozone season prior to the attainment date (e.g., the 2009 ozone season for moderate areas).

In response to the January 2004 proposal, some commenters have expressed concern that the CAIR compliance dates (January 1, 2010, for Phase I, and January 1, 2015, for Phase 2) come too late for Eastern States to meet their deadlines for coming into attainment with the 8-hour ozone NAAQS. In making ozone designations, however, EPA recognized that certain areas may find it difficult to adopt plans showing attainment by their initial attainment dates, and would choose to be reclassified to higher classifications with longer attainment dates. For example, an area reclassified to serious would have a June 2013 attainment deadline, and would be required to achieve reductions required for attainment by the 2012 ozone season. It is also possible that some subpart 1 areas will qualify for an extension and receive an attainment date later than June 2009. In addition, an area failing to attain on time can qualify for up to two one-year extensions if it meets statutory criteria. Therefore, CAIR implementation by the 2013 or 2014 ozone season could facilitate attainment by a serious area receiving one-year extensions.

Some commenters also asserted that a similar timing issue arises for PM2.5. Assuming PM2.5 designations by the statutory deadline of December 2004, the PM2.5 attainment deadlines would be no later than early 2010, or no later than early 2015 for areas receiving a maximum 5-year extension. To influence whether an area attains by those dates, reductions would have to occur one to three years earlier. Because of the structure of the proposed program, which creates a strong financial incentive for early reductions, EPA projects substantial early reductions in SO_2. Thus, although the Phase I cap does not come into place until 2010, the proposed program would achieve substantial reductions in SO_2 emissions. In addition, the same opportunity for one-year extensions mentioned for ozone exists for PM2.5 areas.

In light of the discussion above, EPA requests comment on all aspects of the issues concerning the timing of the proposed CAIR compliance dates in relation to NAAQS attainment dates.

ii. Implementation date and beginning of calendar year. The EPA believes that it is most straightforward for EPA to develop and implement the requirements of the proposed CAIR, for sources to comply with the proposed CAIR, and to ensure the environmental effectiveness of the proposed CAIR, if the compliance date for sources is the beginning of a calendar year (or for requirements that pertain only to ozone, at the beginning of the ozone season). There are several reasons for this approach. First, the proposed requirements for States are annual emissions reductions. Beginning the program at any point other than the start of a calendar year would require the development and implementation of different Federal requirements for the first year of the program.

Second, different State rules to meet these requirements would also be necessary for the first, partial year portion of a program. States would have to develop partial year allocations. Additionally, States would have to modify monitoring and reporting requirements to address partial year reporting. Further, for SO_2 emissions reductions requirements, because of the interactions with title IV (which is an annual program), provisions would be needed to address both the annual requirements of title IV and the partial year requirements of the CAIR.

For these administrative feasibility reasons, EPA proposes that the emissions reductions requirements begin at the start of the calendar year, and not at any other time during a calendar year. However, EPA solicits comment on the administrative feasibility issues of implementing these requirements on a partial year basis for the first year of the program.

In particular, EPA solicits comment on the appropriate budget allocation method, and, to promote discussion, offers the following observations for both NO_X and SO_2 partial year budgets. For the NO_X EGU emissions budget, partial year allocation could be accomplished by pro-rating to account for the fact that the program would be implemented for less than a full year. The simplest method would be to pro-rate by the number of days that the program would be implemented. For example, if the program began on January 31, 2010, budgets would be pro-rated by the factor 335/365, where 335 equals the number of days in the year in which States will be required to comply with the program.

At least in theory, more complex methodologies could be developed to account for the fact that the amount of generation—and therefore the amount of NO_X emissions—varies throughout the year (*e.g.*, in many areas, summer generation is higher due to air conditioning load; in other areas that are heavily dependent on hydro power, fossil-fuel generation can vary seasonally with availability of hydro power). However, because factors that affect peak generation vary by region, EPA believes it would be very difficult to develop a methodology that reasonably addresses these many variations. Therefore, we believe that

the simplest pro-rata methodology described above would be appropriate for a partial year allocation.

Budgets for SO_2 could be set in a similar way. A State's SO_2 budget could be pro-rated by the number of days that the program would be in place. Because of the interactions with title IV (an annual program), implementation of a partial year budget for SO_2 would be somewhat more complicated. For emissions from the first portion of the year in which the State was not required to comply with the CAIR, the Acid Rain sources would still be subject to the 1-to-1 retirement ratio required under title IV. For emissions from the second part of the year, all EGUs affected by the CAIR would be required to turn in allowances of that vintage year at a ratio of 2-to-1.

3. Completeness Determination

Any SIP submittal that is made with respect to the final CAIR requirements first would be determined to be either incomplete or complete. A finding of completeness means that EPA would proceed to review the submittal to determine whether it is approvable. It is not a determination that the submittal is approvable; rather, it means the submittal is administratively and technically sufficient for EPA to determine whether it meets the statutory and regulatory requirements for approval. Under 40 CFR 51.123 and 40 CFR 51.124 (the proposed new regulations for NO_X and SO_2 SIP requirements, respectively), a submittal, to be complete, must meet the criteria described in 40 CFR, part 51, appendix V, "Criteria for Determining the Completeness of Plan Submissions." These criteria apply generally to SIP submissions.

Under CAA section 110(k)(1) and section 1.2 of appendix V, EPA must notify States whether a submittal meets the requirements of appendix V within 60 days of, but no later than 6 months after, EPA's receipt of the submittal. If a completeness determination is not made within 6 months after submission, the submittal is deemed complete by operation of law. For rules submitted in response to the CAIR, EPA intends to make completeness determinations expeditiously. In addition, if a State fails to make any submission by the required submission date, EPA expects to make a finding of failure to submit within the same period that would apply to making a completeness determination had a SIP been submitted on time.

A finding of failure to submit or incompleteness triggers the requirement that EPA promulgate a Federal implementation plan (FIP) within 2 years of the date of the finding. In addition, if a complete SIP is submitted in a timely fashion but EPA disapproves it, the requirement to promulgate a FIP within 2 years would be triggered by EPA's disapproval. The EPA's obligation to promulgate a FIP in either instance would terminate upon EPA's approval of a SIP as meeting the requirements of the CAIR.

4. Approvability Criteria

a. Introduction. The approvability criteria for CAIR SIP submissions appear in the proposed 40 CFR 51.123 (NO_X emissions reductions) and in the proposed 40 CFR 51.124 (SO_2 emissions reductions). Most of the criteria are substantially similar to those that currently apply to SIP submissions under CAA section 110 or part D (nonattainment). For example, each submission must describe the control measures that the State intends to employ, identify the enforcement methods for monitoring compliance and handling violations, and demonstrate that the State has legal authority to carry out its plan.

This part of the section III preamble explains additional approvability criteria specific to the CAIR that were proposed in the January 2004 proposal, or are being proposed in today's SNPR. As explained in the January 2004 proposal, EPA proposed that each affected State must submit SIP revisions containing control measures that assure a specified amount of NO_X and SO_2 emissions reductions by specified dates.

Although EPA determined the required amount of emissions reductions by identifying specified control levels for EGUs that are highly cost effective, EPA explained in the January 2004 proposal that States have flexibility in choosing the sources to control in order to achieve the required emissions reductions. As long as the State's emissions reductions requirements are met, a State may impose controls on EGUs only, on non-EGUs only, or on a combination of EGUs and non-EGUs. The EPA's proposed SIP approvability criteria are intended to provide as much certainty as possible that, whichever sources a State chooses to control, the controls will result in the required amount of emissions reductions.

In the January 2004 proposal, EPA proposed a "hybrid" approach for the mechanisms used to ensure emissions reductions from sources. This approach incorporates elements of an emissions "budget" approach (requiring an emissions cap on affected sources) and an "emissions reductions" approach (not requiring an emissions cap). In this hybrid approach, if States impose control measures on EGUs, they would be required to impose an emissions cap on all EGUs, which would effectively be an emissions budget. However, as stated in the January 2004 proposal, if States impose control measures on non-EGUs, they would be encouraged but not required to impose an emissions cap on non-EGUs. In the January 2004 proposal, we requested comment on the issue of requiring States to impose caps on any source categories the State chooses to regulate.

Today, we propose to modify this hybrid approach so that States choosing to impose control measures on large industrial boilers and/or turbines must do so by imposing an emissions cap on all such sources within their State. This is similar to EPA's approach in the NO_X SIP Call which required States to include an emissions cap on such sources as well as on EGUs if the SIP submittals included controls on such sources. (See 40 CFR 51.121(f)(2)(ii), referenced at 63 FR 57494, October 27, 1998.)

Below, EPA describes specific criteria, depending on which sources States choose to control.

b. Requirements if States Choose To Control EGUs.

i. Emissions caps. As explained in the January 2004 proposal (69 FR 4626), EPA proposed that States must apply the "budget" approach if they choose to control EGUs; that is, States must cap EGU emissions at the level that assures the appropriate amount of reductions. These caps constitute the State EGU budgets for SO_2 and NO_X. Additionally, EPA proposed that, if States choose to control EGUs, they must require EGUs to follow part 75 monitoring, recordkeeping, and reporting requirements.

If States choose to allow their EGUs to participate in EPA-administered interstate NO_X and SO_2 emissions trading programs, States must adopt EPA's model trading rules, as described in section IV below and as proposed in 40 CFR part 96, § 96.101–§ 96.176 and § 96.201–§ 96.276, below. States adopting EPA's model trading rules, with only those modifications specifically allowed by EPA, will meet the requirements for applying an emissions cap as well as part 75 monitoring, recordkeeping, and reporting requirements to EGUs.

If States choose to control EGUs but not to allow them to participate in EPA-administered NO_X and SO_2 emissions trading programs, States must still impose an emissions cap as well as part

75 monitoring, recordkeeping, and reporting requirements on all EGUs. Additionally, States must use the same definition of EGU as EPA uses in its model trading rules, *i.e.*, the sources described as "CAIR units" in proposed 40 CFR 96.102 and 40 CFR 96.202. If a State chooses to design its own NO_X and SO_2 emissions trading programs, regardless of whether they are for intrastate or interstate trading, in addition to meeting the requirements of these rules, they should consider EPA's guidance, "Improving Air Quality with Economic Incentive Programs," January 2001 (EPA–452/R–01–001) (available on EPA's Web site at: *http://www.epa.gov/ttn/ecas/incentiv.html*), and the rules must be approved by EPA. It should be noted that EPA would not administer a State-designed program, so the State (or States) would need to administer such programs.

ii. Retirement Ratios. The January 2004 proposal required each State to assure that the title IV SO_2 allowances for vintage year 2010 and beyond for the State's EGUs that exceed the State's CAIR EGU SO_2 emissions budget cannot be used in a manner that would lead to emissions increases in areas not affected by the CAIR. Additionally, EPA was concerned that a devaluation of title IV allowances (because of the more stringent requirements of the CAIR) could lead to emissions increases prior to implementation of the CAIR. The EPA's concerns regarding these allowances are described in the January 2004 proposal at 69 FR 4630. To avoid these significant problems, the January 2004 proposal in effect would require the State to include a mechanism for retirement of the allowances in excess of the State's budget.

The number of retired allowances must be at least equal to the difference between the number of title IV allowances allocated to EGUs in a State and the SO_2 budget the State sets for EGUs under this rule. This requirement to retire allowances in excess of a State's budget applies regardless of whether or not a State participates in the EPA-administered trading programs. If a State chooses to participate in the EPA-administered trading programs, the State must follow the provisions of the model trading rules, described in section IV below, that require that vintage 2010 through 2014 title IV allowances be retired at a ratio of 2 allowances for every ton of emissions and that vintage 2015 and beyond title IV allowances be retired at a ratio of three allowances for every ton of emissions. Pre-2010 vintage allowances would be retired at a ratio of one allowance for every ton of emissions. (See section IV.B.1 of this SNPR.)

In the January 2004 proposal, EPA stated that if a State does not choose to participate in the EPA-administered trading programs, the State may choose the specific method to retire allowances in excess of its budget. The EPA has further considered alternative ways for retiring these excess allowances and believes that if different States use different means to address this concern, it could undermine the regionwide emission reduction goals of the proposed CAIR. The EPA's concerns are further described in Section II of today's preamble. Because of these concerns, EPA is withdrawing the January 2004 proposal on this point and re-proposing that all States use a 2-for-1 retirement ratio for vintage 2010 through 2014 allowances and a 3-for-1 retirement ratio for vintage 2015 allowances and beyond to address concerns about title IV allowances that exceed State budgets.

State rules may also allow sources currently subject to title IV and to the NO_X SIP Call trading program to use allowances banked from those programs before 2010 for compliance with the CAIR, provided that States which participate in EPA's CAIR trading programs must allow this, in accordance with EPA's model trading rules. For further discussion of banking of NO_X SIP Call allowances, see the January 2004 proposal (69 FR 4633).

c. Requirements if States Choose to Control Sources Other Than EGUs

i. Overview of requirements. As noted in the January 2004 proposal, if a State chooses to require emissions reductions from non-EGUs, the State must adopt and submit SIP revisions and supporting documentation designed to quantify the amount of reductions from the non-EGU sources and to assure that the controls will achieve that amount. Although EPA did not propose that States be required to impose an emissions cap on those sources but instead solicited comment on the issue, EPA proposes today that States be required to impose an emissions cap in certain cases on non-EGU sources.

If a State chooses to obtain some but not all of its required emissions reductions from non-EGUs, it would still be required to set an EGU SO_2 budget and/or an EGU NO_X budget, but at some level higher than shown in Tables VI–9 and VI–10 in the January 2004 proposal (69 FR 4619–4620), thus allowing more emissions from its EGUs. The difference between the amount of a State's SO_2 EGU budget in Table VI–9 and a State's selected higher EGU SO_2 budget would be the amount of SO_2 emissions reductions the State must demonstrate it will achieve from non-EGU sources. By the same token, the difference between the amount of a State's NO_X EGU budget in Table VI–10 and a State's selected higher EGU NO_X budget would be the amount of NO_X emissions reductions the State must demonstrate it will achieve from non-EGU sources.

If States require SO_2 emissions reductions from non-EGU sources, States should still use the same retirement ratio (*i.e.*, 2-for-1 for vintage 2010 through 2014 allowances and 3-for-1 for vintage 2015 allowances and beyond) for title IV allowances. To account for the fact that the State is not requiring its EGUs to reduce as much, the State can allocate additional allowances. The number of these allowances will be calculated by multiplying the emissions reductions required for the non-EGU source category by the title IV retirement ratio.

The demonstration of emissions reductions from non-EGUs is a critical requirement of the SIP revision due from a State that chooses to control non-EGUs. As noted in the January 2004 proposal, the State must take into account the amount of emissions attributable to the source category in both (i) the base case, in the implementation years 2010 and 2015, *i.e.*, without assuming SIP-required reductions from that source category under the final CAIR, and (ii) in the control case, in the implementation years 2010 and 2015, *i.e.*, with assuming SIP-required reductions from that source category under the CAIR SIP. We are proposing an alternative methodology for calculating the base case for certain large non-EGU sources, as described below, but generally the difference between emissions in the base case and emissions in the control case equals the amount of emissions reductions that can be claimed from application of the controls on non-EGUs. (See below for criteria applicable to development of the baseline and projected control emissions inventories.)

Additionally, if a State chooses to obtain some or all of its required emission reductions from non-EGUs, EGUs in that State could not participate in the EPA administered multi-State trading programs.

ii. Eligibility of non-EGU reductions. In evaluating whether emissions reductions from non-EGUs would count towards the emissions reductions required under the CAIR, States may include only reductions attributable to measures that are not otherwise required under the CAA. This exclusion

of credit is consistent with the NO_X SIP Call. For the most part, the measures that are mandated by the CAA, and that EPA proposes be excluded from credit towards the emission reduction requirements of the CAIR, were assumed to be in place in the emissions projections and air quality contribution analysis used in the proposed findings regarding significant contribution to nonattainment in 2010.[5]

Specifically, States must exclude reductions attributable to measures otherwise required by the CAA, including: (1) Measures already in place at the date of promulgation of the final CAIR, such as adopted State rules, SIP revisions approved by EPA, and settlement agreements; (2) measures adopted and implemented by EPA (or other Federal agencies) such as emissions reductions required pursuant to the Federal Motor Vehicle Control Program for mobile sources (vehicles or engines) or mobile source fuels, or pursuant to the requirements for National Emissions Standards for Hazardous Air Pollutants; and (3) specific measures that are mandated under the CAA (which may have been further defined by EPA rulemaking) based on the classification of an area which has been designated nonattainment for a NAAQS, such as vehicle inspection and maintenance programs. If a State can demonstrate that a new or modified measure is more stringent than what is required, e.g., due to broader geographic coverage or more stringent emissions reductions levels, the State may count toward the CAIR requirement the reductions attributable to the more stringent requirement. The exclusion of credit for ineligible measures is accomplished by including those measures in both the base and control cases, if they have already been adopted; or by excluding them from both the base and control cases if they have not yet been adopted.

States required to make CAIR SIP submittals may also be required to make other SIP submittals to meet other requirements applicable to non-EGUs, e.g., nonattainment SIPs required for areas designated nonattainment under the PM2.5 or 8-hour ozone NAAQS. These SIPs could include, for example, measures to be adopted such as Reasonably Available Control Technology (RACT) measures pursuant to CAA section 182.

It is likely that CAIR SIP submittals will be due before or at the same time that some of these other SIP submittals are due. States relying on reductions from controls on non-EGUs must commit in the CAIR SIP revisions to replace the emissions reductions attributable to any CAIR SIP measure if that measure is subsequently determined to be required in meeting any other SIP requirement related to adoption of control measures. The State could make this replacement by decreasing its EGU emissions cap or a non-EGU emissions cap, if applicable, by the appropriate amount.

iii. Emissions controls and monitoring. As noted above, we are modifying the "hybrid" approach described in the January 2004 proposal as it applies to non-EGUs. For States that choose to impose controls on certain non-EGUs, namely large industrial boilers and turbines, i.e., those whose maximum design heat input is greater than 250 mmBtu/hr, to meet part or all of their emissions reductions requirements under the CAIR, EPA proposes that State requirements must include an emissions cap on all such sources in their State. Additionally, EPA proposes that in this situation, States must require those large industrial boilers and turbines to meet part 75 requirements for monitoring and reporting emissions as well as recordkeeping. The EPA proposes that if a State chooses to control non-EGUs other than large industrial boilers and turbines to obtain the required emissions reductions, the States must either (i) impose the same requirements, i.e., an emissions cap on all the non-EGUs in the source category and Part 75 monitoring, reporting and recordkeeping requirements, or (ii) must demonstrate why such requirements are not practicable. In the latter case, the State must adopt appropriate alternative requirements to ensure to the maximum practicable degree that the required emissions reductions will be achieved. Further, if a State adopts alternative requirements that do not apply to all non-EGUs in a particular source category (defined to include all sources where any aspect of production is reasonably interchangeable), the State must demonstrate that it has analyzed the potential for shifts in production from the regulated sources to lesser regulated sources in the same State as well as in other States, and that the State is not including reductions attributable to sources that may shift emissions to such non-regulated or not as stringently regulated sources.

iv. Emissions inventories and demonstrating reductions. Quantifying emissions reductions attributable to controls on non-EGUs requires that the States submit both baseline and projected control emissions inventories for the applicable implementation years. We have issued many guidance documents and tools for preparing such emissions inventories, some of which apply to specific sectors States may choose to control. While much of that guidance is applicable to the proposed CAIR, there are some key differences between quantification of emission reduction requirements under a SIP designed to help achieve attainment with a NAAQS and emission reduction requirements under a SIP designed to reduce emissions that contribute to a downwind State's nonattainment problem. When addressing its own nonattainment problem, a State has an incentive not to overestimate emission reductions. If a State overestimates emission reductions, the potential consequence is that the State would remain out of attainment. Missing an attainment deadline has adverse impacts upon a State. Among other things, the area may be "bumped up" to a higher classification with more stringent requirements.

Under transport requirements, however, overestimating emission reductions has fewer intrastate consequences (because it is the downwind State that would pay the price of remaining in nonattainment). For this reason, EPA believes that it is appropriate to have more stringent guidelines with respect to quantification of emission reductions under a program designed to reduce transported pollutants than are currently used with respect to SIPs addressing intrastate air pollution problems. We discuss below more stringent requirements both for developing baseline emission rates and for projecting future emission levels.

When we review CAIR SIPs for approvability, we intend to closely review the emissions inventory projections for non-EGUs to evaluate whether the emissions reductions estimates are correct. We intend to review the accuracy of baseline historical emissions for the subject sources, assumptions regarding activity and emissions growth between the baseline year and 2010 and 2015, and assumptions about the effectiveness of control measures.

To quantify non-EGU reductions, as the first step, a historical baseline must be established for emissions of SO_2 and/or NO_X from the non-EGU source(s) in

[5] The 2010 emissions projections did not account for requirements for reasonably available control technology (RACT), reasonably available control measures (RACM), and vehicle inspection/maintenance in any new 8-hour ozone or PM2.5 nonattainment areas, as these areas had not been designated at the time of the modeling. However, we believe that not accounting for these requirements did not distort the proposed findings for each State because the aggregate reductions in NO_X and SO_2 emissions from these measures would be at most a small percentage of overall emissions.

a recent year. The historical baseline inventory should represent actual emissions from the substitute sources prior to the application of the emissions controls. We expect that States will choose a representative year (or average of several years) falling between 2002 and 2005, inclusively, for this purpose.

The proposed requirements that follow for estimating the historical baseline inventory reflect EPA's belief that, when States assign emissions reductions to non-EGU sources, those reductions should have a high degree of certainty of actually being achieved similar to EGU reductions which can be quantified with a high degree of certainty in accordance with part 75 monitoring requirements that apply to EGUs. For non-EGU sources which are subject to part 75 monitoring requirements, historical baselines must be derived from actual emissions obtained from part 75 monitored data.

For non-EGU sources that do not have part 75 monitoring data to use as a baseline, a historical baseline must be established that estimates actual emissions in a way that matches or approaches as closely as possible the certainty provided by the part 75 measured data for EGUs. In the absence of part 75 measured data, EPA proposes that States be required to estimate historical baseline emissions using assumptions that ensure a source's or source category's actual emissions are not overestimated; source-specific or category-specific data are required. Because the substitute emissions reductions are estimated by subtracting controlled emissions from a projected baseline, if the historical baseline overestimates actual emissions, the estimated reductions could be higher than the actual reductions achieved. As explained above, the use of historical baselines that do not overestimate emissions helps to ensure that upwind emissions reductions are actually achieved.

To achieve this baseline, States must use emission factors that ensure that emissions are not overestimated (*e.g.*, emission factors at the low end of a range when EPA guidance presents a range) or the State must provide additional information that shows with reasonable confidence that another value is more appropriate for estimating actual emissions. Other monitoring or stack testing data can be considered but care must be taken not to overestimate baselines. If a production or utilization factor is part of the historical baseline emissions calculation, again, a factor that ensures that emissions are not overestimated must be used, or additional data must be provided. Similarly, if a control-efficiency factor and/or rule-effectiveness factor enters into the estimate of historical baseline emissions, it must be realistic and supported by facts or analysis. For these factors, a high value (closer to 100 percent control and effectiveness) ensures that emissions are not overestimated.

Once the historical baseline is established for SO_2 and/or NO_X emissions from the substitute sources, the second step is to project these emissions to conditions expected in 2010 and 2015. This step results in the 2010 and 2015 baseline emissions estimates. This step must be done with state-of-the-art methods for projecting the source's or source category's economic output. Economic and population forecasts must be as specific as possible to the applicable industry, State, and county of the source, and must be consistent with both national projections and relevant official planning assumptions including estimates of population and vehicle miles traveled developed through consultation between State and local transportation and air quality agencies. However, if these official planning assumptions are themselves inconsistent with official U.S. Census projections of population and energy consumption projections contained in the Annual Energy Outlook published by the U.S. Department of Energy, adjustments must be made to correct the inconsistency, or the SIP must demonstrate how the official planning assumptions are more accurate. Where changes in production method, materials, fuels, or efficiency are expected to occur between the baseline year and 2010 or 2015, these must be accounted for in the projected 2010 and 2015 baseline emissions. The projection must also account for any adopted regulations that will affect source emissions, not including the measures adopted for purposes of meeting the requirements of the proposed CAIR and eligible for that purpose. (See discussion above regarding eligibility of reductions from non-EGU sources.)

The EPA is also proposing an alternative methodology for the use of projected 2010 and 2015 emissions. In this alternative, instead of using the projected 2010 and 2015 emissions as the 2010 and 2015 baselines, States must use the lower of historical baseline emissions for a source category or projected 2010 or 2015 emissions, as applicable, for a source category. This is because, as explained above, changes in production method, materials, fuels, or efficiency often play a key role in changes in emissions. Because of factors such as these, emissions can often stay the same or even decrease as productivity within a sector increases. These factors that contribute to emission decreases can be very difficult to quantify. Underestimating the impact of these types of factors can easily result in a projection for increased emissions within a sector, when a correct estimate would result in a projection for decreased emissions within the sector.

The third step is to develop the 2010 and 2015 controlled emissions estimates by assuming the same changes in economic output and other factors listed above but adding the effects of the new regulations adopted for the purpose of meeting the CAIR. The regulations may take the form of emissions caps, emission rate limits, technology requirements, work practice requirements, etc. The State's estimate of the effect of the regulations must be realistic in light of the specific provisions for monitoring, reporting, and enforcement and experience with similar regulatory approaches. The State's analysis must examine the possibility that these new regulations may cause production and emissions to shift to non-regulated or less stringently regulated sources in the same State or another State. If all sources of an industrial or other type (where any aspect of production is reasonably interchangeable) within the State are regulated with the same stringency and compliance assurance provisions, the analysis of production and emissions shifts need only consider the possibility of shifts to other States. In estimating controlled emissions in 2010 and 2015, assumptions regarding ineligible control measures must be the same as in the 2010 baseline estimates. For example, if a federally adopted and implemented measure for the source type is assumed in one estimate, it must be assumed in the other.

Thus, EPA proposes two alternative methodologies for calculating the 2010 and 2015 emissions reductions from non-EGUs which can be counted toward satisfying the CAIR. In the first alternative, the 2010 and 2015 emissions reductions which can be counted toward satisfying the CAIR are the differences between (i) for 2010, the 2010 baseline emissions estimates and the 2010 controlled emissions estimates, and (ii) for 2015, the 2015 baseline emissions estimates and the 2015 controlled emissions estimates, minus in each case any emissions that may shift to other sources rather than be eliminated.

In the second alternative, the 2010 and 2015 emissions reductions which can be counted toward satisfying the

CAIR are the differences between (i) for 2010, the lower of historical baseline or 2010 baseline emissions estimates and the 2010 controlled emissions estimates, and (ii) for 2015, the lower of historical baseline or 2015 baseline emissions estimates and the 2015 controlled emissions estimates, minus in each case any emissions that may shift to other sources rather than be eliminated.

v. Controls on non-EGUs only. In the January 2004 proposal, we stated that we believe it is unlikely States will choose to control only non-EGUs, but we also said we would propose in this SNPR provisions for determining the specified emissions reductions that must be obtained if States pursue this alternative. In this SNPR, EPA proposes that States choosing this path must ensure the amount of non-EGU reductions is greater than or equivalent to all of the emissions reductions that would have been required from EGUs had the State chosen to assign all the emissions reductions to EGUs, for example by participating in EPA-administered trading programs. For SO_2 emissions, this amount in 2010 would be 50 percent of a State's title IV SO_2 allocations for all affected sources in the State and, for 2015, 65 percent of that amount. For NO_X emissions, this amount would be the difference between a State's EGU budget for NO_X under the CAIR and its NO_X baseline EGU emissions inventory as projected in the Integrated Planning Model (IPM) for 2010 and 2015, respectively. The proposed rule text provides tables of these amounts for both SO_2 and NO_X.

In addition, EPA proposes that the same requirements described above (in section III.A.4.c of this preamble) regarding the eligibility of non-EGU reductions, emissions control and monitoring, emissions inventories and demonstrations of reductions, will apply to the situation where a State chooses to control only non-EGUs.

B. What Changes Are EPA Proposing for Emissions Reporting Requirements?

1. Purpose and Authority

The EPA believes that it is essential that achievement of the emissions reductions required by the proposed CAIR be verified on a regular basis. Emissions reporting is the principal mechanism to verify these reductions and to assure the downwind affected States and EPA that the ozone and PM2.5 transport problems are being mitigated as required by the proposed CAIR. Also, EPA intends to reassess from time to time whether the requirements of the CAIR are effective in achieving the protections intended by CAA section 110(a)(2)(D)(i) for downwind PM2.5 and ozone nonattainment areas. To this end, EPA is proposing certain, limited new emissions reporting requirements for States. Proposed rule language for these requirements appears at the end of this SNPR. The rule language also would remove or simplify some current emissions reporting requirements which we believe are not necessary or appropriate, for reasons explained below.

Because we are proposing to consolidate and harmonize the new emissions reporting requirements proposed today with two pre-existing sets of emissions reporting requirements, we review here the purpose and authority for emissions reporting requirements in general.

Emissions inventories are critical for the efforts of State, local, and Federal agencies to attain and maintain the NAAQS that EPA has established for criteria pollutants such as ozone, particulate matter (PM), and carbon monoxide (CO). Pursuant to its authority under sections 110 and 172 of the CAA, EPA has long required SIPs to provide for the submission by States to EPA of emissions inventories containing information regarding the emissions of criteria pollutants and their precursors (*e.g.*, volatile organic compounds (VOC)). The EPA codified these requirements in subpart Q of 40 CFR part 51, in 1979 and amended them in 1987.

The 1990 Amendments to the CAA revised many of the provisions of the CAA related to the attainment of the NAAQS and the protection of visibility in Class I areas. These revisions established new periodic emissions inventory requirements applicable to certain areas that were designated nonattainment for certain pollutants. For example, section 182(a)(3)(A) required States to submit an emissions inventory every 3 years for ozone nonattainment areas beginning in 1993. Similarly, section 187(a)(5) required States to submit an inventory every 3 years for CO nonattainment areas. The EPA, however, did not immediately codify these statutory requirements in the CFR, but simply relied on the statutory language to implement them.

In 1998, EPA promulgated the NO_X SIP Call which requires the affected States and the District of Columbia to submit SIP revisions providing for NO_X reductions to reduce their adverse impact on downwind ozone nonattainment areas. (63 FR 57356, October 27, 1998). As part of that rule, codified in 40 CFR 51.122, EPA established emissions reporting requirements to be included in the SIP revisions required under that action.

Another set of emissions reporting requirements, termed the Consolidated Emissions Reporting Rule (CERR), was promulgated by EPA in 2002, and is codified at 40 CFR part 51 subpart A. (67 FR 39602, June 10, 2002). These requirements replaced the requirements previously contained in subpart Q, expanding their geographic and pollutant coverages while simplifying them in other ways.

The principal statutory authority for the emissions inventory reporting requirements outlined in this SNPR is found in CAA section 110(a)(2)(F), which provides that SIPs must require "as may be prescribed by the Administrator * * * (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources." Section 301(a) of the CAA provides authority for EPA to promulgate regulations under this provision.[6]

2. Existing Emission Reporting Requirements

As noted above, at present, two sections of title 40 of the CFR contain emissions reporting requirements applicable to States: Subpart A of part 51 (the CERR) and section 51.122 in subpart G of part 51 (the NO_X SIP Call reporting requirements). This SNPR would consolidate these, with modifications as proposed below. The modifications are intended to achieve the additional reporting needed to verify the reductions required by the proposed CAIR, to harmonize the emissions reporting requirements, to reduce and simplify them, and to make them more easily understood.

Under the NO_X SIP Call requirements in section 51.122, emissions of NO_X for a defined 5-month ozone season (May 1 through September 30) from sources that the State has subjected to emissions control to comply with the requirements of the NO_X SIP Call are required to be reported by the affected States to EPA every year. However, emissions of sources reporting directly to EPA as part of the NO_X trading program are not required to be reported by the State to EPA every year. The affected States are also required to report ozone season emissions and typical summer daily emissions of NO_X from all sources every

[6] Other CAA provisions relevant to this SNPR include section 172(c)(3) (provides that SIPs for nonattainment areas must include comprehensive, current inventory of actual emissions, including periodic revisions); section 182(a)(3)(A) (emissions inventories from ozone nonattainment areas); and section 187(a)(5) (emissions inventories from CO nonattainment areas).

third year (2002, 2005, etc.) and in 2007. This triennial reporting process does not have an exemption for sources participating in the emissions trading programs. Section 51.122 also requires that a number of data elements be reported in addition to ozone season NO_X emissions. These data elements describe certain of the source's physical and operational parameters.

Emissions reporting under the NO_X SIP Call as first promulgated was required starting for the emissions reporting year 2002, the year prior to the start of the required emissions reductions. The reports are due to EPA on December 31 of the calendar year following the inventory year. For example, emissions from all sources and types in the 2002 ozone season were required to be reported on December 31, 2003. However, because the Court which heard challenges to the NO_X SIP Call delayed the implementation by 1 year to 2004, no State was required to start reporting until the 2003 inventory year. In addition, EPA recently promulgated a rule to subject Georgia and Missouri to the NO_X SIP Call with an implementation date of 2007. (See 69 FR 21604, April 21, 2004.) For them, emissions reporting begins with 2006. These emissions reporting requirements under the NO_X SIP Call affect the District of Columbia and 22 of the 29 States affected by the proposed CAIR.

As noted above, the other set of emissions reporting requirements is codified at subpart A of part 51. Although entitled the CERR, this rule left in place the separate § 51.122 for the NO_X SIP Call reporting. The CERR requirements were aimed at obtaining emissions information to support a broader set of purposes under the CAA than were the reporting requirements under the NO_X SIP Call. The CERR requirements apply to all States.

Like the requirements under the NO_X SIP Call, the CERR requires reporting of all sources at 3-year intervals (2002, 2005, etc.). It requires reporting of certain large sources every year. However, the required reporting date under the CERR is 5 months later than under the NO_X SIP Call reporting requirements. Also, emissions must be reported for the whole year, for a typical day in winter, and a typical day in summer, but not for the 5-month ozone season as is required by the NO_X SIP Call. Finally, the CERR and the NO_X SIP Call differ in what non-emissions data elements must be reported.

3. Proposed Emissions Reporting Requirements

The EPA proposes to further consolidate the detailed requirements for emissions reporting by States entirely into subpart A, while adding limited new requirements for emissions reports to serve the additional purposes of verifying the CAIR-required emissions reductions. This will allow EPA to monitor compliance with the CAIR, as well as assess from time to time progress in mitigating the interstate transport of ozone and $PM_{2.5}$ precursors.

This SNPR would also harmonize the reporting requirements, and reduce and simplify them in several ways. The major changes included in the proposed rule text are described below. A technical support document in the docket provides a detailed explanation of every change and its purpose.[7]

Amendments are proposed to subpart A, which contains § 51.1 through 51.45 and an appendix, and to § 51.122 in particular. We also propose to add a new § 51.125.

- In § 51.122, we propose to abolish certain requirements entirely, and to replace certain requirements with a cross reference to subpart A so that detailed lists of required data elements appear only in subpart A. As amended, § 51.122 will specify what pollutants, sources, and time periods the States subject to the NO_X SIP Call must report and when, but will no longer list the detailed data elements required for those reports.
- The new § 51.125 will be functionally parallel to § 51.122, specifying what pollutants, sources, and time periods the States subject to the proposed CAIR must report and when, referencing subpart A for the detailed data elements required.
- The amended subpart A will list the detailed data elements as well as provide information on submittal procedures, definitions, and other generally applicable provisions.

Taken together, the existing emissions reporting requirements under the NO_X SIP Call and CERR are already rather comprehensive in terms of the States covered and the information required. Therefore, the practical impact of the changes proposed today is to impose only three new requirements.

First, in Arkansas, Iowa, Louisiana, Mississippi, and Wisconsin, for which we have proposed a finding of significant contribution to ozone nonattainment in another State but which were not among the 22 States subject to the NO_X SIP Call, the required emissions reporting will be expanded to match those of the 22 States. The change requires that they report NO_X emissions during the 5-month ozone season, in addition to the existing requirement for reporting emissions for the full year. We are proposing that this new requirement begin with the triennial inventory year prior to the CAIR implementation date. This will be the 2008 inventory year, the report for which will be due to EPA by June 1, 2010.

Second, under the existing CERR, yearly reporting is required only for sources whose emissions exceed specified amounts. Under this SNPR, the 28 States and the District of Columbia subject to the CAIR for reasons of $PM_{2.5}$ must report to EPA each year a set of specified data elements for all sources subject to new controls adopted specifically to meet the CAIR requirements related to $PM_{2.5}$, unless the sources participate in an EPA-administered emissions trading program. This is like the every-year reporting requirement for controlled sources under the NO_X SIP Call, but covering SO2 in addition to NO_X and covering the whole year—since the $PM_{2.5}$ NAAQS at issue is the annual NAAQS—rather than only the ozone season. This proposal could increase the number of sources for which States must submit reports each year rather than only every third year, if a State chooses to control non-EGU sources under this SNPR or if the State does not join the EPA trading programs for EGUs. We are proposing that this new requirement begin with the 2009 inventory year, the report for which will be due to EPA by June 1, 2011. After the 2009 reporting year, this new requirement will have no effect on States that fully comply with the CAIR by requiring their EGUs to participate in the EPA model cap-and-trade programs.

Third, in all States, we are proposing to expand the definition of what sources must report in point source format, so that fewer sources would be included in non-point source emissions.[8] We are proposing to base the requirement for point source format reporting on whether the source is a major source under 40 CFR part 70 for the pollutants

[7] "Technical Support Document on Emissions Inventory Reporting Requirements for the Proposed Clean Air Interstate Rule (May 2004)" can be obtained from the docket for today's proposed rule: OAR–2003–0053.

[8] We use the term "non-point source" to refer to a stationary source that is treated for inventory purposes as part of an aggregated source category rather than as individual facility. In the existing subpart A of part 51, such emissions sources are referred to as "area sources." However, the term "area source" is used in section 112 of the CAA to indicate a non-major source of hazardous air pollutants, which could be a point source. As emissions inventory activities increasingly encompass both NAAQS-related pollutants and hazardous air pollutants, the differing uses of "area source" can cause confusion. Accordingly, EPA proposes to substitute the term "non-point source" for the term "area source" in subpart A, § 51.122, and the new § 51.125 to avoid confusion.

for which reporting is required, *i.e.*, for CO, VOC, NO_X, SO_2, $PM_{2.5}$, PM_{10} and ammonia but without regard to emissions of hazardous air pollutants. Currently, the requirement for point source reporting is based on actual emissions in the year of the inventory report. This change may require more sources than at present to be reported as point sources every third year. The new approach will make it possible to better track source emissions changes, shutdowns, and start ups over time. It will result in a more stable universe of reporting point sources, which in turn will facilitate elimination of overlaps and gaps in estimating point source, as compared to non-point source, emissions. Under this proposal, States will know well in advance of the start of the inventory year which sources will need to be reported. We are proposing that these new requirements begin with the 2008 inventory year, the report for which will be due to EPA by June 1, 2010. We invite comment on whether this change could instead be practically implemented for the 2005 inventory year, which we believe is desirable if it is practicable. We intend to finalize this proposed change even if for some reason the new emissions reductions requirements of the proposed CAIR and the above two changes in emission reporting requirements are not finalized as proposed, because this change is appropriate for the purposes of monitoring the effectiveness of current SIP programs.

A number of proposed changes will reduce reporting requirements on States or provide them with additional options:

- The NO_X SIP Call rule required the affected States to submit emissions inventory reports for a given ozone season to EPA by December 31 of the following year. The CERR requires similar but not identical reports from all States by the following June 1, 5 months later. The EPA believes that harmonizing these dates would be efficient for both States and EPA. We are proposing to move the December 31 reporting requirement to the following June 1, the more generally applicable submission date affecting all 50 States. We invite comment on whether allowing this 5-month delay is consistent with the air quality goals served by the emissions reporting requirements. However, we also invite comment on the alternative of moving forward to December 31 all or part of the June 1 reporting for all 50 States. In particular, we solicit comment on requiring that point sources be reported on December 31 and other sources on June 1. This approach would eliminate the problem of States having to make two submissions for point sources within a 5-month period, and would result in more timely submission of the emissions information for point sources. More timely submission would be particularly useful for point sources because point sources generally are the primary subject of control measures in SIPs. The later June 1 submission date for non-point sources and mobile sources would allow more time for estimating these emissions sources, which in some cases may require vehicle miles traveled or business activity data not available in time for a December 31 submission. In addition, estimating emissions of some types of non-point sources requires prior knowledge of emissions and activity levels at point sources of the same industrial type; therefore, it makes sense to stagger the submission deadlines for those different sources.
- We also propose to eliminate a requirement of the NO_X SIP Call for a special all-sources report by affected States for the year 2007, due December 31, 2008. The normal cycle of every-third-year reporting would also produce the same type of all-sources reports for 2005 and 2008. The EPA originally intended to use the information on 2007 emissions to re-assess the effectiveness of the NO_X SIP Call in eliminating upwind NO_X emissions that contribute significantly to downwind ozone nonattainment as of the latest 1-hour ozone attainment date within the region. The large majority of the emissions reductions required by the NO_X SIP Call have been assigned to sources that participate in the EPA-administered trading program, which has independent procedures to ensure that emissions reductions are achieved. We now believe that examining 2005 and 2008 inventory submissions and the annual reporting on controlled sources will permit us to evaluate the effectiveness of individual State rules or implementation practices in reducing emissions. We no longer need the special 2007 emissions inventory information to broadly revisit the NO_X SIP Call, and we recognize that preparing that inventory could draw resources away from more important work by State air agencies.
- We propose to remove a requirement in the existing CERR for reporting annual and typical ozone season day biogenic emissions. Because biogenic emissions vary greatly with daily weather conditions and because there are other practical methods for obtaining hourly estimates across whole regions when needed by EPA, States, or others, we believe this requirement for reporting biogenic emissions serves no useful purpose. This change does not affect our expectation that biogenic emissions be appropriately considered in ozone and $PM_{2.5}$ attainment demonstrations.
- We are proposing a new provision which would allow States the option of providing emissions inventory estimation model inputs in lieu of actual emissions estimates, for source categories for which prior to the submission deadline EPA develops or adopts suitable emissions inventory estimation models and by guidance defines their necessary inputs. This provision will allow source reporting to evolve to take advantage of new emissions estimation tools for greater efficiency, although the States will remain required to provide inputs representative of their conditions. We propose this option be available starting with the reports on 2003 emissions.
- We are proposing to delete the existing requirement that all States report emissions for a winter work weekday. This requirement was originally aimed at tracking progress towards attainment of the CO NAAQS. We believe applying this requirement to all States is no longer warranted given that CO violations are currently observed in few areas. We believe we can work directly with the remaining affected States to monitor efforts to attain, without requiring formal submission of CO inventories.

The NO_X SIP Call rule and the CERR contain detailed lists of required data elements in addition to emissions, and each rule has its own set of definitions. The two sets of data elements overlap but are not identical. Generally, the NO_X SIP Call rule required more data elements to be reported. The EPA has reviewed both lists in light of more recent experiences and insight into the difficulty States face in collecting and submitting these data elements and their utility to EPA, other States, and other users. We are proposing to combine the separate lists of required elements into a single new list of required data elements. A few data elements are proposed to be eliminated, as explained in the technical support document for inventory reporting. We propose that these relatively minor changes become applicable starting with the first required emissions reports following the promulgation of the final CAIR, which we expect to be the reports regarding emissions during 2003, due June 1, 2005.

There are a number of currently required data elements that have been kept in the proposed rule text, but on which we invite comment as to whether

they should be dropped in the final rule. These are heat content (fuel), ash content (fuel), sulfur content (fuel) for fuels other than coal, activity/throughput, hours per day in operation, days per week in operation, weeks per year in operation, and start time in the day. These data elements have been carried forward from emissions reporting systems dating back many years. We believe it is appropriate to take comment on their current usefulness.

We also invite comment on whether the current data elements that describe emissions control equipment type and efficiency are adequate. We believe it is important for States to report on the manner in which sources are currently controlled so that opportunities for additional highly cost-effective controls can be assessed from time to time, but the existing data elements may not be adequate and appropriate for that purpose. The present data elements related to control measures are primary control efficiency, secondary control efficiency, control device type, and rule effectiveness for point sources; and total capture/control efficiency, rule effectiveness, and rule penetration for non-point sources and nonroad mobile sources.[9]

We are proposing to retain the requirement for reporting of summer day emissions from all sources (except biogenic sources) at 3-year intervals, but to restrict it to only States with ozone nonattainment areas or for which we are proposing a finding of significant contribution to ozone nonattainment in another State. The NO_X SIP Call requires reporting only of NO_X emissions for a typical summer day, while the CERR requires reporting of all pollutants. We propose to restrict the requirement to VOC and NO_X emissions, but we invite comment on whether CO emissions should be required also.

At present, States are required to report three particular data elements for point source stacks: Stack diameter, exit gas velocity, and exit gas flow rate. This is a redundant requirement, since any one of these can be calculated from the other two. We invite comment on which of these to drop from the required list of data elements, if any. Our preference would be to collect the data element that is most closely tied to an actual operating measurement. Alternatively, we may allow States to report either exit gas flow or exit gas velocity, at their option.

Finally, we propose to modify section 51.35 of subpart A, to provide that if States obtain one-third of their necessary emissions estimates from point sources and/or prepare one-third of their non-point or mobile source emissions estimates each year on a rolling basis, they should submit their data as a single package on the required every-third-year submission date.

C. Acid Rain Program

In this SNPR, EPA proposes several revisions of the Acid Rain Program regulations (40 CFR parts 72 through 78). Most of the proposed revisions would affect the provisions in the regulations concerning the requirement to hold allowances sufficient to authorize annual SO_2 emissions. These proposed revisions would facilitate the interaction of the Acid Rain Program with the proposed CAIR trading program. However, because these proposed modifications also would benefit the implementation of the existing Acid Rain Program, EPA is proposing to adopt them regardless of whether other rules proposed in the CAIR are adopted.

As the basis for these proposed revisions of the Acid Rain Program regulations, EPA proposes to modify its interpretation of title IV of the CAA and, specifically, provisions in sections 403, 404, 405, 408, 409, 411, and 414, concerning the requirement to hold allowances. Provisions in each of these sections address the allowance-holding requirement by: Stating the requirement that sufficient allowances be held for a unit after a calendar year to authorize emissions at least equal to the unit's tonnage of SO_2 emissions during that year; referencing this requirement; or establishing the penalties and offsets for violation of this requirement.

The following is a description of these statutory provisions. Section 403(g) is a general prohibition barring each affected unit from emitting SO_2 in excess of the number of allowances "held for that unit for that year by the owner or operator of the unit" (42 U.S.C. 7651b(g)). Various provisions in sections 404 and 405 refer to existing units (those commencing commercial operation before November 15, 1990) and state that a unit's emissions may not exceed its allowance allocation unless the owner or operator of such unit "holds allowances to emit not less than the unit's total annual emissions" (42 U.S.C. 7651c(a), 7651c(c)(2), 7651c(d)(1) and (5), 7651d(b)(1) and (3), 7651d(c)(1) through (3) and (5), 7651d(d)(1) and (2), 7651d(e), 7651d(f)(1), 7651d(h)(1)).[10] Section 403(e) refers to new units and States that it is unlawful for such a unit "to emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit held for the unit by the unit's owner or operator" (42 U.S.C. 7651b(e)).[11] Section 403(d)(1) provides that "the total tonnage of emissions in any calendar year (calculated at the end thereof) from all units in such a utility system, power pool, or allowance pool agreements shall not exceed the total allowances for such units for the calendar year concerned" (42 U.S.C. 7651b(d)(2)). Section 403(f) states that each permit under titles IV and V of the CAA must provide that "the affected unit may not emit an annual tonnage of sulfur dioxide in excess of the allowances held for that unit" (42 U.S.C. 7651b(f)).[12] Section 411(a) establishes the owner or operator's liability for an excess emissions penalty if SO_2 is emitted at the unit in excess of the "allowances the owner or operator holds for use for the unit for that calendar year" (42 U.S.C. 7651j(a)).[13] Finally, section 414 provides that the operation of an affected unit to emit SO_2 in excess of "allowances held for such unit" is a violation of the CAA, with each ton emitted in excess of allowances held constituting a separate violation (42 U.S.C. 7651m).

In summary, sections 403(e) through (g), 408(a) and (d), 411(a) and (b), and 414 all state that the owner or operator must hold allowances "for the unit" at least equal to the unit's SO_2 emissions. While section 403(d)(2) refers to "all units" on a "utility system's power pool, or allowance pool agreements," EPA interprets this provision as consistent with the requirement that

[9] Additional information on emissions data elements and the formats and valid codes presently in use for State reporting to EPA is available on the EPA Web site *http://www.epa.gov/ttn/chief/nif/index.html*.

[10] *See also* 42 U.S.C. 7651h(f) (section 409(f), referring to repowered sources and the "prohibition against emitting sulfur dioxide in excess of allowances held").

[11] *See also* 42 U.S.C. 7651d(g)(1) (section 405(g)(1), referring to certain new units and stating that a unit's emissions may not exceed its allowance allocation unless the owner or operator of such unit "holds allowances to emit not less than the unit's total annual emissions").

[12] *See also* 42 U.S.C. 7651g(a) (section 408(a)(1), stating that each permit must prohibit "annual emissions of sulfur dioxide in excess of the number of allowance to emit sulfur dioxide the owner or operator, or the designated representative of the owners or operators, of the unit hold for the unit"); and 42 U.S.C. 7651g(d)(4) (section 408(d)(4), stating that each Phase II permit must bar "affected units at the affected source" from emitting "in excess of the number of allowances to emit sulfur dioxide the owner or operator or designated representative hold for the unit").

[13] *See also* 42 U.S.C. 7651j(b) (section 411(b), stating that the owner or operator of "any affected source that emits sulfur dioxide during any calendar year in excess of * * * the allowances held for the unit for the calendar year" is liable for an equal tonnage offset of the excess emissions).

allowances must be held for each such unit at least equaling the unit's emissions.[14] The remaining provisions cited above contain a more shorthand reference to the allowance-holding requirement by simply stating that the owner or operator must hold sufficient allowances for a unit's emissions.

Moreover, section 403(b) of the CAA requires the Administrator to establish by regulation the allowance tracking system, including the requirements for "allocation, transfer, and use of allowances" (*e.g.*, for the holding of allowances). 42 U.S.C. 7651b(b). For example, in establishing the allowance tracking system, the regulations must specify which accounts in the allowance tracking system must contain allowances used to meet the allowance-holding requirement. However, none of the above-described statutory provisions on the allowance-holding requirement specifically identify the type of account in which a unit's owner or operator must hold allowances in order to meet that requirement. In particular, these statutory provisions do not state, and thus are ambiguous concerning, whether the account must be an account unique to the unit "for" which allowances are held (*i.e.*, a unit-level account) or whether the account can be "for" all units at a given source (*i.e.*, a source-level account).

The EPA has exercised its authority under section 403(b) in several prior rulemakings, in which EPA considered the question of what type of account could be used to hold allowances "for" a unit to meet the allowance-holding requirement. In the initial rulemaking for the Acid Rain Program that resulted in the January 11, 1993 core rules for the program, EPA interpreted the statutory provisions on allowance holding to mean that, in general, allowances "for" a unit could be held only in an account unique to that unit (referred to in the regulations as a "unit account"). (*See* 63 FR 41358, 41362, August 3, 1998) (discussing that allowances had to be held in a subaccount (the "compliance subaccount") of the unit account). Even so, the January 11, 1993 rules include an exception, continued in the existing rules, for affected units that share a common stack and monitor at the stack, not at the individual units. For such common-stack units, the designated representative has the option to assign (before the allowance transfer deadline) a percentage of allowances to be deducted from the unit account for each unit so that the total deduction for all the common-stack units equals the total annual emissions from these units. If the option is not exercised, an equal percentage of the allowances is deducted from the unit account of each unit. The assigned, or the default, deductions need not have any relationship to the actual distribution of emissions among the common-stack units. Consequently, the treatment of common-stack units effectively allows the allowances in a unit's unit account to be used to cover emissions from another unit at the same source. (*See* 63 FR 41362.)

In a rulemaking completed in May 1999, EPA reconsidered and revised its interpretation of title IV, and revised the Acid Rain Program regulations, in order to allow a unit to use some allowances in the unit account of another unit at the source to meet the allowance-holding requirement. (64 FR 25834, May 13, 1999). This revision applied to units at the same source even if they were not common-stack units. The revised regulations resulting from that rulemaking allow a unit to use allowances in the unit account of another unit at the same source up to a limit equal to the greater of: 95 percent of the difference between the first unit's emissions and the allowances in its own unit account; or 10 tons. See 40 CFR 73.35(b)(3) (§ 73.35(b)(3)). This approach effectively allows the owner or operator to approach source-wide compliance in that, except for the above-described limit, allowances at one unit are considered to be held "for" another unit at the same source and can be used to meet the allowance-holding requirement. The EPA explained that the limit on using another unit's allowances would "provide owners and operators with a strong incentive to hold sufficient allowances in an affected unit's account" and that compliance would "routinely" be achieved on a unit-by-unit basis. (64 FR 25837). In adopting this interpretation of the ambiguous language in title IV concerning the allowance-holding requirement, EPA stated that it was balancing the general unit-by-unit orientation of title IV and the need for "compliance flexibility." Compliance flexibility is necessary to reduce excess emission penalties where there are insufficient allowances in the unit's unit account due to "inadvertent, minor errors" but enough allowances in the account of another unit at the same source.

In today's SNPR, EPA is reconsidering the extent to which allowances in the account of one unit at a source can be used to meet the allowance-holding requirement for another unit at the same source. There are several factors relevant to this reconsideration. The first factor is that, as discussed above, the statutory provisions setting forth the allowance-holding requirement do not specifically refer to allowance accounts, much less dictate the type of account in which allowances must be held "for the unit" in meeting this requirement. To the extent only allowances held in a unit-level account are treated as being held "for" the unit involved, compliance must be met on an individual-unit basis. To the extent all allowances held in a source-level account are treated as being held "for" all units at the source involved, compliance may be met on a source-wide basis. In light of the ambiguity in the statutory allowance-holding-requirement provisions, EPA believes that it has discretion in determining whether to apply the allowance-holding requirement at the unit level or the source level. Indeed, EPA maintains that the degree of compliance flexibility that was provided in the May 13, 1999 rulemaking did not exhaust EPA's discretion in moving toward source-level compliance.

The second factor considered by EPA is that it is important to provide compliance flexibility by allowing one unit at a source to use, for compliance, allowances from other units at that source. The statutory excess emissions penalty of $2,000 (adjusted for inflation since 1990 to about $2,900) per ton is over ten times the current market value of an allowance. Moreover, unlike the general civil penalties under section 113 for violations of the CAA, section 411 makes the excess emission penalty automatic (not discretionary) and therefore applicable to all excess emissions at a unit, even if they result from inadvertent, minor errors by the owner or operator. Consequently, companies have potential liability for large excess emissions penalty payments for what may be inadvertent, minor errors. For example, a company may have acquired enough allowances to authorize all the annual emissions from units at a source but incorrectly distributed the allowances among the unit accounts for those units. The distribution may be incorrect because of something as simple as: An error by the owner or operator in calculating how many allowances will remain in each unit account after allowance transfers submitted just before the allowance transfer deadline are recorded; an error in the allowance amount, or in the account number of the transferee, listed

[14] *See* 64 FR 25835–25837 (explaining that the legislative history of section 403(d)(2) indicates that the provision was not intended to require or authorize aggregation of such units' allowances to determine compliance with the allowance-holding requirement).

in an allowance transfer form; or an error in identifying the unit for which collected emission data are reported.

In the May 13, 1999 rulemaking, EPA partially addressed this problem by allowing a unit with fewer allowances in its unit account than emissions to use allowances in the unit accounts of other units at the source, but with a limit on that use. (*See* 63 FR 41360 and 64 FR 25838–25839). Under the current § 73.35(b)(3), the unit may use allowances from other units at the source to eliminate up to the greater of: 95 percent of that unit's allowance deficit; or 10 tons. While this can significantly reduce a unit's potential liability for excess emission penalty payments, the excess emission penalty payments can still be quite large, particularly when the allowance deficit is large enough that the 95 percent limit, rather then the 10-ton limit, applies. The 95 percent limit applies whenever the allowance deficit exceeds 200. An error, such as reversing digits in the allowance amount in a transfer form or misidentifying the unit for which collected emission data are reported, can easily result in a very large allowance deficit and therefore in a large penalty payment when the 95 percent limit on use of other units' allowances applies. In short, the current provisions in § 73.35(b)(3) do not fully (and in EPA's view do not sufficiently) address the problem of excess emission penalty payments that potentially are far out of proportion to the errors involved.

The third factor considered by EPA is that, as noted in prior rulemakings, title IV evidences in language addressing matters beyond the allowance-holding requirement a "pervasive unit-by-unit orientation." (See 63 FR 41360). For example, the applicability of title IV is determined on a unit-by-unit basis under sections 402 (definitions of "unit," "existing unit," "new unit," "utility unit," and "affected unit"), 403(e), 404(a)(1), and 405. Allowances are allocated, and annual SO_2 emission limitations are set, for individual units. Under section 411(a), excess emissions penalties are imposed on owners and operators of units that have excess emissions, while, under section 411(b), offsets of excess emissions are imposed on owners and operators of sources with units that have excess emissions. Section 412(a) requires unit-by-unit monitoring of emissions, except that, in the case of units at a common stack, separate monitors for each unit are not required if sufficient information for compliance determinations is provided.

Balancing the three above-described factors, EPA proposes to revise the Acid Rain regulations to allow a unit to use for compliance any allowances from other units at the same source.[15] This approach limits the extent of deviation from the unit-by-unit orientation evidenced in the non-allowance-holding provisions of title IV in that a unit may only use allowances held for other units that are at essentially the same geographic location as that unit, *i.e.*, other units that are at the same source. Moreover, there are no significant environmental consequences to shifting from unit- to source-level compliance. This approach is also feasible in that it does not require any dramatic changes in the operation of the Acid Rain Program. For example, only one designated representative (*i.e.*, the designated representative of the source at which the units are located) will be involved in ensuring that there are sufficient allowances to cover emissions as of the allowance transfer deadline. It also appears that this approach will result in a minimum of changes to existing contracts involving allowance agreements among different owners of units at a source. This is because § 73.35(b)(2) already allows a unit to use allowances from other units at the same source within certain limits (*i.e.*, the 95 percent and 10 ton limits described above), and today's SNPR simply removes those limits.

In order to implement the proposal to allow a unit to use allowances from other units at the same source without limit, EPA is proposing the following specific changes to the Acid Rain Program regulations. The EPA's objective is to implement the proposal, but with a minimum of changes to the language of the Acid Rain Program regulations. Other than implementing the proposed shift from unit- to source-level compliance, these proposed revisions are not intended to make any substantive changes to the revised provisions.

1. The term "unit account" is replaced by "compliance account" in § 72.2 and, as appropriate, in every other provision of the Acid Rain Program regulations in which the term appears. Similarly, references to a "unit's" account in the Allowance Tracking System are replaced by references to a "source's" account. In addition, references to allowances held by a "unit" are changed to refer to allowances held by a "source."

2. References to a "unit's" Acid Rain emissions limitation for SO_2 are replaced by references to a "source's" Acid Rain emissions limitation for SO_2 throughout the Acid Rain Program regulations. Similarly, references to a "unit's" SO_2 emissions for purposes of applying the SO_2 emissions limitation (or a "unit's" excess emissions) are replaced, where appropriate, by references to the SO_2 emissions of the "affected units at a source" or to a "source's" excess emissions. It should be noted that the proposed rule language accompanying this preamble attempts to list every instance in which the terms "unit's" Acid Rain emissions limitation for SO_2 and "unit's" SO_2 emissions or excess emissions (as well as the terms "unit account," a "unit's" account, and allowances held by a "unit") appear and should be replaced. However, even if some instances were missed, EPA proposes to replace the term in all instances necessary to implement source-level compliance with the allowance-holding requirement and requests comment on, among other things, what other instances may have been missed.

3. The provisions in §§ 72.90(b)(5) and 73.35(e) concerning the assignment of allowance deductions among units at a common stack are removed. These provisions are unnecessary with the shift from unit- to source-level compliance.

4. The terms "compliance subaccount," "future year subaccount," and "current year subaccount" (and their definitions) are removed or replaced, as appropriate, throughout the Acid Rain Program regulations. The current regulations distinguish between two subaccounts in each unit account, *i.e.*, the "compliance subaccount" for allowances usable for compliance in a given year and a "future year subaccount" for allowances not usable until a future year. Similarly, the current regulations refer to a "current year subaccount" of a general account. The electronic Allowance Tracking System does not currently use or refer to these subaccounts. Moreover there is also no need to use or refer to them when compliance is on a source-level basis. The proposed rule language accompanying this preamble attempts to list every provision in which the terms "compliance subaccount," "future year subaccount," and "current year subaccount" appear and to modify the provision as necessary to remove these terms without changing the substance of the provision. However, even if some instances were missed, EPA proposes to replace the terms in all instances and requests comment on, among other things, what other instances may have been missed.

[15] For the reasons set forth in the preamble of the May 13, 1999 final rule, EPA maintains that allowing company-level compliance or compliance at any other, higher level is neither required by title IV nor appropriate. *See* 64 FR 25835–25837.

5. The provision in § 73.35(b)(3) limiting the use of allowances from another unit at the same source for compliance is removed.

The EPA notes, in addition to the above-described rule changes, shifting from unit- to source-level compliance under the Acid Rain Program would require revisions to the software used to operate the Allowance Tracking System and to reconcile allowances and emissions after the end of each calendar year. For example, one approach might be to revise the software to aggregate and convert unit accounts in the Allowance Tracking System to source-level compliance accounts. The system would need to move the allowances in the unit accounts of all affected units at a given source to the new source-level compliance account and ensure recordation in the compliance account of the allowances allocated to such units. In addition, annual emissions for the affected units at a source would have to be summed and then compared with the allowances in that source's compliance account. Because of the time necessary to revise the software and to conduct testing to ensure that the Allowance Tracking System operates properly, EPA believes that the rule changes implementing source-level compliance, if adopted in a final rule, should not become effective before July 1, 2005. Under that approach, compliance under the Acid Rain Program for the 2004 calendar year (which is determined after the allowance transfer deadline for 2004, i.e., March 1 or the next business day if March 1 is not a business day) would remain at the unit-level, and compliance would shift to the source-level for the 2005 calendar year. An effective date of July 1, 2005 would ensure that the source-level rule changes would take effect after completion of the process of determining compliance for 2004. The EPA's experience is that the compliance determination process is generally completed several months after the end of the year for which emissions and allowances are compared. The July 1, 2005 effective date would give owners and operators, as well as EPA, the opportunity to adjust internal procedures to take account of source-level compliance. The EPA requests comment on a July 1, 2005 effective date for the Acid Rain Program rule changes discussed in today's notice and on any alternative effective dates for such rule changes.

The EPA further notes that not only is the proposed shift to source-level compliance consistent with title IV and an improvement to the operation of the Acid Rain Program, but also this change would facilitate the coordination of this program with the proposed CAIR trading program. The latter program, of course, requires source-level compliance.

The EPA is also proposing other revisions of the Acid Rain Program that do not address the allowance-holding requirement but that are focused on facilitating the interaction of the Acid Rain Program and the proposed CAIR trading program. For example, certain language in the definition of "cogeneration unit" in § 72.2, which definition was recently changed (*See* 67 FR 40420, June 12, 2002), is changed back to the original language so that it is consistent with certain language in the proposed definition of "cogeneration unit" in the CAIR model trading rules. *See* section IV below.

Further, the language required in § 72.21(b)(1) for the certification that must be in each submission by the designated representative in the Acid Rain Program would be revised so that the same submission-certification language can be used for submissions for units whether the units are in both the CAIR trading program and the Acid Rain Program or in only one of the programs. Similarly, certain language required in § 72.24 (paragraphs (a)(5), (a)(7), and (a)(10)) for the certificate of representation for the designated representative in the Acid Rain Program would be removed so that the same, standard certificate can be used for units that are in one or both programs. This would remove requirements (e.g., for a 1-day newspaper notice of the designation of a designated representative) that EPA believes have proved to be unnecessary. For the same reason, certain language required in § 73.31(c)(v) for the certificate of representation for an authorized account representative in the Acid Rain Program would be removed as unnecessary. With the proposed changes in §§ 72.24 and 73.31, the language for certificates of representation in the Acid Rain Program and the CAIR trading program would be the same as the language in the certificates of representation in the NO_X Budget Trading Program under the NO_X SIP Call.

A further example is that the general requirement for all affected sources to submit compliance certification reports at the end of each year is removed as superfluous. Sources already are required to submit compliance certification reports under title V of the CAA that cover compliance with CAA requirements, including the Acid Rain Program requirements. Moreover, the quarterly emissions reports that each unit must submit already include a certification of compliance with the monitoring and reporting requirements under part 75 of the Acid Rain Program regulations. The proposed CAIR trading programs do not require submission of annual compliance certification reports.

In addition, several provisions in the Acid Rain Program regulations concerning the allowance tracking system are proposed to be removed or revised in order to make the allowance tracking systems in the Acid Rain Program, the NO_X Budget Trading Program, and the proposed CAIR trading program as similar as possible. For example, § 73.32 has proved to be superfluous (and includes obsolete references to compliance and current year subaccounts) and would be removed. Section 73.33(c) imposes a one-day newspaper notice requirement for authorized account representatives that has proved to be unnecessary and would be removed. Sections 73.37(a) through (d) would be removed since the claim of error procedure has proved to be superfluous and has not been used. Similarly, §§ 73.50 and 73.52 would be revised to remove superfluous language and to conform to the provisions under the NO_X Budget Trading Program and the proposed CAIR trading program. For instance, language referencing allowance transfers in perpetuity is removed as superfluous since such transfers are allowed under these sections (and in the NO_X Budget Trading Program) even without such language.

D. NO_X SIP Call

1. Emissions Reduction Requirements

Today's SNPR requires additional reductions in NO_X from States affected by the NO_X SIP Call. However, this SNPR would not relieve those States from the requirements of the NO_X SIP Call. Except as explained below, States should retain all of the SIP provisions that they adopted to meet the requirements of the NO_X SIP Call.

All of the States subject to the NO_X SIP Call (with the exception of Georgia and Missouri, which are not required to submit SIPs until 2005) chose to meet at least part of their emission reduction requirement by including their EGUs in a multi-State ozone season NO_X trading program. The EPA has performed modeling of expected NO_X emissions from EGUs assuming that all States affected by the proposed CAIR achieve all of their required NO_X reductions under the CAIR by including their EGUs in a regionwide annual NO_X cap-and-trade program. Based on that modeling, EPA has proposed that if States achieve all of the mandated NO_X reductions by

including their EGUs in the regionwide, annual NO_X cap-and-trade program managed by EPA, EPA will consider the reductions from that program to also meet the ozone season reduction requirements that States were previously achieving from EGUs participating in a regionwide ozone season NO_X cap-and-trade program. Under these circumstances, EGUs in a State achieving all of the required NO_X reductions from only EGUs would not be subject to a seasonal NO_X cap-and-trade program unless the State elects to retain such a program. The EPA believes this approach would simplify compliance for sources and avoid the potential administrative burden of implementing both a seasonal and annual cap-and-trade program for EGUs.

2. NO_X SIP Call Cap-and-Trade Program for Non-EGUs

The EPA is proposing to continue administering an ozone season only NO_X cap-and-trade program for non-EGUs that are subject to the requirements of the regionwide NO_X SIP Call cap-and-trade program. In today's SNPR, EPA proposes modifications to part 51 of the NO_X SIP Call to reflect the continued participation of non-EGUs in the ozone season NO_X cap-and-trade program and the removal of EGUs from their ozone season NO_X limitations.

Maintaining the ozone season reductions from non-EGUs in the NO_X SIP Call is important for limiting their interstate contribution to ozone nonattainment. The EPA considered whether it would be appropriate to allow States to include non-EGUs in the annual CAIR trading program and relieve them from the requirements of the ozone season NO_X trading program. However, EPA does not have sufficient information to project whether non-EGUs would continue to meet their ozone season NO_X reduction requirements if they were subject to an annual limitation only. Therefore, EPA is proposing to continue to run the NO_X SIP Call cap-and-trade program for non-EGUs.

The EPA acknowledges that, if non-EGUs are only permitted to trade with other non-EGUs, the robustness of the existing NO_X SIP Call allowance market must be maintained to provide incentives for non-EGUs to find cost-effective emissions reductions. States that are concerned for the future health of the market may choose to revise their SIPs to achieve the non-EGU NO_X emissions reductions using an alternate approach. The EPA solicits comment on the potential effects that removing EGUs from the NO_X SIP Call trading market may have on the robustness of the market and any alternative mechanisms for addressing these concerns.

The EPA solicits comment on the above proposal and any other approaches.

3. NO_X Early Reduction Credits [16]

Today's SNPR does not propose to allow the generation and use of early NO_X emission reduction credits ("ERCs") but does solicit comment on whether NO_X ERCs should be included in the CAIR and, if so, how a NO_X ERC program should be structured.

If NO_X ERCs are included, EPA expects that they would primarily be generated by sources already subject to the NO_X SIP Call that would choose to operate already installed selective catalytic reduction (SCR) technology during the 7-month "non-ozone season." These reductions in non-ozone season NO_X reductions would provide some additional, early environmental benefit by reducing the atmospheric loading of NO_X, acid precipitation, and fine PM precursors prior to the implementation of the CAIR. That said, EPA analysis projects that over 3.7 million tons of NO_X ERCs could be created (between 2006 and 2010) and banked into the CAIR if unlimited non-ozone season ERCs were permitted in the program. Allowing these ERCs to be used for compliance with the CAIR NO_X emission cap would delay progress towards achieving both the annual NO_X reduction goals and could potentially reduce the ozone season reductions that are necessary for EPA to justify removing the NO_X SIP Call constraint for EGUs.

If EPA were to include ERCs, several approaches could be utilized: (1) EPA could maintain the NO_X SIP Call requirements and allow sources to use ERCs only for compliance with the annual limitation, to ensure that seasonal NO_X limitations are met. Under this scenario, the additional States subject to the CAIR that have been found to significantly contribute to ozone nonattainment may also have to be included in the ozone season cap; (2) EPA could limit the period of time during which ERCs could be created and banked; (3) EPA could cap the amount of ERCs that can be created; and (4) EPA could apply a discount rate to ERCs.

The EPA solicits comment on today's SNPR to not include NO_X ERCs and, if ERCs were included, how the mechanism for including ERCs should be structured.

[16] Sulfur dioxide emission reduction credits (ERCs) are not proposed because the CAIR sources already have incentive to make early, annual reductions to bank Acid Rain Program SO_2 allowances into the CAIR cap-and-trade program.

E. How Would Emissions Trading Under the Proposed CAIR Relate to Regional Haze?

This section addresses the relationship between the CAIR and the CAA visibility-impairment provisions, in particular the Best Available Retrofit Technology (BART) requirements under the Regional Haze Rule. These provisions, under CAA Section 169A–B, require certain existing sources, including electric generating units (EGUs) that may be affected by SIPs required under CAIR, to install BART. However, the Regional Haze Rule further provides that sources otherwise subject to BART may be exempt if they are subject to alternative controls demonstrated to provide greater reasonable progress toward the national visibility goal. Today, EPA proposes that BART-eligible EGUs in any State affected by CAIR may be exempted from BART for controls for SO_2 and NO_X if that State complies with the CAIR requirements through adoption of the CAIR cap-and-trade programs for SO_2 and NO_X emissions.

1. Background: Nature of Regional Haze and Visibility Impairment; Statutory and Regulatory Requirements

The EPA has discussed the science and legal background for visibility impairment and regional haze elsewhere, most recently in the re-proposed Guidelines for BART Determinations (69 FR 25184, May 5, 2004). Readers are referred to that preamble for a detailed description of the background. The following is a brief summary.

a. What is regional haze? "Regional Haze" refers to air pollution that impairs visibility over a widespread area that may encompass several States. Regional haze occurs to varying degrees throughout the United States, including at national parks that may be as far as hundreds of miles from major pollution sources.[17] Under sections 169A–B of the CAA, special protection is afforded to larger national parks and wilderness areas, which are termed "Class I areas."[18]

Visibility in Class I areas, measured as visual range, is observed to be on average one-half to two-thirds of the natural visual range that would exist in the absence of anthropogenic pollution.

[17] National Research Council, Protecting Visibility in National Parks and Wilderness Areas, National Academy Press (Washington, DC, 1993).

[18] A "Class I area" is defined as any one of the 156 mandatory Class I Federal areas identified in part 81, subpart D of title I of the CAA.

Observations show that visibility is lowest in Class I areas in the eastern U.S., and significant impairment in visibility is also observed in the Midwest and on the Pacific coast. The best visibility occurs in the Central Rockies and in Alaska, but even in these locations, visibility is worse than would be expected without anthropogenic pollution.

Most visibility impairment is caused by fine particulate substances and associated water. While natural sources of fine particles, such as forest fires and windblown dust, can affect visibility significantly, anthropogenic emissions are usually the major source of regional haze.[19]

b. Major chemical components of particles that contribute to regional haze; EGUs as the major source of those components. The major chemical classes of fine particles that affect visibility include sulfates, organic matter, elemental carbon (soot), nitrates, and soil dust. The major sources and important aspects of the chemistry of these fine particle components as they affect $PM_{2.5}$ mass were summarized in EPA's January 2004 proposal. (69 FR 4566, January 30, 2004).

As discussed in the January 2004 proposal, sulfate particles comprise a major portion of $PM_{2.5}$ mass. The relative contribution of sulfates to visibility impairment is usually even greater than their contribution to particle mass, largely because sulfates absorb water, which enhances their capabilities to impair.[20] Nitrates, which also generally contribute proportionally more to visibility impairment than they do to fine particle mass, on average caused 5–10 percent of visibility impairment over much of the U.S.[21] Further, as discussed in section II of the January 2004 proposal, the chemical interplay between ammonium sulfate and ammonium nitrate particles is important in determining the effectiveness of SO_2 and NO_X reductions in reducing fine particles and in improving visibility. Because of this "nitrate replacement," SO_2 controls that reduce sulfates will be more effective at improving visibility if complemented by NO_X controls that reduce nitrates, particularly in the winter.

c. Interstate transport and regional haze. A wealth of air quality observations and modeling data clearly demonstrate that $PM_{2.5}$ and its precursors are transported across State boundaries. This body of evidence—particularly, EPA air quality modeling results—was summarized in the January 2004 proposal. Sulfur dioxide and NO_X emissions have been demonstrated to affect ambient $PM_{2.5}$ concentrations over a wide interstate area. In addition, observations show that sulfate and nitrate make a large contribution to visibility impairment.[22]

A large fraction of current and future SO_2 and NO_X emissions are attributable to EGUs. In the lower 48 States, the fraction of SO_2 emissions from EGUs is a consistent percentage of emissions from all sources, ranging from 62 to 65 percent over time; and EGU NO_X emissions as a percent of emissions from all sources is projected to grow slightly from 21 to 25 percent.

d. What are the Clean Air Act requirements for addressing regional haze? In the 1977 CAA, Congress added the first provisions to protect visibility in Class I areas. Subsection (a)(1) of CAA section 169A establishes the following national visibility goal: "The prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution." Subsection (a)(4) of this provision requires EPA to promulgate regulations to assure "reasonable progress toward meeting [this] national goal. * * *" In addition, the CAA visibility provisions contain a specific requirement for the installation of BART at certain existing sources, discussed below.

In 1980, EPA issued regulations addressing visibility impairment "that can be traced to a single existing stationary facility or small group of existing facilities." (45 FR 80085, December 2, 1980). In that rulemaking, the Agency explicitly deferred national rules addressing regional haze impairment.

In 1990, Congress added section 169B to the CAA to prompt EPA to address regional haze. These provisions specifically establish a commission for Grand Canyon National Park—the Grand Canyon Visibility Transport Commission (GCVTC)—and require the Commission to issue a report to EPA recommending measures to remedy visibility impairment. CAA Section 169B(a)–(d) and (f). In the 1990 CAA Amendments, Congress further provided that within 18 months after receiving this final report, EPA must "carry out the Administrator's regulatory responsibilities under [section 169A], including criteria for measuring 'reasonable progress' toward the national goal." CAA Section 169B(e)(1).

The EPA published a rule in 1999 to address various aspects of regional haze (the Regional Haze Rule). (64 FR 35714, July 1, 1999). The Regional Haze Rule calls for the States to play the lead role in designing and implementing regional haze programs for Class I areas. Each State must establish goals that provide for reasonable progress, over the period covered by the SIP, toward achieving natural visibility conditions in the Class I areas in that State. 40 CFR 51.308(d)(1). States must also submit a long-term strategy, as well as measures necessary to implement that strategy, addressing visibility impairment due to regional haze for each Class I area in the State and for each Class I area located outside the State which may be affected by emissions from the State. 40 CFR 51.308(d)(1), (3).

The EPA provided the States with considerable flexibility in selecting the reasonable progress goals. The Regional Haze Rule requires that these goals both provide for improvement during the 20 percent most impaired days and ensure no degradation in visibility during the 20 percent clearest days. The baseline period for assessing improvement and degradation is 2000–2004. In addition, for each Class I area within its borders, a State must determine the appropriate, annual rate of visibility improvement that would lead to "natural visibility" conditions. The rule includes a presumption that States can reach this goal in 60 years. 40 CFR 51.308(d)(1)(ii). Under the regulations, this 60-year period extends to 2064, with the first long-term strategy period ending in 2018. 40 CFR 51.308(f). States must submit their long-term strategies each 10-year period. The first strategy is due in early 2008 and must provide for reasonable progress through 2018.

The 1999 Regional Haze Rule also addressed the BART requirements, in 40 CFR 51.308(e)(1), and provided for the use of alternative measures in lieu of BART in 40 CFR 51.308(e)(2) (discussed more fully in section III.E.1.e. of this preamble below). The Regional Haze Rule was challenged by several petitioners in the U.S. Court of Appeals for the DC Circuit. *American Corn*

[19] NARSTO, Particulate Matter Science for Policy Makers—A NARSTO Assessment. February 2003.

[20] Malm, W. C., *et al.* (2000) Spatial and Seasonal Patterns and Temporal Variability of Haze and its Constituents in the United States: Report III, Cooperative Institute for Research in the Atmosphere, Colorado State University, Fort Collins, CO.

[21] Vimont, J. "Nitrates: Contribution to Visibility", National Park Service, Presentation to the Western Regional Air Partnership Workshop on NO_X, July, 2003.

[22] Malm, W. C., *et al.* (2000) Spatial and Seasonal Patterns and Temporal Variability of Haze and its Constituents in the United States: Report III, Cooperative Institute for Research in the Atmosphere, Colorado State University, Fort Collins, CO.

Growers et al. v. *EPA*, 291 F.3d 1 (DC Cir., 2002). The Court generally upheld EPA's approach to improving visibility. However, the Court vacated and remanded the provisions of the rule addressing the determination of BART on a case-by-case basis.

In addition to these nationally applicable reasonable progress requirements, the Regional Haze Rule contains a special rule for the nine-State region [23] (including tribes) included in the GCVTC, with respect to the Grand Canyon and 15 other Class I areas located on the Colorado Plateau. Under this provision, these States (and tribes) may meet their reasonable progress requirements for the first, long-term strategy period (ending in 2018) with respect to these 16 Class I areas either by (i) meeting the nationally applicable reasonable progress requirements (40 CFR 51.308), or (ii) adopting the recommendations of the GCVTC, once those recommendations were approved by EPA. 40 CFR 51.309. This section also provided that, before the GCVTC recommendations could be approved, an "Annex" to those recommendations pertaining to stationary sources must be submitted to EPA, providing quantitative emissions reduction goals and detailed implementation strategies. The successor organization to the GCVTC—the Western Regional Air Partnership (WRAP)—submitted such an Annex in September, 2000, and EPA approved it in a final rule by notice dated June 5, 2003. (68 FR 33764).

e. Statutory and regulatory background for BART requirement. Under CAA Section 169A(b)(2)(A), an existing source must install BART if the source was constructed between 1962 and 1977,[24] falls within one of 26 categories, has a potential to emit 250 tons or more of any pollutant, and emits "any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility" at a Class I area. The 1999 Regional Haze Rule, among other things, established requirements for implementing BART on a source-by-source basis, in order to address the contribution of BART-eligible sources to regional haze. 40 CFR 51.308(e)(1).

In addition to requirements for implementing BART on a source-by-source basis, the 1999 rule provides States with an option of using an emissions trading program or alternative measure in lieu of requiring source-by-source BART. 40 CFR 51.308(e)(2). States may utilize this trading or alternative option if they demonstrate that it would achieve greater reasonable progress than source-by-source BART. To make this demonstration, States would compare the estimated emissions reductions available from requiring BART on all BART-eligible sources, and the resulting degree of visibility improvement expected. Under the existing section 308(e)(2) States would also have to ensure that the trading or alternative measure applied to all BART-eligible sources in all 26 categories, within the State.[25]

In July 2001, we proposed guidelines for implementing BART on a source-specific basis. These guidelines also contained guidance on how to demonstrate that a proposed alternative to BART would result in greater progress than source-specific BART. (66 FR 38108, Friday, July 20, 2001).

By notice dated May 5, 2004, we re-proposed the BART regulations and guidelines, to comport with the court's findings regarding source-specific BART. The portions of the BART guidelines related to demonstrating that an alternative is better than BART are largely unchanged from the 2001 proposal. (69 FR 25184, 25186).

2. What Is the Basis for This SNPR That the Cap-and-Trade Program is "Better Than BART" for Affected EGUs?

In today's SNPR, EPA proposes to apply the better-than-BART requirements to the CAIR proposal, as it may affect the 29 States and DC in the eastern part of the country. Specifically, EPA proposes that BART-eligible EGUs in any State affected by CAIR may be exempted from BART if that State complies with the CAIR requirements through adoption of the CAIR cap-and-trade programs for SO_2 and NO_X for affected EGUs.

a. Better-than-BART two-pronged test. In our recently re-proposed Guidelines for BART Determinations, we propose a methodology for determining whether a trading program will provide greater reasonable progress than BART. If the geographic distribution of emissions reductions is similar under either program a State may demonstrate the trading program is better than BART by showing that the trading program achieves greater emissions reductions than the source-specific BART program. If it is expected that the trading program would result in a different geographic distribution of emissions reductions than would source-specific BART, visibility impacts must be assessed through a two-pronged test. (69 FR 25184, 25231, May 5, 2004). Although under CAIR the total emissions reductions are greater than source-specific BART would achieve in the CAIR States, our modeling indicates that CAIR would produce greater emissions reductions than BART in most States, but lesser reductions in a few States. Because of this potential for a different geographic distribution of emission reductions, we have assessed the difference between the two programs under the two-pronged visibility impact test.

The first prong is designed to address the "prevention of any future" impairment element of the CAA section 169A(a)(1) national visibility goal. Under this prong, visibility must not decline at any Class I area, as determined by comparing the predicted visibility impacts at each affected Class I area under the trading program with existing visibility conditions. This prong also protects against the creation of visibility impairment "hot spots" that could conceivably occur as the result of local emissions increases under a trading program.

The second prong of the test is designed to address the "remedying of any existing" impairment element of the CAA section 169A(a)(1) national visibility goal. Under this prong, at the end of the first long-term strategy period in 2018, overall visibility, as measured by the average improvement at all affected Class I areas, must be better under the trading program than under source-specific BART.

We also note that the two-pronged test does not require that the comparison be limited to BART-eligible sources affected by the alternative-to-BART programs. In other words, one way the alternative program may be better than source-specific BART is by controlling emissions from non-BART eligible sources within the affected source categories. This was the case in our approval of the WRAP Annex as better than BART under Regional Haze Rule section 40 CFR 51.309. (See 68 FR 33769).

b. Application of the two-pronged test to the CAIR proposal. To determine whether CAIR is better than BART, the analysis must address the two main elements of the test. First, we compare the existing visibility situation (using data from the baseline period 2000–2004) to a future where CAIR is in effect to see if any degradation occurs. Second, we compare the visibility

[23] The nine States are Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming.

[24] Specifically, a source is subject to the BART requirement if it came on-line after August 7, 1962 and construction commenced prior to August 7, 1977.

[25] In section III.E.3 in this supplemental proposal, EPA is proposing to amend section 308(e) to eliminate the requirement to address all 26 categories simultaneously under specific conditions relating to the proposed CAIR.

improvements resulting from the CAIR cap-and-trade program to visibility improvements expected from the application of source-specific BART in 2015, near the end of the first long-term strategy period in 2018.

In applying the two prongs of the test, we faced some shortcomings in currently available modeling. Under both prongs, we would ideally perform air quality modeling for the situation where CAIR is in effect only in the CAIR region, and source-specific BART is in effect in the rest of the country. This would reflect the best currently available prediction of future emissions, because BART is a federally enforceable requirement of the CAA, and therefore appropriately assumed to be in effect outside the CAIR region.[26]

However, the CAIR air quality modeling was based on the simplifying assumption that SO_2 emission reductions would be required nationwide and did not include BART SO_2 controls in place for the non-CAIR region. Additionally, NO_X was controlled in a 31½ State region rather than the 29 State region that is covered in the proposed CAIR.[27] Finally, because the recently re-proposed BART guidelines are applicable nationally, for that rulemaking we estimated emissions after application of source-specific BART on a nationwide basis. We therefore currently lack modeling of a scenario where BART is applied only outside the CAIR region.

Despite these limitations in currently available modeling, we believe the ideal scenario and the modeling we conducted using available information are similar enough to serve as the basis of this "better than BART" determination. In fact, we anticipate that when we model a scenario combining CAIR requirements in the CAIR region with source-specific BART in the rest of the country, we will project fewer SO_2 and NO_X emissions than our current modeling indicates. The full rationale for this belief is given in a technical support document (SAQMTSD)[28]. The remainder of this section gives a brief overview of key aspects of the methodology we used and the results.

We used the Integrated Planning Model (IPM) to estimate emissions expected after implementation of a source-specific BART approach and after implementation of the CAIR cap-and-trade programs for EGUs. This analysis indicates that implementing BART on a source-specific basis would result in SO_2 emissions falling to approximately 6.9 million tons nationally in 2015, then increasing, thereafter [29]. Under the CAIR trading program, however, SO_2 emissions in 2015 would fall to about 5.3 million tons nationwide, and would continue declining to 4.3 million tons in 2020 [30]. Notably, CAIR leads to SO_2 emission reductions when it starts in 2007 that grow over time. Nationwide, NO_X emissions under a source-specific BART approach would be reduced to 2.7 million tons per year in 2015 and do not decrease thereafter [31], while under the proposed CAIR trading program NO_X emissions would be 2.2 million tons nationwide in 2015 and 2.3 million tons in 2020.[32] Notably, substantial NO reductions actually begin in 2010 under the CAIR rule.

We then used the REMSAD air quality model [33] to project the visibility impact of these IPM emissions predictions for both the CAIR and the nationwide source-specific BART scenario. Specifically, EPA evaluated the model results for the 20 percent best days (that is, least visibility impaired) and the 20 percent worst days at 44 Class I areas.[34] These 44 areas are broadly representative of national visibility conditions, as they are found in States throughout the country, including California and Texas, States on the continental divide, the Pacific Northwest, the Southwest, the Southeast, the Mid-Atlantic, and New England. Thirteen of these Class I areas are within States affected by the CAIR proposal, and 31 Class I areas are outside the CAIR region—29 in States to the west of the proposed CAIR region, and 2 in New England States northeast of the CAIR region. We also modeled expected visibility for the future base case, which has lower emissions than we have today overall (that is, we examined expected emissions levels in 2015 without either BART or the trading program, but including emissions reductions anticipated from other requirements.) This is a more stringent way of considering degradation, given we are primarily concerned about degradation relative to the existing visibility situation.

i. First prong: Visibility will not decline at any class I area. The modeling predicts that the CAIR cap-and-trade program will not result in degradation of visibility, compared to existing visibility conditions, at any of the 44 Class I areas considered. In each of the 44 areas—the 13 within the proposed CAIR region and the 31 outside of it—visibility is expected to improve or at worst remain unchanged. Details of these results, for the 20 percent worst days and the 20 percent best days are contained in SAQMTSD. We only had modeling representing nationwide SO_2 emission reductions, including some

[26] The existence of BART outside the CAIR region would also mitigate concerns of emissions leakage caused by production and emissions shifts from the CAIR region, which might occur if non-CAIR States are subject to substantially less stringent requirements.

[27] The modeling assumed NO_X reductions in 5 States where they are not required (Maine, New Hampshire, Rhode Island and Vermont). Additionally it does not require controls in Kansas and the western half of Texas. Kansas and the all of Texas are covered by CAIR.

[28] See "Supplemental Air Quality Modeling Technical Support Document for the Clean Air Interstate Rule (May 2004)," available in the docket.

[29] As discussed in the SAQMTSD, the amount of SO_2 emissions remaining after the application of BART on all BART-eligible EGUs may be somewhat less than 6.9 million tons by 2015. This is so because we modeled emissions reductions only for BART-eligible EGUs over 250 MW and did not include BART-eligible EGUs between 25 and 250 MW. We anticipate that even with any additional SO_2 reductions from these smaller EGUs the amount of remaining SO_2 emissions under the CAIR cap-and-trade program will be sufficiently less than under BART to support our proposed determination that CAIR provides greater visibility improvement than BART for EGUs. We intend to do further analysis of the effect of applying BART controls to EGUs between 25 and 250 MW.

[30] Under the cap-and-trade program, SO_X emissions do not reach their minimum until after the 2015 Phase-2 implementation date because the availability of an existing title IV allowance bank. Sources may use allowances from this bank to emit at higher levels until sometime after 2020 when all of the banked allowances have been used.

[31] As in the case of SO_2 emissions noted above, the SAQMTSD explains that the application of BART on all BART-eligible EGUs may result in somewhat fewer NO_X emissions than 2.7 million tons by 2015, once emission reductions from BART-eligible EGUs between 25–250 MW are considered. As with SO_2, we anticipate that CAIR would nonetheless provide greater NO_X emission reductions than BART, and we intend to do further analysis of the effect of including BART-eligible EGUs between 25–250 MW.

[32] There is much less incentive to bank allowances under the NO_X program so the emissions caps should be met in 2015. Since the emissions cap is not nationwide there is an increase in NO_X emissions in the non-affected States after 2015.

[33] Changes in future visibility were predicted by using the REMSAD model to generate relative visibility changes, then applying those changes to measured current visibility data. Details of the visibility modeling and calculations can be found in SAQMTSD.

[34] Ambient PM2.5 data for the purposes of calculating visibility degradation at Class I areas is collected by the IMPROVE network. There are currently 110 IMPROVE monitoring sites operating at Class I areas. For this analysis, future year visibility values were calculated at the 44 IMPROVE sites which had complete data in 1996. Since the base year meteorology used in the REMSAD modeling is from 1996, ambient data from 1996 is needed to be able to apply the model results. It is necessary to know which days make up the 20 percent best and worst days so that the model outputs can be calculated on the same days. For a Class I area without ambient data in 1996, there is no way to match up the model predicted changes in visibility with the ambient data from the 20 percent best and worst days. There were only 44 IMPROVE sites (at Class I areas) with complete data for 1996.

relatively small amount of SO_2 emission reductions occurring in the West[35]. Since the western SO_2 emissions reductions are relatively small, EPA believes they will not significantly impact the conclusions of this analysis.

Based on these results and other analysis presented in the SAQMTSD, we believe the CAIR impact on emissions passes the first prong of the two-pronged test by not causing degradation of visibility at any Class I area.

ii. Second prong: Average visibility for all affected Class I areas will improve. The second prong of the better-than-BART test is to analyze whether the CAIR cap-and-trade programs result in greater overall improvement in visibility, as compared to source-specific BART.

For Class I areas in the proposed CAIR region, our analysis indicates that proposed CAIR emissions reductions in the East produce significantly greater visibility improvements than source-specific BART. Specifically, for the 15 Eastern Class I areas analyzed, the average visibility improvement (on the 20 percent worst days) expected solely as a result of the CAIR is 2.0 deciviews (dv), and the average degree of improvement predicted for source-specific BART is 1.0 dv. Therefore, the proposed CAIR is substantially better than BART—indeed, the proposed CAIR provides more than twice the visibility improvement benefits—for Eastern Class I areas.[36]

Similarly, on a national basis, the visibility modeling shows that for the 44 class I areas evaluated, the average visibility improvement, on the 20 percent worst days, in 2015 was 0.7 dv under the proposed CAIR cap-and-trade programs, but only 0.4 dv under the source-specific BART approach.

We therefore believe that these results, in combination with the other analysis in the SAQMTSD, demonstrate that the second prong of the better-than-BART test is met.

Because both prongs of the test are met, EPA proposes to conclude that the proposed CAIR cap-and-trade program is better than BART for BART eligible EGUs within the proposed CAIR region. Therefore, States that adopt the model cap-and-trade programs would not be required to implement source-specific BART for their EGUs.

3. What Changes to the Regional Haze Rule Provisions for Alternatives to BART Are Proposed?

The preceding discussion applied the provisions of section 40 CFR 51.308(e)(2) of the Regional Haze Rule which allows States to determine that a trading program or other alternative measure may be substituted for individual BART applications for all sources subject to the BART requirement.

Because the proposed CAIR allows States to choose how to achieve the required emissions reductions, and does not mandate participation in the EPA-administered cap-and-trade program for EGUs, some States may wish to satisfy their proposed CAIR requirements through controls on sources other than EGUs, or through controls on EGUs without using the CAIR cap-and-trade programs (such as through an in-State only trading program). To the extent that these control obligations fall on BART-eligible sources, the State may wish to demonstrate that these controls are better than BART, and therefore satisfy the source-specific BART requirements for those sources.

To accommodate the various approaches States may wish to take in complying with the proposed CAIR and making the better-than-BART determinations, we propose to add a new section to the alternative-to-BART provisions of the Regional Haze Rule. We are not proposing to change or revise the provisions contained in section 308(e)(2), which apply to States that develop their own cap-and-trade program or other alternative measure to BART. Therefore, we are retaining 308(e)(2) without revision, except for the addition of a proposed cross-reference to the new provision for these BART-alternative rules proposed today. Section 308(e)(2) will continue to apply to trading programs or other alternatives to BART which do not involve the proposed CAIR cap-and-trade programs. These might include in-State only trading programs, or future regional trading programs developed by States and tribes through Regional Planning Organizations.

We propose to add a new section 308(e)(3), which provides that for any of the 29 States and DC in the CAIR region, implementation of the CAIR cap-and-trade programs to fulfill the proposed State emissions reduction obligations under the CAIR qualifies as a "better than BART" alternative. This alternative is available only to States that subject all of their EGUs to the cap-and-trade programs. As explained above, modeling to support the proposed determination establishes that the cap-and-trade programs would result in greater reasonable progress than would source-specific BART for EGUs. Therefore, a better-than-BART demonstration would not be required of States that choose this option.

We also propose to renumber current sections 308(e)(3) and (4) to read 308(e)(4) and (5), respectively. These sections provide for continuing regulation of BART-eligible sources under the general regional haze provisions after BART is satisfied, and for source-specific exemptions from the Administrator.

4. What Effect Does the CAIR Cap-and-Trade Program Have on Source-specific BART Based on Reasonably Attributable Visibility Impairment?

As we explained in our recent re-proposal of the BART guidelines (69 FR 25184, May 5, 2004), when a State utilizes an alternative measure such as an emissions trading program in lieu of requiring BART on specific sources, the requirement for BART is not satisfied until the alternative measure reduces emissions sufficiently to make "more reasonable progress than BART." Thus, in that period between implementation of an emissions trading program and the satisfaction of the overall BART requirement, an individual source could be required to install BART for reasonably attributable impairment under 40 CFR 51.302. The Regional Haze Rule contains a provision allowing for "geographic enhancements" to address the interface between a regional trading program and the requirement under 40 CFR 51.302 regarding BART for reasonably attributable visibility impairment. (*See* 40 CFR 51.308(e)(2)(v)).

We note that the same framework applies in the context of the proposed CAIR cap-and-trade programs. That is, until the emissions reductions requirements in today's SNPR are fully implemented in 2015, the possibility exists that a certification of impairment by a Federal Land Manager (FLM) could trigger a requirement for a State to determine whether the impairment is "reasonably attributable" to a single

[35] Although the CAIR proposal would not include emissions reductions requirements for western States, BART requirements will otherwise apply in these States and achieve some level of SO_2 reductions.

[36] We note that the modeling we used to represent the CAIR proposal was more stringent than the proposed CAIR in some ways (because it assumed SO_2 reductions in the West and NO_X reductions in the Northeast, which the proposed CAIR does not require) and less stringent in others (because it does not include NO_X controls for Kansas and western Texas, which are required in the proposed CAIR). As explained in the SAQMTSD, we anticipate that these differences are either too small to affect the analysis, or are mitigated by the fact that source-specific BART will produce SO_2 and NO_X reductions in the non-CAIR States in which our modeling attributed emissions reductions to CAIR. Therefore, we believe that the air quality modeling supports our better-than-BART determination.

source or small group of sources, and if so to make a source-specific BART determination. We request comments on whether a "geographic enhancement" (for example, an adjustment to the State's allowance budget) would be appropriate, and whether such enhancement mechanisms should be determined by EPA on a national basis, or individually by affected States.

We also note that the WRAP, as part of its voluntary emissions milestones and backstop SO_2 cap-and-trade program under Regional Haze Rule section 309 has adopted policies which target use of the § 51.302 provisions by the FLMs. In this case, for the five States in the WRAP program, the FLMs have agreed that they will certify reasonable attributable impairment only under certain specific conditions. Under this approach, the FLMs would certify under 40 CFR 51.302 only if the regional trading program is not decreasing or has not decreased sulfate concentrations in a Class I area within the region. Moreover, the FLMs will certify impairment under 40 CFR 51.302 only where: (1) BART-eligible sources are located "near" that class I area and (2) those sources have not implemented BART controls. In addition, the WRAP is investigating other procedures for States to follow in responding to a certification of reasonably attributable impairment if an emissions trading approach is adopted to address the BART requirement based on the sources' impact on regional haze.

We request comment on whether such an approach would be appropriate for the proposed CAIR cap-and-trade programs.

F. Tribal Issues

As discussed in our January 2004 proposal, tribal implementation of approved CAA programs is optional. That is, under CAA section 301(d) as implemented by the Tribal Authority Rule (TAR), eligible Indian tribes may implement all, but are not required to implement any, programs under the CAA for which EPA has determined that it is appropriate to treat tribes similarly to States. Tribes may also implement "reasonably severable" elements of programs. (40 CFR 49.7(c)). In the absence of tribal implementation of a CAA program or programs, EPA will utilize Federal implementation for the relevant area of Indian country as necessary or appropriate to protect air quality, in consultation with the tribal government. State implementation plans are generally not applicable in Indian country.

With very few exceptions, Indian country is not home to the types of air pollution sources potentially affected by this rule—neither EGUs, nor other large sources of NO_X or SO_2 that could be controlled in order to meet emission reduction requirements.

Despite these legal and factual considerations which indicate that today's proposal would not generally immediately affect tribes, tribes have raised valid concerns about the rule's future implications. These implications arise from the fact that the cap-and-trade program by definition is designed to cap emissions over a broad geographic area and constrain these emissions into the future. Indian country lands are included within these broad areas. Some tribes may choose to pursue a path of economic development which may include future sources of air pollution.

The TAR contains a list of provisions for which it is not appropriate to treat tribes in the same manner as States. 40 CFR 49.4. The CAIR proposal is based on the States' obligations under CAA 110(a)(2)(D) to prohibit emissions which would contribute significantly to non-attainment in other States due to pollution transport. Because CAA 110(a)(2)(D) is not among the provisions we determined to be not appropriate to apply to tribes in the same manner as States, the CAIR is applicable to tribes. However, among the CAA provisions not appropriate for tribes are "[s]pecific plan submittal and implementation deadlines for NAAQS-related requirements * * *" 40 CFR 49.4(a). Therefore, tribes are not required to submit implementation plans under the CAIR. Instead, the CAIR will be implemented as necessary or appropriate in Indian country, either through voluntary Tribal Implementation Plans or Federal Implementation Plans developed in consultation with affected tribes.

The EPA believes new sources that locate in Indian country should be subject to the program in the same manner as any new source located outside of Indian country. If they were not, emissions from new Indian country sources could jeopardize the environmental goals of PM2.5 and ozone attainment on which today's rule is based. It could also conceivably result in undue pressure for energy and economic development in Indian country, depending on allowances, prices and a variety of other economic and regulatory factors.

At the same time, some tribal representatives have voiced another set of concerns to EPA. In their view, requiring new sources in Indian country (which may be tribally owned) to either obtain an allocation of allowances from the State where the tribe is located, or to purchase allowances in order to operate is unfair, for several reasons. These include: (1) That the concept that budgets for Indian country should be derivative from State budgets may offend notions of tribal sovereignty and autonomy; (2) that Federal policy over the course of U.S. history has hindered tribal economic development and this inequity should not be continued by basing allocations on existing source emissions; (3) that some of the tribes that have contributed substantially to the economy through extractive industries have not shared in the economic benefits, including residential electrification; and (4) that Indian country areas may have suffered the detrimental effects of air pollution from the sources from which they would be required to buy allowances in order to construct new sources.

One approach that might be used to address these concerns would be to develop a Federal set-aside of allowances for new sources in Indian country. The WRAP, in developing a backstop cap-and-trade program for SO_2 under section 40 CFR 51.309 of the Regional Haze Rule, addressed this same set of concerns. The WRAP is a unique partnership of 13 western States, tribes, and Federal agencies. The WRAP Board comprises equal numbers of State governors and tribal leaders, or their designees, and decisions are made by consensus.

Based on tribal input, the WRAP included provisions to address the tribal concerns delineated above including a tribal set-aside of 20,000 tons of SO_2 per year. This amount was not the product of any single formula, but was negotiated within the WRAP based on a number of factors. One important consideration was that because new EGUs and other major sources would be subject to pre-construction permitting under New Source Review (NSR) or Prevention of Significant Deterioration (PSD) rules, as well as New Source Performance Standards (NSPS) or Maximum Achievable Control Technology (MACT), SO_2 emissions per MW or other unit of production would be considerably lower than for older, less efficient plants. Therefore, although 20,000 tons represents only about 4 percent of the 9-State cap for 2018, it would enable the installation of a much larger percentage of new capacity.

The WRAP's cap-and-trade program will only come into existence if voluntary efforts and current requirements fail to meet the agreed upon emissions reduction "milestones." Therefore, the tribal set-aside, like all tradable allowances under this program,

will only exist if the milestones are not met sometime between 2003 and the end of the first long-term strategy period in 2018. In light of the uncertainty of this event, and of the difficulty of reaching consensus among the more than 200 tribes in the affected region, the WRAP did not attempt to establish the mechanism by which the tribal set-aside would be allocated among tribes. Rather, it was agreed that this mechanism would be determined within one year of the date the trading program was triggered, by a determination that the milestones had been exceeded. This would provide for the distribution of all allowances by the time of trading program implementation.

Tribal participants in the WRAP stipulated that the tribal set-aside allocations would be available to tribes for use by new sources, for sale to generate revenue, or to retire for the benefit of the environment. The EPA concurred with these uses in the preamble to the final WRAP Annex rule (68 FR 33778, June 5, 2003). We also agreed that tribal participation in the Annex, including the tribal set-aside, is not dependent on whether the State in which the tribe is located participates. For the few sources currently in existence in Indian country within the WRAP region which are eligible for the program based on SO_2 emissions, the WRAP would provide for allowance allocations within the existing-source cap. These sources would not need to draw upon the tribal set-aside for the allowances to cover their emissions.

There are no emission sources in Indian country of which we are aware in the 29-State region that could be affected by the January 2004 proposal. (We request comment regarding the existence of any such sources of which we are unaware). Therefore, the only way tribes in this region could receive allowances would be through a set-aside.

The approach used by the WRAP could provide a template for the CAIR for both SO_2 and CO_X set-asides for tribes. This would raise a number of issues, some identical to those faced by the WRAP and some with different considerations. For example, one difference is that because the CAIR is not a backstop cap-and-trade program, any allowance set-aside for tribes would either result in a corresponding decrease in the present allowances of existing sources, or increase the overall level of the cap.

The WRAP example of establishing a tribal set-aside provides one possible approach to addressing tribal concerns. If EPA were to determine that a tribal set-aside were appropriate, some issues raised in developing the set-aside would include: (1) What method to use to determine the SO_2 and NO_X set-asides, for example through negotiation or by a formula, (2) whether the set-aside would be in addition to or part of the allocations proposed in our January 2004 proposal, and (3) how the tribal set-aside would be allocated or distributed among tribes, for example on a first-come first-served basis, by an allocation formula, or some combination of approaches.

We seek comment on whether a tribal set-aside is necessary or appropriate; if so, how it should be structured; whether other approaches might better address the tribal concerns identified above. We also seek comment on any other implications the proposed CAIR may have for tribes. We remain committed to fulfilling our obligation to consult with tribes, and will continue to do so as we address these issues.

IV. Model Cap-and-Trade Rule

A. Background and Purpose of the Model Rules

This section of today's action proposes model trading rules—one for SO_2 and one for NO_X—that States will adopt if they wish to participate in the EPA-managed, EGU cap-and-trade program to achieve the emissions reductions of the proposed CAIR. This fulfills the commitment made in the January 2004 proposal.

Today's action proposes a NO_X and a SO_2 model cap-and-trade rule for public comment. At the time of signature of today's SNPR, EPA had not yet reviewed full public comment on the January 2004 proposal, which solicited comment on some model rule concepts. The EPA intends to respond to comments received on the January 2004 proposal and today's SNPR when it promulgates the final rule.

The NO_X and SO_2 model rules incorporate the experience gained through the implementation of several cap-and-trade programs (*i.e.*, the CAA title IV SO_2 Acid Rain Program, the Ozone Transport Commission Regional NO_X Program, and the NO_X SIP Call), lessons learned from other trading programs like the Regional Clean Air Incentives Market (RECLAIM), as well as two workshops which EPA held to inform this rulemaking. These workshops, held in July and August of 2003, provided a forum for States and multi-State air planning organizations to share with EPA what has worked well, what may not have worked well, and what could be improved. (The EPA Web site provides a summary of the comments received from these workshops at *http://www.epa.gov/airmarkets/business/noxsip/atlanta/atl03.html*). Workshops such as these played an important role in the development and implementation of the NO_X SIP Call and aided in the development of this proposed rule.

This section describes: The advantages of adopting the model trading rules; the requirements for those who choose to adopt the model rules; the flexibility that States have in developing their cap-and-trade rules; and, lastly, a subpart-by-subpart explanation of the model rule provisions that highlights key elements and aspects unique to either the SO_2 or NO_X programs.

1. Who May Adopt the Model Rules and What Are the Advantages of Adopting New Model Rules?

States may choose to participate in the EPA-managed cap-and-trade programs, which are a fully approvable control strategy for achieving all of the emissions reductions required under today's proposed rulemaking, in order to achieve the mandated emission reductions in a highly cost-effective manner. States that wish to reduce emissions by controlling EGUs (which modeling shows can make additional highly cost-effective emission reductions) through a regionwide cap-and-trade approach may simply adopt the model rules and comply with the requirements for Statewide budget demonstrations detailed in section III. States that elect to achieve the required reductions by regulating other sources or using other approaches, should refer to section III for alternate State requirements.

Today's action proposes that States that choose to achieve the mandated emission reductions through the EPA-managed cap-and-trade programs are also required to adopt both the SO_2 and NO_X model rules. Requiring States to participate in both the SO_2 and NO_X programs assures that compliance is more readily determinable, and creates incentives for sources to develop comprehensive control strategies for both pollutants.[37]

[37] Note that under the proposed CAIR, because Connecticut is only required to reduce NO_X emissions in the summertime to address its impact on downwind 8-hour ozone nonattainment areas, Connecticut would not be required to adopt the CAIR NO_X model rule—which focuses on annual NO_X reductions—unless the State volunteers to make annual NO_X reductions.

Advantages of Adopting the Model Rules

EPA is proposing the use of regionwide cap-and-trade programs because market-based approaches have proven to be both environmentally effective and cost-effective. The advantages of a well-designed cap-and-trade system include:

- Control of emissions to desired levels under a fixed cap that is not compromised by future growth;
- High compliance rates;
- Lower cost of compliance for individual sources and the regulated community as a whole;
- Incentives for early emissions reductions;
- Promotion of innovative compliance solutions and continued evolution of electricity generation and pollution control technology;
- Flexibility for the regulated community (without resorting to waivers, exemptions and other forms of administrative relief that can delay emissions reductions);
- Direct legal accountability by sources for compliance;
- Coordinated program implementation that efficiently applies administrative resources while enhancing compliance; and
- Transparent, complete, and accurate recording of emissions.

These benefits result primarily from the interplay of a rigorous cap-and-trade framework, flexibility in compliance options, and the monetary incentives associated with avoided emissions in a market-based system. The model rules are designed around elements that are essential to a successful cap-and-trade program. These include:

- Simplicity (*e.g.*, clear applicability thresholds, allocation formulas, trading rules and restrictions, measurement options and procedure, reporting requirements, and penalty assessment);
- Accountability (*e.g.*, accurate measurement of emissions, complete and timely emission reporting, and automatic penalties for noncompliance);
- Transparency (*e.g.*, full and open disclosure of programmatic elements, compliance data, allowance ownership, and environmental progress); and
- Predictability and Consistency (*e.g.*, to provide consistent program implementation over time and a long compliance planning horizon that allows long-term, innovative strategies).

States collectively benefit from the adoption of the model rules by improving the efficiency and clarity of the CAIR's implementation.

In addition, States adopting the CAIR NO_X and SO_2 model rules will benefit from improvements to the rule mechanics that originated from the stakeholder input during the implementation of the Title IV, OTC, and NO_X SIP Call cap-and-trade programs, as well as the EPA-managed "lessons learned" workshops held in 2003. Today's proposed NO_X and SO_2 model rules not only incorporate these refinements, but are designed to parallel the existing rules in parts 96 and 97 (*see* sections IV.A.4 and IV.B below) to allow States that have already codified all or part of these regulations to transition smoothly into both the CAIR NO_X and SO_2 programs.

2. Requirements for Adopting the Model Cap-and-Trade Rules

Except as noted in section IV.A.3, States that choose to participate in the EPA-managed cap-and-trade programs must adopt the complete model cap-and-trade rules in order to participate in the program and to have it constitute an approvable remedy for achieving the mandated SO_2 and NO_X emission reductions. (Section III discusses the requirements for States, including those that wish to comply with the CAIR through alternatives other than the EGU-based emission reduction approach proposed in today's action.) This ensures that all participating sources, regardless of which State in the CAIR region they are located, are subject to the same rules. Further, requiring States to use the complete model rules provides for accurate and certain quantification of emissions, which are—when reflected in allowances—a valuable commodity on the trading market, and thereby maintains the financial integrity of the allowance trading market. In turn, the integrity of this emissions measurement system and the trading market ensures that the environmental goals are met.

States are required to achieve all of the mandated emissions reductions from large EGUs if they wish to participate in the EPA-managed cap-and-trade programs. (In other words, States that achieve all or part of the emissions reductions from large non-EGUs, may not participate in the EPA-managed cap-and-trade programs.) More specifically, the rules must apply to all fossil fuel-fired boilers and turbines serving an electrical generator with a nameplate capacity greater than 25MW and producing electricity for sale (except for certain cogeneration units). All units that meet this generation size threshold would be affected by the proposed CAIR with no exemptions for small, low-emitting units. (The EPA is not proposing an exemption for units that meet the generation applicability threshold but emit less than 25 tons of NO_X, as done in the NO_X SIP Call.) The EPA anticipates that these small, low-emitting units will take advantage of special monitoring and reporting procedures in part 75 that simplify the requirements for low mass emitting ("LME") units. In general, these procedures relieve much of the administrative burden and, therefore, compliance costs, for LME units by allowing them to use conservative emissions estimates in lieu of continuous emissions monitoring. In providing streamlined monitoring and reporting options, EPA can accurately and cost-effectively account for the emissions, even at low emission levels, and allow them to participate in the cap-and-trade programs.

Sources that produce usable thermal energy, such as steam, in addition to generating electricity are known as "cogeneration units." Only a cogeneration unit that (i) serves a generator greater than 25 MW, (ii) sells at least ⅓ of its potential electrical output capacity and at least 25 MW of electricity, and (iii) meets certain operating and efficiency criteria is considered an EGU and covered by the EPA-managed cap-and-trade programs. (*See* section IV.B.1 for a proposed clarification to the definition of a cogeneration unit.)

Once a unit is classified as an EGU for purposes of this rule, the unit will remain classified as an EGU regardless of any future modifications to the unit. If a unit serving a generator that initially does not qualify as an EGU (based on the nameplate capacity) is later modified to increase the capacity of the generator to the extent that the unit meets the definition of EGU, this unit will become an EGU for purposes of this rule. This approach is proposed to prevent avoidance of regulation by initially constructing units that are below the size threshold, and then upgrading above the size criteria.

3. Flexibility in Adopting the Model Cap-and-Trade Rules

It is important to have consistency from State-to-State when implementing a multi-State cap-and-trade program to ensure that the intended emissions reductions are achieved and that the compliance and administrative costs are minimized. However, EPA believes that some differences, such as allowance allocation methodologies for NO_X allowances, are possible without jeopardizing the environmental goals of the program.

a. Allocation of NO_X and SO_2 allowances. Each State participating in the EPA-managed cap-and-trade

programs must develop a method for allocating, or distributing, (to the extent that the State has allowances available to allocate) NO_X allowances equal to its CAIR EGU budget. For NO_X allowances, States have the flexibility to allocate their EGU NO_X budget to individual units however they choose. For SO_2, as noted in the approach outlined in the January 2004 proposal, States do not have discretion in their allocation approach since the proposal relies on title IV SO_2 allowances which have been already allocated in perpetuity to individual units by title IV of the CAA. Today's action proposes essential elements that would be required for each State's NO_X allocation method (*e.g.*, the deadlines by which each State must complete and submit to EPA their unit-by-unit allocations for inclusion into the electronic data systems), describes areas in which States have flexibility, and provides an example allocation approach.

i. Aspects unique to SO_2 allowance allocations. The CAIR SO_2 allocations differ from the NO_X approach because the title IV SO_2 allowances—the proposed basis for the CAIR—have already been allocated in perpetuity to specific units. Only units that were listed or described in the 1990 CAA Amendments are allocated allowances. Some units that are currently affected by the today's proposed rule title IV Acid Rain Program are not allocated title IV SO_2 allowances and instead must acquire all of the allowances they need in the marketplace.

ii. Required aspects of a State allocation approach. While it is EPA's intent to provide States with as much flexibility as possible in developing allocation approaches, there are some aspects of State allocations that must be consistent for all States. Today's SNPR proposes that all State allocation systems are required to include specific provisions that establish when States notify EPA and sources of the unit-by-unit allocations. These provisions would create: (1) The minimum lead-time for a State to notify a source of its allocations; and (2) the deadline for each State to submit to EPA its unit-by-unit allocations for processing into the electronic data systems.

Today's action proposes to require States to submit unit-by-unit allocations no less than 3 years prior to January 1 of the allowance vintage year. Requiring States to provide a minimum amount of notification ensures that an affected source—regardless of the State in the CAIR region in which the unit is located—would have sufficient time to plan for compliance. Finalizing allowance allocations less than 3 years in advance of the compliance year may reduce a CAIR unit's ability to plan for compliance and, consequently, increase compliance costs. Shorter notification periods may also prevent CAIR units from participating in allowance futures markets, a mechanism for hedging risk and lowering costs. (**Note:** New units will not have allowances 3 years in advance of their first year of operation.) In addition, States would be required to submit the unit-by-unit allocations to EPA by a specific date for sources in their State. This allows EPA to efficiently administer the program and ensure a fair and competitive market for allowances across the region.

These minimum requirements would apply to the NO_X allocation approach and would not be relevant for SO_2, which relies on title IV allowances.

iii. Flexibility and options for a state allowance allocations approach. Allowance allocation decisions in a cap-and-trade program are largely distributional issues, as economic forces would be expected to result in economically efficient and environmentally similar outcomes. Consequently, for CAIR NO_X allowances, States would be given latitude in developing their allocation approach. Allocation methodology elements for which States will have flexibility include:

- The cost of the allowance distribution (*e.g.*, free distribution or auction);
- The frequency of allocations (*e.g.*, permanent or periodically updated);
- The basis for distributing the allowances (*e.g.*, actual heat-input or actual power output); and,
- The use of allowance set-asides (*e.g.*, new unit set-asides or energy efficiency set-asides).

These points are discussed immediately below.

Cost of Allowance Distribution

Allowances may be distributed by either providing them at no cost (*i.e.*, a "free distribution"), offering them for sale to bidders (*i.e.*, an "auction"), or some combination of the two. Today's proposal allows the State to decide which approach is best for their circumstances.

Auctions: In general, auctions ensure all parties, including the general public, have access to allowances and are considered to be economically efficient since sources would bid their perceived values for allowances. It is possible to auction all allowances under a cap, or have a hybrid approach that auctions some portion of the pool that could change over time. The title IV Acid Rain Program is an example of a hybrid in that it reserves 2.8 percent of available allowances for an auction and distributes the remainder for free. Auctions may also vary in the frequency with which they are held. Strict procedures must be established for auctions and, in the context of the proposed CAIR, States would be responsible for implementing these rules. Allowance auctions are typically, but are not required to be, open to any person, including sources or third-party entities, that can comply with the auction protocols. (In general, auction protocols establish key procedures for bidding, the bidding schedule, a bidding mechanism, and requirements for financial guarantees.)

Auctions treat existing and new sources in a similar fashion. Sources performing costly retrofits to reduce emissions would then also have to pay for allowances for their remaining emissions. Some other benefits of auctions include the fact that they eliminate the permanent right to emit and can provide distortion-free revenues to States.

Free Distribution: A free distribution system provides allowances to any entity, typically the affected sources, as determined by the State. When using a free distribution, it is necessary to establish both (1) the basis for determining each unit's share of the allowance pool, and (2) the frequency with which the allowances are allocated. The title IV Acid Rain Program is an example of a free, one-time distribution (with a small percentage reserved for auction, as mentioned above) that uses the product of historical heat input and specified emission rates (*i.e.*, a permanent, heat input-based system) to determine each unit's share of the pool.

Allocating allowances for free could lessen the financial impact of the program on the affected sources which already bear the compliance costs, but would not be expected to affect the sources' output decisions, or labor and pricing decisions. It would also give States the ability to determine the initial allowance recipients.

Frequency of Allocating Allowances

Allowances may be allocated once (*i.e.*, a "permanent" allocation) or periodically recalculated (*i.e.*, "updated") based upon some protocol. When deciding upon the frequency of the allocations, any of the options concerning the cost of distribution and the basis for apportioning the pool may be used. However, it is important to consider the practical implications of using complex protocols, such as data that must undergo time-consuming

quality assurance, when frequently updating.

Permanent Systems: Permanent systems allocate all of the allowances at the beginning of the program. They provide long planning horizons for affected sources that receive an allocation.

Permanent allocations do not create additional incentives for those units that receive allowances to change their future behavior to garner more allowances (*e.g.*, increase utilization). Furthermore, because permanent systems are based on a historic baseline, they would not reflect changes in the industry going forward. For instance, retired units would continue receiving allowances. Additionally, a pure permanent allocation system would not provide for allowances to new affected units that begin operations after the allocation of allowances and instead would require them to obtain allowances from the market. The title IV Acid Rain Program is an example of a primarily permanent approach that auctioned 2.8 percent of the allowances to provide new sources an additional mechanism for obtaining allowances.

Updating Systems: Updating systems periodically recalculate and reallocate allowances. These include: The ability to reflect future changes in the power sector; the ability to impact the future generation mix; and, an inherent mechanism for new generators to gain access to free allowances. An updating system that bases the allowance distribution on power output provides an additional incentive beyond the inherent reward for efficiency provided by the market for existing units to improve their generation efficiency and for new units to employ the most efficient technology available.

Updating methods may provide a slight subsidy for units to either generate (for output-based systems) or consume more fuel (for input-based systems). Should this potential subsidy result in an increase in electricity production, there would be a corresponding slight distortion (lowering) of the price of electricity as well as an incentive for older units to continue generating. (Note that under a capped program, incentives to generate will not impact the total emissions of the capped pollutants.)

There are additional aspects of the allocation frequency that are significant in an updating system. These include:

- The length of the period for which allocations are determined (*e.g.*, the allocations may be calculated for one year or for 5 years at a time); and
- The length of the notification time (*e.g.*, allocations are determined and announced 3 years into the future, 5 years into the future).

In general, the longer the allocation period (*i.e.*, the less frequent the updating), the more the system will resemble a permanent approach.

Allowance Set-Asides

Allocation methodologies may include a reserve of a certain number allowances from within the cap to create a "set-aside" of allowances. This reduces the number of allowances available to the existing affected sources. Set-asides may be used for a variety of purposes including encouraging certain behaviors (*e.g.*, demand-side energy efficiency and renewable energy set-asides) and mitigating potential disadvantages in the marketplace (*e.g.*, auction set-asides or, as discussed below, set-asides available to units that come online after the program implementation date). In the context of the proposed CAIR, States (if they choose to have set-asides) would be responsible for developing and implementing protocols to distribute set-asides. Set-asides may have provisions that distribute unused allowances back to affected sources should the set-asides not be fully utilized.

New unit set-asides create a pool of allowances that are available to units that come online after the allowances have been allocated. This may mitigate potential barriers to entering the market for new units. Should a new unit be included in an allocation approach, it is necessary to determine how the allowances will be distributed to the new units from the pool. Common approaches include basing each unit's share on either heat input or power output. Depending upon the type of performance measurement used, slightly different incentives may be created. For example, if the new unit's power output were used to distribute the set-aside, sources would find an additional incentive—beyond the incentive for efficiency inherent in the market—to employ more efficient generation technology. (Note that the allocation example provided below includes a new unit set-aside with a hybrid input/output distribution metric.)

Basis for Determining Share of Allowance Pool

For any allocation option, other than an allowance auction, it is necessary to establish the primary parameter that will be used to determine each unit's share of the allowance pool. This parameter is typically a performance measure such as:

- Measured or potential emissions (in tons) from the unit;
- Historical or current measured heat input (in mmBtu) of the unit; or
- Measured or potential production output (in terms of electricity generation and/or steam energy) of the unit.

Any of these parameters may be used to distribute allowances, regardless of whether it is a permanent or updated system. Other factors, such as fuel type or emission rates (*e.g.*, pounds of pollutant per mmBtu heat input or pounds of pollutant per MWhr of power output) may be used with the above parameters. As mentioned earlier in this discussion of allocation options, the choice of the parameter for distributing allowances can influence the behavior of affected sources in an updating system.

iv. Example allowance allocation system. Included below is an example (offered for informational guidance) of an allocation methodology that includes allowances for new generation and is administratively straightforward. The method involves input-based allocations for existing fossil units, with updating to take into account new generation on a modified output basis. This methodology is offered as an example, as individual States would make their own choice regarding what type of allocation method to adopt for NO_x allowances.

Initial allocations for existing sources could be made for the first control periods at the start of the program on the basis of heat input. After the first 5 years, the budget would be distributed on an annual basis, taking into account data from new units.

As new units enter into service and establish a baseline, they begin to pick up allowances in proportion to their share of the generation. Allowances allocated to existing plants slowly decline as their share of total heat input decreases with the entry of new plants. In this EPA example methodology, existing units as a group would not update their heat input. This would eliminate the potential for a generation subsidy (and efficiency loss) as well as any potential incentive for less efficient units to generate more. This methodology would also be easier to implement since it would not require the updating of existing units' baseline data. Retired units would continue to receive allowances indefinitely, thereby creating an incentive to retire less efficient units.

Through this EPA example methodology, new units as a group would only update their heat input

numbers once—in the initial baseline period when they start operating. This would eliminate any potential generation subsidy and be easier to implement, since it would not require the collection and processing of data needed for regular updating.

The EPA believes that allocating based on heat input data (rather than output data) for existing units is desirable because accurate protocols exist for monitoring this data and reporting it to EPA, and several years of certified data are available for most of the affected sources. This heat input data for existing units could be adjusted by multiplying it by different factors based on fuel-type, reflecting the inherent higher emissions of coal-fired plants. For example, factors could be calculated based on average historic NO_X emissions rates by fuel type (*i.e.*, coal, gas and oil) throughout the proposed CAIR region for the years 1999–2002 at 1.0 for coal, 0.4 for gas and 0.6 for oil.

However, allocating on the basis of input for new sources would serve to subsidize less-efficient new generation. For a given generation capacity, the most efficient unit would have the lowest fuel input or heat input. Allocating to new units based on heat input may encourage the building of less efficient units since they would get more allowances than an efficient, lower heat input unit. The modified output approach, as described below, would encourage new, clean generation and would not reward inefficient or higher emitting new units.

Allowances would be allocated to new units on a "modified output" basis. The new unit's modified output would be calculated by multiplying its gross output by a heat rate conversion factor of 8,000 btu/kWh. The 8,000 btu/kWh value for the conversion factor is a mid-point between expected heat-rates for new gas-fired combined cycle plants, new pulverized coal plants, and new IGCC coal plants (based upon assumptions in EPA's economic modeling analysis. See documentation for IPM at *http://www.epa.gov/airmarkets/epa-ipm/attachment-h.pdf).* In addition, this would create consistent incentives for efficient generation (rather than favoring new units with higher heat-rates). For new cogeneration units, their share of the allowances would be calculated by multiplying (1) the sum of their electric output and one half of their equivalent electrical output energy for the unit's process steam, times (2) 8,000 btu/kWh conversion factor.

Five years after entering the CAIR cap-and-trade programs, new units would be incorporated into the calculations for allocations to all affected units. After 5 years of participating in the cap-and-trade programs, new units would have an adequate operating baseline of heat input data. The average of the highest 3 years from these 5 years would be used to calculate the heat input value that the new unit would use to receive allowances from the pool of allowances for all sources.

In this example, only fossil units would be included in the updating process. This is administratively more straightforward and would comprise the vast majority of expected new generation. Alternately, all new generating units could be included in the updating process, which would provide incentives for all new generation (such as renewables, hydro, nuclear). To include such non-fossil units as part of the program would involve clearly defining the entities which could participate (*e.g.*, application procedures, size requirements, and boundaries of included generation, since there is no clear analog to discrete fossil "units").

New units that have entered service, but have not yet established a baseline output and have not yet started receiving allowances through the update, could receive allowances each year from a new source set-aside. In this example methodology, EPA has described a new source set-aside representing 2 percent of the State's emission budget.

Allowances in the new source set-aside could be distributed in a number of different ways. For example, as described in today's proposed model rules, the new source allowances could be distributed based on a unit's utilization/output and the unit's NSPS rate limitation as proposed in the Clear Skies Act of 2003. Because the proposed NSPS rates vary across fuel types, this allocation method could provide new plant investors with varying incentives depending upon the fuel type. While this set-aside would help new sources relative to a situation with no set-aside, because the demand for allowances for future sources is unknown, it is difficult to know beforehand what should be the appropriate size of the set-aside pool.

Another potential approach for distributing allowances from a new source set-aside is using a single emissions rate for all new plants and a plant specific utilization or power output level to calculate allowance allocations for new units before they begin receiving allowances through the update. Alternatively, the lower of the NSPS rates for the respective fuel types and a rate representing the proposed caps in 2010 and 2015 divided by projected 2010 and 2015 total affected unit generation may be used to calculate allowance allocations for new units before they begin receiving allowances through the update. This alternative would ensure that new sources would receive allowances at the same rate as that applied to existing sources and no greater than their proposed NSPS. A State may also choose to distribute allowances from this set-aside through an auction, which could be open to anyone or limited (*e.g.*, only new sources could participate). We ask for comment on these various proposals, and for any other alternatives commenters may wish to raise.

In today's proposed example allocation methodology, new units would begin receiving allowances from the set-aside for the control period immediately following the control period in which the new unit commenced commercial operation, based on the unit's actual utilization rates for the preceding control period. States would allocate allowances from the set-aside to all new units in any given year as a group. If there were more allowances requested than in the set-aside, allowances would be distributed on a pro rata basis. Allowance allocations in following years would continue to be based on the prior year's utilization until the new unit is considered an existing unit and is allocated allowances through the State's updating process. This would enable new units to have a good sense of the amount of allowances they would likely receive—in proportion to their generation. This methodology would not provide allowances to a unit in its first year of operation; however this methodology is straightforward and predictable.

As an alternative, States could distribute a new source set-aside for a control period based on full utilization rates. Then, at the end of the year, the actual allowance allocation would be adjusted to account for actual unit utilization/output, and excess allowances would be returned and redistributed, first taking into account new unit requests that were not able to be addressed. This was the example methodology used in the NO_X SIP Call model rule. In implementing the NO_X SIP Call, EPA found this approach to be complicated for both the States and the Agency in implementing the procedure, as well as to the sources as this approach introduces a higher level of uncertainty in the allocation process than may be necessary.

With either approach, any unused set-aside allowances could be redistributed to existing units based on their existing allocations. The EPA is soliciting comment on the timing and method of allocating allowances from the set aside in the example methodology.

While EPA recognizes States' flexibility in choosing their NO_X allocations method and is proposing that States be allowed to determine their own method for allocating allowances to sources in their State, EPA is also asking for comment on all aspects of this example allocation proposal and whether the proposed regulatory language, which codifies the above example as proposed in today's SNPR, could reflect a different approach.

The EPA is also soliciting comment on alternate allocation methods.

b. Individual unit opt-in. In today's SNPR, EPA is soliciting comment on whether opt-in provisions (*i.e.*, provisions that allow units that otherwise would not be subject to the proposed CAIR to individually elect, or "opt," to participate in the proposed CAIR cap-and-trade programs) should be included in the final CAIR rule. Further, EPA provides and solicits comment on an example opt-in approach that could be included in the final CAIR model rules. If opt-in provisions are included in final model rules, States would not be required to include them, and both States with and without opt-in provisions could participate in the EPA-managed cap-and-trade programs. States that chose to include opt-ins would be required to adopt EPA's methodology for including opt-ins as is.

Description of Potential Opt-In Approach

Opt-ins would be restricted to boilers and turbines that (1) exhaust to a stack or duct, and (2) meet the same monitoring and reporting requirements as CAIR-affected units. These requirements ensure the consistent, rigorous monitoring and reporting required to maintain the integrity of the emissions cap and trading market. To establish baseline emissions and operating information, opt-in units would be required to monitor and report in accordance with part 75 for a minimum of one full calendar year prior to the unit entering the CAIR trading program. If 3 or more consecutive calendar years of part 75 quality assured emissions and heat input data are available, then an average of the most recent 3 calendar years would be used to establish the baselines.

If a unit chooses to opt-in, the unit is required to opt into both the SO_2 and NO_X cap-and-trade programs. By requiring units to opt-in for both SO_2 and NO_X, opt-in units are encouraged to develop integrated control strategies. In addition, the burden of including opt-in units in the cap-and-trade programs could be somewhat offset by the benefit of both SO_2 and NO_X emission reductions.

Opt-in units would be allocated SO_2 and NO_X allowances on a year-by-year basis. The annual updating of allocations based upon utilization reduces concerns that individual opt-in units may shift utilization and, therefore, emissions, to other, unaffected units. Opt-in allocations would be based upon (1) an emission rate, and (2) the lesser of the baseline heat-input or the actual heat input measured at the unit for the prior year. For example, the potential SO_2 allocation for an opt-in unit could be calculated by taking (i) the lesser of the unit's actual heat-input for the prior year or the unit's annual average baseline heat input for the most recent 3 years for which part 75 quality-assured data are available (or, if 3 years of such data are not available, the one year prior to opting into the CAIR programs) and multiplying it by (ii) the lesser of the unit's baseline SO_2 emissions rate, the most stringent State or Federal SO_2 emissions limitation that applies to the unit during the calender year prior to the year in which the unit is being allocated allowances, or the emission rate representing 50 percent of the unit's baseline SO_2 emission rate (in lb/mmBtu)for the years 2010 through 2014 and 35 percent of the units's baseline SO_2 emission rate (in lb/mmBtu) for 2015 and beyond. The EPA takes comment on this approach and specifically solicits comment on allocating to opt-in units at a range of 20 to 65 percent below their baseline SO_2 emission rates—the equivalent of multiplying the baseline emission rate in the above equation by 80 to 35 percent of their baseline emissions, respectively. The NO_X allocation for an opt-in unit could be calculated by taking (i) the lesser of the unit's actual heat-input for the prior year or the unit's annual average baseline heat input for the most recent 3 years for which part 75 quality assured data is available or, if 3 years of such data are not available, the one year prior to opting into the CAIR program and multiplying it by (ii) the lesser of the unit's baseline NO_X emission rate, the most stringent State or Federal NO_X emissions limitation that applies to the opt-in unit at any time during the calendar year prior to opting into the CAIR program, or 0.15 lb/mmBtu for the years 2010 through 2014, and 0.11 lb/mnBtu for the years 2015 and beyond (these rates are based on the average emission rates at which EPA projects EGUs will be emitting). The EPA is taking comment on this approach and specifically solicits comment on allocating to opt-in units at a range of levels that are 20 to 65 percent below their baseline NO_X emissions, where an emissions rate of 0.11 lb NO_X/mmBtu is roughly equivalent to a 65 percent reduction.

States would need to notify EPA after the end of the calendar year in order to allocate SO_2 and NO_X allowances to an opt-in unit for the next calendar year. Because opt-in allocations would be based upon data developed for the previous year, the allocations would be distributed a few months after the beginning of the next year (*e.g.*, by April 1 of the next year, which would be of the year for which the allowances are needed for compliance).

Non-EGU boilers and turbines under the NO_X SIP Call that choose to opt-in to the CAIR cap-and-trade programs would still be required to meet the NO_X SIP Call seasonal NO_X limitations. (The EPA does not have modeling, similar to that for EGUs, that projects that if non-EGUs meet the annual NO_X emission limits, they will also meet the ozone season NO_X emission limit as well.) This requirement would ensure that the NO_X SIP Call States continue to meet their summertime NO_X emission limits and make progress toward attaining the ozone NAAQS.

Opt-in units must remain in the CAIR program for at least 5 years. This would improve the cost effectiveness of implementing the program and would avoid potential incentives for opting in and out of the program. An opt-in unit could withdraw from the CAIR program any time with the request being effective on December 31 following the submission of the request or a subsequent December 31. The EPA believes that the administrative burden for a permitting authority in processing a withdrawal effective during a calendar year—particularly in ascertaining the disposition of SO_2 and NO_X allowances and in determining compliance for a partial calendar year—would be sufficient to warrant the prohibition of an effective date of withdrawal during a calendar year. Further, EPA believes that an opt-in unit should not be allowed to withdraw retroactively, whether during a calendar year or at the end of a prior calendar year. The ability to withdraw retroactively could reduce the incentive to comply since an opt-in unit could simply withdraw once it projects that it will not hold enough SO_2

and/or NO_X allowances to account for its SO_2 and/or NO_X emissions for that calendar year. At best, under such a scenario, there would be no benefit from allowing the opt-in of the unit. Under an alternate scenario, allowing the unit to "opt out" of the program during a calendar year could result in higher overall SO_2 and/or NO_X emissions, since an opt-in unit could reduce its emissions during part of the year, sell some of its allowances, and increase its emissions after withdrawing from the program. Such increased emissions would not be accounted for with the requisite surrender of SO_2 and/or NO_X allowances required under the CAIR cap-and-trade programs and could occur outside of a State's annual budget for SO_2 and/or NO_X. The opt-in unit could, in effect, shift utilization from the part of the year for which it must surrender allowances for emissions to the part of the year for which emissions do not require an allowance surrender.

Opt-in permits would be terminated for any unit that becomes a CAIR-affected unit. This change in regulatory status for an opt-in unit could occur as a result of a modification or reconstruction that may take place at the unit. An opt-in unit that becomes a CAIR-affected unit would be required to notify the permitting authority within 30 days of the change in regulatory status. The permitting authority should revise the opt-in permit to reflect the CAIR permit content requirements of subparts CC and CCC (for NO_X and SO_2, respectively), effective as of the date of the change in status. The SO_2 and NO_X allowances would be deducted or allocated as necessary to ensure that the appropriate number of allowances are allocated to the unit consistent with the proposed CAIR trading rules for each calendar year after the effective date of the change in status.

4. Structure of Proposed CAIR Model Trading Rules

In order to make the proposed CAIR NO_X and SO_2 model trading rules as simple and consistent as possible, EPA designed them to parallel the model trading rules of the NO_X SIP Call (part 96) and the Federal NO_X Budget Trading Program (part 97). Because EPA is proposing new CAIR NO_X and SO_2 model rules—separate from the existing model rule in part 96—States can continue to reference part 96 as they implement the NO_X SIP Call through 2009. The new CAIR NO_X and SO_2 model rules use the same basic structure as part 96 and will allow for an easier transition to the CAIR rules as States and sources will already be familiar with the rule layout. Specifically, the model rules will be codified as follows:

- NO_X SIP Call model cap-and-trade rule will remain in part 96 subparts A through J;
- CAIR NO_X model cap-and-trade rule will be created in part 96 subparts AA through HH;
- CAIR SO_2 model cap-and-trade rule will be created in part 96 subparts AAA through HHH; In addition, today's SNPR will add and reserve subparts between those proposed in today's action (*i.e.*, subparts K through Z, subparts II through ZZ, and subparts III through ZZZ). Both the CAIR NO_X and SO_2 model rules will rely upon the detailed unit-level emissions monitoring and reporting procedures of part 75. (Note that proposed regulations establishing SIP requirements under the CAIR, *i.e.*, part 51, are discussed in section III of today's action.) Additionally, section III of today's SNPR proposes revisions to part 72 through 77 in order to, among other things, harmonize the title IV Acid Rain Program's SO_2 cap-and-trade provisions with those of the proposed CAIR.

B. Elements of the Proposed NO_X and SO_2 Model Trading Rules, Subparts AA Through HH and AAA Through HHH

This section of today's SNPR describes the purpose of each subpart of the proposed NO_X and SO_2 model trading rules in parallel. The descriptions highlight any improvements relative to corresponding sections in the existing part 96 (NO_X SIP Call) and part 97 (Federal NO_X Budget Trading Program) model rules. In addition, each subsection notes provisions that have been specifically adapted for either the CAIR SO_2 or NO_X trading program.

1. Subparts AA and AAA, CAIR NO_X and SO_2 Trading Program Applicability and General Provisions

a. 96.101 and 96.201 purpose. This section states the reason for the regulation.

b. 96.102 and 202 Definitions and 96.103 and 96.203 measurements, abbreviations, and acronyms. Many of the definitions, measurements, abbreviations, and acronyms remain unchanged from those used in 40 CFR parts 96 and 97, in order to maintain consistency among programs. However, certain terms that are specific to the CAIR SO_2 and NO_X model cap-and-trade rule have been added and certain other terms have been modified.

In today's supplemental proposal of the model SO_2 cap-and-trade rule, EPA has defined CAIR SO_2 allowances to reflect the SO_2 retirement ratios described in section VIII.B.2.f (69 FR 6932) of the January 2004 proposal. Specifically, the definition established the number of title IV or CAIR SO_2 allowances, by vintage, that must be retired to offset one ton of SO_2 emissions. Specifically, one SO_2 allowance of vintage years 2009 and earlier authorizes the emission of one ton of SO_2. Two SO_2 allowances of vintage years 2010–2014 authorize one ton of SO_2 emission. Three SO_2 allowances of vintage years 2015 and beyond authorizes the emission of one ton of SO_2.

In today's SNPR, EPA is clarifying the definition of cogeneration unit included in the January 2004 proposal. (This clarification also corrects an error in the January 2004 proposal, where it was erroneously stated that the definition of a cogeneration facility under the title IV Acid Rain Program and the NO_X SIP Call was based on the Federal Energy Regulatory Commission's qualifying cogeneration facility definition.) The EPA proposes to use a definition of cogeneration unit that is based on the Acid Rain Program definition of "cogeneration unit" and the Federal Energy Regulatory Commission's (FERC) definitions of "cogeneration unit" and "qualifying cogeneration facility." The proposed "cogeneration unit" has two elements. First, in order to be a "cogeneration unit," a unit must produce electric energy and useful thermal energy for industrial, commercial, heating or cooling purposes, through the sequential use of original fuel energy. *See* 40 CFR 72.2 and 18 CFR 292.202(c) ("cogeneration" definition). Second, the unit must meet the operating and efficiency standards under 18 CFR 292.205, but applied to all cogeneration units, instead of applying the efficiency standards only to oil- and gas-fired units as under 18 CFR 292.205. The EPA believes that applying the operating and efficiency standards to all units would be more consistent with its fuel-neutral approach throughout this proposed rule. In addition, not applying the efficiency standards to coal-fired units would be counter-productive to EPA's efforts to reduce SO_2 and NO_X emissions under this proposed rule because of the relatively high SO_2 and NO_X emissions from coal-fired units. Thus, under the second element of today's proposed "cogeneration unit" definition, a topping-cycle cogeneration unit must meet the following requirements.

The useful thermal energy output of the unit must be no less than 5 percent of the total energy output during the 12-month period beginning with the date the unit first produces electric energy

and any subsequent calendar year. The useful power output of the unit plus one-half the useful thermal energy output, during the 12-month period beginning with the date the unit first produces electric energy, and any calendar year after the year in which the unit first produces electric energy, must be: (i) No less than 42.5 percent of the total energy input to the unit; or (ii) if the useful thermal energy output is less than 15 percent of the total energy output of the unit, no less than 45 percent of the total energy input to the unit.

For bottoming-cycle cogeneration units, the useful power output of the unit during the 12-month period beginning with the date the unit first produces electric energy, and any subsequent calendar, must be no less than 45 percent of the energy input.

c. 96.104 and 204 Applicability. Today's SNPR proposes to affect fossil fuel-fired boilers and turbines serving an electrical generator with a nameplate capacity exceeding 25MW and producing power for sale. Cogeneration units would be affected if they meet the definition in b. above.

d. 96.105 and 205 Retired unit exemption. This section of today's SNPR provides an exemption from the CAIR NO_X and SO_2 trading program requirements for retired units so that retired CAIR units will be free from unnecessary requirements (*e.g.*, emissions monitoring and reporting). The EPA proposes an exemption beginning on the day the unit permanently retires, requiring no notice and comment period regarding the retirement. This provision proposes that the CAIR Designated Representative (CAIR DR) (*i.e.*, the person authorized by the owners and operators to make submissions and handle other matters) submit notification to the permitting authority of the CAIR unit's retirement within 30 days of the cessation of activity. (Note that the CAIR DR designation is similar to the title IV Acid Rain Program's Designated Representative, or "Acid Rain DR," and the NO_X SIP Call's Authorized Account Representative, or "AAR.") In response, the permitting authority would amend the operating permit in accordance with the exemption and notify EPA of the unit's status as exempt. This provision imposes conditions that all program requirements prior to the exemption are fulfilled and records are kept on site to verify the non-emitting status of the retired unit. A retired unit could continue to hold NO_X and SO_2 allowances previously allocated or be allocated NO_X and SO_2 allowances in the future depending on the allocation provisions adopted by the State where the retired unit is located. The number of future year NO_X and SO_2 allowances that a retired unit would be allocated would be dependent on the given State's allocation system. The NO_X and SO_2 allowance allocations are discussed in sections IV.A.3.a and IV.B.5 of this SNPR.

In order to resume operation without violating program requirements (*i.e.*, an exemption requires that the unit's permit language be changed to reflect that it would not emit any NO_X and SO_2 emissions), the CAIR DR must submit a permit application to the permitting authority no less than 18 months (or less, if so specified by the applicable State permitting regulations) prior to the date on which the unit is to resume operation, to allow the permitting authority time to review and approve the application for the unit's re-entry into the program. If a retired unit resumes operation, EPA proposes to automatically terminate the exemption under this part.

e. 96.106 and 96.206 Standard requirements. Today's SNPR delineates the standard requirements that CAIR units and their owners, operators, and CAIR DRs must meet under the CAIR NO_X and SO_2 cap-and-trade program. This provision sets forth references to other portions of the cap-and-trade rule for the full range of program requirements: Permits, monitoring, NO_X and SO_2 emissions limitations, excess emissions, recordkeeping and reporting, liability, and effect on other authorities. For example, the permitting, monitoring, and emissions limit requirements are discussed in general and the relevant sections of the cap-and-trade rule are cited. The liability provisions state that the requirements of the trading program must be met, and any knowing violations or false statements are subject to enforcement under the applicable State or Federal law. Violations and the associated liability are established on a facility-wide basis. The provision addressing the effect on other authorities establishes that no provision of the trading program can be construed to exempt the owners or operators of a CAIR source from compliance with any other provision of the applicable SIP, any federally enforceable permit, or the CAA. This provision ensures, for example, that a State may set a binding source-specific NO_X and SO_2 limitation and, regardless of how many allowances a CAIR source holds under the trading program, the emissions limit established in the SIP cannot be violated.

Automatic penalties for non-compliance have been key to the success of the title IV and the NO_X SIP Call's cap-and-trade programs and are an important feature of the proposed CAIR model rules as well. Simple, transparent, automatic penalties avoid litigation, which can be costly for both the air authorities and the sources, for most non-compliance instances. For severe non-compliance, the air authorities retain the right to pursue civil actions.

f. 96.107 and 207 Computation of time. This section clarifies how to determine the deadlines referenced in the proposal. For example, deadlines falling on a weekend or holiday are extended to the next business day. These are the same computation-of-time provisions as are in the regulation for the title IV and the NO_X SIP Call emissions trading programs.

2. Subparts BB and BBB, CAIR Designated Representative for CAIR Sources

Sections 96.108 and 96.208 of today's SNPR establish procedures for appealing the decisions of the Administrator regarding the model cap-and-trade rules in part 78. Part 78 also includes administrative appeal procedures for the Acid Rain Program and the Federal NO_X Budget Trading Program. Today's SNPR revises part 78 to make these procedures applicable to the CAIR NO_X and SO_2 trading programs as well.

Sections 96.110 through 96.114 and 96.210 and 96.214 of today's proposed CAIR NO_X and SO_2 cap-and-trade programs rule establish the process for certifying the CAIR DR and describe his or her duties. Patterned after the roles and responsibilities of the title IV Acid Rain Program's DR, a CAIR DR is the individual authorized to represent the owners and operators of each CAIR NO_X and SO_2 unit at a CAIR source (*i.e.*, a facility that includes at least one CAIR affected unit) in matters pertaining to the CAIR cap-and-trade programs. Because the CAIR DR represents the owners and operators of all the CAIR NO_X and SO_2 units at a CAIR source, the CAIR DR must certify that he or she was selected by an agreement binding on all such owners and operators and is authorized to act on their behalf. The CAIR DR's responsibilities include: The submission of permit applications to the permitting authority, submission of monitoring plans and certification applications, holding and transferring CAIR allowances, and submission of emissions data. The rule proposes that each CAIR source have one DR that is responsible for both the NO_X and SO_2 cap-and-trade program requirements. Additionally, the rule proposes to

require that the CAIR DR be the same individual as the title IV Acid Rain Program's Designated Representative (Acid Rain DR) at each source. These requirements will ensure that one individual is responsible for all matters pertaining to the CAIR as well as significantly reduce the burden on the data systems used in the administration of the cap-and-trade programs.

The EPA recognizes that the CAIR DR cannot always be available to perform his or her duties. Therefore, the rule proposes to allow for the appointment of one alternate CAIR DR for a CAIR source. The alternate CAIR DR would have the same authority and responsibilities as the CAIR DR. Therefore, unless expressly provided to the contrary, whenever the term "CAIR Designated Representative" is used in the rule, it should be read to apply to the alternate CAIR DR as well. While the alternate CAIR DR would have full authority to act on behalf of the CAIR DR, all correspondence from EPA, including reports, would be sent only to the CAIR DR. It should be noted that additional flexibility is provided within the electronic data systems that EPA uses to administer the program. Within these systems the CAIR DR may assign "agents" to perform specific tasks on his or her behalf, such as submission of allowance transfers and electronic data reports.

Today's SNPR requires the completion and submission of the Certificate of Representation in order to certify a CAIR DR for a CAIR source and all CAIR NO_X and SO_2 units at the source. There would be one standard form (the Certificate of Representation [DR form]) which would be submitted by sources to EPA. The DR form would include identifying information for the source, the CAIR DR and the alternate CAIR DR, if applicable; the name of every owner and operator of the source and each CAIR unit at the source; and certification language and signature of the CAIR DR and alternate, if applicable. The EPA would design this form to also include the Acid Rain DR certifications, and the CAIR DR would indicate which units at the source are included in which programs. This form can also be completed and submitted electronically. Upon receipt of a complete DR form, EPA would establish a compliance account for each source in the systems used to track SO_2 and NO_X allowances.

In order to change the CAIR DR, alternate CAIR DR, or list of owners and operators, EPA is proposing that a new complete account certificate of representation be submitted. The EPA believes the CAIR DR requirements afford the regulated community with flexibility, while ensuring source accountability and simplifying the administration of the cap-and-trade program.

3. Subparts CC and CCC, CAIR Permits

a. 96.120 and 96.220 General CAIR NO_X and SO_2 trading program permit requirements. The EPA has attempted to minimize the number of new procedural requirements for CAIR permitting and to defer, whenever possible, to the permitting programs already established by the permitting authority. The proposed CAIR trading program regulations assume that the CAIR permit would be a portion of a federally enforceable permit issued to the CAIR source and administered through permitting vehicles such as operating permits programs established under title V of the CAA and 40 CFR part 70. Generally, the permits regulations promulgated by the permitting authority cover: Permit application, permit application shield, permit duration, permit shield, permit issuance, permit revision and reopening, public participation, and State and EPA review. The proposed CAIR trading program permit regulations generally require use of the procedures under these other regulations and add some requirements such as CAIR permit application submission and renewal deadlines, CAIR permit application information requirements and permit content, and the term "CAIR permit". The term "CAIR permit" throughout this preamble and the CAIR trading program regulations therefore refers to the CAIR trading program portion of the permit issued by the permitting authority to a CAIR source.

b. 96.121 and 96.221 Submission requirements for CAIR NO_X and SO_2 permit applications. The proposed rule sets the initial CAIR permit application deadlines for units in operation before January 1, 2007 so that the permits will be issued by January 1, 2010. January 1, 2010 is the beginning of the first control period for the CAIR cap-and-trade program, and therefore also the date by which initial CAIR permits for existing units should be effective. Application submission deadlines are based on the permitting authority's title V permitting regulations. For instance, if a permitting authority's permitting regulations allowed 12 months for final action by the permitting authority on a permit application, the application deadline would be the later of January 1, 2009 (12 months prior to January 1, 2010) or 12 months before the unit commences operation. The same principle applies to CAIR units commencing operation on or after January 1, 2007, except that the application submission deadline is the later of the date the CAIR unit commences operation or January 1, 2010. The CAIR permit renewal application deadlines are the same as those that apply to permit renewal applications in general for sources under Title V. For instance, if a permitting authority requires submission of a Title V permit renewal application by a date which is 12 months in advance of a title V permit's expiration, the same date would also apply to the CAIR permit application.

c. Sections 96.122 and 96.222, Information requirements for CAIR permit applications and §§ 96.123 and 96.223 CAIR permit contents and term. The CAIR cap-and-trade program requires that a CAIR permit application properly identify the source and include the standard requirements under proposed sections §§ 96.121 and 96.221. The CAIR cap-and-trade program permit application should include all elements of the program (including the standard requirements). Such an approach allows the permitting authority to incorporate virtually all of the applicable CAIR cap-and-trade program requirements into a CAIR permit by including as part of such permit the CAIR permit application submitted by the source. Directly incorporating the CAIR permit application into the CAIR permit and, thus, into the source's operating permit or the overarching permit minimizes the administrative burden on the permitting authority of including the CAIR cap-and-trade program applicable requirements. The permitting authority may revise the term of the CAIR permit as necessary to facilitate coordination of the renewal with the issuance, revision, or renewal of the sources title V permit.

d. Sections 96.124 and 96.224, CAIR permit revisions. For revisions to the CAIR permit, the CAIR trading program again defers to the regulations addressing permits revisions promulgated by the permitting authority under title V and 40 CFR part 70 or 71. The proposal also provides that the allocation, transfer, or deduction of allowances is automatically incorporated in the CAIR permit, and does not require a permit revision or reopening by the permitting authority. The CAIR permit must, however, expressly state that each source must hold enough allowances to account for emissions by the allowance transfer deadline for each control period. The EPA believes that requiring the permitting authority to revise or reopen a CAIR permit each time a CAIR allowance allocation, transfer, or deduction is made would be burdensome and unnecessary.

4. Subpart DD and DDD, CAIR Compliance Certification

Sections 96.130 through 96.131 and 96.230 through 96.231 are reserved. The NO_X and SO_2 cap-and-trade programs in today's SNPR do not include the requirement for the source to submit a compliance certification report. The requirements are unnecessary because these sources already certify compliance with the emissions monitoring and reporting requirements when they submit their quarterly emissions data. In addition, these sources will submit compliance certifications under title V for all CAA requirements, including the CAIR, NO_X SIP Call, and Acid Rain trading programs.

5. Subpart EE and EEE, CAIR NO_X and SO_2 Allowance Allocations

Sections 96.140 through 96.142 of today's SNPR propose both required provisions (*i.e.*, State-by-State NO_X emissions budgets and the timing for States to report unit-by-unit NO_X allocations) as well as the example allocation approach, provided as an illustration. Specifically, sections 96.140 and 96.240 propose the State-by-State NO_X emission budgets that may be allocated by the State. Section 96.141 proposes elements of the NO_X allocation systems that States are required to include (*i.e.*, a 3 year minimum for advanced notification by the State of allocations and the annual timing of submitting to EPA the updated, unit-by-unit allocations) in order to ensure consistency for sources across all States participating in the EPA-managed cap-and-trade program. Section 96.142 proposes provisions that would implement the example approach for the NO_X cap-and-trade program—discussed in detail in above, including procedures for creating a new unit set-aside and incorporating new units into a permanent allocation.

Sections 96.240 through 242, pertaining to the CAIR SO_2 cap-and-trade program, are reserved. The title IV SO_2 allowance allocation provisions of the CAA remain in effect. Should the final CAIR program make CAIR SO_2 allowances available to the States, EPA would include requirements for a 3 year minimum for advanced notification for unit-by-unit allocations that would be similar to those proposed for NO_X allocations in today's action.

6. Subpart FF and FFF, CAIR NO_X and SO_2 Allowance Tracking Systems.

a. Overview of tracking system. Sections 96.150 through 96.157 and 96.250 through 96.257 of today's proposed model rule cover the system to track CAIR NO_X and SO_2 allowances. The proposed rule is intended to make use of the allowance tracking systems developed for the NO_X SIP Call and Acid Rain Program, with some modifications. Such an approach would help to allow the integration of the CAIR NO_X and SO_2 cap-and-trade programs with the existing cap-and-trade programs under the NO_X SIP Call and Acid Rain Program. It would also save industry and government the time and resources necessary to develop new tracking systems.

The current automated systems will be used to track CAIR NO_X and SO_2 allowances held by CAIR sources under the CAIR NO_X and SO_2 cap-and-trade programs, as well as those allowances held by other organizations or individuals. Specifically, the systems would track the allocation of all CAIR NO_X and SO_2 allowances, holdings of CAIR NO_X and SO_2 allowances in accounts, deduction of CAIR NO_X and SO_2 allowances for compliance purposes, and transfers between accounts. The primary role of the tracking system is to provide an efficient, transparent, and automated means of monitoring compliance with the CAIR NO_X and SO_2 cap-and-trade programs. It would also provide the allowance market with a record of ownership of allowances, dates of allowance transfers, buyer and seller information, and the serial numbers of allowances transferred.

The EPA is proposing that the tracking system contain two primary types of accounts: Compliance accounts and general accounts. The EPA is proposing that compliance accounts for NO_X and SO_2 be created for each CAIR source with one or more CAIR units, upon receipt of the Certificate of Representation form. General accounts are created for any organization or individual upon receipt of a General Account Information form.

b. Establishment of accounts.

i. Compliance accounts. The EPA is proposing to require source-level accounts for compliance with the CAIR NO_X and SO_2 cap-and-trade programs. The EPA's experience in conducting compliance determinations (reconciliation) for the Acid Rain cap-and-trade program at strictly the unit level indicates that there is the potential for affected facilities to be subject to monetary penalties simply for having too few allowances in one unit account at a source when there are plenty of available allowances at another unit account at the same source. This amounts to a monetary penalty, potentially large, for an accounting error that has no significant environmental effect. In developing the compliance procedures for the NO_X SIP Call cap-and-trade programs, this was taken into consideration and overdraft accounts were introduced to provide some flexibility in managing allowances at a source. However, both EPA and the regulated community find that, in practice, overdraft accounts and their use can be quite complicated and do not significantly reduce the burden of unit-level accounting. Therefore, EPA is proposing compliance accounts be established at the source level. This will significantly reduce the accounting burden for both EPA and the regulated community without causing any environmental consequences. The source-level accounts would be identified by a account number incorporating the source's Office of Regulatory Information System's (ORIS) code or facility identification number.

Today's SNPR also modifies the Acid Rain Program regulations to provide for source-level compliance. This will facilitate the interaction of the Acid Rain Program and the CAIR cap-and-trade programs.

ii. General accounts. Today's proposed model rules allow any person or group to open a general account. These accounts would be identified by the "9999" that would compose the first four digits of the account number. Unlike compliance accounts, general accounts cannot be used for compliance but can be used for holding or trading NO_X or SO_2 allowances (*e.g.*, by allowance brokers or owners of multiple CAIR NO_X or SO_2 units or sources). General accounts are currently used for both SO_2 allowances in the Acid Rain Program and NO_X allowances in the NO_X SIP Call cap-and-trade program.

To open a general account, a person or group must complete the standard General Account Information form, which is similar to the Certificate of Representation that precedes the opening of a compliance account. The form must include the name of a natural person who would serve as the NO_X or SO_2 Authorized Account Representative (AAR). The form would include identifying information for the AAR and alternate AAR (if applicable); the organization name and type, if applicable; the names of all parties with an ownership interest with the respect to the NO_X or SO_2 allowances in the account; and certification language and signatures of the NO_X or SO_2 AAR and alternate, if applicable.

Revisions to information regarding an existing general account are made by submitting a new General Account Information form which would be sent to EPA in all cases, whether the form is

used to open a new account, or revise information on an existing one. The EPA would notify the NO_X or SO_2 AAR cited on the application of the establishment of his or her general account or of the registration of requested changes.

c. Recordation of allowance allocations. The NO_X allocations for existing units for the first 5 years (2010–2014), as prescribed by each State, would be recorded into the CAIR NO_X (source-level) compliance accounts prior to the first control period in 2010. Prior to the second control period, in 2011, and each year thereafter, NO_X allocations for the new fifth sixth year, as prescribed by each State, would be recorded in each compliance account (*e.g.*, in 2011, year 2016 NO_X allowances would be allocated).

Title IV SO_2 allowances are allocated and recorded under the Acid Rain Program so this section of the CAIR SO_2 model cap-and-trade rules is reserved. Should the final CAIR rule make CAIR SO_2 allowances available to States, requirements for the recordation of CAIR SO_2 allowances would be similar to those proposed for NO_X allocations in today's action.

d. Compliance. Once a control period has ended (*i.e.*, December 31) CAIR NO_X and SO_2 sources would have a window of opportunity (*i.e.*, until the allowance transfer deadline of midnight on March 1 following the control period) to evaluate their reported emissions and obtain any additional NO_X or SO_2 allowances they may need to cover the emissions during the year.

NO_X: The compliance requirement would be to hold one NOx allowance for each ton of NO_X emissions at each CAIR unit at the source. For each ton of NO_X emissions for which the source does not hold an allowance, the excess emissions offset would be a deduction of 3 NO_X allowances allocated for the year after the year in which the excess emissions occur.

SO_2: The compliance requirement would depend upon the vintage of the SO_2 allowance being submitted for compliance. For allowances with vintage years of 2009 and earlier, one SO_2 allowance must be held for each ton of SO_2 emissions. For allowances for vintage years 2010–2014, a source must hold 2 allowances of these vintages for each ton of SO_2 emissions. A source must hold 3 SO_2 allowances of vintage years 2015 and beyond for each ton of SO_2 emissions at the source. For each ton of SO_2 emissions for which the source does not hold the requisite number of SO_2 allowances, the excess emissions offset would deduct three times the number of SO_2 allowances required for the sources emissions for the vintage year immediately following the year in which the excess emissions occurred. This would result in six 2010–2014 vintage year allowances and nine 2015 and beyond year allowances, since two 2010–2014 allowances or three 2015 and beyond allowances authorize one ton of SO_2 emissions.

The EPA believes that it is important to include this automatic offset deduction because it ensures that non-compliance with the NO_X and SO_2 emission limitations of this part is a more expensive option than controlling emissions. The EPA required an automatic deduction of 3-for-1 in the NO_X SIP Call, and is taking comment on the ratios used in the proposed model rules. The automatic offset provisions do not limit the ability of the permitting authority or EPA to take enforcement action under State law or the CAA.

In the Acid Rain Program, one SO_2 allowance must be held for each ton of SO_2 emissions. As discussed above, one, two, or three SO_2 allowances must be held for each ton of emissions, depending on the year for which the allowances were allocated. Consequently, non-compliance with the allowance-holding requirement in the CAIR SO_2 cap-and-trade program would not necessarily mean non-compliance with the allowance-holding requirement in the Acid Rain Program. Therefore, it is necessary to ensure that compliance with the Acid Rain Program allowance-holding requirements is assessed independently from the CAIR requirements. The EPA is proposing a detailed allowance deduction order for each CAIR unit at each CAIR source where one allowance for each ton of emissions is deducted first (satisfying the Acid Rain requirement) and then the additional allowances are deducted to complete the CAIR SO_2 requirement.

e. Banking. Banking is the retention of unused allowances from one control period for use in a later control period. Banking allows sources to create reductions beyond required levels and "bank" the unused allowances for use later. The EPA is proposing that banking of allowances after the start of the CAIR NO_X and SO_2 cap-and-trade programs be allowed with no restriction. Banking after a program starts and the budget is imposed allows sources to retain any allowances not surrendered for compliance at the end of each control period. Once the CAIR cap-and-trade program budgets are in place, sources may over-control for one or more years and withdraw from the bank in one or more later years. This type of banking provides the following advantages: Encourages early reductions, stimulates the market, and provides flexibility to sources, while also potentially causing NO_X or SO_2 emissions in some control periods to be greater than the allowances allocated for those years.

Allowing unrestricted banking is consistent with the current Acid Rain Program for SO_2. The NO_X SIP Call cap-and-trade program, however, has some restrictions on the use of banked allowances, a procedure called flow control. Flow control was first used in the OTC NO_X cap-and-trade program and was carried over into the NO_X SIP Call cap-and-trade program. The flow control provisions were designed to discourage extensive use of banked allowances in a particular ozone season. Flow control establishes a 2-to-1 discount ratio on the use of banked allowances above a certain level. The discount ratio applies after the total number of banked allowances from all sources exceeds 10 percent of the regionwide NO_X emissions budget. Flow control is a very complicated procedure to explain, understand, and implement. The experience in the OTC cap-and-trade program illustrated that flow control can cause allowance market complexity and confusion for the regulated community by stratifying the allowance market by vintages (*i.e.*, the year for which the allowances are allocated), making banked allowances less valuable, and potentially increasing the cost of compliance. In addition to these negative effects, it remains difficult to ascertain an environmental benefit. The EPA is proposing to not use flow control in order to keep compliance with the CAIR cap-and-trade programs as simple and easy as possible.

7. Subparts GG and GGG, CAIR NO_X and SO_2 Allowance Transfers

The EPA is proposing that once a NO_X or SO_2 DR or AAR is appointed and an account is established, NO_X or SO_2 allowances can be transferred to or from the accounts with the submission of allowance transfer information, either on-line or through the use of an Allowance Transfer form. Transfers can occur between any accounts at any time of year with one exception: Transfers of current and past year allowances into and out of compliance accounts are prohibited after the allowance transfer deadline (March 1 following each control period) until EPA completes the annual reconciliation process by deducting the necessary allowances.

For those electing not to transfer allowances on-line, there would be one standard NO_X and one standard SO_2 Allowance Transfer form. This form would be submitted to the EPA in all

cases. The form would generally include: the transferor and transferee allowance account numbers; the transferor's printed name, phone number, signature, and date of signature; and a list of allowances to be transferred, by serial number.

8. Subparts HH and HHH, CAIR NO_X and SO_2 Monitoring and Reporting

Clear, rigorous, and transparent monitoring and reporting of all emissions are the basis for holding sources accountable for their emissions and are essential to the success of any cap-and-trade program. Consistent and accurate measurement of emissions ensures that each allowance actually represents one ton of emissions and that one ton of reported emissions from one source is equivalent to one ton of reported emissions from another source. Similarly, such measurement of emissions ensures that each single allowance (or group of SO_2 allowances, depending upon the SO_2 allowance vintage) represents one ton of emissions, regardless of the source for which it is measured and reported. This establishes the integrity of each allowance, which instills confidence in the underlying market mechanisms that are central to providing sources with flexibility in achieving compliance. Given the variability in the type, operation, and fuel mix of sources in the proposed CAIR NO_X and SO_2 cap-and-trade programs, EPA believes that emissions must be monitored continuously in order to ensure the precision, reliability, accuracy, and timeliness of emissions data that support a cap-and-trade program. As proposed, part 96 subpart HH for NO_X and subpart HHH for SO_2 establish monitoring and reporting requirements for CAIR sources. These subparts reference the relevant sections of part 75 where the specific procedures and requirements for measuring and reporting NO_X and SO_2 mass emissions are found. These subparts are modeled after subpart H of part 96.

Part 75 was originally developed for the Acid Rain Program. The Acid Rain Program, as established by Congress in the 1990 Amendments to the Act, requires the use of continuous emissions monitoring systems (CEMS) or an alternative monitoring system that is demonstrated to provide information with the same precision, reliability, accuracy, and timeliness as a CEMS. The EPA believes that the use of CEMS is a critical part of ensuring the effectiveness of regional cap-and-trade programs. In implementing the Acid Rain Program, as well as the NO_X SIP Call Trading Program, EPA has allowed alternatives to CEMS only where the total of the emissions contributed by specified categories of affected sources is *de minimis* in comparison to the emissions cap for the program, or where an alternative monitoring system has been demonstrated, according to specified criteria, to meet the standard Congress set. Provisions for monitoring and reporting NO_X mass emissions were added to Acid Rain Program methodologies for both the OTC NO_X Budget Program and for the NO_X SIP Call. As a result, several alternative monitoring methodologies exist for qualifying sources to use. For example, there is a SO_2 emissions data protocol that allows gas- or oil-fired units to use fuel sampling techniques along with fuel flow metering to quantify emissions. (*See* part 75, appendix D.) There is also a NO_X estimation methodology for certain infrequently used gas- or oil-fired units that can be found in part 75, appendix E. There are also optional emissions calculation procedures for gas-or oil-fired sources emitting no more than 25 tons of SO_2 annually or less than 100 tons of NO_X annually which allow the use of conservative emission factors to estimate emissions. (*See* § 75.19.) All of the existing part 75 monitoring methodologies will be available to CAIR sources as applicable.

Sources subject to the CAIR must monitor and report NO_X and SO_2 mass emissions year round. The majority of CAIR sources are measuring and reporting SO_2 mass emissions year round under the Acid Rain Program. Therefore, these sources will have little or no changes to make to their monitoring and reporting efforts under the CAIR. Most CAIR sources are also reporting NO_X mass emissions year round under the NO_X SIP Call. The CAIR-affected Acid Rain sources that are located in States that are not affected by the NO_X SIP Call currently measure and report NO_X emission rates year round, but do not currently report NO_X mass emissions. These sources will need to modify only their reporting practices in order to comply with the proposed CAIR monitoring and reporting requirements. Today's SNPR is designed to be as consistent as possible with existing requirements in order to minimize the impact on CAIR sources of the monitoring and reporting requirements, while maintaining the integrity of the cap-and-trade programs.

The requirement to monitor and the associated monitoring deadlines are found in § 96.170 for NO_X and § 96.270 for SO_2 for the CAIR trading programs and require continuous measurement of SO_2 and NO_X emissions by all existing affected sources by January 1, 2009 using part 75 certified monitoring methodologies. New sources have separate deadlines based upon the date of commencement of operation, consistent with the Acid Rain Program.

The quality assurance (QA) requirements for the Acid Rain Program that were mandated by Congress under the CAA have been codified in appendices A and B of part 75. Part 75 specifies that each CEMS must undergo rigorous initial certification testing and periodic quality assurance testing thereafter, including the use of relative accuracy test audits (RATAs) and daily calibrations. A standard set of data validation rules apply to all of the monitoring methodologies. These stringent requirements result in an accurate accounting of the mass emissions from each affected source and provide prompt feedback if the monitoring system is not operating properly. In addition, when the CEMS is not operating properly, standard substitute data procedures are applied and result in a conservative estimate of emissions for the period involved. This ensures a level playing field among the regulated sources with consistent accounting for every ton of emissions and also provides an incentive to keep the monitoring system properly up to date with QA requirements. The NO_X SIP Call trading program also requires part 75 QA procedures. The EPA proposes to require the same QA procedures (as applied to an entire year, not just the ozone season) for the CAIR program. Initial certification or recertification is required as specified in §§ 96.171 and 96.271. Recognizing that many of the CAIR units are already monitoring NO_X or SO_2 (sometimes both) under part 75 through existing programs, subparts HH and HHH allow continued use of previously certified CEMS when appropriate rather than automatically requiring recertification. Requirements for reporting data when the monitors do not meet QA specifications are found in §§ 96.172 and 96.272.

Sections 96.174 and 96.274 specify reporting requirements, which include general requirements, monitoring plan reporting, certification applications, quarterly emissions and operations reports, and compliance certifications. The EPA proposes to require year-round reporting of emissions and monitoring data from each affected unit. As required for the Acid Rain Program and the NO_X SIP Call trading programs, quarterly emissions reports must be submitted to EPA electronically on a quarterly basis and in a format specified by the Agency using EPA-provided software. Many affected sources are

already reporting some or all of this data to EPA under either the Acid Rain Program or the NO_X SIP Call trading program and can continue to report that data along with any additional data that may be required by this program. The EPA has found centralized reporting to be necessary to ensure consistent review, checking, and posting of the emissions and monitoring data for all affected sources, which contributes to the integrity, efficiency, and transparency of the trading program. Another important feature is that sources regulated under the Acid Rain Program, NO_X SIP Call, or the CAIR NO_X and SO_2 cap-and-trade programs must use the same reporting format and submit only one report with all of the information required for all of the applicable programs. Thus, if the same data is needed for multiple programs, the source needs to report it only once in the form of one comprehensive report.

Consistent with the current monitoring and reporting requirements in part 75 for the Acid Rain and the NO_X SIP Call programs, the proposed rule would allow sources, § 96.175 of subpart HH of part 96 and under § 96.275 of subpart HHH of part 96, to petition for an alternative to any of the specified monitoring requirements in the rule. These provisions provide sources with the flexibility to petition to use an alternative monitoring system under subpart E of part 75 or variations of the standard monitoring requirements as long as the requirements of existing § 75.66 are met.

Sections 96.176 and 96.276 require heat input data to be measured and reported regardless of the type of monitoring system.

V. Clarifications to January 30, 2004 Proposal

This section provides clarifications to the January 2004 proposal where the preamble language provided in the published proposal was unclear, incomplete, inadvertently omitted, or inadvertently incorrect. Unless otherwise indicated, all references to the **Federal Register**—69 FR 4566–4650—are to the proposed Interstate Air Quality Rule.

A. Scope of the Proposed Action

On 69 FR 4633 column 1, EPA discussed the NO_X cap-and-trade program. Under the heading "States Outside the Proposed Region with Existing Regional NO_X Cap-and-trade Programs", EPA mistakenly identified Massachusetts in the list of States that participate in existing NO_X trading markets that would not be affected by the proposed rules. Massachusetts should be deleted from that list because it would be affected by the proposed rules.

In the January 2004 proposal, we discussed regional control requirements and budgets based on a showing of "significant contribution" by upwind States to nonattainment in other States. (69 FR 4611–4613). CAA section 110(a)(2)(D), which provides the authority for the proposal, states among other things that SIPs must contain adequate provisions prohibiting, consistent with the CAA, sources or other types of emissions activity within a State from emitting pollutants in amounts that will "contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to" the NAAQS.

Thus, CAA section 110(a)(2)(D) requires that States prohibit emissions that contribute significantly to downwind nonattainment. In the January 2004 proposal, we discussed both the air quality component and the cost-effectiveness component of the "contribute significantly" determination. The EPA has interpreted CAA section 110(a)(2)(D) to require that States reduce emissions by specified amounts, and has based those amounts on the availability of highly cost-effective controls for certain source categories. Following this interpretation, EPA based the January 2004 proposal on the availability of highly cost-effective reductions of SO_2 and NO_X from EGUs in States that meet EPA's proposed inclusion criteria.

We noted in the January 2004 proposal, with respect to the cost-effectiveness component, that one factor we consider in determining cost effectiveness is the identification of source categories which emit relatively large amounts of the relevant emissions. We noted that this element is particularly important in a case such as the proposed CAIR where the Federal government is proposing a multi-State regional approach to reducing transported pollution. (69 FR 4611).

One approach cited in the January 2004 proposal for ensuring that both the air quality component and the cost effectiveness component of the section 110 "contribute significantly" determination is met, is to consider a source category's contribution to ambient concentrations above the attainment level in all nonattainment areas in affected downwind States. Some have recommended a further refinement of this concept, suggesting that a source category should be included only if the proposed level of additional control of that category would meet a specified threshold. Under this suggested approach, EPA could determine, for example, that inclusion of a source category in a broad multi-State SIP call would be appropriate only if it would result in at least 0.5 percent of U.S. counties and/or parishes in the lower 48 States coming into attainment with a NAAQS. Given the number of counties and parishes in the United States, this requirement would be met if at least 16 counties in the lower 48 States were brought into attainment with a NAAQS as a result of the proposed level of control on a particular source category. Choice of a factor as low as 0.5 percent of U.S. counties and/or parishes reflects the fact, according to this approach, that, for every NAAQS, the vast majority of counties are already in attainment. Nevertheless, for most criteria pollutants, this figure represents a significant portion of the remaining nonattainment problem.

The EPA seeks comment on whether this test should be incorporated as a part of the "highly cost-effective" component of the "contribute significantly" requirement of CAA section 110(a)(2)(D) when a multi-State call for SIP revisions to address interstate transport of air pollution is at issue. The EPA has conducted air quality modeling of the January 2004 proposal which indicates that the proposed emissions reductions will bring 34 additional areas (from a base of 73 down to 39) into attainment with either the PM2.5 or 8-hour ozone NAAQS by 2015. Since there are over 3,000 counties and parishes in the lower 48 States, basing the highly cost-effective control levels in the proposed CAIR on EGUs would meet this 0.5 percent criterion.

States retain authority to decide which sources to control to achieve the required amounts of reductions, but EPA considers the costs of controls for more sources in determining what is a significant contribution. Other CAA mechanisms, such as SIP disapproval authority and State petitions under CAA section 126, are available to address more isolated instances of the interstate transport of pollutants.

B. Summary of Control Costs

The control cost summary provided on 69 FR 4632 column 2 indicates a marginal cost per ton of SO_2 emissions of $805 in the first phase, and $989 in the second phase, of the proposed control program. These amounts were based on modeling performed to evaluate the implications of using retirement ratios to implement the emission reduction requirements of the

rule. This modeling is different from the modeling used to evaluate highly cost-effective controls. The latter modeling is summarized in Table VI–1 on 69 FR 4613, and shows marginal costs of $700 per ton in the first phase, and $1000 per ton in the second phase.

C. Source of Cost Information

On 69 FR 4614, Table VI–4, EPA failed to include an additional footnote referencing the source of the cost information for the last entry in the table, "Revision of NSPS for New EGUs." The footnote should have indicated that the cost information is derived from "Proposed Revision of Standards of Performance for Nitrogen Oxide Emissions from New Fossil-Fuel Fired Steam Generating Units: Proposed Revisions to Reporting Requirements for Standards of Performance for New Fossil-Fuel Fired Steam Generating Units," 62 FR 36951. The control costs for SCR shown in the table are for coal-fired utility steam generating units and coal-fired industrial steam generating units. The proposed NSPS revision included ranges of costs; EPA presented the mid-point from those ranges in the table.

D. Judicial Review Under Clean Air Act Section 307

The EPA did not discuss in the January 2004 proposal the applicable provisions for judicial review of CAA section 307. Section 307(b)(1) indicates in which Federal Courts of Appeal petitions of review of final actions by EPA must be filed. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if (i) the agency action consists of "nationally applicable regulations promulgated, or final action taken, by the Administrator," or (ii) the agency action is locally or regionally applicable, but "such action is based on a determination of nationwide scope or effect and * * * in taking such action the Administrator finds and publishes that such action is based on such a determination."

Any final action related to the CAIR is "nationally applicable" within the meaning of section 307(b)(1). As an initial matter, through this rule, EPA interprets section 110(a)(2)(D)(i) of the CAA in a way that could affect future actions regulating the transport of pollutants. In addition the January 2004 proposal would require 29 States and the District of Columbia to decrease emissions of either SO_2 or NO_X, or both. The Interstate Air Quality Rule is based on a common core of factual findings and analyses concerning the transport of ozone, PM2.5 and their precursors between the different States subject to the Interstate Air Quality Rule. Finally, EPA has established uniform approvability criteria that would be applied to all States subject to the Interstate Air Quality Rule. For these reasons, the Administrator also is determining that any final action regarding the Interstate Air Quality Rule is of nationwide scope and effect for purposes of section 307(b)(1). Thus, any petitions for review of final actions regarding the Interstate Air Quality Rule must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

VI. Statutory and Executive Order Reviews

This section of the SNPR discusses reviews conducted to meet the requirements of applicable statutes and executive orders. In the January 2004 proposal (69 FR 4566, January 30, 2004), EPA addressed the regulatory requirements that trigger statutory and executive order reviews. This supplemental proposal does not add substantive regulatory requirements. Rather, in general, it proposes a legal determination that implementation of the model rule will meet the better-than-BART requirements, clarifies aspects of the January 2004 proposal, and adds regulatory text for the proposals in the January 2004 proposal. Therefore, this supplemental proposal does not alter the findings of the January 2004 proposal.

The EPA provides additional information below relating to the National Technology Transfer and Advancement Act. In addition, the EPA plans to conduct additional analyses as discussed in the January 2004 proposal relating to the Paperwork Reduction Act (PRA), the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121) (SBREFA), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA) in the Notice of Final Rulemaking for this action. The EPA believes the analyses relating to the RFA and UMRA are not required for this rule by statute, but these analyses will be conducted for informational purposes. While it doesn't alter EPA's findings, EPA has performed additional analysis of the impact that the proposed CAIR may have on States not affected by the proposed CAIR. This analysis is available in the docket.

National Technology Transfer Advancement Act. Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This SNPR would require all sources that participate in the trading program under proposed part 96 to meet the applicable monitoring requirements of part 75. Part 75 already incorporates a number of voluntary consensus standards. Consistent with the Agency's Performance Based Measurement System (PBMS), part 75 sets forth performance criteria that allow the use of alternative methods to the ones set forth in part 75. The PBMS approach is intended to be more flexible and cost effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. At this time, EPA is not proposing any revisions to part 75, however EPA periodically revises the test procedures set forth in part 75. When EPA revises the test procedures set forth in part 75 in the future, EPA will address the use of any new voluntary consensus standards that are equivalent. Currently, even if a test procedure is not set forth in part 75, EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified. However, any alternative methods must be approved through the petition process under § 75.66 before they are used under part 75. We welcome comments on this aspect of the proposed rulemaking and, specifically, invite the public to identify potentially applicable voluntary consensus standards and to explain why EPA should use such standards in this regulation.

VII. Proposed Rule Text

This SNPR includes the proposed rule text for the CFR for the basic elements of the CAIR proposal. This rule text includes the requirements for the affected jurisdictions to submit transport SIPs under the $PM_{2.5}$ standard, the 8-hour ozone standard, or both; as well as for implementation of the

applicable SO_2 and NO_X emissions budgets. It also includes model rule language that States may adopt for interstate trading rules. The rule language is located at the end of the preamble.

Specifically, EPA is today proposing to amend or revise the following rule text:

(i) Part 51 subpart A, §§ 51.1 through 51.45;
(ii) Part 51 subpart G, §§ 51.122 through 51.125;
(iii) Part 51, § 51.308;
(iv) Part 72, § 72.2;
(v) Part 73, various §§ 73.1 through 73.70;
(vi) Part 74, various §§ 74.18 through 74.50;
(vii) Part 77, various §§ 77.3 through 77.6;
(viii) Part 78, §§ 78.1, 78.3, 78.4 and 78.12;
(ix) Part 96, §§ 96.101 through 96.186 (NO_X trading) and §§ 96.201 through 96.286 (SO_2 trading).

List of Subjects

40 CFR Part 51

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Parts 72, 73, 74, 77 and 78

Environmental Protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 96

Environmental Protection, Administrative practice and procedure, Air pollution control, Nitrogen oxides, Reporting and recordkeeping requirements.

Dated: May 18, 2004.

Michael O. Leavitt,

Administrator.

Title 40, chapter I, of the Code of Federal Regulations is proposed to be 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.

2. Part 51 subpart A is revised to read as follows:

Subpart A—Emission Inventory Reporting Requirements

General Information for Inventory Preparers

Subpart A—Emission Inventory Reporting Requirements

General Information for Inventory Preparers

§ 51.1 Who is responsible for actions described in this subpart?

States must inventory emission sources located on non-tribal lands and report this information to EPA.

§ 51.5 What tools are available to help prepare and report emissions data?

We urge your State to use estimation procedures described in documents from the Emission Inventory Improvement Program (EIIP). These procedures are standardized and ranked according to relative uncertainty for each emission estimating technique. Using this guidance will enable others to use your State's data and evaluate its quality and consistency with other data.

§ 51.10 How does my State report emissions that are required by the NO_X SIP Call and the Clean Air Interstate Rule ?

The District of Columbia and States that are subject to the NO_X SIP Call (§ 51.121) are subject to the emission reporting provisions of § 51.122. The District of Columbia and States that are subject to the Clean Air Interstate Rule are subject to the emission reporting provisions of § 51.125. This subpart A incorporates the pollutants, source, time periods, and required data elements for both of these reporting requirements.

Specific Reporting Requirements

§ 51.15 What data does my State need to report to EPA?

(a) Pollutants. Report actual emissions of the following (*see* Definitions in appendix A to this subpart for precise definitions as required):

(1) Required pollutants for triennial reports of annual (12-month) emissions for all sources and every-year reports of annual emissions from Type A sources:

(i) Sulfur dioxide (SO_2).

(ii) Volatile organic compounds (VOC).

(iii) Nitrogen oxides (NO_X).

(iv) Carbon monoxide (CO).

(v) Lead and lead compounds.

(vi) Primary $PM_{2.5}$. Emissions of filterable, condensible, and total $PM_{2.5}$ should be reported, if all are applicable to the source type.

(vii) Primary PM_{10}. Emissions of filterable, condensible, and total PM_{10} should be reported, if all are applicable to the source type.

(viii) Ammonia (NH_3).

(2) Required pollutants for every-year reporting of annual (12-month) emissions for sources controlled to meet the requirements of § 51.123: NO_X.

(3) Required pollutants for every-year reporting of annual (12-month) emissions of sources controlled to meet the requirements of 51.124: SO_2.

(4) Required pollutants for all reports of ozone season (5 months) emissions: NO_X.

(5) Required pollutants for triennial reports of summer daily emissions:

(i) NO_X.

(ii) VOC.

(6) Required pollutants for every-year reports of summer daily emissions: NO_X.

(7) A State may at its option include in its emissions inventory reports estimates of emissions for additional pollutants such as other pollutants listed in paragraph (a)(1) or hazardous air pollutants.

(b) Sources. Emissions should be reported from the following sources in all parts of the State, excluding sources located on tribal lands:

(1) Point.

(2) Non-point.

(3) Onroad mobile.

(4) Nonroad mobile.

(c) Supporting information. You must report the data elements in Tables 2a through 2d of appendix A to this subpart. You must also report information on the method of determination for data elements EPA may designate for such reporting in each reporting period. Additional information not listed in Tables 2a through 2d may be required, for

example information identifying the State contact person for the submittal. We may ask you for other data on a voluntary basis to meet special purposes.

(d) Confidential data. We do not consider the data in Tables 2a through 2d of appendix A to this subpart confidential, but some States limit release of this type of data. Any data that you submit to EPA under this rule will be considered in the public domain and cannot be treated as confidential. If Federal and State requirements are inconsistent, consult your EPA Regional Office for a final reconciliation.

(e) Option to Submit Inputs to Emission Inventory Estimation Models in Lieu of Emission Estimates. For a given reporting year, EPA may allow States to submit comprehensive input values for models capable of estimating emissions from a certain source type on a national scale, in lieu of submitting the emission estimates otherwise required by this subpart.

§ 51.20 What are the emission thresholds that separate point and non-point sources?

(a) All anthropogenic stationary sources must be included in your inventory as either point or non-point sources, except that biogenic emissions are not required to be reported.

(b) Sources which are major sources under section 302 or part D of title I of the Clean Air Act, considering emissions only of the pollutants listed in § 51.15(a), must be reported as point sources, starting with the 2008 inventory year. Provisions of part 70 affecting the definition of a major source apply to this subpart also. All pollutants specified in § 51.15(a) must be reported for point sources, not just the pollutant(s) which qualify the source as a point source. Prior to the 2008 inventory year, States may omit from point source treatment any source that would not be major if its actual emissions were considered rather than its potential to emit.

(c) If your State has lower emission reporting thresholds for point sources than paragraph (b) of this section, then you may use these in reporting your emissions to EPA.

(d) All stationary sources that are not subject to reporting as point sources must be reported as non-point sources. This includes wild fires and prescribed fires. Episodic wind-generated particulate matter emissions from sources that are not major sources may be excluded, for example dust lifted by high winds from natural or tilled soil. Emissions of non-point sources may be aggregated to the county level, but must be separated and identified by source classification code (SCC). Non-point source categories or emission events reasonably estimated by the State to represent a *de minimis* percentage of total county and State emissions of a given pollutant may be omitted.

§ 51.25 What geographic area must my State's inventory cover?

Because of the regional nature of these pollutants, your State's inventory must be statewide, regardless of any area's attainment status.

§ 51.30 When does my State report which emissions data to EPA?

All States are required to report two basic types of emission inventories to EPA: Every-year Cycle Inventory; and Three-year Cycle Inventory. The sources and pollutant to be reported vary among States.

(a) Every-year cycle. See Tables 2a, 2b, and 2c of appendix A to this subpart for the specific data elements to report every year.

(1) All States are required to report every year the annual (12-month) emissions of all pollutants listed in § 51.15(a)(1) from Type A (large) point sources, as defined in Table 1. The first every-year cycle inventory will be for the year 2003 and must be submitted to EPA within 17 months, i.e., by June 1, 2005. Subsequent every-year cycle inventories will be due 17 months following the end of the reporting year.

(2) States subject to §§ 51.123 and 51.125 of this subpart are required to report every year the annual (12-month) emissions of NO_X from any point, non-point, onroad mobile, or nonroad mobile source for which the State specified control measures in its SIP submission under § 51.123 of this subpart. This requirement begins with the 2009 inventory year. This requirement does not apply to any State subject to § 51.123 solely because of its contribution to ozone nonattainment in another State.

(3) States subject to §§ 51.124 and 51.125 of this subpart are required to report every year the annual (12-month) emissions of SO_2 from any point, non-point, onroad mobile, or nonroad mobile source for which the State specified control measures in its SIP submission under § 51.124 of this subpart. This requirement begins with the 2009 inventory year.

(4) States subject to §§ 51.123 and 51.125 are required to report every year the ozone season emissions of NO_X and summer daily emissions of NO_X from any point, non-point, onroad mobile, or nonroad mobile source for which the State specified control measures in its SIP submission under § 51.123 of this subpart. This requirement begins with the 2009 inventory year. This requirement does not apply to any State subject to § 51.123 solely because of its contribution to $PM_{2.5}$ nonattainment in another State.

(5) States subject to the emission reporting requirements of § 51.122 are required to report every year the ozone season emissions of NO_X and summer daily emissions of NO_X from any point, non-point, onroad mobile, or nonroad mobile source for which the State specified control measures in its SIP submission under § 51.121(g) of this subpart. This requirement begins with the inventory year prior to the year in which compliance with the NO_X SIP Call requirements is first required.

(6) If sources report SO_2 and NO_X emissions data to EPA in a given year pursuant to a trading program approved under § 51.123(o) or § 51.124(o) of this part or pursuant to the monitoring and reporting requirements of subpart H of 40 CFR 75, then the State need not provide annual reporting of the pollutants to EPA for such sources. If SO_2 and NO_X are the only pollutants required to be reported for the source for the given calendar year and emissions period (annual, ozone season, or summer day), all data elements for the source may be omitted from the State's emissions report for that period. We will make both the raw data submitted by sources to the trading programs and summary data available to any State that chooses this option.

(7) In years which are reporting years under the 3-year cycle, the reporting required by the 3-year cycle satisfies the requirements of this paragraph.

(b) Three-year cycle. See Tables 2a, 2b and 2c of appendix A to this subpart for the specific data elements that must be reported triennially.

(1) All States are required to report for every third year the annual (12-month) emissions of all pollutants listed in § 51.15(a)(1) from all point sources, non-point sources, onroad mobile sources, and nonroad mobile sources. The first 3-year cycle inventory will be for the year 2005 and must be submitted to us within 17 months, i.e., by June 1, 2007. Subsequent 3-year cycle inventories will be due 17 months following the end of the reporting year.

(2) States subject to § 51.122 must report ozone season emissions and summer daily emissions of NO_X from all point sources, non-point sources, onroad mobile sources, and nonroad mobile sources. The first 3-year cycle inventory will be for the year 2005 and must be submitted to us within 17 months, i.e., by June 1, 2007. For States with a NO_X SIP Call compliance date of

2007, the first 3-year cycle inventory will be for 2008. Subsequent 3-year cycle inventories will be due 17 months following the end of the reporting year.

(3) States subject to §§ 51.123 and 51.125 must report ozone season emissions of NO_X and summer daily emissions of VOC and NO_X from all point sources, non-point sources, onroad mobile sources, and nonroad mobile sources. The first 3-year cycle inventory will be for the year 2008 and must be submitted to us within 17 months, i.e., by June 1, 2010. Subsequent 3-year cycle inventories will be due 17 months following the end of the reporting year. This requirement does not apply to any State subject to § 51.123 solely because of its contribution to $PM_{2.5}$ nonattainment in another State.

(4) Any State with an area for which EPA has made an 8-hour ozone nonattainment designation finding (regardless of whether that finding has reached its effective date) must report summer daily emissions of VOC and NO_X from all point sources, non-point sources, onroad mobile sources, and nonroad mobile sources. The first 3-year cycle inventory will be for the year 2005 and must be submitted to us within 17 months, i.e., by June 1, 2007. Subsequent 3-year cycle inventories will be due 17 months following the end of the reporting year.

§ 51.35 How can my State equalize the emissions inventory effort from year to year?

(a) Compiling a 3-year cycle inventory means much more effort every 3 years. As an option, your State may ease this workload spike by using the following approach:

(1) Each year, collect and report data for all Type A (large) point sources (This is required for all Type A point sources).

(2) Each year, collect data for one-third of your smaller point sources. Collect data for a different third of these sources each year so that data has been collected for all of the smaller point sources by the end of each 3-year cycle. You must save 3 years of data and then report all of the smaller point sources on the 3-year cycle due date.

(3) Each year, collect data for one-third of the area, nonroad mobile, and onroad mobile sources. You must save 3 years of data and then report all of these data on the 3-year cycle due date.

(b) For the sources described in paragraph (a) of this section, your State will therefore have data from 3 successive years at any given time, rather than from the single year in which it is compiled.

(c) If your State chooses the method of inventorying one-third of your smaller point sources and 3-year cycle area, nonroad mobile, onroad mobile sources each year, your State must compile each year of the 3-year period identically. For example, if a process hasn't changed for a source category or individual plant, your State must use the same emission factors to calculate emissions for each year of the 3-year period. If your State has revised emission factors during the 3 years for a process that hasn't changed, resubmit previous year's data using the revised factor. If your State uses models to estimate emissions, you must make sure that the model is the same for all three years.

(d) If your State needs a new reference year emission inventory for a selected pollutant, your State can not use these optional reporting frequencies for the new reference year.

(e) If your State is a NO_X SIP Call State, you can not use these optional reporting frequencies for NO_X SIP Call reporting.

§ 51.40 In what form and format should my State report the data to EPA?

You must report your emission inventory data to us in electronic form. We support specific electronic data reporting formats and you are required to report your data in a format consistent with these. The term format encompasses the definition of one or more specific data fields for each of the data elements listed in Tables 2a, 2b, and 2c; allowed code values for categorical data fields; transmittal information; and data table relational structure. Because electronic reporting technology continually changes, contact the Emission Factor and Inventory Group (EFIG) for the latest specific formats. You can find information on the current formats at the following Internet address: *http://www.epa.gov/ttn/chief/nif/index.html.* You may also call the air emissions contact in your EPA Regional Office or our Info CHIEF help desk at (919) 541–1000 or e-mail to *info.chief@epa.gov.*

§ 51.45 Where should my State report the data?

(a) Your State submits or reports data by providing it directly to EPA.

(b) The latest information on data reporting procedures is available at the following Internet address: *http://www.epa.gov/ttn/chief.* You may also call our Info CHIEF help desk at (919) 541–1000 or e-mail to *info.chief@epa.gov.*

Appendix A to Subpart A of Part 51—Tables and Definitions

TABLE 1.—EMISSION THRESHOLDS BY POLLUTANT (TPY[1]) FOR TREATMENT OF POINT SOURCES AS TYPE A UNDER § 51.30

Pollutant	Emissions threshold for type A treatment
1. SO_2	≥2500
2. VOC	≥250
3. NO_X	≥2500
4. CO	≥2500
5. Pb	Does not determine Type A status
6. PM_{10}	≥250
7. $PM_{2.5}$	≥250
8. NH_3[2]	≥250

[1] tpy = tons per year of actual emissions.

[2] Ammonia threshold applies only in areas where ammonia emissions are a factor in determining whether a source is a major source, *i.e.*, where ammonia is considered a significant precursor of $PM_{2.5}$.

TABLE 2a.—DATA ELEMENTS FOR REPORTING ON EMISSIONS FROM POINT SOURCES, WHERE REQUIRED BY § 51.30

Data elements	Every-year reporting	Three-year reporting
1. Inventory year	✓	✓
2. Inventory start date	✓	✓
3. Inventory end date	✓	✓
4. Inventory type	✓	✓
5. FIPS code	✓	✓
6. Facility ID codes	✓	✓
7. Unit ID code	✓	✓
8. Process ID code	✓	✓
9. Stack ID code	✓	✓
10. Site name	✓	✓
11. Physical address	✓	✓

TABLE 2a.—DATA ELEMENTS FOR REPORTING ON EMISSIONS FROM POINT SOURCES, WHERE REQUIRED BY § 51.30—Continued

Data elements	Every-year reporting	Three-year reporting
12. SCC or PCC	✓	✓
13. Heat content (fuel) (annual average)	✓	✓
14. Heat content (fuel) (ozone season, if applicable)	✓	✓
15. Ash content (fuel)(annual average)	✓	✓
16. Sulfur content (fuel)(annual average)	✓	✓
17. Pollutant code	✓	✓
18. Activity/throughput (for each period reported)	✓	✓
19. Summer daily emissions (if applicable)	✓	✓
20. Ozone season emissions (if applicable)	✓	✓
21. Annual emissions	✓	✓
22. Emission factor	✓	✓
23. Winter throughput (percent)	✓	✓
24. Spring throughput (percent)	✓	✓
25. Summer throughput (percent)	✓	✓
26. Fall throughput (percent)	✓	✓
27. Hr/day in operation	✓	✓
28. Start time (hour)	✓	✓
29. Day/wk in operation	✓	✓
30. Wk/yr in operation	✓	✓
31. X stack coordinate (longitude) with method accuracy descriptions		✓
32. Y stack coordinate (latitude) with method accuracy descriptions		✓
33. Stack height		✓
34. Stack diameter		✓
35. Exit gas temperature		✓
36. Exit gas velocity		✓
37. Exit gas flow rate		✓
38. SIC/NAICS and at the facility and unit levels		✓
39. Design capacity (including boiler capacity if applicable)		✓
40. Maximum generator nameplate capacity		✓
41. Primary capture and control efficiencies (percent)		✓
42. Total capture and control efficiency (percent)		✓
43. Control device type		✓
44. Rule effectiveness (percent)		✓

TABLE 2b.—DATA ELEMENTS FOR REPORTING ON EMISSIONS FROM NON-POINT SOURCES AND NONROAD MOBILE SOURCES, WHERE REQUIRED BY § 51.30

Data elements	Every-year reporting	Three-year reporting
1. Inventory year	✓	✓
2. Inventory start date	✓	✓
3. Inventory end date	✓	✓
4. Inventory type	✓	✓
5. FIPS code	✓	✓
6. SCC or PCC	✓	✓
7. Emission factor	✓	✓
8. Activity/throughput level (for each period reported)	✓	✓
9. Total capture/control efficiency (percent)	✓	✓
10. Rule effectiveness (percent)	✓	✓
11. Rule penetration (percent)	✓	✓
12. Pollutant code	✓	✓
13. Ozone season emissions (if applicable)	✓	✓
14. Summer daily emissions (if applicable)	✓	✓
15. Annual emissions	✓	✓
16. Winter throughput (percent)	✓	✓
17. Spring throughput (percent)	✓	✓
18. Summer throughput (percent)	✓	✓
19. Fall throughput (percent)	✓	✓
20. Hrs/day in operation	✓	✓
21. Days/wk in operation	✓	✓
22. Wks/yr in operation	✓	✓

TABLE 2c.—DATA ELEMENTS FOR REPORTING ON EMISSIONS FROM ONROAD MOBILE SOURCES, WHERE REQUIRED BY § 51.30

Data elements	Every-year reporting	Three-year reporting
1. Inventory year	✓	✓
2. Inventory start date	✓	✓
3. Inventory end date	✓	✓
4. Inventory type	✓	✓
5. FIPS code	✓	✓
6. SCC or PCC	✓	✓
7. Emission factor	✓	✓
8. Activity (VMT by SCC)	✓	✓
9. Pollutant code	✓	✓
10. Ozone season emissions (if applicable)	✓	✓
11. Summer daily emissions (if applicable)	✓	✓
12. Annual emissions	✓	✓
13. Winter throughput (percent)	✓	✓
14. Spring throughput (percent)	✓	✓
15. Summer throughput (percent)	✓	✓
16. Fall throughput (percent)	✓	✓

Definitions

Activity throughput—A measurable factor or parameter that relates directly or indirectly to the emissions of an air pollution source during the period for which emissions are reported. Depending on the type of source category, activity information may refer to the amount of fuel combusted, raw material processed, product manufactured, or material handled or processed. It may also refer to population, employment, or number of units. Activity information is typically the value that is multiplied against an emission factor to generate an emissions estimate.

Annual emissions—Actual emissions for a plant, point, or process—measured or calculated that represent a calendar year.

Ash content—Inert residual portion of a fuel.

Biogenic sources—Biogenic emissions are all pollutants emitted from non-anthropogenic sources. Example sources include trees and vegetation, oil and gas seeps, and microbial activity.

Control device type—The name of the type of control device (*e.g.*, wet scrubber, flaring, or process change).

Day/wk in operations—Days per week that the emitting process operates—average over the inventory period.

Design capacity—A measure of the size of a point source, based on the reported maximum continuous throughput or output capacity of the unit. For a boiler, design capacity is based on the reported maximum continuous steam flow, usually in units of million BTU per hour.

Emission factor—Ratio relating emissions of a specific pollutant to an activity or material throughput level.

Exit gas flow rate—Numeric value of stack gas's flow rate.

Exit gas temperature—Numeric value of an exit gas stream's temperature.

Exit gas velocity—Numeric value of an exit gas stream's velocity.

Facility ID codes—Unique codes for a plant or facility treated as a point source, containing one or more pollutant-emitting units. The EPA's reporting format for a given reporting year may require several facility ID codes to ensure proper matching between data bases, *e.g.*, the State's own current and most recent facility ID codes, the EPA-assigned facility ID codes, and the ORIS (Department of Energy) ID code if applicable.

Fall throughput (percent)—Part of the throughput for the three Fall months (September, October, November). This expresses part of the annual activity information based on four seasons—typically spring, summer, fall, and winter. it can be a percentage of the annual activity (*e.g.*, production in summer is 40 percent of the year's production) or units of the activity (*e.g.*, out of 600 units produced, spring = 150 units, summer = 250 units, fall = 150 units, and winter = 50 units).

FIPS Code—Federal Information Placement System (FIPS)is the system of unique numeric codes the government developed to identify States, counties and parishes for the entire United States, Puerto Rico, and Guam.

Heat content—The amount of thermal heat energy in a solid, liquid, or gaseous fuel, averaged over the period for which emissions are reported. Fuel heat content is typically expressed in units of Btu/lb of fuel, Btu/gal of fuel, joules/kg of fuel, etc.

Hr/day in operations—Hours per day that the emitting process operates—average over the inventory period.

Inventory end date—Last day of the inventory period.

Inventory start date—First day of the inventory period.

Inventory type—A code indicating whether the inventory submission includes emissions of hazardous air pollutants.

Inventory year—The calendar year for which you calculated emissions estimates.

Lead (Pb)—As defined in 40 CFR 50.12, lead should be reported as elemental lead and its compounds.

Maximum nameplate capacity—A measure of the size of a generator which is put on the unit's nameplate by the manufacturer. The data element is reported in megawatts or kilowatts.

Mobile source—A motor vehicle, nonroad engine or nonroad vehicle, where:

A "motor vehicle" is any self-propelled vehicle used to carry people or property on a street or highway.

A "nonroad engine" is an internal combustion engine (including fuel system) that is not used in a motor vehicle or vehicle only used for competition, or that is not affected by §§ 111 or 202 of the CAA.

A "nonroad vehicle" is a vehicle that is run by a nonroad engine and that is not a motor vehicle or a vehicle only used for competition.

Nitrogen oxides (NO_X)—The EPA has defined nitrogen oxides (NO_X) in 40 CFR part 60.2 as all oxides of nitrogen except N_2O. Nitrogen Oxides should be reported on an equivalent molecular weight basis as nitrogen dioxide (NO_2).

Non-point sources—Non-point sources collectively represent

individual sources that have not been inventoried as specific point, mobile, or biogenic sources. These individual sources treated collectively as non-point sources are typically too small, numerous, or difficult to inventory using the methods for the other classes of sources.

Ozone Season—The period May 1 through September 30 of a year.

PM (Particulate Matter)—Particulate matter is a criteria air pollutant. For the purpose of this subpart, the following definitions apply:

(1) Filterable $PM_{2.5}$ or Filterable PM_{10}: Particles that are directly emitted by a source as a solid or liquid at stack or release conditions and captured on the filter of a stack test train. Filterable $PM_{2.5}$ is particulate matter with an aerodynamic diameter equal to or less than 2.5 micrometers. Filterable PM_{10} is particulate matter with an aerodynamic diameter equal to or less than 10 micrometers.

(2) Condensible PM: Material that is vapor phase at stack conditions, but which condenses and/or reacts upon cooling and dilution in the ambient air to form solid or liquid PM immediately after discharge from the stack. Note that all condensible PM, if present from a source, is typically in the $PM_{2.5}$ size fraction, and therefore all of it is a component of both primary $PM_{2.5}$ and primary PM_{10}.

(3) Primary $PM_{2.5}$: The sum of filterable $PM_{2.5}$ and condensible PM.

(4) Primary PM_{10}: The sum of filterable PM_{10} and condensible PM.

(5) Secondary PM: Particles that form or grow in mass through chemical reactions in the ambient air well after dilution and condensation have occurred. Secondary PM is usually formed at some distance downwind from the source. Secondary PM should not be reported in the emission inventory and is not covered by this subpart.

PCC—Process classification code. A process-level code that describes the equipment or operation which is emitting pollutants. This code is being considered as a replacement for the SCC.

Physical address—Street address of a facility. This is the address of the location where the emissions occur; not, for example, the corporate headquarters.

Point source—Point sources are large, stationary (non-mobile), identifiable sources of emissions that release pollutants into the atmosphere. As used in this rule, a point source is defined as a facility that is a major source under § 302 or part D of title I of the Clean Air Act. Emissions of hazardous air pollutants are not considered in determining whether a source is a point source under this subpart.

Pollutant code—A unique code for each reported pollutant assigned by the reporting format specified by EPA for each reporting year.

Primary capture and control efficiencies (percent)—Two values indicating the emissions capture efficiency and the emission reduction efficiency of a primary control device. Capture and control efficiencies are usually expressed as a percentage or in tenths.

Process ID code—Unique code for the process generating the emissions, typically a description of a process.

Roadway class—A classification system developed by the Federal Highway Administration that defines all public roadways as to type based on land use and physical characteristics of the roadway.

Rule effectiveness (RE)—How well a regulatory program achieves all possible emission reductions. This rating reflects the assumption that controls typically are not 100 percent effective because of equipment downtime, upsets, decreases in control efficiencies, and other deficiencies in emission estimates. RE adjusts the control efficiency.

Rule penetration—The percentage of a non-point source category covered by an applicable regulation.

SCC—Source classification code. A process-level code that describes the equipment and/or operation which is emitting pollutants.

SIC/NAICS—Standard Industrial Classification code. NAICS (North American Industry Classification System) codes will replace SIC codes. U.S. Department of Commerce's code for businesses by products or services.

Site name—The name of the facility.

Spring throughput (percent)—Part of throughput or activity for the three spring months (March, April, May). See the definition of Fall Throughput.

Stack diameter—A stack's inner physical diameter.

Stack height—A stack's physical height above the surrounding terrain.

Stack ID code—Unique code for the point where emissions from one or more processes release into the atmosphere.

Start time (hour)—Start time (if available) that was applicable and used for calculations of emissions estimates.

Sulfur content—Sulfur content of a fuel, usually expressed as percent by weight.

Summer daily emissions—Average day's emissions for a typical summer day with conditions critical to ozone attainment planning. The State will select the particular month(s) in summer and the day(s) in the week to be represented. The selection of conditions should be coordinated with the conditions assumed in the development of reasonable further progress plans, rate of progress plans and demonstrations, and/or emissions budgets for transportation conformity, to allow comparability of daily emission estimates.

Summer throughput (percent)—Part of throughput or activity for the three summer months (June, July, August). See the definition of Fall Throughput.

Total capture and control efficiency (percent)—The net emission reduction efficiency of all emissions collection and devices.

Type A source—Large point sources with actual annual emissions greater than or equal to any of the emission thresholds listed in Table 1 for Type A sources.

Unit ID code—Unique code for the unit of generation of emissions, typically a physical piece or closely related set of equipment. The EPA's reporting format for a given reporting year may require multiple unit ID codes to ensure proper matching between data bases, *e.g.*, the State's own current and most recent unit ID codes, the EPA-assigned unit ID codes if any, and the ORIS (Department of Energy) ID code if applicable.

VMT by SCC—Vehicle miles traveled (VMT) disaggregated to the SCC level, *i.e.*, reflecting combinations of vehicle type and roadway class. VMT expresses vehicle activity and is used with emission factors. The emission factors are usually expressed in terms of grams per mile of travel. Because VMT does not correlate directly to emissions that occur while the vehicle isn't moving, these nonmoving emissions are incorporated into the emission factors in EPA's MOBILE Model.

VOC—Volatile Organic Compounds. The EPA's regulatory definition of VOC is in 40 CFR 51.100.

Winter throughput (percent)—Part of throughput or activity for the three winter months (December, January, February, all from the same year, *e.g.*, Winter 2000 = January 2000 + February, 2000 + December 2000). See the definition of Fall Throughput.

Wk/yr in operation—Weeks per year that the emitting process operates.

X stack coordinate (longitude)—An object's east-west geographical coordinate.

Y stack coordinate (latitude)—An object's north-south geographical coordinate.

Appendix B to Subpart A of Part 51—[Reserved]

3. Part 51 is amended by revising § 51.122 of subpart G to read as follows:

§ 51.122 Emissions reporting requirements for SIP revisions relating to budgets for NO_X emissions.

(a) For its transport SIP revision under § 51.121 of this part, each State must submit to EPA NO_X emissions data as described in this section.

(b) Each revision must provide for periodic reporting by the State of NO_X emissions data to demonstrate whether the State's emissions are consistent with the projections contained in its approved SIP submission.

(1) Every-year reporting cycle. Each revision must provide for reporting of NO_X emissions data every year as follows:

(i) The State must report to EPA emissions data from all NO_X sources within the State for which the State specified control measures in its SIP submission under § 51.121(g) of this part. This would include all sources for which the State has adopted measures that differ from the measures incorporated into the baseline inventory for the year 2007 that the State developed in accordance with § 51.121(g) of this part.

(ii) If sources report NO_X emissions data to EPA for a given year pursuant to a trading program approved under § 51.121(p) of this part or pursuant to the monitoring and reporting requirements of subpart H of 40 CFR part 75, then the State need not provide an every-year cycle report to EPA for such sources.

(2) Three-year cycle reporting. Each plan must provide for triennial (*i.e.*, every third year) reporting of NO_X emissions data from all sources within the State.

(3) The data availability requirements in § 51.116 of this part must be followed for all data submitted to meet the requirements of paragraphs (b)(1) and (2) of this section.

(c) The data reported in paragraph (b) of this section must meet the requirements of subpart A of this part.

(d) Approval of ozone season calculation by EPA. Each State must submit for EPA approval an example of the calculation procedure used to calculate ozone season emissions along with sufficient information to verify the calculated value of ozone season emissions.

(e) Reporting schedules.

(1) Data collection is to begin during the ozone season one year prior to the State's NO_X SIP Call compliance date.

(2) Reports are to be submitted according to paragraph (b) of this section and the schedule in Table 1. After 2008, triennial reports are to be submitted every third year and annual reports are to be submitted each year that a triennial report is not required.

TABLE 1.—SCHEDULE FOR SUBMITTING REPORTS

Data collection year	Type of report required
2002	Triennial.
2003	Annual.
2004	Annual.
2005	Triennial.
2006	Annual.
2007	Annual.
2008	Triennial.

(3) States must submit data for a required year no later than 17 months after the end of the calendar year for which the data are collected.

(f) Data reporting procedures are given in subpart A. When submitting a formal NO_X Budget Emissions Report and associated data, States shall notify the appropriate EPA Regional Office.

(g) Definitions. As used in this section, words and terms shall have the meanings set forth in appendix A of subpart A of this part.

4. Part 51 is amended by adding § 51.123 to Subpart G to read as follows:

§ 51.123 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen pursuant to the Clean Air Interstate Rule.

(a) Under section 110(a)(1) of the CAA, 42 U.S.C. 7410(a)(1), the Administrator determines that each State identified in paragraph (c) of this section must submit a SIP revision to comply with the requirements of section 110(a)(2)(D)(i)(I) of the CAA, 42 U.S.C. 7410(a)(2)(D)(i)(I), through the adoption of adequate provisions prohibiting sources and other activities from emitting NO_X in amounts that will contribute significantly to nonattainment in, or interfere with maintenance by, one or more other States with respect to the fine particles ($PM_{2.5}$) and/or the 8-hour ozone NAAQS.

(b) For each State identified in paragraph (c) of this section, the SIP revision required under paragraph (a) will contain adequate provisions, for purposes of complying with § 110(a)(2)(D)(i)(I) of the CAA, 42 U.S.C. 7410(a)(2)(D)(i)(I), only if the SIP revision contains measures that assure compliance with the applicable requirements of this section.

(c) The following States are subject to the requirements of this section: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and the District of Columbia, provided that Connecticut shall be subject to a seasonal NO_X reduction requirement, unless it adopts an annual NO_X reduction requirement, as described in paragraph (q) of this section.

(d)(1) The SIP submissions required under paragraph (a) of this section must be submitted to EPA by no later than 18 months from the date of promulgation of the final Clean Air Interstate Rule.

(2) The requirements of appendix V shall apply to the SIP submissions required under paragraph (a) of this section.

(3) The State shall deliver 5 copies of the SIP revision to the appropriate Regional Office, with a letter giving notice of such action.

(e)(1)(i) The Annual EGU NO_X budget for a State is defined as the total amount of NO_X emissions from all EGUs in that State for a year if the State meets the requirements of paragraph (a) of this section by imposing control measures, at least in part, on EGUs. If a State imposes control measures under this section on only EGUs, the Annual EGU NO_X budget amounts for a State shall not exceed the amounts, during the indicated periods, specified in paragraph (e)(2) of this section.

(ii) The Non-EGU Reduction Requirement is defined as the amount of NO_X emission reductions the State demonstrates, in accordance with paragraph (g) of this section, it will achieve from non-EGUs during the appropriate period. If a State meets the requirements of paragraph (a) of this section by imposing control measures on only non-EGUs, the State's Non-EGU Reduction Requirement shall equal or exceed the amount specified in paragraph (e)(3) of this section.

(iii) If a State meets the requirements of paragraph (a) of this section by imposing control measures on both EGUs and non-EGUs, the amount of the Non-EGU Reduction Requirement shall equal or exceed the difference between the amount of the State's Annual EGU NO_X budget specified in paragraph (e)(2) of this section and the amount of the State's Annual EGU NO_X budget specified in the SIP for the appropriate period.

(2) For a State that complies with the requirements of paragraph (a) of this section by imposing control measures only on EGUs, the amount of the Annual EGU NO_X budget, in tons per year, shall be as follows, for the indicated State, for the indicated period:

State	Annual EGU NO_X budget, 2010 through 2014	Annual EGU NO_X budget, 2015 and beyond
Alabama	67,422	56,185
Arkansas	24,919	20,765
Delaware	5,089	4,241
District of Columbia	215	179
Florida	115,503	96,253
Georgia	63,575	52,979
Illinois	73,622	61,352
Indiana	102,295	85,246
Iowa	30,458	25,381
Kansas	32,436	27,030
Kentucky	77,938	64,948
Louisiana	47,339	39,449
Maryland	26,607	22,173
Massachusetts	19,630	16,358
Michigan	60,212	50,177
Minnesota	29,303	24,420
Mississippi	21,932	18,277
Missouri	56,571	47,143
New Jersey	9,895	8,246
New York	52,503	43,753
North Carolina	55,763	46,469
Ohio	101,704	84,753
Pennsylvania	84,552	70,460
South Carolina	30,895	25,746
Tennessee	47,739	39,783
Texas	224,314	186,928
Virginia	31,087	25,906
West Virginia	68,235	56,863
Wisconsin	39,044	32,537
Total	1,600,799	1,333,999

(3) For a State that complies with the requirements of paragraph (a) of this section by imposing control measures on only non-EGUs, the amount of the Non-EGU Reduction Requirement, in tons per year, shall be as follows, for the indicated State, for the indicated period:

State	Non-EGU reduction requirement, 2010 through 2014 [1]	Non-EGU reduction requirement, 2015 and beyond [2]
Alabama	66,678	72,415
Arkansas	27,581	32,035
Delaware	5,211	6,559
District of Columbia	0	0
Florida	46,097	74,247
Georgia	87,025	100,321
Illinois	96,778	117,148
Indiana	133,705	156,754
Iowa	51,642	61,219
Kansas	68,464	74,870
Kentucky	115,962	133,752
Louisiana	2,361	10,651
Maryland	33,793	39,727
Massachusetts	0	0
Michigan	60,688	76,323
Minnesota	71,697	80,280
Mississippi	21,168	26,623
Missouri	76,229	93,657
New Jersey	19,105	22,154
New York	11,497	21,747
North Carolina	5,237	15,931
Ohio	159,696	171,147
Pennsylvania	123,148	142,440

State	Non-EGU reduction requirement, 2010 through 2014 [1]	Non-EGU reduction requirement, 2015 and beyond [2]
South Carolina	33,805	40,454
Tennessee	55,061	62,917
Texas	0	13,572
Virginia	23,813	31,394
West Virginia	86,965	91,337
Wisconsin	66,456	64,863

[1] This period refers to each year during the 2010–2014 period.
[2] This period refers to each year during 2015 and subsequently.

(f) Each SIP revision must set forth control measures to meet the amounts specified in paragraph (e) of this section, as applicable, including the following:

(1) A description of enforcement methods including, but not limited to:

(i) Procedures for monitoring compliance with each of the selected control measures;

(ii) Procedures for handling violations; and

(iii) A designation of agency responsibility for enforcement of implementation.

(2)(i) Should a State elect to impose control measures on EGUs, then those measures must impose a NO_X mass emissions cap on all such sources in the State.

(ii) Should a State elect to impose control measures on fossil fuel-fired non-EGUs that are boilers or combustion turbines with a maximum design heat input greater than 250 mmBtu/hr, then those measures must impose a NO_X mass emissions cap on all such sources in the State.

(iii) Should a State elect to impose control measures on fossil fuel-fired non-EGUs other than those described in paragraph (f)(2)(ii) of this section, then those measures must impose a NO_X mass emissions cap on all such sources in the State, or the State must demonstrate why such emissions cap is not practicable, and adopt alternative requirements that ensure to the maximum practicable degree that the State will comply with its requirements under paragraph (e) of this section, as applicable, in 2010 and subsequent years. (g)(1) Each SIP revision which includes control measures covering non-EGUs as part or all of a State's obligation in meeting its requirement under paragraph (a) of this section must demonstrate that such control measures are adequate to provide for the timely compliance with the State's Non-EGU Reduction Requirement under paragraph (e) of this section, and are not otherwise required under the Clean Air Act.

(2) The demonstration under paragraph (g)(1) of this section must include the following, with respect to each source category of non-EGUs for which the SIP requires controls:

(i) A detailed historical baseline inventory of NO_X mass emissions from the source category in a representative year consisting, at the State's election, of 2002, 2003, 2004, or 2005, or an average of 2 or more of those years, absent the control measures specified in the SIP submission.

(A) This inventory must represent estimates of actual emissions based on part 75 monitoring data, if the source category is subject to part 75 monitoring requirements.

(B) In the absence of part 75 monitoring data, actual emissions must be estimated using assumptions that ensure a source or source category's actual emissions are not overestimated, and must include source-specific or category-specific data. If a State uses factors to estimate emissions, production or utilization, or effectiveness of controls or rules for a source category, such factors must be chosen to ensure that emissions are not overestimated, or the State must justify the use of another value with additional information showing with reasonable confidence that the substitute value is more appropriate for estimating actual emissions.

(C) For measures to reduce emissions from motor vehicles, emission estimates must be based on an emissions model that has been approved by EPA for use in SIP development, and must be consistent with the planning assumptions regarding vehicle miles traveled and other factors current at the time of the SIP development.

(D) For measures to reduce emissions from nonroad engines or vehicles, emission estimates must be based on the emission methodologies recommended in EPA guidance current at the time of the SIP development or the SIP must document that another method is superior due to local factors.

(ii) A detailed baseline inventory of NO_X mass emissions from the source category in the years 2010 and 2015, absent the control measures specified in the SIP submission, and reflecting changes in these emissions from the historical baseline year to the years 2010 and 2015, based on projected changes in the production input and/or output, population, vehicle miles traveled, economic activity or other factors as applicable to this source category.

(A) These inventories must account for implementation of any rules or regulations that will affect NO_X emissions from this source category, excluding any control measures specified in the SIP submission to meet the NO_X emissions reduction requirements of this section.

(B) Economic and population forecasts must be as specific as possible to the applicable industry, State, and county of the source or source category, and must be consistent with both national projections and relevant official planning assumptions including estimates of population and vehicle miles traveled developed through consultation between State and local transportation and air quality agencies. However, if these official planning assumptions are themselves inconsistent with official U.S. Census projections of population and energy consumption projections contained in the Annual Energy Outlook published by the U.S. Department of Energy, adjustments must be made to correct the inconsistency, or the SIP must demonstrate how the official planning assumptions are more accurate.

(C) These inventories must account for any changes in production method, materials, fuels, or efficiency that are expected to occur between the historical baseline year and 2010 or 2015, as appropriate.

(iii) A projection of NO_X mass emissions in 2010 and 2015 from the source category identified in paragraph (g)(2)(i) of this section resulting from implementation of each of the control

measures specified in the SIP submission.

(A) These inventories must address the possibility that the State's new control measures may cause production and emissions to shift to non-regulated or less stringently regulated sources in the source category in the same or another State, and must include in the projected emissions inventory any such amounts of emissions that may shift to other sources.

(B) The State must provide EPA with a summary of the computations, assumptions, and judgments used to determine the degree of reduction in projected 2010 and 2015 NO_X emissions that will be achieved from the implementation of the new control measures compared to the relevant baseline emissions inventory.

(iv) The result of subtracting the amounts in paragraph (g)(2)(iii) for 2010 and 2015, respectively, from the lower of the amounts in paragraph (g)(2)(i) or (g)(2)(ii) of this section for 2010 and 2015, respectively, may be credited towards the State's Non-EGU Reduction Requirement in paragraph (e)(3) of this section for the appropriate period.

(v) Each revision must identify the sources of the data used in the estimate and projection of emissions.

(h) Each revision must comply with § 51.116 (regarding data availability).

(i) Each revision must provide for monitoring the status of compliance with any control measures adopted to meet the State's requirements under paragraph (e) of this section. Specifically, the revision must meet the following requirements:

(1) The revision must provide for legally enforceable procedures for requiring owners or operators of stationary sources to maintain records of, and periodically report to the State:

(i) Information on the amount of NO_X emissions from the stationary sources; and

(ii) Other information as may be necessary to enable the State to determine whether the sources are in compliance with applicable portions of the control measures;

(2) The revision must comply with § 51.212 (regarding testing, inspection, enforcement, and complaints);

(3) If the revision contains any transportation control measures, then the revision must comply with § 51.213 (regarding transportation control measures);

(4)(i) If the revision contains measures to control EGUs, then the revision must require such sources to comply with the monitoring and reporting provisions of subpart H of part 75.

(ii) If the revision contains measures to control fossil fuel-fired non-EGUs that are boilers or combustion turbines with a maximum design heat input greater than 250 mmBtu/hr, then the revision must require such sources to comply with the monitoring and reporting provisions of subpart H of part 75.

(iii) If the revision contains measures to control any other non-EGUs that are not described in paragraph (i)(4)(ii) of this section, the revision must require such sources to comply with the monitoring and reporting provisions of subpart H of part 75, or the State must demonstrate why such requirements are not practicable, and adopt alternative requirements that ensure to the maximum practicable degree that the required emissions reductions will be achieved.

(j) Each revision must show that the State has legal authority to carry out the revision, including authority to:

(1) Adopt emissions standards and limitations and any other measures necessary for attainment and maintenance of the State's relevant Annual EGU NO_X budget or the Non-EGU Reduction Requirement, as applicable, under paragraph (e);

(2) Enforce applicable laws, regulations, and standards, and seek injunctive relief;

(3) Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources; and

(4)(i) Require owners or operators of stationary sources to install, maintain, and use emissions monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such stationary sources; and

(ii) Make the data described in paragraph (j)(4)(i) of this section available to the public as reported and as correlated with any applicable emissions standards or limitations.

(k)(1) The provisions of law or regulation which the State determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the SIP revision.

(2) Legal authority adequate to fulfill the requirements of paragraphs (j)(3) and (4) of this section may be delegated to the State under § 114 of the CAA.

(l)(1) A revision may assign legal authority to local agencies in accordance with § 51.232.

(2) Each revision must comply with § 51.240 (regarding general plan requirements).

(m) Each revision must comply with § 51.280 (regarding resources).

(n) Each revision must provide for State compliance with the reporting requirements set forth in § 51.125.

(o)(1) Notwithstanding any other provision of this section, if a State adopts regulations substantively identical to subparts AA through HH of part 96 of this chapter, (the model CAIR NO_X trading program), incorporates such part by reference into its regulations, or adopts regulations that differ substantively from such part only as set forth in paragraph (o)(2) of this section, then that portion of the State's SIP revision is automatically approved as meeting the requirement of paragraph (e)(1)(i) of this section, provided that the State has the legal authority to take such action and to implement its responsibilities under such regulations.

(2)(i) If a State adopts an emissions trading program that differs substantively from subparts AA through HH of part 96 of this chapter only as described in paragraph (o)(2)(ii) of this section, then the emissions trading program is approved as set forth in paragraph (o)(1) of this section.

(ii) The State may decline to adopt the allocation provisions set forth in subpart EE of part 96 of this chapter and may instead adopt any methodology for allocating NO_X allowances to individual sources, provided that:

(A) The State's methodology does not allow the State to allocate NO_X allowances in excess of the total amount of NO_X emissions which the State has assigned to its trading program; and

(B) The State's methodology conforms with the timing requirements for submission of allocations to the Administrator set forth in § 96.141 of this chapter.

(3) If a State adopts an emissions trading program that differs substantively from subparts AA through HH of part 96 of this chapter, other than as set forth in paragraph (o)(2)(ii) of this section, then such portion of the trading program is not automatically approved as set forth in paragraph (o)(1) of this section, but will be reviewed by the Administrator for approvability in accordance with the other provisions of this section.

(p)(1) The State may revise its applicable implementation plan to provide that, for each year during which a State imposes controls on EGUs under paragraph (o) of this section, such EGUs shall not be subject to the requirements of the State's applicable implementation plan that meet the requirements of

§ 51.121. The owners and operators of such EGUs shall surrender for deduction by the Administrator any NO_X SIP Call allowances allocated to such units for any such year.

(2) Notwithstanding a revision by the State authorized under paragraph (p)(1) of this section, a State's applicable implementation plan that, without such revision, imposes controls on EGUs under § 51.121 determined by the Administrator to meet the requirements of § 51.121 shall be deemed to continue to meet the requirements of § 51.121.(q)(1)(i) The SIP revision required under paragraph (a) of this section for the State of Connecticut must require emissions reductions during the ozone season, which begins May 1 and ends September 30 of any year, commencing with 2010.

(ii) Except as provided under paragraph (q)(2) of this section, the Administrator shall not approve SIP provisions that adopt the model CAIR NO_X trading program, under subparts AA through HH of part 96 of this chapter.

(iii) For purposes of determining the applicability of paragraph (e) of this section to the State of Connecticut's SIP revision required under paragraph (a) of this section—

(A) The term "Seasonal EGU NO_X budget" shall replace the term "Annual EGU NO_X budget;" and

(B) The Seasonal EGU NO_X budget, in tons per season, for the State of Connecticut shall be 4,360 for the years 2010 through 2014, and 3,633 for the years 2015 and beyond; and

(C) The amount of the Non-EGU Reduction Requirement, in tons per season, for the State of Connecticut shall be zero, for the years 2010 through 2014, and zero, for the years 2015 and beyond.

(3) In lieu of the SIP provisions required under paragraph (q)(1) of this section, the Administrator may approve a SIP revision adopted by the State of Connecticut that requires annual NO_X emissions reductions and that meets the requirements of this section, as revised by this paragraph.

(i) For purposes of paragraph (e)(2) of this section, the Annual EGU NO_X . budget, in tons per year, for Connecticut shall be 9,283 for the years 2010 through 2014, and 7,735 for the years 2015 and beyond; and

(ii) For purposes of paragraph (e)(3) of this section, the amount of the Non-EGU Reduction Requirement, in tons per year, for Connecticut shall be zero for the years 2010 through 2014, and zero for the years 2015 and beyond.

(4) The Administrator may approve a SIP revision from the State of Connecticut adopted under paragraph (q)(2) of this section that adopts the model CAIR NO_X trading program, under subparts AA through HH of part 96 of this chapter.

(r) The terms used in this section shall have the following meanings:

Boiler means an enclosed fossil-or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for power production.

CAIR NO_X Trading Program means a multi-State nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AA through HH of part 96 of this chapter and this section, as a means of mitigating interstate transport of fine particulates, ozone, and nitrogen oxides.

Cogeneration unit means a unit:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity—

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input or, if useful thermal energy produced is less than 15 percent of total energy output, not less than 45 percent of total energy input.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means an enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine. A combustion turbine that is combined cycle also includes any associated heat recovery steam generator and steam turbine.

Electric generating unit or *EGU* means:

(1) Except for a unit under paragraph (2) of this definition, a fossil fuel-fired boiler or combustion turbine serving at any time a generator with nameplate capacity of more than 25 MWe producing electricity for sale; or

(2) A fossil fuel-fired cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and in any year supplying more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, any boiler or turbine combusting any amount of fossil fuel.

Generator means a device that produces electricity.

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis, as specified by the manufacturer of the unit as of the initial installation of the unit.

NAAQS means National Ambient Air Quality Standard.

Nameplate capacity means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as specified by the manufacturer of the generator as of the initial installation of the generator or, if the generator is subsequently modified or reconstructed resulting in an increase in such maximum electrical generating output, as specified by the person conducting the modification or reconstruction.

Non-EGU means a source of NO_X emissions that is not an EGU.

NO_X means oxides of nitrogen.

NO_X Budget Trading Program means a multi-State nitrogen oxide air pollution control and emission reduction program established by air pollution control and emission reduction program established by the Administrator in accordance with subparts A through I of part 96 of this chapter and § 51.121, as a means of mitigating interstate transport of ozone and nitrogen oxides.

NO_X SIP Call allowance means a limited authorization issued by the Administrator under the NO_X Budget Trading Program to emit up to one ton of nitrogen oxides during the ozone season of the specified year or any year thereafter.

Sequential use of energy means:

(1) For a topping-cycle cogeneration unit, the use of reject heat from power production in a useful thermal energy application or process; or

(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in power production.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power and at least some of the reject heat from the power production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

(1) Made available to an industrial or commercial process, excluding any heat contained in condensate return or makeup water;

(2) Used in a heat application (*e.g.*, space heating or domestic hot water heating); or

(3) Used in a space cooling application (*i.e.*, thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a distribution utility and dedicated to delivering electricity to customers.

5. Part 51 is amended by adding § 51.124 to Subpart G to read as follows:

§ 51.124 Findings and requirements for submission of State implementation plan revisions relating to emissions of sulfur dioxide pursuant to the Clean Air Interstate Rule.

(a) Under § 110(a)(1) of the CAA, 42 U.S.C. 7410(a)(1), the Administrator determines that each State identified in paragraph (c) of this section must submit a SIP revision to comply with the requirements of § 110(a)(2)(D)(i)(I) of the CAA, 42 U.S.C. 7410(a)(2)(D)(i)(I), through the adoption of adequate provisions prohibiting sources and other activities from emitting SO_2 in amounts that will contribute significantly to nonattainment in, or interfere with maintenance by, one or more other States with respect to the fine particles (PM2.5) NAAQS.

(b) For each State identified in paragraph (c) of this section, the SIP revision required under paragraph (a) will contain adequate provisions, for purposes of complying with § 110(a)(2)(D)(i)(I) of the CAA, 42 U.S.C. 7410(a)(2)(D)(i)(I), only if the SIP revision contains measures that assure compliance with the applicable requirements of this section.

(c) The following States are subject to the requirements of this section: Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and the District of Columbia.

(d)(1) The SIP submissions required under paragraph (a) of this section must be submitted to EPA by no later than 18 months from the date of promulgation of the final Clean Air Interstate Rule.

(2) The requirements of appendix V shall apply to the SIP submissions required under paragraph (a) of this section.

(3) The State shall deliver 5 copies of the SIP revision to the appropriate Regional Office, with a letter giving notice of such action.

(e)(1)(i) The Annual EGU SO_2 budget for a State is defined as the total amount of SO_2 emissions from all EGUs in that State for a year if the State meets the requirements of paragraph (a) of this section by imposing control measures, at least in part, on EGUs. If a State imposes control measures under this section on only EGUs, the Annual EGU SO_2 budget amounts for a State shall not exceed the amounts, during the indicated periods, specified in paragraph (e)(2) of this section.

(ii) The Non-EGU Reduction Requirement is defined as the amount of SO_2 emission reductions the State demonstrates, in accordance with paragraph (g) of this section, it will achieve from non-EGUs during the appropriate period. If a State meets the requirements of paragraph (a) of this section by imposing control measures on only non-EGUs, the State's Non-EGU Reduction Requirement shall equal or exceed the amount specified in paragraph (e)(3) of this section.

(iii) If a State meets the requirements of paragraph (a) of this section by imposing control measures on both EGUs and non-EGUs, the amount of the Non-EGU Reduction Requirement shall equal or exceed the difference between the amount of the State's Annual EGU SO_2 budget specified in paragraph (e)(2) of this section and the amount of the State's Annual EGU SO_2 budget specified in the SIP for the appropriate period.

(2) For a State that complies with the requirements of paragraph (a) of this section by imposing control measures only on EGUs, the amount of the Annual EGU SO_2 budget, in tons per year, shall be as follows, for the indicated State, for the indicated period:

State	Annual EGU SO_2 budget, 2010 through 2014[1]	Annual EGU SO_2 budget, 2015 and beyond[2]
Alabama	157,582	110,307
Arkansas	48,702	34,091
Delaware	22,411	15,687
District of Columbia	708	495
Florida	253,450	177,415
Georgia	213,057	149,140
Illinois	192,671	134,869
Indiana	254,599	178,219
Iowa	64,095	44,866
Kansas	58,304	40,812
Kentucky	188,773	132,141
Louisiana	59,948	41,963
Maryland	70,697	49,488
Massachusetts	82,561	57,792

State	Annual EGU SO_2 budget, 2010 through 2014 [1]	Annual EGU SO_2 budget, 2015 and beyond [2]
Michigan	178,605	125,024
Minnesota	49,987	34,991
Mississippi	33,763	23,634
Missouri	137,214	96,050
New Jersey	32,392	22,674
New York	135,139	94,597
North Carolina	137,342	96,139
Ohio	333,520	233,464
Pennsylvania	275,990	193,193
South Carolina	57,271	40,089
Tennessee	137,216	96,051
Texas	320,946	224,662
Virginia	63,478	44,435
West Virginia	215,881	151,117
Wisconsin	87,264	61,085
Total	3,863,566	2,704,490

[1] This period refers to each year during the 2010–2014 period.
[2] This period refers to each year during 2015 and subsequently.

(3) For a State that complies with the requirements of paragraph (a) of this section by imposing control measures on only non-EGUs, the amount of the Non-EGU Reduction Requirement, in tons per year, shall be as follows, for the indicated State, for the indicated period:

State	Non-EGU reduction requirement, 2010 through 2014 [1]	Non-EGU reduction requirement, 2015 and beyond [2]
Alabama	157,582	204,857
Arkansas	48,702	63,312
Delaware	22,411	29,134
District of Columbia	708	920
Florida	253,450	329,485
Georgia	213,057	276,974
Illinois	192,671	250,472
Indiana	254,599	330,978
Iowa	64,095	83,323
Kansas	58,304	75,795
Kentucky	188,773	245,405
Louisiana	59,948	77,932
Maryland	70,697	91,906
Massachusetts	82,561	107,329
Michigan	178,605	232,187
Minnesota	49,987	64,983
Mississippi	33,763	43,892
Missouri	137,214	178,378
New Jersey	32,392	42,109
New York	135,139	175,681
North Carolina	137,342	178,545
Ohio	333,520	433,576
Pennsylvania	275,990	358,787
South Carolina	57,271	74,452
Tennessee	137,216	178,380
Texas	320,946	417,230
Virginia	63,478	82,521
West Virginia	215,881	280,645
Wisconsin	87,264	113,443

[1] This period refers to each year during the 2010–2014 period.
[2] This period refers to each year during 2015 and subsequently.

(f) Each SIP revision must set forth control measures to meet the amounts specified in paragraph (e) of this section, as applicable, including the following:

(1) A description of enforcement methods including, but not limited to:

(i) Procedures for monitoring compliance with each of the selected control measures;

(ii) Procedures for handling violations; and

(iii) A designation of agency responsibility for enforcement of implementation.

(2)(i) Should a State elect to impose control measures on EGUs, then those measures must impose a SO_2 mass emissions cap on all such sources in the State.

(ii) Should a State elect to impose control measures on fossil fuel-fired non-EGUs that are boilers or combustion turbines with a maximum design heat input greater than 250 mmBtu/hr, then those measures must impose a SO_2 mass emissions cap on all such sources in the State.

(iii) Should a State elect to impose control measures on fossil fuel-fired non-EGUs other than those described in paragraph (f)(2)(ii) of this section, then those measures must impose a SO_2 mass emissions cap on all such sources in the State, or the State must demonstrate why such emissions cap is not practicable, and adopt alternative requirements that ensure to the maximum practicable degree that the State will comply with its requirements under paragraph (e) of this section, as applicable, in 2010 and subsequent years.

(g)(1) Each SIP revision which includes control measures covering non-EGUs as part or all of a State's obligation in meeting its requirement under paragraph (a) of this section must demonstrate that such control measures are adequate to provide for the timely compliance with the State's Non-EGU Reduction Requirement under paragraph (e) of this section, and are not otherwise required under the Clean Air Act.

(2) The demonstration under paragraph (g)(1) of this section must include the following, with respect to each source category of non-EGUs for which the SIP requires controls:

(i) A detailed historical baseline inventory of SO_2 mass emissions from the source category in a representative year consisting, at the State's election, of 2002, 2003, 2004, or 2005, or an average of 2 or more of those years, absent the control measures specified in the SIP submission.

(A) This inventory must represent estimates of actual emissions based on part 75 monitoring data, if the source category is subject to part 75 monitoring requirements.

(B) In the absence of part 75 monitoring data, actual emissions must be estimated using assumptions that ensure a source or source category's actual emissions are not overestimated, and must include source-specific or category-specific data. If a State uses factors to estimate emissions, production or utilization, or effectiveness of controls or rules for a source category, such factors must be chosen to ensure that emissions are not overestimated, or the State must justify the use of another value with additional information showing with reasonable confidence that the substitute value is more appropriate for estimating actual emissions.

(C) For measures to reduce emissions from motor vehicles, emission estimates must be based on an emissions model that has been approved by EPA for use in SIP development, and must be consistent with the planning assumptions regarding vehicle miles traveled and other factors current at the time of the SIP development.

(D) For measures to reduce emissions from nonroad engines or vehicles, emission estimates must be based on the emission methodologies recommended in EPA guidance current at the time of the SIP development or the SIP must document that another method is superior due to local factors.

(ii) A detailed baseline inventory of SO_2 mass emissions from the source category in the years 2010 and 2015, absent the control measures specified in the SIP submission, and reflecting changes in these emissions from the historical baseline year to the years 2010 and 2015, based on projected changes in the production input and/or output, population, vehicle miles traveled, economic activity or other factors as applicable to this source category.

(A) These inventories must account for implementation of any rules or regulations that will affect SO_2 emissions from this source category, excluding any control measures specified in the SIP submission to meet the SO_2 emissions reduction requirements of this section.

(B) Economic and population forecasts must be as specific as possible to the applicable industry, State, and county of the source or source category, and must be consistent with both national projections and relevant official planning assumptions including estimates of population and vehicle miles traveled developed through consultation between State and local transportation and air quality agencies. However, if these official planning assumptions are themselves inconsistent with official U.S. Census projections of population and energy consumption projections contained in the Annual Energy Outlook published by the U.S. Department of Energy, adjustments must be made to correct the inconsistency, or the SIP must demonstrate how the official planning assumptions are more accurate.

(C) These inventories must account for any changes in production method, materials, fuels, or efficiency that are expected to occur between the historical baseline year and 2010 or 2015, as appropriate.

(iii) A projection of SO_2 mass emissions in 2010 and 2015 from the source category identified in paragraph (g)(2)(i) of this section resulting from implementation of each of the control measures specified in the SIP submission.

(A) These inventories must address the possibility that the State's new control measures may cause production and emissions to shift to non-regulated or less stringently regulated sources in the source category in the same or another State, and must include in the projected emissions inventory any such amounts of emissions that may shift to other sources.

(B) The State must provide EPA with a summary of the computations, assumptions, and judgments used to determine the degree of reduction in projected 2010 and 2015 SO_2 emissions that will be achieved from the implementation of the new control measures compared to the relevant baseline emissions inventory.

(iv) The result of subtracting the amounts in paragraph (g)(2)(iii) for 2010 and 2015, respectively, from the lower of the amounts in paragraph (g)(2)(i) or (g)(2)(ii) of this section for 2010 and 2015, respectively, may be credited towards the State's Non-EGU Reduction Requirement in paragraph (e)(3) of this section for the appropriate period.

(v) Each revision must identify the sources of the data used in the estimate and projection of emissions.

(h) Each revision must comply with § 51.116 (regarding data availability).

(i) Each revision must provide for monitoring the status of compliance with any control measures adopted to meet the State's requirements under paragraph (e) of this section. Specifically, the revision must meet the following requirements:

(1) The revision must provide for legally enforceable procedures for requiring owners or operators of stationary sources to maintain records of, and periodically report to the State:

(i) Information on the amount of SO_2 emissions from the stationary sources; and

(ii) Other information as may be necessary to enable the State to determine whether the sources are in compliance with applicable portions of the control measures;

(2) The revision must comply with § 51.212 (regarding testing, inspection, enforcement, and complaints);

(3) If the revision contains any transportation control measures, then the revision must comply with § 51.213

(regarding transportation control measures);

(4)(i) If the revision contains measures to control EGUs, then the revision must require such sources to comply with the monitoring and reporting provisions of part 75.

(ii) If the revision contains measures to control fossil fuel-fired non-EGUs that are boilers or combustion turbines with a maximum design heat input greater than 250 mmBtu/hr, then the revision must require such sources to comply with the monitoring and reporting provisions of part 75.

(iii) If the revision contains measures to control any other non-EGUs that are not described in paragraph (i)(4)(ii) of this section, the revision must require such sources to comply with the monitoring and reporting provisions of part 75, or the State must demonstrate why such requirements are not practicable, and adopt alternative requirements that ensure to the maximum practicable degree that the required emissions reductions will be achieved.

(j) Each revision must show that the State has legal authority to carry out the revision, including authority to:

(1) Adopt emissions standards and limitations and any other measures necessary for attainment and maintenance of the State's relevant Annual EGU SO_2 budget or the Non-EGU Reduction Requirement, as applicable, under paragraph (e);

(2) Enforce applicable laws, regulations, and standards, and seek injunctive relief;

(3) Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources; and

(4)(i) Require owners or operators of stationary sources to install, maintain, and use emissions monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such stationary sources; and

(ii) Make the data described in paragraph (j)(4)(i) of this section available to the public as reported and as correlated with any applicable emissions standards or limitations.

(k)(1) The provisions of law or regulation which the State determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the SIP revision.

(2) Legal authority adequate to fulfill the requirements of paragraphs (j)(3) and (4) of this section may be delegated to the State under § 114 of the CAA.

(l)(1) A revision may assign legal authority to local agencies in accordance with § 51.232.

(2) Each revision must comply with § 51.240 (regarding general plan requirements).

(m) Each revision must comply with § 51.280 (regarding resources).

(n) Each revision must provide for State compliance with the reporting requirements set forth in § 51.125.

(o) Notwithstanding any other provision of this section, if a State adopts regulations substantively identical to subparts AAA through HHH of part 96 of this chapter (CAIR SO_2 Emissions Trading Program), or incorporates such part by reference into its regulations, then that portion of the State's SIP revision is automatically approved as meeting the requirements of paragraph (e)(1)(i) of this section, provided that the State has the legal authority to take such action and to implement its responsibilities under such regulations.

(p) For a State that does not adopt regulations in accordance with paragraph (o) of this section:

(1) The sources subject to the Acid Rain Program , in addition to complying with the requirements of § 72.9(c)(1)(i) of this chapter, shall hold the following amounts of Acid Rain allowances, as of the allowance transfer deadline in the source's compliance account—

(i) For each Acid Rain allowance allocated for a year during 2010 through 2014 that is held in order to meet the requirements of § 72.9(c)(1)(i) of this chapter, one additional Acid Rain allowance allocated for a year during 2010 through 2014; and

(ii) For each Acid Rain allowance allocated for a year during 2015 or thereafter held in accordance with § 72.9(c)(1)(i) of this chapter, two additional Acid Rain allowances allocated for a year during 2015 or thereafter.

(2) When the Administrator deducts Acid Rain allowances under § 73.35(b) and (c) of this chapter, the Administrator will also deduct from the source's compliance account the amount of Acid Rain allowances required to be held under paragraph (p)(1) of this section. If the owner and operator of the source fails to hold the Acid Rain allowances required under paragraph (p)(1) of this section, then, for each Acid Rain allowance required but not held, the Administrator will deduct from such compliance account three Acid Rain allowances allocated for the year after the year of the allowance transfer deadline by which the Acid Rain allowances were required to be held.

(q) The terms used in this section shall have the following meanings:

Acid Rain Program means a multi-State sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Acid Rain allowance means a limited authorization issued by the Administrator under the Acid Rain Program to emit up to one ton of sulfur dioxide during the specified year or any year thereafter.

Allowance transfer deadline means the allowance transfer deadline under the Acid Rain Program, as defined in § 72.2 of this chapter.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for power production.

CAIR SO_2 Emissions Trading Program means a multi-State sulfur dioxide air pollution control and emission reduction program established by the Administrator in accordance with subparts AAA through HHH of part 96 of this chapter and this section, as a means of mitigating interstate transport of fine particulates.

Cogeneration unit means a unit:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity—

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input or, if useful thermal energy produced is less than 15 percent of total energy output, not less than 45 percent of total energy input.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means an enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine. A combustion turbine that is combined cycle also includes any associated heat recovery steam generator and steam turbine.

Compliance account means a compliance account under the Acid Rain Program, as defined in § 72.2 of this chapter.

Electric generating unit or *EGU* means:

(1) Except for a unit under paragraph (2) of this definition, a fossil fuel-fired boiler or combustion turbine serving at any time a generator with nameplate capacity of more than 25 MWe producing electricity for sale; or

(2) A fossil fuel-fired cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and in any year supplying more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, any boiler or turbine combusting any amount of fossil fuel.

Generator means a device that produces electricity.

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis, as specified by the manufacturer of the unit as of the initial installation of the unit.

NAAQS means National Ambient Air Quality Standard.

Nameplate capacity means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as specified by the manufacturer of the generator as of the initial installation of the generator or, if the generator is subsequently modified or reconstructed resulting in an increase in such maximum electrical generating output, as specified by the person conducting the modification or reconstruction.

Non-EGU means a source of SO_2 emissions that is not an EGU.

SO_2 means sulfur dioxide.

Sequential use of energy means:

(1) For a topping-cycle cogeneration unit, the use of reject heat from power production in a useful thermal energy application or process; or

(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in power production.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power and at least some of the reject heat from the power production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

(1) Made available to an industrial or commercial process, excluding any heat contained in condensate return or makeup water;

(2) Used in a heat application (*e.g.*, space heating or domestic hot water heating); or

(3) Used in a space cooling application (*i.e.*, thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a distribution utility and dedicated to delivering electricity to customers.

6. Part 51 is amended by adding § 51.125 to Subpart G to read as follows:

§ 51.125 Emissions reporting requirements for SIP revisions relating to budgets for SO_2 and NO_X emissions.

(a) For its transport SIP revision under § 51.123 and/or 51.124 of this part, each State must submit to EPA SO_2 and/or NO_X emissions data as described in this section.

(1) The District of Columbia and following States must report annual (12 months) emissions of SO_2 and NO_X: Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

(2) The District of Columbia and the following States must report ozone season (May 1 through September 30) emissions of NO_X: Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

(b) Each revision must provide for periodic reporting by the State of SO_2 and/or NO_X emissions data as specified in paragraph (a) of this section to demonstrate whether the State's emissions are consistent with the projections contained in its approved SIP submission.

(1) Every-year reporting cycle. As applicable, each revision must provide for reporting of SO_2 and NO_X emissions data every year as follows:

(i) The States identified in paragraph (a)(1) of this section must report to EPA annual emissions data every year from all SO_2 and NO_X sources within the State for which the State specified control measures in its SIP submission under §§ 51.123 and/or 51.124 of this part.

(ii) The States identified in paragraph (a)(2) of this section must report to EPA ozone season and summer daily emissions data every year from all NO_X sources within the State for which the State specified control measures in its SIP submission under § 51.123 of this part.

(iii) If sources report SO_2 and NO_X emissions data to EPA in a given year pursuant to a trading program approved under § 51.123(o) or § 51.124(o) of this part or pursuant to the monitoring and reporting requirements of subpart H of 40 CFR part 75, then the State need not provide annual reporting of these pollutants to EPA for such sources.

(2) Three-year reporting cycle. As applicable, each plan must provide for triennial (*i.e.*, every third year) reporting of SO_2 and NO_X emissions data from all sources within the State.

(i) The States identified in paragraph (a)(1) of this section must report to EPA annual emissions data every third year from all SO_2 and NO_X sources within the State.

(ii) The States identified in paragraph (a)(2) of this section must report to EPA ozone season and ozone daily emissions data every third year from all NO_X sources within the State.

(3) The data availability requirements in § 51.116 of this part must be followed for all data submitted to meet the requirements of paragraphs (b)(1)and(2) of this section.

(c) The data reported in paragraph (b) of this section must meet the requirements of subpart A of this part.

(d) Approval of annual and ozone season calculation by EPA. Each State must submit for EPA approval an example of the calculation procedure used to calculate annual and ozone season emissions along with sufficient information for EPA to verify the calculated value of annual and ozone season emissions.

(e) Reporting schedules.

(1) Reports are to begin with data for emissions occurring in the year 2008, which is the first year of the 3-year cycle.

(2) After 2008, 3-year cycle reports are to be submitted every third year and every-year cycle reports are to be submitted each year that a triennial report is not required.

(3) States must submit data for a required year no later than 17 months after the end of the calendar year for which the data are collected.

(f) Data reporting procedures are given in subpart A. When submitting a formal NO_X budget emissions report and associated data, States shall notify the appropriate EPA Regional Office.

(g) Definitions. As used in this section, words and terms shall have the meanings set forth in appendix A of subpart A of this part.

7. § 51.308 is amended by revising the introductory text of paragraph (e)(2), paragraphs (e)(3) and (e)(4), and by adding paragraph (e)(5) as follows:

§ 51.308 Regional haze program requirements

* * * * *

(e) * * *

(2) A State may opt to implement an emissions trading program or other alternative measure rather than to require sources subject to BART to install, operate and maintain BART. Except as provided in paragraph (e)(3) of this section, to do so, the State must demonstrate that this emissions trading program or other alternative measure will achieve greater reasonable progress than would be achieved through the installation and operation of BART. To make this demonstration, the State must submit an implementation plan containing the following plan elements and include documentation for all required analyses:

* * * * *

(3) A State that opts to participate in the Clean Air Interstate Rule cap-and-trade program under part 96 AAA–EEE need not require affected BART-eligible EGU's to install, operate, and maintain BART. A State that chooses this option may also include provisions for a geographic enhancement to the program to address the requirement under § 51.302(c) related to BART for reasonably attributable impairment from the pollutants covered by the CAIR cap-and-trade program.

(4) After a State has met the requirements for BART or implemented emissions trading program or other alternative measure that achieves more reasonable progress than the installation and operation of BART, BART-eligible sources will be subject to the requirements of § 51.308(d) in the same manner as other sources.

(5) Any BART-eligible facility subject to the requirement under § 51.308(e) to install, operate, and maintain BART may apply to the Administrator for an exemption from that requirement. An application for an exemption will be subject to the requirements of § 51.303(a)(2)–(h).

PART 72—PERMITS REGULATION

1. The authority citation for part 72 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 72.2 [Amended]

2. Section 72.2 is amended as follows:

a. Amend the definition of "Acid rain emissions limitation" by replacing, in paragraph (1)(i), the words "an affected unit" by the words "the affected units at a source" and replacing, in paragraph (1)(ii)(C), the words "compliance subaccount for that unit" by the words "compliance account for that source";

b. Amend the definition of "Allocate or allocation" by replacing the words "unit account" by the words "compliance account";

c. Amend the definition of "Allowance deduction, or deduct" by replacing the words "compliance subaccount, or future year subaccount," by the words "compliance account" and replacing the words "from an affected unit" by the words "from the affected units at an affected source";

d. Amend the definition of "Allowance transfer deadline" by replacing the words "affected unit's compliance subaccount" by the words "an affected source's compliance account" and replacing the words "the unit's" by the words "the source's";

e. Amend the definition of "Authorized account representative" by replacing the words "unit account" by the words "compliance account" and replacing the words "affected unit" by the words "affected source and the affected units at the source";

f. Amend the definition of "Compliance use date" by replacing the word "unit's" by the word "source's";

g. Amend the definition of "excess emissions" by, in paragraph (1), replacing the words "an affected unit" by the words "the affected units at an affected source" and replacing the words "for the unit" by the words "for the source";

h. Amend the definition of "Recordation, record, or recorded" by removing the words "or subaccount"; and

i. Revise the definition of "Cogeneration unit", adding a new definition of "Compliance account", and removing the definitions of "Compliance subaccount", "Current year subaccount", "Future year subaccount", and "Unit account" to read as follows:

§ 72.2 Definitions.

* * * * *

Cogeneration unit means a unit that has equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam) for industrial, commercial, heating, or cooling purposes, through sequential use of energy.

* * * * *

Compliance account means an Allowance Tracking System account, established by the Administrator for an affected source and for each affected unit at the source pursuant to § 73.31(a) or (b) of this chapter.

* * * * *

§ 72.7 [Amended]

3. Section 72.7 is amended in paragraph (c)(1)(ii), in the first sentence, remove the word "unit's" and add after the words "Allowance Tracking System account" the words "of the source that includes the unit" and remove the third sentence.

§ 72.9 [Amended]

4. Section 72.9 is amended by:

a. In paragraph (c)(1)(i), replace the words "unit's compliance subaccount" with the words "source's compliance account" and replace the words "from the unit" by the words "from the affected units at the source";

b. In paragraphs (e)(1) and (e)(2) introductory text, replace the words "an affected unit" by the words "an affected source"; and

c. In paragraph (g)(6), remove the second sentence.

§ 72.21 [Amended]

5. Section 72.21 is amended by removing from paragraph (b)(1) the word "affected" wherever it appears.

§ 72.24 [Amended]

6. Section 72.24 is amended by removing and reserving paragraphs (a)(5), (a)(7), and (a)(10).

§ 72.40 [Amended]

7. Section 72.40 is amended, in paragraph (a)(1), replace the words "unit's compliance subaccount" with the words "compliance account of the source where the unit is located ", remove the words ", or in the compliance subaccount of another affected unit at the source to the extent provided in § 73.35(b)(3),", and replace the words "from the unit" by the words "from the affected units at the source".

§ 72.73 [Amended]

8. Section 72.73 is amended, in paragraph (b)(2), replace the words "the first Acid Rain permit" by the words "an Acid Rain permit".

§ 72.90 [Amended]

9. Section 72.90 is amended, in paragraph (a), add, after the words "each calendar year", the words "during 1995 through 2004".

§ 72.95 [Amended]

10. Section 72.95 is amended by:

a. In the introductory text, replace the words "an affected unit's compliance subaccount" with the words "an affected source's compliance account"; and

b. In paragraph (a), replace the words "by the unit" by the words "by the affected units at the source".

PART 73—SULFUR DIOXIDE ALLOWANCE SYSTEM

1. The authority citation continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 73.10 [Amended]

2. Section 73.10 is amended by:

a. In paragraph (a), remove the words "in each future year subaccount";

b. In paragraph (b)(1), replace the words "in the future year subaccounts representing calendar years" with the words "for the years"; and

c. In paragraph (b)(2), replace the words "in the future year subaccounts representing calendar years" with the words "for the year".

§ 73.30 [Amended]

3. Section 73.30 is amended by:

a. In paragraph (a), replace the words "affected units" by the words "affected sources"; and

b. In paragraph (b), replace the word "unit" by the word "source".

§ 73.31 [Amended]

4. Section 73.31 is amended by:

a. In paragraph (a), replace the words "each unit" with the words "each source that includes a unit";

b. In paragraph (b), replace the words "the unit." by the words "the source that includes the unit, unless the source already has a compliance account."; and

c. In paragraph (c)(1)(v), remove the words "I shall abide by any fiduciary responsibilities assigned pursuant to the binding agreement.".

§ 73.32 [Removed and Reserved]

5. § 73.32 is removed and reserved.

§ 73.33 [Amended]

6. Removing and reserving paragraph (c).

§ 73.34 [Amended]

7. Section 73.34 is amended as follows:

a. Revise paragraph (a) to read as set forth below;

b. Remove and reserve paragraph (b); and

c. In paragraph (c) heading, replace the words "in subaccounts" with the words "in compliance accounts" and in the introductory text, replace the words "compliance, current year, and future year" with the words "compliance account".

§ 73.34 Recordation in accounts.

(a) Recordation in compliance accounts. When a compliance account is established under § 73.31(a), the Administrator will record in the account any allowances allocated to the affected units at the source under § 73.10 or part 74 for 30 years starting with the later of 1995 or the year in which the account is established. At the beginning of 1995 and, in the case of each year thereafter, after the Administrator has made all deductions from the compliance account pursuant to § 73.35(b), the Administrator will record in the compliance account the allowances allocated to such units under § 73.10 or part 74 for the new 30th year.

* * * * *

§ 73.35 [Amended]

8. Section 73.35 is amended as follows:

a. In paragraph (a) introductory text and paragraph (a)(1), replace the words "unit's" by the word "source's";

b. In paragraph (a)(2)(i), replace the words "the unit's compliance subaccount" with the words "the compliance account of the source that includes the unit";

c. In paragraph (a)(2)(ii), replace the words "the unit's compliance subaccount" with the words "the compliance account of the source that includes the unit" wherever they appear and remove the words "for the unit", and replace the words "; or" with a period.

d. Remove paragraph (a)(2)(iii).

e. In paragraph (b)(1), add after the words "deduct allowances" the words "available for deduction under paragraph (a) of this section" and replace the words "each affected unit's compliance subaccount" with the words "each affected source's compliance account";

f. In paragraph (b)(2), replace the words "allowances remain in the compliance subaccount" with the words "allowances available for deduction under paragraph (a) of this section remain in the compliance account";

g. Remove paragraph (b)(3);

h. Revise paragraph (c)(1) to read as set forth below;

i. In paragraph (c)(2), replace the words "for the unit" with the words "for the units at the source", replace the words "in its compliance subaccount." by the words "in the source's compliance account.", replace the words "from the compliance subaccount" by the words "from the compliance account", and replace the words "unit's compliance subaccount" by the words "source's compliance account";

j. In paragraph (d), replace the words "for each unit" by the words "for each source" and replace the word "unit's" by the word "source's"; and

k. Remove paragraph (e).

§ 73.35 Compliance.

* * * * *

(c)(1) *Identification of allowances by serial number.* The authorized account representative for a source's compliance account may request that specific allowances, identified by serial number, in the compliance account be deducted for a calendar year in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the year and include, in a format prescribed by the Administrator, the identification of the source and the appropriate serial numbers.

* * * * *

§ 73.36 [Amended]

9. Section 73.36 is amended by:

a. In paragraph (a), replace the words "Unit accounts." with the words "Compliance accounts." and replace with words "compliance subaccount"

with the words "compliance account" whenever they appear; and

b. In paragraph (b), replace the words "current year subaccount" with the words "general account" whenever they appear.

10. Section 73.37 is revised to read as follows:

§ 73.37 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the authorized account representative for the account.

§ 73.38 [Amended]

11. Section 73.38 is amended as follows:

a. In paragraph (a), replace the words "delete the general account from the Allowance Tracking System." by the words "close the general account."; and

b. In paragraph (b), remove the words "and eliminated from the Allowance Tracking System" and the last sentence.

§ 73.50 [Amended]

12. Section 73.50 is amended as follows:

a. In paragraph (a), remove the words ", including, but not limited to, transfers of an allowance to and from contemporaneous future year subaccounts, and transfers of an allowance to and from compliance subaccounts and current year subaccounts, and transfers of all allowances allocated for a unit for each calendar year in perpetuity";

b. In paragraph (b)(1)(ii), remove the words ", or correct indication on the allowance transfer where a request involves the transfer of the unit's allowance in perpetuity";

c. In paragraph (b)(2)(ii), remove the words "Allowance Tracking System" and "under 40 CFR part 73, or any other remedies" and remove the comma after the words "under State or Federal law"; and

d. Remove paragraph (b)(3).

§ 73.51 [Removed and Reserved]

13. Section 73.51 is removed and reserved.

14. Section 73.52 is amended as follows revising paragraphs (a)(1), (a)(2) and (a)(3) and by removing paragraph (a)(4), and revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 73.52 EPA recordation.

(a) * * *

(1) The transfer is corrected submitted under § 73.50;

(2) The transferor account includes each allowance identified by serial number in the transfer;

(3) If the allowances identified by serial number specified pursuant to § 73.50(b)(1)(ii) are subject to the limitation on transfer imposed pursuant to § 72.44(h)(1)(i) of this chapter, § 74.42 of this chapter, or § 74.47(c) of this chapter, the transfer is in accordance with such limitation.

(b) To the extent an allowance transfer submitted for recordation after the allowance transfer deadline includes allowances allocated for any year before the year of the allowance transfer deadline, the transfer of such allowance will not be recorded until after completion of the deductions pursuant to § 73.35(b) for year before the year of the allowance transfer deadline.

(c) Where an allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 73.70 [Amended]

15. Section 73.70 is amended as follows:

a. In paragraph (f), replace the words "the subaccount" by the words "the Allowance Tracking System account"; and

b. In paragraph (i)(1), add, after the words "Allowance Tracking System account", the words "of the source that includes".

PART 74—SULFUR DIOXIDE OPTS-INS

1. The authority citation for part 74 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 74.18 [Amended]

2. Section 74.18 is amended, in paragraph (d), remove the last sentence.

§ 74.40 [Amended]

3. Section 74.40 is amended, in paragraph (a), add, after the words "an account", the words "(unless the source that includes the opt-in unit already has a compliance account)" and remove the last sentence.

4. Section 74.42 is revised to read as follows:

§ 74.42 Limitation on transfers.

(a) With regard to a transfer request submitted for recordation during the period starting January 1 and ending with the allowance transfer deadline in the same year, the Administrator will not record a transfer of an opt-in allowance that is allocated to an opt-in source for the year in which the transfer request is submitted or a subsequent year.

(b) With regard to a transfer request during the period starting with an allowance transfer deadline and ending December 31 in the same year, the Administrator will not record a transfer of an opt-in allowance that is allocated to an opt-in source for a year after the year in which the transfer request is submitted.

§ 74.43 [Amended]

5. Section 74.43 is amended as follows:

a. In paragraph (a), remove the words "in lieu of any annual compliance certification report required under subpart I of part 72 of this chapter";

b. In paragraph (b)(7), replace the word "At" by the words, "In an annual compliance certification report for a year during 1995 through 2004, at"; and

c. In paragraph (b)(8), replace the word "The" by the words, "In an annual compliance certification report for a year during 1995 through 2004, the".

§ 74.44 [Amended]

6. Section 74.44 is amended as follows:

a. In paragraphs (c)(2)(iii)(C), (c)(2)(iii)(D), (c)(2)(iii)(E) introductory text, and (c)(2)(iii)(E)(3), replace the words "opt-in source's compliance subaccount" by the words "compliance account of the source that includes the opt-in source" whenever they occur; and

b. In paragraph (c)(2)(iii)(F), replace the words "opt-in source's compliance subaccount" by the words "compliance account of the source that includes the opt-in source" and replace the words "source's compliance subaccount" by the words "compliance account of the source that includes the opt-in source".

§ 74.46 [Amended]

7. Section 74.6 is amended by removing and reserving paragraph (b)(2).

§ 74.47 [Amended]

8. Section 74.47 is amended as follows:

a. In paragraph (c), replace the words "unit account" by the words "compliance account of the source that includes the replacement unit"; and

b. In paragraph (d)(2), add, after the words "Allowance Tracking System accounts", the words "of the source that include the opt-in source and each replacement unit" and remove the words "for the opt-in source and for each replacement unit".

§ 74.49 [Amended]

9. Section 74.49 is amended, in paragraph (a), replace the words "an opt-in source's compliance subaccount"

by the words "the compliance account of a source that include an opt-in source".

§ 74.50 [Amended]

10. Section 74.50 is amended as follows:

a. In paragraph (a)(2) introductory text, add, after the words "the account of the" the words "source that includes";

b. In paragraph (a)(2)(i), replace the words "opt-in source's compliance subaccount" by the words "the compliance account of the source that includes the opt-in source"; and

c. In paragraph (b), replace the words "the opt-in source's unit account" by the words "the compliance account of the source that includes the opt-in source"; and

d. In paragraph (d), replace the words "an opt-in source does not hold" by the words "the source that include the opt-in source does not hold".

PART 77—EXCESS EMISSIONS

1. The authority citation for part 77 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 77.3 [Amended]

2. Section 77.3 is amended as follows:

a. In paragraph (a), replace the words "affected unit" by the words "affected source" and replace the word "unit's" by the word "source's";

b. In paragraphs (b) and (c), replace the word "unit" by the word "source" wherever it appears; and

c. In paragraph (d) introductory text and paragraphs (d)(1), (d)(2), (d)(3), and (d)(5), replace the word "unit" by the word "source" wherever it appears, replace the word "unit's" by the word "source's" wherever it appears, and replace the words "compliance subaccount" by the words "compliance account".

§ 77.4 [Amended]

3. Section 77.4 is amended, in paragraphs (c)(1)(ii)(A), (d)(1), (d)(2), (d)(3), (g)(2)(ii), (g)(3)(ii), and (g)(3)(iii), by replacing the word "unit" by the word "source".

§ 77.5 [Amended]

4. Section 77.5 is amended by:

a. In paragraph (b), replace the words "compliance subaccount" with the words "compliance account";

b. In paragraph (c), replace the words ", from the unit's compliance subaccount" with the words "allocated for the year after the year in which the source has excess emissions, from the source's compliance account" and replace the word "unit's" by the word "source's"; and

c. Remove paragraph (d).

§ 77.6 [Amended]

5. Section 77.6 is amended by, in paragraph (a)(1), add, after the words "sulfur dioxide", the words occur at the affected source" and add, after the words "owners and operators of", the words "the affected source or".

PART 78—APPEAL PROCEDURES FOR ACID RAIN PROGRAM

1. The authority citation for part 78 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

§ 78.1 [Amended]

2. Section 78.1 is amended, in paragraph (a)(1), replace the words "parts 72, 73, 74, 75, 76, or 77 of this chapter or part 97 of this chapter" by the words "part 72, 73, 74, 75, 76, or 77 of this chapter, subparts AA through GG and subparts AAA and GGG of part 96 of this chapter, or part 97 of this chapter" and add new paragraphs (b)(7) and (b)(8) to read as follows:

§ 78.1 Purpose and scope.

(b) * * *

(7) Under subparts AA through GG of part 96 of this chapter,

(i) The decision on the deduction of CAIR NO_X allowances, and the adjustment of the information in a submission and the deduction or transfer of CAIR NO_X allowances based on the information, as adjusted, under § 96.154;

(ii) The correction of an error in a CAIR NO_X Allowance Tracking System account under § 97.156;

(iii) The decision on the transfer of CAIR NO_X allowances under § 96.161;

(iv) The finalization of control period emissions data, including retroactive adjustment based on audit;

(v) The approval or disapproval of a petition under § 96.175.

(8) Under subparts AAA through GGG of part 96 of this chapter,

(i) The decision on the deduction of CAIR SO_2 allowances, and the adjustment of the information in a submission and the deduction or transfer of CAIR SO_2 allowances based on the information, as adjusted, under § 96.254;

(ii) The correction of an error in a CAIR SO_2 Allowance Tracking System account under § 97.256;

(iii) The decision on the transfer of CAIR SO_2 allowances under § 96.261;

(iv) The finalization of control period emissions data, including retroactive adjustment based on audit;

(v) The approval or disapproval of a petition under § 96.275.

§ 78.3 [Amended]

3. Section 78.3 is amended by:

a. Amend paragraph (b)(3)(i) by adding, after the words "(unless the NO_X authorized account representative is the petitioner)", the words "or the CAIR designated representative or CAIR authorized account representative under paragraph (a)(5) or (a)(6) of this section (unless the CAIR designated representative or CAIR authorized account representative is the petitioner)";

b. In paragraph (c)(7) replace the words "or part 97 of this chapter, as appropriate" by the words ", subparts AA through GG of part 96 of this chapter, subparts AAA through GGG of part 96 of this chapter, or part 97 of this chapter, as appropriate";

c. In paragraph (d)(2) add, after the words "under the NO_X Budget Trading Program", the words "or on an account certificate of representation submitted by a CAIR designated representative or an application for a general account submitted by a CAIR authorized account representative under subparts AA through GG of part 96 of this chapter or subparts AAA through GGG of part 96 of this chapter,";

d. Add new paragraphs (a)(5), (a)(6), and (d)(5) and (d)(6).

The additions and revisions read as follows:

§ 78.3 Petition for administrative review and request for evidentiary hearing.

(a) * * *

(5) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AA through GG of part 96 and that is appealable under § 78.1(a) of this part:

(i) The CAIR designated representative for a source or the CAIR authorized account representative for any CAIR NO_X Allowance Tracking System account covered by the decision; or

(ii) Any interested person.

(6) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AAA through GGG of part 96 and that is appealable under § 78.1(a) of this part:

(i) The CAIR designated representative for a source or the CAIR authorized account representative for any CAIR SO_2 Allowance Tracking System account covered by the decision; or

(ii) Any interested person.

* * * * *

(d) * * *

(5) Any provision or requirement of subparts AA through GG of part 96, including the standard requirements under § 96.106 of this chapter and any emission monitoring or reporting requirements.

(6) Any provision or requirement of subparts AAA through GGG of part 96, including the standard requirements under § 96.206 of this chapter and any emission monitoring or reporting requirements.

* * * * *

§ 78.4 [Amended]

4. Section 78.4 is amended by adding two new sentences after the fifth sentence in paragraph (a) to read as follows:

§ 78.4 Filings.

(a) * * * Any filings on behalf of owners and operators of a CAIR unit or source shall be signed by the CAIR designated representative. Any filings on behalf of persons with an interest in CAIR NO_X or SO_2 allowances in a general account shall be signed by the CAIR authorized account representative. * * *

* * * * *

§ 78.12 [Amended]

5. Section 78.12 is amended, in paragraph (a)(2), by adding, after the words "a NO_X Budget permit", the words ", CAIR permit,".

PART 96—[AMENDED]

1. Authority citation for Part 96 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7601.

2. Part 96 is amended by adding subparts AA through CC, adding and reserving subpart DD and adding subparts EE through HH to read as follows:

Subpart AA—CAIR NO_X Trading Program General Provisions

Sec.

Subpart BB—CAIR Designated Representative for CAIR Sources

Subpart CC—Permits

Subpart DD—[Reserved]

Subpart EE—CAIR NO_X Allowance Allocations

Subpart FF—CAIR NO_X Allowance Tracking System

Subpart GG—CAIR NO_X Allowance Transfers

Subpart HH—Monitoring and Reporting

Subpart AA—CAIR NO_X Trading Program General Provisions

§ 96.101 Purpose.

This subpart establishes the model rule comprising general provisions and the applicability, permitting, allowance, excess emissions, and monitoring for the state Clean Air Interstate Rule (CAIR) NO_X Trading Program, under section 110 of the Clean Air Act (CAA) and § 51.123 of this chapter, as a means of reducing national NO_X emissions.

§ 96.102 Definitions.

The terms used in this subpart shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR NO_X Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or *allocation* means, with regard to CAIR NO_X allowances, the determination by the Administrator of the amount of CAIR NO_X allowances to be initially credited to a CAIR unit or a new unit set-aside.

Alternate CAIR designated representative means, for a CAIR source and each CAIR unit at the source, the natural person who is authorized by the owners and operators of the source and all CAIR units at the source in accordance with subpart BB of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR SO_2 Trading Program and the CAIR NO_X Trading Program. This natural person shall be the same person as the alternate designated representative under the Acid Rain Program under § 72.22 of this chapter.

Automated data acquisition and handling system or *DAHS* means that component of the CEMS, or other emissions monitoring system approved for use under subpart HH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HH of this part.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or

process is then used for power production.

CAIR designated representative means, for a CAIR source and each CAIR unit at the source, the natural person who is authorized by the owners and operators of the source and all CAIR units at the source, in accordance with subpart BB of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR SO_2 Trading Program and to the CAIR NO_X Trading Program. This natural person shall be the same person who is the authorized account representative under the Acid Rain Program under § 72.20 of this chapter.

CAIR NO_X allowance means a limited authorization issued by the Administrator to emit up to one ton of nitrogen oxide during the control period of the specified year or of any year thereafter under the CAIR NO_X Program or, except for purposes of subpart EE of this part, any NO_X SIP Call allowance, allocated for the 2009, or any earlier, ozone season that is not used to meet an NO_X emissions limitation under the NO_X Budget Trading Program.

CAIR NO_X allowance deduction or *deduct CAIR NO_X allowances* means the permanent withdrawal of CAIR NO_X allowances by the Administrator from a compliance account in order to account for a specified number of tons of nitrogen oxide emissions from all CAIR units at a CAIR source for a control period, determined in accordance with subparts FF and HH of this part, or to account for excess emissions.

CAIR NO_X Allowance Tracking System (INATS) means the system by which the Administrator records allocations, deductions, and transfers of CAIR NO_X allowances under the CAIR NO_X Trading Program.

CAIR NO_X Allowance Tracking System account means an account in the CAIR NO_X Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO_X allowances.

CAIR NO_X allowance transfer deadline means midnight of March 1 or, if March 1 is not a business day, midnight of the first business day thereafter and is the deadline by which a CAIR NO_X allowance transfer must be submitted for recordation in a CAIR source's compliance account in order to meet the source's CAIR NO_X emissions limitation for the control period immediately preceding such deadline.

CAIR NO_X allowances held or *hold CAIR NO_X allowances* means the CAIR NO_X allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FF and GG of this part, in a CAIR NO_X Allowance Tracking System account.

CAIR NO_X authorized account representative means a responsible natural person who is authorized, in accordance with subpart BB of this part, to transfer and otherwise dispose of CAIR NO_X allowances held in a CAIR NO_X Allowance Tracking System general account; or, in the case of a compliance account, the CAIR designated representative of the source.

CAIR NO_X emissions limitation means, for a CAIR source, the tonnage equivalent of the CAIR NO_X allowances available for compliance deduction for the source under §§ 96.154(a) and (b) in a control period.

CAIR NO_X Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AA through HH of this part and § 51.123 of this chapter, as a means of mitigating interstate transport of fine particulates, ozone, and nitrogen oxides.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CC of this part, including any permit revisions, specifying the CAIR SO_2 and NO_X Trading Program requirements applicable to a CAIR source, to each CAIR unit at the CAIR source, and to the owners and operators and the CAIR designated representative of the CAIR source and each CAIR unit.

CAIR SO_2 Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program established by the Administrator in accordance with subparts AAA through HHH of this part and § 51.124 of this chapter, as a means of mitigating interstate transport of fine particulates.

CAIR source means a source that includes one or more CAIR units.

CAIR unit means a unit that is subject to the CAIR NO_X Trading Program under § 96.104.

Clean Air Act means the Clean Air Act, 42 U.S.C. 7401, *et seq.*

Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

Coal-fired means, with regard to a unit, combusting coal or any coal-derived fuel alone or in combination with any amount of any other fuel in any year.

Cogeneration unit means a unit:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity—

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input or, if useful thermal energy produced is less than 15 percent of total energy output, not less than 45 percent of total energy input.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means an enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine. A combustion turbine that is combined cycle also includes any associated heat recovery steam generator and steam turbine.

Commence commercial operation means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in § 96.105, for a unit that is a CAIR unit under § 96.104 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified or reconstructed. Except as provided in § 96.105, for a unit that is not a CAIR unit under § 96.104 on the date the unit commences commercial operation, the date the unit becomes a CAIR unit under § 96.104 shall be the unit's date of commencement of commercial operation.

Commence operation means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in § 96.105, for a unit that is a CAIR unit under § 96.104 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified or reconstructed. Except as provided in § 96.105, for a unit that is not a CAIR

unit under § 96.104 on the date of commencement of operation, the date the unit becomes a CAIR unit under § 96.104 shall be the unit's date of commencement of operation.

Common stack means a single flue through which emissions from two or more units are exhausted.

Compliance account means a CAIR NO_X Allowance Tracking System account, established by the Administrator for a CAIR source under subpart FF of this part, in which the CAIR NO_X allowance allocations for the CAIR units at the source are initially recorded and in which are held CAIR NO_X allowances available for use for a control period in order to meet the source's CAIR NO_X emissions limitation.

Continuous emission monitoring system or *CEMS* means the equipment required under subpart HH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen oxide (NO_X) emissions, stack gas volumetric flow rate or stack gas moisture content (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under subpart HH of this part:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated DAHS. A flow monitoring system provides a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A nitrogen oxides (NO_X) concentration monitoring system, consisting of a NO_X pollutant concentration monitor and an automated DAHS. A NO_X concentration monitoring system provides a permanent, continuous record of NO_X emissions, in parts per million (ppm);

(3) A nitrogen oxides emission rate (or NO_X-diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated DAHS. A NO_X-diluent monitoring system provides a permanent, continuous record of: NO_X concentration, in parts per million (ppm); diluent gas concentration, in percent CO_2 or O_2 (percent CO_2 or O_2); and NO_X emission rate, in pounds per million British thermal units (lb/mmBtu);

(4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter. A moisture monitoring system provides a permanent, continuous record of the stack gas moisture content, in percent H_2O (percent H_2O);

(5) A carbon dioxide (CO_2) monitoring system, consisting of a CO_2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and the automated DAHS. A carbon dioxide monitoring system provides a permanent, continuous record of CO_2 emissions, in percent CO_2 (percent CO_2); and

(6) An oxygen (O_2) monitoring system, consisting of an O_2 concentration monitor and an automated DAHS. An O_2 monitoring system provides a permanent, continuous record of O_2 in percent O_2 (percent O_2).

Control period means the period beginning January 1 of a year and ending on December 31 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HH of this part.

Energy Information Administration means the Energy Information Administration of the United States Department of Energy.

Excess emissions means any ton of nitrogen oxide emitted by the CAIR units at a CAIR source during a control period that exceeds the CAIR NO_X emissions limitation for the source.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, any boiler or turbine combusting any amount of fossil fuel.

General account means a CAIR NO_X Allowance Tracking System account, established under subpart FF of this part, that is not a compliance account.

Generator means a device that produces electricity.

Gross thermal energy means, with regard to a cogeneration unit, useful thermal energy output plus, where such output is made available for an industrial or commercial process, any heat contained in condensate return or makeup water.

Heat input means, with regard to a specified period to time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HH of this part. Heat input does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis, as specified by the manufacturer of the unit as of the initial installation of the unit.

Monitoring system means any monitoring system that meets the requirements of subpart HH of this part, including a continuous emissions monitoring system or an alternative monitoring system.

Nameplate capacity means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as specified by the manufacturer of the generator as of the initial installation of the generator or, if the generator is subsequently modified or reconstructed resulting in an increase in such maximum electrical generating output, as specified by the person conducting the modification or reconstruction.

NO_X Budget Trading Program means a multi-state nitrogen oxide air pollution control and emission reduction program established by air pollution control and emission

reduction program established by the Administrator in accordance with subparts A through I of this part and § 51.121 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

NO_X SIP Call allowance means a limited authorization issued by the Administrator under the NO_X Budget Trading Program to emit up to one ton of nitrogen oxides during the ozone season of the specified year or any year thereafter under the NO_X Budget Trading Program or during the control period in 2010 or any year thereafter under the CAIR NO_X Trading Program, provided that § 96.54(f) of this chapter shall not apply to the use of such allowance under § 96.154.

Operator means any person who operates, controls, or supervises a CAIR unit or a CAIR source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a CAIR unit; or

(2) Any holder of a leasehold interest in a CAIR unit; or

(3) Any purchaser of power from a CAIR unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from the CAIR unit; or

(4) With regard to any general account, any person who has an ownership interest with respect to the CAIR NO_X allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent that person's ownership interest with respect to CAIR NO_X allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR NO_X Trading Program in accordance with subpart CC of this part.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 mmBtu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, record, or *recorded* means, with regard to CAIR NO_X allowances, the movement of CAIR NO_X allowances by the Administrator into or between CAIR NO_X Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Serial number means for a CAIR NO_X allowance, the unique identification number assigned to each CAIR NO_X allowance by the Administrator, under § 96.153(f).

Sequential use of energy means:

(1) For a topping-cycle cogeneration unit, the use of reject heat from power production in a useful thermal energy application or process; or

(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in power production.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

State means one of the 50 States or the District of Columbia that adopts the CAIR NO_X Trading Program pursuant to § 51.123 of this chapter.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery. Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR NO_X emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HH of this part, with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power and at least some of the reject heat from the power production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Unit means a stationary boiler or combustion turbine.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or *hour of unit operation* means an hour in which a unit combusts any fuel. *Useful power* means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

(1) Made available to an industrial or commercial process, excluding any heat contained in condensate return or makeup water;

(2) Used in a heat application (*e.g.*, space heating or domestic hot water heating); or

(3) Used in a space cooling application (*i.e.*, thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a distribution utility and dedicated to delivering electricity to customers.

§ 96.103 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu—British thermal unit.
CO_2—carbon dioxide.
NO_X—nitrogen oxide.
hr—hour.
kW—kilowatt electrical.
kWh—kilowatt hour.
mmBtu—million Btu.
MWe—megawatt electrical.
MWh—megawatt hour.
O_2—oxygen.
SO_2—sulfur dioxide.
yr—year.

§ 96.104 Applicability.

The following units in a State shall be CAIR units, and any source that includes one or more such units shall be a CAIR source, subject to the requirements of this subpart and subparts BB through HH of this part:

(a) Except a unit under paragraph (b) of this section, a fossil fuel-fired boiler or combustion turbine serving at any time a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(b) A fossil fuel-fired cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and in any year supplying more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

§ 96.105 Retired unit exemption.

(a) This section applies to any CAIR unit that is permanently retired.

(b)(1) Any CAIR unit that is permanently retired shall be exempt from the CAIR NO_X Trading Program, except for the provisions of this section, § 96.102, § 96.103, § 96.104, § 96.106(c)(5) through (8), § 96.107, and subparts EE through GG of this part.

(2) The exemption under paragraph (b)(1) of this section shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit. The CAIR designated representative shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date, and will comply with the requirements of paragraph (c) of this section.

(3) After receipt of the notice under paragraph (b)(2) of this section, the permitting authority will amend any permit under subpart CC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (b)(1) and (c) of this section.

(c) *Special provisions.*

(1) A unit exempt under this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

(2) The permitting authority will allocate CAIR NO_X allowances under subpart EE of this part to a unit exempt under this section.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(4) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under this section shall comply with the requirements of the CAIR NO_X Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(5) A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 96.122 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the unit resumes operation.

(6) On the earlier of the following dates, a unit exempt under paragraph (b) of this section shall lose its exemption:

(i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (c)(5) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (c)(5) of this section to submit a CAIR permit application for the unit; or

(iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(7) For the purpose of applying monitoring requirements under subpart HH of this part, a unit that loses its exemption under this section shall be treated as a unit that commences operation and commercial operation on the first date on which the unit resumes operation.

§ 96.106 Standard requirements.

(a) *Permit Requirements.*

(1) The CAIR designated representative of each CAIR source required to have a title V operating permit and each CAIR unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under § 96.122 in accordance with the deadlines specified in § 96.121(b) and (c); and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR source required to have a title V operating permit and each CAIR unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority and operate the unit in compliance with such CAIR permit.

(3) The owners and operators of a CAIR source that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CC of this part for such CAIR source.

(b) *Monitoring requirements.*

(1) The owners and operators and, to the extent applicable, the CAIR designated representative of each CAIR source and each CAIR unit at the source shall comply with the monitoring requirements of subpart HH of this part.

(2) The emissions measurements recorded and reported in accordance with subpart HH of this part shall be used to determine compliance by the unit with the CAIR NO_X emissions limitation under paragraph (c) of this section.

(c) *Nitrogen oxide emission requirements.*

(1) As of the CAIR NO_X allowance transfer deadline for a control period, the owners and operators of each CAIR source and each CAIR unit at the source shall hold, in the source's compliance account, CAIR NO_X allowances available for compliance deductions for the control period under § 96.154(a) in an amount not less than the total nitrogen oxides emissions for the

control period from all CAIR units at the source, as determined in accordance with subpart HH of this part.

(2) Each ton of nitrogen oxide emitted in excess of the CAIR NO_X emissions limitation shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(3) A CAIR unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under § 96.170(b)(1) or (b)(2).

(4) A CAIR NO_X allowance shall not be deducted, in order to comply with the requirements under paragraph (c)(1) of this section, for a control period in a year prior to the year for which the CAIR NO_X allowance was allocated.

(5) CAIR NO_X allowances shall be held in, deducted from, or transferred into or among CAIR NO_X Allowance Tracking System accounts in accordance with subpart EE of this part.

(6) A CAIR NO_X allowance is a limited authorization to emit one ton of nitrogen oxide in accordance with the CAIR NO_X Trading Program. No provision of the CAIR NO_X Trading Program, the CAIR permit application, the CAIR permit, or exemption under § 96.105 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

(7) A CAIR NO_X allowance does not constitute a property right.

(8) Upon recordation by the Administrator under subparts FF and GG of this part, every allocation, transfer, or deduction of a CAIR NO_X allowance to or from a CAIR unit's compliance account is incorporated automatically in any CAIR permit of the CAIR unit.

(d) *Excess emissions requirements.*

(1) The owners and operators of a CAIR unit that has excess emissions in any control period shall:

(i) Surrender the CAIR NO_X allowances required for deduction under § 96.154(d)(1); and

(ii) Pay any fine, penalty, or assessment or comply with any other remedy imposed under § 96.154(d)(2).

(e) *Recordkeeping and Reporting Requirements.*

(1) Unless otherwise provided, the owners and operators of the CAIR source and each CAIR unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The certificate of representation under § 96.113 for the CAIR designated representative for the source and each CAIR unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 96.113 changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with subpart HH of this part; provided that to the extent that subpart HH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_X Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_X Trading Program or to demonstrate compliance with the requirements of the CAIR NO_X Trading Program.

(2) The CAIR designated representative of a CAIR source and each CAIR unit at the source shall submit the reports required under the CAIR NO_X Trading Program, including those under subpart HH of this part.

(f) *Liability.*

(1) Any person who knowingly violates any requirement or prohibition of the CAIR NO_X Trading Program, a CAIR permit, or an exemption under § 96.105 shall be subject to enforcement pursuant to applicable State or Federal law.

(2) Any person who knowingly makes a false material statement in any record, submission, or report under the CAIR NO_X Trading Program shall be subject to criminal enforcement pursuant to the applicable State or Federal law.

(3) No permit revision shall excuse any violation of the requirements of the CAIR NO_X Trading Program that occurs prior to the date that the revision takes effect.

(4) Each CAIR source and each CAIR unit shall meet the requirements of the CAIR NO_X Trading Program.

(5) Any provision of the CAIR NO_X Trading Program that applies to a CAIR source or the CAIR designated representative of a CAIR source shall also apply to the owners and operators of such source and of the CAIR units at the source.

(6) Any provision of the CAIR NO_X Trading Program that applies to a CAIR unit or the CAIR designated representative of a CAIR unit shall also apply to the owners and operators of such unit.

(g) *Effect on Other Authorities.* No provision of the CAIR NO_X Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 96.105 shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the CAIR designated representative of a CAIR source or CAIR unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 96.107 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR NO_X Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR NO_X Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR NO_X Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 96.108 Appeal Procedures.

The appeal procedures for decisions of the Administrator under the CAIR NO_X Trading Program are set forth in part 78 of this chapter.

Subpart BB—CAIR Designated Representative for CAIR Sources

§ 96.110 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 96.111, each CAIR source, including all CAIR units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NO_X Trading Program concerning the source or any CAIR unit at the source.

(b) The CAIR designated representative of the CAIR source shall be selected by an agreement binding on the owners and operators of the source and all CAIR units at the source and shall act in accordance with the certification statement in § 96.113(a)(5)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 96.113, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner

and operator of the CAIR source represented and each CAIR unit at the source in all matters pertaining to the CAIR NO_X Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO_X Allowance Tracking System account will be established for a CAIR unit at a source, until the Administrator has received a complete certificate of representation under § 96.113 for a CAIR designated representative of the source and the CAIR units at the source.

(e)(1) Each submission under the CAIR NO_X Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR source or a CAIR unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 96.111 Alternate CAIR designated representative.

(a) A certificate of representation may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 96.113, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and §§ 96.102, 96.110(a), 96.112, 96.113, and 96.151, whenever the term "CAIR designated representative" is used in this subpart, the term shall be construed to include the alternate CAIR designated representative.

§ 96.112 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

(a) *Changing CAIR designated representative.* The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative prior to the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR source and the CAIR units at the source.

(b) *Changing alternate CAIR designated representative.* The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative prior to the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR source and the CAIR units at the source.

(c) *Changes in owners and operators.*

(1) In the event a new owner or operator of a CAIR source or a CAIR unit is not included in the list of owners and operators submitted in the certificate of representation under § 96.113, such new owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions, orders, actions, and inactions of the permitting authority or the Administrator, as if the new owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a CAIR source or a CAIR unit, including the addition of a new owner or operator, the CAIR designated representative or alternate CAIR designated representative shall submit a revision to the certificate of representation under § 96.113 amending the list of owners and operators to include the change.

§ 96.113 Certificate of representation.

(a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CAIR source and each CAIR unit at the source for which the certificate of representation is submitted.

(2) For each CAIR unit at the source, the dates on which the unit commenced operation and commenced commercial operation.

(3) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR designated representative and any alternate CAIR designated representative.

(4) A list of the owners and operators of the CAIR source and of each CAIR unit at the source.

(5) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative—

(i) "I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each unit at the source."

(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO_2 and NO_X Trading Programs on behalf of the owners and operators of the source and of each unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."

(iii) "I certify that the owners and operators of the source and of each unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit."

(iv) "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a unit, or where a customer purchases power from a unit under life-of-the-unit, firm power contractual arrangements, I certify that: I have given a written notice of my selection as the "designated representative" or 'alternated designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each unit at the source; and allowances and proceeds of transactions involving allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement or, if such multiple holders have expressly provided for a different distribution of allowances by contract, that allowances and the proceeds of transactions involving allowances will be deemed to be held or distributed in accordance with the contract."

(6) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 96.114 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 96.113 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 96.113 is received by the Administrator.

(b) Except as provided in § 96.112(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR NO_X Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO_X allowance transfers.

Subpart CC—Permits

§ 96.120 General CAIR Trading Program permit requirements.

(a) For each CAIR source required to have a title V operating permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit. The CAIR portion of the title V permit shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter, except as provided otherwise by this subpart.

(b) Each CAIR permit shall contain all applicable CAIR SO_2 and NO_X Trading Program requirements and shall be a complete and separable portion of the title V operating permit under paragraph (a) of this section.

§ 96.121 Submission of CAIR permit applications.

(a) *Duty to apply.* The CAIR designated representative of any CAIR source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 96.122 by the applicable deadline in paragraph (b) of this section.

(b) *Application deadline.* For any source with any CAIR unit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.122 covering such CAIR unit to the permitting authority at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the CAIR unit commences operation.

(c) *Duty to Reapply.* For a CAIR source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.122 for the CAIR source covering the CAIR units at the source in accordance with the permitting authority's title V operating permits regulations addressing operating permit renewal.

§ 96.122 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the CAIR source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration, if applicable;

(b) Identification of each CAIR unit at the CAIR source; and

(c) The standard requirements under §§ 96.106 and 96.206.

§ 96.123 CAIR permit contents and term.

(a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 96.122.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 96.102 and, upon recordation by the Administrator under subparts FF and GG of this part, every allocation, transfer, or deduction of a CAIR NO_X allowance to or from the compliance account of the CAIR source covered by the permit.

(c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR source's title V permit.

§ 96.124 CAIR permit revisions.

Except as provided in § 96.123(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations addressing permit revisions.

Subpart DD—[Reserved]

Subpart EE—CAIR NO_X Allowance Allocations

§ 96.140 State trading budgets.

The State trading program budgets for annual allocations of CAIR NO_X allowances for 2010 through 2014 and for 2015 and thereafter are respectively as follows:

State	State NO_X budget 2010 (tons)	State NO_X budget 2015 (tons)
Alabama	67,422	56,185

State	State NO_X budget 2010 (tons)	State NO_X budget 2015 (tons)
Arkansas	24,919	20,765
Delaware	5,089	4,241
District of Columbia	215	179
Florida	115,503	96,253
Georgia	63,575	52,979
Illinois	73,622	61,352
Indiana	102,295	85,246
Iowa	30,458	25,381
Kansas	32,436	27,030
Kentucky	77,938	64,948
Louisiana	47,339	39,449
Maryland	26,607	22,173
Massachusetts	19,630	16,358
Michigan	60,212	50,177
Minnesota	29,303	24,420
Mississippi	21,932	18,277
Missouri	56,571	47,143
New Jersey	9,895	8,246
New York	52,503	43,753
North Carolina	55,763	46,469
Ohio	101,704	84,753
Pennsylvania	84,552	70,460
South Carolina	30,895	25,746
Tennessee	47,739	39,783
Texas	224,314	186,928
Virginia	31,087	25,906
West Virginia	68,235	56,863
Wisconsin	39,044	32,537
Total Regional Budget	1,600,799	1,333,999

§ 96.141 Timing requirements for CAIR NO_X allowance allocations.

(a)(1) By October 31, 2006, the permitting authority will submit to the Administrator the CAIR NO_X allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.142(a) and (b), for the control periods in 2010, 2011, 2012, 2013, and 2014.

(2) If the permitting authority fails to submit to the Administrator the CAIR NO_X allowance allocations in accordance with paragraph (a)(1) of this section, the Administrator will allocate CAIR NO_X allowances for the applicable control periods, in accordance with § 96.142(a) and (b).

(b)(1) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_X allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.142(a) and (b), for the control period in the year that is 6 years after the year of the applicable deadline for submission under this paragraph.

(2) If the permitting authority fails to submit to the Administrator the CAIR NO_X allowance allocations in accordance with paragraph (b)(1), the Administrator will allocate CAIR NO_X allowances for the applicable control period, in accordance with § 96.142(a) and (b).

§ 96.142 CAIR NO_X allowance allocations.

(a)(1) The baseline heat input (in mmBtu) used with respect to CAIR NO_X allowance allocations under paragraph (b) of this section for each CAIR unit will be:

(i) For units commencing operation before January 1, 1998 the average of the three highest amounts of the unit's annual heat input for 1998 through 2002.

(ii) For units commencing operation on or after January 1, 1998 and operating each year during a period of 5 or more consecutive years, the average of the three highest amounts of the unit's total converted annual heat input over the first such 5 years.

(2)(i) A unit's annual heat input for a year under paragraphs (a)(1)(i), (a)(2)(ii)(A), and (c)(3)(ii) of this section will be determined in accordance with part 75 of this chapter, if the CAIR unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit, if the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(ii) A unit's converted annual heat input for a year specified under paragraph (a)(1)(ii) of this section equals—

(A) The annual gross electrical output of the generator or generators served by the unit multiplied by 8,000 Btu/kWh, provided that if the generator is served by two or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of total heat input of such units for the year; plus

(B) For a cogeneration unit, one-half of the unit's annual gross thermal energy multiplied by 8,000 Btu/kWh.

(b)(1) For each control period under § 96.141, the permitting authority will allocate to all CAIR units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_X allowances equal to 98 percent of the tons of CAIR NO_X emissions in the State trading program budget under § 96.140 (except as provided in § 96.142(d)).

(2) The permitting authority will allocate CAIR NO_X allowances to each CAIR unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such unit to the total amount of baseline heat input of all CAIR units in the State and rounding to

the nearest whole allowance as appropriate.

(c) For each control period under § 96.141, the permitting authority will allocate CAIR NO_X allowances to CAIR units in the State that commenced operation on or after January 1, 1998 and do not yet have a baseline heat input (as determined under paragraph (a) of this section), in accordance with the following procedures:

(1) The permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_X allowances equal to 2 percent of the amount of tons of CAIR NO_X emissions in the State trading program budget under § 96.140.

(2) The CAIR designated representative of such a CAIR unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NO_X allowances, starting with the first control period after the control period in which the CAIR unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_X allowances under paragraph (b) of this section. The CAIR NO_X allowance allocation request must be submitted before January 1 of the first control period for which the CAIR NO_X allowances are requested and after the date on which the CAIR unit commences commercial operation.

(3) In a CAIR NO_X allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_X allowances in an amount not exceeding—

(i) 1.00 lb/MWh for boilers, coal-fired combustion turbines, and integrated gasification combined cycle plants, 0.56 lb/MWh for gas-fired combustion turbines, or 1.01 lb/MWh for all other combustion turbines;

(ii) multiplied by the CAIR unit's heat input for the control period immediately preceding the control period for which the allowances are requested; and

(iii) rounded to the nearest whole allowance as appropriate.

(4) The permitting authority will review each CAIR NO_X allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_X allowances for each control period pursuant to such request as follows:

(i) Upon receipt of an allowance allocation request, the permitting authority will determine whether, and will make any necessary adjustments to the request to ensure that the request is consistent with the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after January 1 of the control period, the permitting authority will determine the sum of the CAIR NO_X allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all CAIR NO_X allowance allocation requests under paragraph (c)(2) of this section for the control period.

(iii) If the amount of CAIR NO_X allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, the permitting authority will allocate the amount of CAIR NO_X allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR unit covered by an allocation request under paragraph (c)(2) of this section.

(iv) If the amount of CAIR NO_X allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, the permitting authority will allocate to each CAIR unit covered by an allocation request under paragraph (c)(2) of this section the amount of the CAIR NO_X allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the number of CAIR NO_X allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The permitting authority will notify each CAIR designated representative that submitted an allowance allocation request, and the Administrator (in a format prescribed by the Administrator), of the amount of CAIR NO_X allowances (if any) allocated for the control period to the CAIR unit covered by the allowance allocation request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section, any unallocated CAIR NO_X allowances remain in the new unit set-aside for a control period, the permitting authority will reallocate to each CAIR unit that was allocated CAIR NO_X allowances under paragraph (b) an amount of CAIR NO_X allowances equal to the total amount of such remaining unallocated CAIR NO_X allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 98 percent of the amount of tons of CAIR NO_X emissions in the State trading program budget, and rounded to the nearest whole allowance as appropriate. The permitting authority will notify the Administrator (in a format prescribed by the Administrator) of the amounts of CAIR NO_X allowances (if any) allocated for the control period to such CAIR units under this paragraph.

Subpart FF—CAIR NO_X Allowance Tracking System

§ 96.150 CAIR NO_X Allowance Tracking System Accounts.

(a) *Nature and function of compliance accounts.* Consistent with § 96.151(a), the Administrator will establish one compliance account for each CAIR source with one or more CAIR units. Allocations of CAIR NO_X allowances to CAIR units pursuant to subpart EE of this part, and deductions or transfers of CAIR NO_X allowances pursuant § 96.154, § 96.156, or subpart GG of this part will be recorded in compliance accounts in accordance with this subpart.

(b) *Nature and function of general accounts.* Consistent with § 96.151(b), the Administrator will establish, upon request, a general account for any person. Transfers of CAIR NO_X allowances pursuant to subpart GG of this part will be recorded in general accounts in accordance with this subpart.

§ 96.151 Establishment of accounts.

(a) *Compliance accounts.* Upon receipt of a complete certificate of representation under § 96.113, the Administrator will establish a compliance account for the CAIR source for which the certificate of representation was submitted.

(b) *General accounts.*

(1) *Application for general account.*

(i) Any person may apply to open a general account for the purpose of holding and transferring CAIR NO_X allowances. An application for a general account may designate one and only one CAIR NO_X authorized account representative and one and only one alternate CAIR NO_X authorized account representative who may act on behalf of the CAIR NO_X authorized account representative. The agreement by which the alternate CAIR NO_X authorized account representative is selected shall include a procedure for authorizing the alternate CAIR NO_X authorized account representative to act in lieu of the CAIR NO_X authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR NO_X authorized account representative and any alternate CAIR NO_X authorized account representative;

(B) Organization name and type of organization;

(C) A list of all persons subject to a binding agreement for the CAIR NO_X authorized account representative and any alternate CAIR NO_X authorized account representative to represent their ownership interest with respect to the allowances held in the general account;

(D) The following certification statement by the CAIR NO_X authorized account representative and any alternate CAIR NO_X authorized account representative: "I certify that I was selected as the CAIR NO_X authorized account representative or the CAIR NO_X alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_X Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."

(E) The signature of the CAIR NO_X authorized account representative and any alternate CAIR NO_X authorized account representative and the dates signed.

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) *Authorization of CAIR NO_X authorized account representative.* Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

(i) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(ii) The CAIR NO_X authorized account representative and any alternate CAIR NO_X authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR NO_X allowances held in the general account in all matters pertaining to the CAIR NO_X Trading Program, notwithstanding any agreement between the CAIR NO_X authorized account representative or any alternate CAIR NO_X authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR NO_X authorized account representative or any alternate CAIR NO_X authorized account representative by the Administrator or a court regarding the general account.

(iii) Any representation, action, inaction, or submission by any alternate CAIR NO_X authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR NO_X authorized account representative.

(iv) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR NO_X authorized account representative or any alternate CAIR NO_X authorized account representative for the persons having an ownership interest with respect to CAIR NO_X allowances held in the general account. Each such submission shall include the following certification statement by the CAIR NO_X authorized account representative or any alternate CAIR NO_X authorizing account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NO_X allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(v) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(iv) of this section.

(3) *Changing CAIR NO_X authorized account representative and alternate CAIR NO_X authorized account representative; changes in persons with ownership interest.*

(i) The CAIR NO_X authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR NO_X authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR NO_X authorized account representative and the persons with an ownership interest with respect to the CAIR NO_X allowances in the general account.

(ii) The alternate CAIR NO_X authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR NO_X authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR NO_X authorized account representative and the persons with an ownership interest with respect to the CAIR NO_X allowances in the general account.

(iii)(A) In the event a new person having an ownership interest with respect to CAIR NO_X allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR NO_X authorized account representative and any alternate CAIR NO_X authorized account representative of the account, and the decisions, orders, actions, and inactions of the Administrator, as if the new person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to CAIR NO_X allowances in the general account, including the addition of persons, the CAIR NO_X authorized account representative or any alternate CAIR NO_X authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR NO_X allowances in the general account to include the change.

(4) *Objections concerning CAIR NO_X authorized account representative.*

(i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a

superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3) (i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR NO_X authorized account representative or any alternative CAIR NO_X authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR NO_X authorized account representative or any alternative CAIR NO_X authorized account representative or the finality of any decision or order by the Administrator under the CAIR NO_X Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR NO_X authorized account representative or any alternative CAIR NO_X authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_X allowance transfers.

(c) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 96.152 Responsibilities of CAIR NO_X authorized account representative.

(a) Following the establishment of a CAIR NO_X Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR NO_X allowances in the account, shall be made only by the CAIR NO_X authorized account representative for the account.

(b) *Authorized account representative identification.* The Administrator will assign a unique identifying number to each CAIR NO_X authorized account representative.

§ 96.153 Recordation of CAIR NO_X allowance allocations.

(a) By January 1, 2007, the Administrator will record the CAIR NO_X allowances for 2010, 2011, 2012, 2013, and 2014 for the CAIR units at a source allocated in accordance with § 96.142 (a) and (b) in the source's compliance account.

(b) Each year starting with 2011, after the Administrator has made all deductions from a CAIR source's compliance account under § 96.154, the Administrator will record CAIR NO_X allowances, in the source's compliance account, as allocated to the CAIR units at the source in accordance with § 96.142 (a) and (b), for the fourth year after the year of the control period for which such deductions were or could have been made.

(c) Each year starting with 2010, after the Administrator is notified, in accordance with § 96.142(c) (v) and (d), by the permitting authority of the amounts of CAIR NO_X allowances allocated to the CAIR units at the source, the Administrator will record the allocated allowances in the source's compliance account.

(d) *Serial numbers for allocated CAIR NO_X allowances.* When allocating CAIR NO_X allowances to a CAIR unit and recording them in an account, the Administrator will assign each CAIR NO_X allowance a unique identification number that will include digits identifying the year for which the CAIR NO_X allowance is allocated.

§ 96.154 Compliance with CAIR NO_X emissions limitation.

(a) *CAIR NO_X allowance transfer deadline.* The CAIR NO_X allowances are available to be deducted for compliance with a source's CAIR NO_X emissions limitation for a control period in a given year only if the CAIR NO_X allowances:

(1) Were allocated for the year or a prior year;

(2) Are held in the compliance account as of the CAIR NO_X allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR NO_X allowance transfer correctly submitted for recordation under § 96.160 by the CAIR NO_X allowance transfer deadline for the control period; and

(3) Are not necessary for deductions for excess emissions for a prior control period under paragraph (d) of this section.

(b) *Deductions for compliance.* Following the recordation, in accordance with § 96.161, of CAIR NO_X allowance transfers submitted for recordation in a source's compliance account by the CAIR NO_X allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR NO_X allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR NO_X emissions limitation for the control period, as follows:

(1) Until the amount of CAIR NO_X allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with subpart HH of this part, from all CAIR units at the source for the control period; or

(2) Until no more CAIR NO_X allowances available under paragraph (a) of this section remain in the compliance account.

(c)(1) *Identification of CAIR NO_X allowances by serial number.* The CAIR NO_X authorized account representative for a source's compliance account may request that specific CAIR NO_X allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CAIR NO_X allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO_X allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Those CAIR NO_X allowances that were allocated to the units at the source under subpart EE of this part, in the order of recordation; and then

(ii) Those CAIR NO_X allowances that were allocated to any unit and transferred and recorded in the compliance account pursuant to subpart GG of this part, in the order of recordation.

(d) *Deductions for excess emissions.*

(1) After making the deductions for compliance under paragraph (b) of this section for a control period in which the CAIR source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CAIR NO_X allowances, allocated for the year after such control period, equal to three times the number of tons of the source's excess emissions.

(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR source or the CAIR units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act or applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations:

(i) For purposes of determining the number of days of violation, if a CAIR source has excess emissions for a control period, each day in the control period constitutes a day in violation unless the owners and operators of the source demonstrate that a lesser number of days should be considered.

(ii) Each ton of excess emissions is a separate violation.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraph (b) or (d) of this section.

(f) *Administrator's action on submissions.*

(1) The Administrator may review and conduct independent audits concerning any submission under the CAIR NO_X Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct CAIR NO_X allowances from or transfer CAIR NO_X allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section.

§ 96.155 Banking.

(a) CAIR NO_X allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CAIR NO_X allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NO_X allowance is deducted or transferred under § 96.154, § 96.156, or subpart GG of this part.

§ 96.156 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR NO_X Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR NO_X authorized account representative for the account.

§ 96.157 Closing of general accounts.

(a) The CAIR NO_X authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under § 96.160 for any CAIR NO_X allowances in the account to one or more other CAIR NO_X Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account and does not contain any CAIR NO_X allowances, the Administrator may notify the CAIR NO_X authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR NO_X allowances into the account under § 96.160 or a statement submitted by the CAIR NO_X authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GG—CAIR NO_X Allowance Transfers

§ 96.160 Submission of CAIR NO_X allowance transfers.

An CAIR NO_X authorized account representative seeking recordation of a CAIR NO_X allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR NO_X allowance transfer shall include the following elements, in a format specified by the Administrator:

(a) The numbers identifying both the transferor and transferee accounts;

(b) The serial number of each CAIR NO_X allowance (which must be in transferor account) to be transferred; and

(c) The name and signature of the CAIR NO_X authorized account representative of the transferor account and the date signed.

§ 96.161 EPA recordation.

(a) Within 5 business days of receiving a CAIR NO_X allowance transfer, except as provided in paragraph (b) of this section, the Administrator will record a CAIR NO_X allowance transfer by moving each CAIR NO_X allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 96.160; and

(2) The transferor account includes each CAIR NO_X allowance identified by serial number in the transfer.

(b) a CAIR NO_X allowance transfer that is submitted for recordation after the CAIR NO_X allowance transfer deadline and that includes any CAIR NO_X allowances allocated for a control period in any year before the year of the CAIR NO_X allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 96.154 for the control period in the year immediately before the year of the CAIR NO_X allowance transfer deadline.

(c) Where a CAIR NO_X allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 96.162 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a CAIR NO_X allowance transfer under § 96.161, the Administrator will notify the CAIR NO_X authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a CAIR NO_X allowance transfer that fails to meet the requirements of § 96.161(a), the Administrator will notify the CAIR NO_X authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a CAIR NO_X allowance transfer for recordation following notification of non-recordation.

Subpart HH—Monitoring and Reporting

§ 96.170 General Requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 96.102 and in § 72.2 of this chapter shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in part 75 of this chapter shall be deemed to refer to the terms "CAIR unit," "CAIR designated representative," and "continuous emission monitoring system" (or "CEMS") respectively, as defined in § 96.102. The owner or operator of a unit that is not a CAIR unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CAIR unit shall:

(1) Install all monitoring systems required under this subpart for monitoring NO_X mass emissions and individual unit heat input. This

includes all systems required to monitor NO_X emission rate, NO_X concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, in accordance with §§ 75.71 and 75.72 of this chapter;

(2) Successfully complete all certification tests required under § 96.171 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* The owner or operator shall meet the certification and other requirements of paragraphs (a)(1) and (a)(2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.

(1) For the owner or operator of a CAIR unit that commences commercial operation before July 1, 2008, by January 1, 2009.

(2) For the owner or operator of a CAIR unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:

(i) January 1, 2009; or

(ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

(3) For the owner or operator of a CAIR unit for which construction of a new stack or flue or installation of add-on NO_X emission controls is completed after the applicable deadline under paragraph (b)(1) or (b)(2) of this section, by the earlier of 90 unit operating days or 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_X emissions controls.

(c) *Reporting data prior to initial certification.* The owner or operator of a CAIR unit that does not meet the applicable compliance date set forth in paragraph (b) of this section shall determine, record, and report maximum potential (or, in some cases, minimum potential) values for NO_X concentration, NO_X emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_X mass emissions and heat input in accordance with § 75.31(b)(2) or § 75.31(c)(3) of this chapter, § 2.4 of appendix D to part 75 of this chapter, or § 2.5 of appendix E to part 75 of this chapter, as applicable.

(d) *Prohibitions*

(1) No owner or operator of a CAIR unit shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with § 96.175.

(2) No owner or operator of a CAIR unit shall operate the unit so as to discharge, or allow to be discharged, NO_X emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CAIR unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_X mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CAIR unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 96.105 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 96.171(d)(3)(i).

§ 96.171 Initial certification and recertification procedures.

(a) The owner or operator of a CAIR unit shall be exempt from the initial certification requirements of this section if the following conditions are met:

(1) In 2008, the unit is subject to an Acid Rain emission limitation or is subject to the NO_X Budget Trading Program or another applicable State or Federal NO_X mass emission reduction program that has adopted the requirements of subpart H of part 75 of this chapter; and

(2) Under the Acid Rain Program or the NO_X mass emission reduction program described in paragraph (a)(1) of this section, all of the monitoring systems required under this subpart for monitoring NO_X mass emissions and heat input have been previously certified in accordance with subpart H of part 75 of this chapter; and

(3) The applicable quality-assurance requirements of § 75.21 or § 75.74(c) of this chapter, or appendix B, appendix D, or appendix E to part 75 of this chapter are fully met in 2008 for all of the certified monitoring systems described in paragraph (a)(2) of this section.

(b) The recertification provisions of this section shall apply to the monitoring systems exempted from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under § 75.17(a) or (b) of this chapter for apportioning the NO_X emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.17 or subpart H of part 75 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 96.175(a) to determine whether the approval applies under the CAIR NO_X Trading Program.

(d) The owner or operator of a CAIR unit that is not exempted under paragraph (a) of this section from the initial certification requirements of this section shall comply with the following initial certification and recertification procedures, for CEMS and for excepted monitoring systems under appendices D and E to part 75 of this chapter. The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each monitoring system required by subpart H of part 75 of this chapter (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 96.170(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring

system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous monitoring system required by subpart H of part 75 of this chapter that may significantly affect the ability of the system to accurately measure or record NO_X mass emissions or heat input rate or to meet the requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to CEMS that require recertification include: replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Fuel flowmeter systems and excepted NO_X monitoring systems under appendix E to part 75 of this chapter are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* Paragraphs (d)(3)(i) through (d)(3)(iv) of this section apply to both initial certification and recertification of continuous monitoring systems. For recertifications, replace the words "certification" and "initial certification" with the word "recertification", replace the word "certified" with the word "recertified," and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) *Notification of certification.* The CAIR designated representative shall submit to the permitting authority, to the appropriate EPA Regional Office, and to the Administrator written notice of the dates of certification testing, in accordance with § 96.173.

(ii) *Certification application.* The CAIR designated representative shall submit to the permitting authority a certification application for each monitoring system required under subpart H of part 75 of this chapter. A complete certification application shall include the information specified in § 75.63 of this chapter. Notwithstanding this requirement, a certification application is not required by subpart H if the monitoring system has been previously certified in accordance with the Acid Rain Program or in accordance with the NO_X Budget Trading Program or another applicable State or Federal NO_X mass emission reduction program that adopts the requirements of subpart H of part 75 of this chapter.

(iii) *Provisional certification date.* Except for units using the low mass emission excepted methodology under § 75.19 of this chapter, the provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CAIR NO_X Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the permitting authority.

(iv) *Certification application formal approval process.* The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR NO_X Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* A certification application will be considered complete when all of the applicable information required to be submitted under paragraph (d)(3)(ii) of this section has been received by the permitting authority. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin prior to receipt of a complete certification application.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter, or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section has been met, then the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) *Audit decertification.* The permitting authority may issue a notice of disapproval of the certification status of a monitor in accordance with § 96.172(b).

(v) *Procedures for loss of certification.* If the permitting authority issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(b)(5), § 75.21(e), or § 75.20(g)(7) of this chapter and continuing until the applicable date

and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(*1*) For a disapproved NO_X emission rate (*i.e.*, NO_X-diluent) system, the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(*2*) For disapproved NO_X pollutant concentration monitors and flow monitors, respectively, the maximum potential concentration of NO_X and the maximum potential flow rate, as defined in § 2 of appendix A to part 75 of this chapter.

(*3*) For disapproved moisture and diluent gas monitoring systems, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable), as defined in § 2 of appendix A to part 75 of this chapter.

(*4*) For disapproved fuel flowmeter systems, the maximum potential fuel flow rate, as defined in § 2.4.2.1 of appendix D to part 75 of this chapter.

(*5*) For a disapproved excepted NO_X monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) *Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter.* The owner or operator of a gas-fired or oil-fired (as defined in § 72.2 of this chapter) unit using low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) in part 75 of this chapter. If the owner or operator of a low mass emissions unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) *Certification/recertification procedures for alternative monitoring systems.* The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall comply with the notification and application procedures of paragraph (d)(1) of this section before using the system under the CAIR NO_X Trading Program. The CAIR designated representative shall also comply with the applicable notification and application procedures of paragraph (d)(2) of this section. Section 75.20(f) of this chapter shall apply to such alternative monitoring system.

§ 96.172 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality assurance or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable procedures in subpart D, subpart H, appendix D, or appendix E of part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 96.171 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority will issue a notice of disapproval of the certification status of such system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority revokes prospectively the certification status of the system. The data measured and recorded by the system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 96.171 for each disapproved system.

§ 96.173 Notifications.

The CAIR designated representative for a CAIR unit shall submit written notice to the permitting authority and the Administrator in accordance with § 75.61 of this chapter, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority.

§ 96.174 Recordkeeping and reporting.

(a) *General provisions.*

(1) The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under § 75.73 of this chapter, and the requirements of § 96.110(e)(1).

(b) *Monitoring Plans.* The owner or operator of a CAIR unit shall comply with requirements of §§ 75.73(c) and (e) of this chapter.

(c) *Certification Applications.* The CAIR designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under § 96.171, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The CAIR designated representative shall submit quarterly reports, as follows:

(1) The CAIR designated representative shall report NO_X mass emissions data and heat input data, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009 through March 31, 2009. Data shall be reported from the first hour on January 1, 2009; or

(ii) For a unit that commences commercial operation on or after July 1, 2008, the calendar quarter corresponding to the earlier of the date of provisional certification or the relevant deadline for initial certification under § 96.170(b), unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009 through March 31, 2009. Data shall be reported from the later of the date and hour corresponding to the date and hour of provisional certification or the first hour on January 1, 2009.

(2) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.

(3) For CAIR units that are also subject to an Acid Rain emissions limitation, the NO_X Budget Trading Program or another applicable State or Federal NO_X mass emission reduction

program that adopts the requirements of subpart H of part 75 of this chapter, or an applicable State or Federal Hg mass emission reduction program that adopts the requirements of subpart I of part 75 of this chapter, quarterly reports shall include the applicable data and information required by subparts F through I of part 75 of this chapter as applicable, in addition to the NO_X mass emission data, heat input data, and other information required by this subpart.

(e) *Compliance certification.* The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and

(2) For a unit with add-on NO_X emission controls and for all hours where NO_X data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B of part 75 of this chapter and the substitute data values do not systematically underestimate NO_X emissions.

§ 96.175 Petitions.

(a) The CAIR designated representative of a CAIR unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved by the Administrator, in consultation with the permitting authority.

(b) The CAIR designated representative of a CAIR unit that is not subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved by both the permitting authority and the Administrator.

§ 96.176 Additional requirements to provide heat input data.

The owner or operator of a CAIR unit that monitors and reports NO_X mass emissions using a NO_X concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in part 75 of this chapter.

3. Part 96 is amended by adding subparts AAA through CCC, adding and reserving subparts DDD and EEE and adding subparts FFF through HHH to read as follows:

Subpart AAA—CAIR SO_2 Trading Program General Provisions

Sec.
96.201 Purpose.
96.202 Definitions.
96.203 Measurements, abbreviations, and acronyms.
96.204 Applicability.
96.205 Retired unit exemption.
96.206 Standard requirements.
96.207 Computation of time.
96.208 Appeal Procedures.

Subpart BBB—CAIR Designated Representative for CAIR Sources

96.210 Authorization and responsibilities of CAIR designated representative.
96.211 Alternate CAIR designated representative.
96.212 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.
96.213 Certificate of representation.
96.214 Objections concerning CAIR designated representative.

Subpart CCC—Permits

96.220 General CAIR SO_2 Trading Program permit requirements.
96.221 Submission of CAIR permit applications.
96.222 Information requirements for CAIR permit applications.
96.223 CAIR permit contents and term.
96.224 CAIR permit revisions.

Subpart DDD—[Reserved]

Subpart EEE—[Reserved]

Subpart FFF—CAIR SO_2 Allowance Tracking System

96.250 CAIR SO_2 Allowance Tracking System accounts.
96.251 Establishment of accounts.
96.252 Responsibilities of CAIR SO_2 authorized account representative.
96.253 [Reserved]
96.254 Compliance with CAIR SO_2 emissions limitation.
96.255 Banking.
96.256 Account error.
96.257 Closing of general accounts.

Subpart GGG—CAIR SO_2 Allowance Transfers

96.260 Submission of CAIR SO_2 allowance transfers.
96.261 EPA recordation.
96.262 Notification.

Subpart HHH—Monitoring and Reporting

96.270 General requirements.
96.271 Initial certification and recertification procedures.
96.272 Out of control periods.
96.273 Notifications.
96.274 Recordkeeping and reporting.
96.275 Petitions.
96.276 Additional requirements to provide heat input data.

Subpart AAA—(CAIR) SO_2 Trading Program General Provisions

§ 96.201 Purpose.

This subpart establishes the model rule comprising general provisions and the applicability, permitting, allowance, excess emissions, and monitoring for the state Clean Air Interstate Rule (CAIR) SO_2 Trading Program, under § 110 of the Clean Air Act (CAA) and § 51.124 of this chapter, as a means of reducing national SO_2 emissions.

§ 96.202 Definitions.

The terms used in this subpart shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR SO_2 Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or *allocation* means, with regard to CAIR SO allowances, the determination by the Administrator of the amount of CAIR SO_2 allowances to be initially credited to a CAIR unit.

Alternate CAIR designated representative means, for a CAIR source and each CAIR unit at the source, the natural person who is authorized by the owners and operators of the source and all CAIR units at the source in accordance with subpart BBB of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR SO_2 Trading Program and the CAIR NO_X Trading

Program. This natural person shall be the same person as the alternate designated representative under the Acid Rain Program under § 72.22 of this chapter.

Automated data acquisition and handling system or *DAHS* means that component of the CEMS, or other emissions monitoring system approved for use under subpart HHH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HHH of this part.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for power production.

CAIR designated representative means, for a CAIR source and each CAIR unit at the source, the natural person who is authorized by the owners and operators of the source and all CAIR units at the source, in accordance with subpart BBB of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR SO_2 Trading Program and to the CAIR NO_X Trading Program. This natural person shall be the same person who is the authorized account representative under the Acid Rain Program under § 72.20 of this chapter.

CAIR NO_X Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AA through HH of this part and § 51.123 of this chapter, as a means of mitigating interstate transport of fine particulates, ozone, and nitrogen oxides.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CCC of this part, including any permit revisions, specifying the CAIR SO_2 and NO_X Trading Program requirements applicable to a CAIR source, to each CAIR unit at the CAIR source, and to the owners and operators and the CAIR designated representative of the CAIR source and each CAIR unit.

CAIR SO_2 allowance means a limited authorization issued by the Administrator under the Acid Rain Program to emit sulfur dioxide during the control period of the specified year for which the authorization is allocated or of any year thereafter under the CAIR SO_2 Trading Program as follows:

(1) For one CAIR SO_2 allowance allocated for a control period before 2010, one ton of sulfur dioxide;

(2) For two CAIR SO_2 allowances allocated for a control period in 2010 through 2014, one ton of sulfur dioxide, provided that one such allowance alone authorizes zero tons of sulfur dioxide emissions under the CAIR SO_2 Trading Program; and

(3) For 3 CAIR SO_2 allowances allocated for a control period in 2015 or later, one ton of sulfur dioxide, provided that one or two such allowances alone authorize zero tons of sulfur dioxide emissions under the CAIR SO_2 Trading Program.

CAIR SO_2 allowance deduction or *deduct CAIR SO_2 allowances* means the permanent withdrawal of CAIR SO_2 allowances by the Administrator from a compliance account in order to account for a specified number of tons of sulfur dioxide emissions from all CAIR units at a CAIR source for a control period, determined in accordance with subparts FFF and HHH of this part, or to account for excess emissions.

CAIR SO_2 Allowance Tracking System (ISATS) means the system by which the Administrator records allocations, deductions, and transfers of CAIR SO_2 allowances under the CAIR SO_2 Trading Program.

CAIR SO_2 Allowance Tracking System account means an account in the CAIR SO_2 Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR SO_2 allowances.

CAIR SO_2 allowance transfer deadline means midnight of March 1 or, if March 1 is not a business day, midnight of the first business day thereafter and is the deadline by which a CAIR SO_2 allowance transfer must be submitted for recordation in a CAIR source's compliance account in order to meet the source's CAIR SO_2 emissions limitation for the control period immediately preceding such deadline.

CAIR SO_2 allowances held or *hold CAIR SO_2 allowances* means the CAIR SO_2 allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FFF and GGG of this part, in a CAIR SO_2 Allowance Tracking System account.

CAIR SO_2 authorized account representative means a responsible natural person who is authorized, in accordance with subpart BBB of this part, to transfer and otherwise dispose of CAIR SO_2 allowances held in a CAIR SO_2 Allowance Tracking System general account; or, in the case of a compliance account, the CAIR designated representative of the source.

CAIR SO_2 emissions limitation means, for a CAIR source, the tonnage equivalent of the CAIR SO_2 allowances available for compliance deduction for the source under § 96.254(a) and (b) in a control period.

CAIR SO_2 Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program established by the Administrator in accordance with subparts AAA through HHH of this part and § 51.124 of this chapter, as a means of mitigating interstate transport of fine particulates.

CAIR source means a source that includes one or more CAIR units.

CAIR unit means a unit that is subject to the CAIR SO_2 Trading Program under § 96.204.

Clean Air Act means the Clean Air Act, 42 U.S.C. 7401, *et seq.*, as amended by Pub. L. No. 101–549 (November 15, 1990).

Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

Coal-fired means, with regard to a unit, combusting coal or any coal-derived fuel alone or in combination with any amount of any other fuel in any year.

Cogeneration unit means a unit:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity—

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input or, if useful thermal energy produced is less than 15 percent of total energy output, not less than 45 percent of total energy input.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means an enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine. A combustion turbine that is combined cycle also includes any associated heat recovery steam generator and steam turbine.

Commence commercial operation means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in § 96.205, for a unit that is a CAIR unit under § 96.204 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified or reconstructed. Except as provided in § 96.205, for a unit that is not a CAIR unit under § 96.204 on the date the unit commences commercial operation, the date the unit becomes a CAIR unit under § 96.204 shall be the unit's date of commencement of commercial operation.

Commence operation means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in § 96.205, for a unit that is a CAIR unit under § 96.204 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified or reconstructed. Except as provided in § 96.205, for a unit that is not a CAIR unit under § 96.204 on the date of commencement of operation, the date the unit becomes a CAIR unit under § 96.204 shall be the unit's date of commencement of operation.

Common stack means a single flue through which emissions from two or more units are exhausted.

Compliance account means a CAIR SO_2 Allowance Tracking System account, established by the Administrator for a CAIR source subject to an Acid Rain emissions limitations under § 73.31(a) or (b) of this chapter or for any other CAIR source under subpart FFF of this part, in which any CAIR SO_2 allowance allocations under § 73.10 or part 74 of this chapter for the CAIR units at the source are initially recorded and in which are held CAIR SO_2 allowances available for use for a control period in order to meet the source's CAIR SO_2 emissions limitation.

Continuous emission monitoring system or *CEMS* means the equipment required under subpart HHH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of sulfur dioxide (SO_2) emissions, stack gas volumetric flow rate or stack gas moisture content (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under subpart HHH of this part:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated DAHS. A flow monitoring system provides a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A sulfur dioxide (SO_2) monitoring system, consisting of a SO_2 pollutant concentration monitor and an automated DAHS. An SO_2 concentration monitoring system provides a permanent, continuous record of SO_2 emissions, in parts per million (ppm);

(3) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter. A moisture monitoring system provides a permanent, continuous record of the stack gas moisture content, in percent H_2O (percent H_2O);

(4) A carbon dioxide (CO_2) monitoring system, consisting of a CO_2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and the automated DAHS. A carbon dioxide monitoring system provides a permanent, continuous record of CO_2 emissions, in percent CO_2 (percent CO_2); and

(5) An oxygen (O_2) monitoring system, consisting of an O_2 concentration monitor and an automated DAHS. An O_2 monitoring system provides a permanent, continuous record of O_2 in percent O_2 (percent O_2).

Control period means the period beginning January 1 of a year and ending on December 31 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HHH of this part.

Energy Information Administration means the Energy Information Administration of the United States Department of Energy.

Excess emissions means any ton of sulfur dioxide emitted by the CAIR units at a CAIR source during a control period that exceeds the CAIR SO_2 emissions limitation for the source.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, any boiler or turbine combusting any amount of fossil fuel.

General account means a CAIR SO_2 Allowance Tracking System account, established under subpart FFF of this part, that is not a compliance account.

Generator means a device that produces electricity.

Gross thermal energy means, with regard to a cogeneration unit, useful thermal energy output plus, where such output is made available for an industrial or commercial process, any heat contained in condensate return or makeup water.

Heat input means, with regard to a specified period to time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HHH of this part. Heat input does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis, as specified by the manufacturer of the unit as of the initial installation of the unit.

Monitoring system means any monitoring system that meets the requirements of subpart HHH of this part, including a continuous emissions monitoring system or an alternative monitoring system.

Nameplate capacity means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as specified by the manufacturer of the generator as of the initial installation of the generator or, if the generator is subsequently modified or reconstructed resulting in an increase in such maximum electrical generating output, as specified by the person conducting the modification or reconstruction.

NO_X Budget Trading Program means a multi-state nitrogen oxide air pollution control and emission reduction program established by air pollution control and emission reduction program established by the Administrator in accordance with subparts A through I of this part and § 51.121 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

Operator means any person who operates, controls, or supervises a CAIR unit or a CAIR source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a CAIR unit; or

(2) Any holder of a leasehold interest in a CAIR unit; or

(3) Any purchaser of power from a CAIR unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (directly or indirectly) on the revenues or income from the CAIR unit; or

(4) With respect to any general account, any person who has an ownership interest with respect to the CAIR SO_2 allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent that person's ownership interest with respect to CAIR SO_2 allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR SO_2 Trading Program in accordance with subpart CCC of this part.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 mmBtu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, record, or *recorded* means, with regard to CAIR SO_2 allowances, the movement of CAIR SO_2 allowances by the Administrator into or between CAIR SO_2 Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Serial number means for a CAIR SO_2 allowance, the unique identification number assigned to each CAIR SO_2 allowance by the Administrator.

Sequential use of energy means:

(1) For a topping-cycle cogeneration unit, the use of reject heat from power production in a useful thermal energy application or process; or

(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in power production.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of § 502(c) of the Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

State means one of the 50 States or the District of Columbia that adopts the CAIR SO_2 Trading Program pursuant to § 51.123 of this chapter.

Submit or serve means to send or transmit a document, information. or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery. Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR SO_2 emissions limitation, total tons of sulfur dioxide emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HHH of this part, with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power and at least some of the reject heat from the power production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Unit means a stationary boiler or combustion turbine.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or *hour of unit operation* means an hour in which a unit combusts any fuel.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in

the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

(1) Made available to an industrial or commercial process, excluding any heat contained in condensate return or makeup water;

(2) Used in a heat application (e.g., space heating or domestic hot water heating); or

(3) Used in a space cooling application (i.e., thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a distribution utility and dedicated to delivering electricity to customers.

§ 96.203 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu-British thermal unit.
CO_2-carbon dioxide.
NO_X-nitrogen oxide.
hr-hour.
kW-kilowatt electrical.
kWh-kilowatt hour.
mmBtu-million Btu.
MWe-megawatt electrical.
MWh-megawatt hour.
O_2-oxygen.
SO_2-sulfur dioxide.
yr-year.

§ 96.204 Applicability.

The following units in a State shall be CAIR units, and any source that includes one or more such units shall be a CAIR source, subject to the requirements of this subpart and subparts BBB through HHH of this part:

(a) Except a unit under paragraph (b) of this section, a fossil fuel-fired boiler or combustion turbine serving at any time a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(b) A fossil fuel-fired cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and in any year supplying more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

§ 96.205 Retired unit exemption.

(a) This section applies to any CAIR unit that is permanently retired.

(b)(1) Any CAIR unit that is permanently retired shall be exempt from the CAIR SO_2 Trading Program, except for the provisions of this section, § 96.202, § 96.203, § 96.204, § 96.206(c)(5) through (8), § 96.207, and subparts EEE through GGG of this part.

(2) The exemption under paragraph (b)(1) of this section shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit. The CAIR designated representative shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date, and will comply with the requirements of paragraph (c) of this section.

(3) After receipt of the notice under paragraph (b)(2) of this section, the permitting authority will amend any permit under subpart CCC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (b)(1) and (c) of this section.

(c) *Special provisions.*

(1) A unit exempt under this section shall not emit any sulfur dioxide, starting on the date that the exemption takes effect.

(2) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(3) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under this section shall comply with the requirements of the CAIR SO_2 Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 96.222 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the unit resumes operation.

(5) On the earlier of the following dates, a unit exempt under paragraph (b) of this section shall lose its exemption:

(i) The date on which the CAIR designated representative submits a CAIR permit application under paragraph (c)(5) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (c)(5) of this section to submit a CAIR permit application; or

(iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(6) For the purpose of applying monitoring requirements under subpart HHH of this part, a unit that loses its exemption under this section shall be treated as a unit that commences operation and commercial operation on the first date on which the unit resumes operation.

§ 96.206 Standard requirements.

(a) *Permit Requirements.*

(1) The CAIR designated representative of each CAIR source required to have a title V operating permit and each CAIR unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under § 96.222 in accordance with the deadlines specified in § 96.221(b) and (c); and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR source required to have a title V operating permit and each CAIR unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority and operate the unit in compliance with such CAIR permit.

(3) The owners and operators of a CAIR source that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CCC of this part for such CAIR source.

(b) *Monitoring requirements.*

(1) The owners and operators and, to the extent applicable, the CAIR designated representative of each CAIR source and each CAIR unit at the source shall comply with the monitoring requirements of subpart HHH of this part.

(2) The emissions measurements recorded and reported in accordance with subpart HHH of this part shall be used to determine compliance by the unit with the CAIR SO_2 emissions limitation under paragraph (c) of this section.

(c) *Sulfur dioxide emission requirements.*

(1) As of the CAIR SO_2 allowance transfer deadline for a control period, the owners and operators of each CAIR source and each CAIR unit at the source shall hold, in the source's compliance account, a tonnage equivalent in CAIR SO_2 allowances available for compliance deductions for the control period under § 96.254(a) not less than the total sulfur dioxide emissions for the control period from all CAIR units at the source, as determined in accordance with subpart HHH of this part.

(2) Each ton of sulfur dioxide emitted in excess of the CAIR SO_2 emissions limitation shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(3) A CAIR unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under § 96.270(b)(1) or (b)(2).

(4) A CAIR SO_2 allowance shall not be deducted, in order to comply with the requirements under paragraph (c)(1) of this section, for a control period in a year prior to the year for which the CAIR SO_2 allowance was allocated.

(5) CAIR SO_2 allowances shall be held in, deducted from, or transferred into or among CAIR SO_2 Allowance Tracking System accounts in accordance with subparts FFF and GGG of this part.

(6) A CAIR SO_2 allowance is a limited authorization to emit sulfur dioxide in accordance with the CAIR SO_2 Trading Program. No provision of the CAIR SO_2 Trading Program, the CAIR permit application, the CAIR permit, or exemption under § 96.205 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

(7) A CAIR SO_2 allowance does not constitute a property right.

(8) Upon recordation by the Administrator under subparts FFF and GGG of this part, every allocation, transfer, or deduction of a CAIR SO_2 allowance to or from a CAIR unit's compliance account is incorporated automatically in any CAIR permit of the CAIR unit.

(d) *Excess emissions requirements.*

(1) The owners and operators of a CAIR unit that has excess emissions in any control period shall:

(i) Surrender the CAIR SO_2 allowances required for deduction under § 96.254(d)(1); and

(ii) Pay any fine, penalty, or assessment or comply with any other remedy imposed under § 96.254(d)(2).

(e) *Recordkeeping and Reporting Requirements.*

(1) Unless otherwise provided, the owners and operators of the CAIR source and each CAIR unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The certificate of representation under § 96.213 for the CAIR designated representative for the source and each CAIR unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 96.213 changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with subpart HHH of this part; provided that to the extent that subpart HHH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR SO_2 Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR SO_2 Trading Program or to demonstrate compliance with the requirements of the CAIR SO_2 Trading Program.

(2) The CAIR designated representative of a CAIR source and each CAIR unit at the source shall submit the reports required under the CAIR SO_2 Trading Program, including those under subpart HHH of this part.

(f) *Liability.*

(1) Any person who knowingly violates any requirement or prohibition of the CAIR SO_2 Trading Program, a CAIR permit, or an exemption under § 96.205 shall be subject to enforcement pursuant to applicable State or Federal law.

(2) Any person who knowingly makes a false material statement in any record, submission, or report under the CAIR SO_2 Trading Program shall be subject to criminal enforcement pursuant to the applicable State or Federal law.

(3) No permit revision shall excuse any violation of the requirements of the CAIR SO_2 Trading Program that occurs prior to the date that the revision takes effect.

(4) Each CAIR source and each CAIR unit shall meet the requirements of the CAIR SO_2 Trading Program.

(5) Any provision of the CAIR SO_2 Trading Program that applies to a CAIR source or the CAIR designated representative of a CAIR source shall also apply to the owners and operators of such source and of the CAIR units at the source.

(6) Any provision of the CAIR SO_2 Trading Program that applies to a CAIR unit or the CAIR designated representative of a CAIR unit shall also apply to the owners and operators of such unit.

(g) *Effect on Other Authorities.* No provision of the CAIR SO_2 Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 96.205 shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the CAIR designated representative of a CAIR source or CAIR unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 96.207 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR SO_2 Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR SO_2 Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR SO_2 Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 96.208 Appeal Procedures.

The appeal procedures for decisions of the Administrator under the CAIA SO_2 Trading Program are set forth in part 78 of this chapter.

Subpart BBB—CAIR designated representative for CAIR sources

§ 96.210 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 96.211, each CAIR source, including all CAIR

units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR SO_2 Trading Program concerning the source or any CAIR unit at the source.

(b) The CAIR designated representative of the CAIR source shall be selected by an agreement binding on the owners and operators of the source and all CAIR units at the source and shall act in accordance with the certification statement in § 96.213(a)(5)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 96.213, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR source represented and each CAIR unit at the source in all matters pertaining to the CAIR SO_2 Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR SO_2 Allowance Tracking System account will be established for a CAIR unit at a source, until the Administrator has received a complete certificate of representation under § 96.213 for a CAIR designated representative of the source and the CAIR units at the source.

(e)(1) Each submission under the CAIR SO_2 Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR source or a CAIR unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 96.211 Alternate CAIR designated representative.

(a) A certificate of representation may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 96.213, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and §§ 96.202, 96.210(a), 96.212, 96.213, and 96.251, whenever the term "CAIR designated representative" is used in this subpart, the term shall be construed to include the alternate CAIR designated representative.

§ 96.212 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

(a) *Changing CAIR designated representative.* The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.213. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative prior to the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR source and the CAIR units at the source.

(b) *Changing alternate CAIR designated representative.* The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.213. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative prior to the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR source and the CAIR units at the source.

(c) *Changes in owners and operators.*

(1) In the event a new owner or operator of a CAIR source or a CAIR unit is not included in the list of owners and operators submitted in the certificate of representation under § 96.213, such new owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions, orders, actions, and inactions of the permitting authority or the Administrator, as if the new owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a CAIR source or a CAIR unit, including the addition of a new owner or operator, the CAIR designated representative or alternate CAIR designated representative shall submit a revision to the certificate of representation under § 96.213 amending the list of owners and operators to include the change.

§ 96.213 Certificate of representation.

(a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CAIR source and each CAIR unit at the source for which the certificate of representation is submitted.

(2) For each CAIR unit at the source, the dates on which the unit commenced operation and commenced commercial operation.

(3) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR designated representative and any alternate CAIR designated representative.

(4) A list of the owners and operators of the CAIR source and of each CAIR unit at the source.

(5) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative—

(i) "I certify that I was selected as the CAIR designated representative or alternate CAIR designated

representative, as applicable, by an agreement binding on the owners and operators of the source and each unit at the source."

(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO_2 and NO_X Trading Programs on behalf of the owners and operators of the source and of each unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."

(iii) "I certify that the owners and operators of the source and of each unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit."

(iv) "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a unit, or where a customer purchases power from a unit under life-of-the-unit, firm power contractual arrangements, I certify that: I have given a written notice of my selection as the 'designated representative' or 'alternated designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each unit at the source; and allowances and proceeds of transactions involving allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement or, if such multiple holders have expressly provided for a different distribution of allowances by contract, that allowances and the proceeds of transactions involving allowances will be deemed to be held or distributed in accordance with the contract."

(6) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 96.214 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 96.213 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 96.213 is received by the Administrator.

(b) Except as provided in § 96.212(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR SO_2 Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR SO_2 allowance transfers.

Subpart CCC—Permits

§ 96.220 General CAIR Trading Program permit requirements.

(a) For each CAIR source required to have a title V operating permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit. The CAIR portion of the title V permit shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter, except as provided otherwise by this subpart.

(b) Each CAIR permit shall contain all applicable CAIR SO_2 and NO_X Trading Program requirements and shall be a complete and separable portion of the title V operating permit under paragraph (a) of this section.

§ 96.221 Submission of CAIR permit applications.

(a) *Duty to apply.* The CAIR designated representative of any CAIR source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 96.222 by the applicable deadline in paragraph (b) of this section.

(b) *Application deadline.* For any source with any CAIR unit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.222 covering such CAIR unit to the permitting authority at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the CAIR unit commences operation.

(c) *Duty to Reapply.* For a CAIR source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.222 for the CAIR source covering the CAIR units at the source in accordance with the permitting authority's title V operating permits regulations addressing operating permit renewal.

§ 96.222 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the CAIR source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration, if applicable;

(b) Identification of each CAIR unit at the CAIR source; and

(c) The standard requirements under §§ 96.106 and 96.206.

§ 96.223 CAIR permit contents and term.

(a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 96.222.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 96.202 and, upon recordation by the Administrator under subparts FFF and GGG of this part, every allocation, transfer, or deduction of a CAIR SO_2 allowance to or from the compliance account of the CAIR source covered by the permit.

(c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR source's title V permit.

§ 96.224 CAIR permit revisions.

Except as provided in § 96.223(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations addressing permit revisions.

Subpart DDD—[Reserved]

Subpart EEE—[Reserved]

Subpart FFF—CAIR SO_2 Allowance Tracking System

§ 96.250 CAIR SO_2 Allowance Tracking System accounts.

(a) *Nature and function of compliance accounts.* Consistent with § 96.251(a),

the Administrator will establish one compliance account for each CAIR source with one or more CAIR units. Deductions or transfers of CAIR SO_2 allowances pursuant § 96.254, § 96.256, or subpart GGG of this part will be recorded in compliance accounts in accordance with this subpart.

(b) *Nature and function of general accounts.* Consistent with § 96.251(b), the Administrator will establish, upon request, a general account for any person. Transfers of CAIR SO_2 allowances pursuant to subpart GGG of this part will be recorded in general accounts in accordance with this subpart.

§ 96.251 Establishment of accounts.

(a) *Compliance accounts.* Upon receipt of a complete certificate of representation under § 96.213, the Administrator will establish a compliance account for the CAIR source for which the certificate of representation was submitted, unless the CAIR source is subject to an Acid Rain emissions limitation and already has a compliance account.

(b) *General accounts.*

(1) *Application for general account.*

(i) Any person may apply to open a general account for the purpose of holding and transferring CAIR SO_2 allowances. An application for a general account may designate one and only one CAIR SO_2 authorized account representative and one and only one alternate CAIR SO_2 authorized account representative who may act on behalf of the CAIR SO_2 authorized account representative. The agreement by which the alternate CAIR SO_2 authorized account representative is selected shall include a procedure for authorizing the alternate CAIR SO_2 authorized account representative to act in lieu of the CAIR SO_2 authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR SO_2 authorized account representative and any alternate CAIR SO_2 authorized account representative;

(B) Organization name and type of organization, if applicable;

(C) A list of all persons subject to a binding agreement for the CAIR SO_2 authorized account representative and any alternate CAIR SO_2 authorized account representative to represent their ownership interest with respect to the allowances held in the general account;

(D) The following certification statement by the CAIR SO_2 authorized account representative and any alternate CAIR SO_2 authorized account representative: "I certify that I was selected as the CAIR SO_2 authorized account representative or the CAIR SO_2 alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO_2 Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."

(E) The signature of the CAIR SO_2 authorized account representative and any alternate CAIR SO_2 authorized account representative and the dates signed.

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) *Authorization of CAIR SO_2 authorized account representative.* Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

(i) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(ii) The CAIR SO_2 authorized account representative and any alternate CAIR SO_2 authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR SO_2 allowances held in the general account in all matters pertaining to the CAIR SO_2 Trading Program, notwithstanding any agreement between the CAIR SO_2 authorized account representative or any alternate CAIR SO_2 authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR SO_2 authorized account representative or any alternate CAIR SO_2 authorized account representative by the Administrator or a court regarding the general account.

(iii) Any representation, action, inaction, or submission by any alternate CAIR SO_2 authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR SO_2 authorized account representative.

(iv) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR SO_2 authorized account representative or any alternate CAIR SO_2 authorized account representative for the persons having an ownership interest with respect to CAIR SO_2 allowances held in the general account. Each such submission shall include the following certification statement by the CAIR SO_2 authorized account representative or any alternate CAIR SO_2 authorizing account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR SO_2 allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(v) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(iv) of this section.

(3) *Changing CAIR SO_2 authorized account representative and alternate CAIR SO_2 authorized account representative; changes in persons with ownership interest.*

(i) The CAIR SO_2 authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR SO_2 authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR SO_2 authorized account

representative and the persons with an ownership interest with respect to the CAIR SO_2 allowances in the general account.

(ii) The alternate CAIR SO_2 authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR SO_2 authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR SO_2 authorized account representative and the persons with an ownership interest with respect to the CAIR SO_2 allowances in the general account.

(iii)(A) In the event a new person having an ownership interest with respect to CAIR SO_2 allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR SO_2 authorized account representative and any alternate CAIR SO_2 authorized account representative of the account, and the decisions, orders, actions, and inactions of the Administrator, as if the new person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to CAIR SO_2 allowances in the general account, including the addition of persons, the CAIR SO_2 authorized account representative or any alternate CAIR SO_2 authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR SO_2 allowances in the general account to include the change.

(4) *Objections concerning CAIR* SO_2 *authorized account representative.*

(i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR SO_2 authorized account representative or any alternative CAIR SO_2 authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR SO_2 authorized account representative or any alternative CAIR SO_2 authorized account representative or the finality of any decision or order by the Administrator under the CAIR SO_2 Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR SO_2 authorized account representative or any alternative CAIR SO_2 authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR SO_2 allowance transfers.

(c) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 96.252 Responsibilities of CAIR SO_2 authorized account representative.

(a) Following the establishment of a CAIR SO_2 Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR SO_2 allowances in the account, shall be made only by the CAIR SO_2 authorized account representative for the account.

(b) *Authorized account representative identification.* The Administrator will assign a unique identifying number to each CAIR SO_2 authorized account representative.

§ 96.253 [Reserved]

§ 96.254 Compliance with CAIR SO_2 emissions limitation.

(a) CAIR SO_2 allowance transfer deadline. The CAIR SO_2 allowances are available to be deducted for compliance with a source's CAIR SO_2 emissions limitation for a control period in a given year only if the CAIR SO_2 allowances:

(1) Were allocated for the year or a prior year;

(2) Are held in the compliance account as of the CAIR SO_2 allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR SO_2 allowance transfer correctly submitted for recordation under § 96.260 by the CAIR SO_2 allowance transfer deadline for the control period; and

(3) Are not necessary for deduction for excess emissions for a prior control period under paragraph (d) of this section or for deduction under part 77 of this chapter.

(b) *Deductions for compliance.* Following the recordation, in accordance with § 96.261, of CAIR SO_2 allowance transfers submitted for recordation in a source's compliance account by the CAIR SO_2 allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR SO_2 allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR SO_2 emissions limitation for the control period as follows:

(1) For a CAIR source subject to an Acid Rain emissions limitation, the Administrator will, in the following order:

(i) Make the deductions required under §§ 73.35(b) and (c) of this part;

(ii) Make the deductions required under §§ 73.35(d) and 77.4 of this part; and

(iii) Treating the CAIR SO_2 allowances deducted under paragraph (b)(1)(i) of this section as also being deducted under this paragraph (b)(1)(iii), deduct CAIR SO_2 allowances until:

(A) The tonnage equivalent of the CAIR SO_2 allowances deducted equals the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this part, from all CAIR units at the source for the control period; or

(B) No more CAIR SO_2 allowances available under paragraph (a) of this section and authorizing at least one ton of sulfur dioxide emissions remain in the compliance account.

(2) For a CAIR source not subject to an Acid Rain emissions limitation, the Administrator will deduct CAIR SO_2 allowances until:

(i) The tonnage equivalent of the CAIR SO_2 allowances deducted equals the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this part, from all CAIR units at the source for the control period; or

(ii) No more CAIR SO_2 allowances available under paragraph (a) of this section and authorizing at least one ton of sulfur dioxide emissions remain in the compliance account.

(c)(1) *Identification of CAIR* SO_2 *allowances by serial number.* The CAIR SO_2 authorized account representative for a source's compliance account may request that specific CAIR SO_2 allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a

control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CAIR SO_2 allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR SO_2 allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Those CAIR SO_2 allowances that were allocated to the units at the source under part 73 or 74 of this chapter. in the order of recordation; and then

(ii) Those CAIR SO_2 allowances that were allocated to any unit and transferred and recorded in the compliance account pursuant to subpart GGG of this part, in the order of recordation.

(d) *Deductions for excess emissions.*

(1) After making the deductions for compliance under paragraph (b) of this section for a control period in which the CAIR source has excess emissions, the Administrator will deduct from the source's compliance account the tonnage equivalent in CAIR SO_2 allowances, allocated for the year after such control period, of three times the number of tons of the source's excess emissions.

(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR source or the CAIR units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act or applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations:

(i) For purposes of determining the number of days of violation, if a CAIR source has excess emissions for a control period, each day in the control period constitutes a day in violation unless the owners and operators of the source demonstrate that a lesser number of days should be considered.

(ii) Each ton of excess emissions is a separate violation.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraph (b) or (d) of this section.

(f) *Administrator's action on submissions.*

(1) The Administrator may review and conduct independent audits concerning any submission under the CAIR SO_2 Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct CAIR SO_2 allowances from or transfer CAIR SO_2 allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section.

§ 96.255 Banking.

(a) CAIR SO_2 allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CAIR SO_2 allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR SO_2 allowance is deducted or transferred under § 96.254, § 96.256, or subpart GGG of this part.

§ 96.256 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR SO_2 Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR SO_2 authorized account representative for the account.

§ 96.257 Closing of general accounts.

(a) The CAIR SO_2 authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under § 96.260 for any CAIR SO_2 allowances in the account to one or more other CAIR SO_2 Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account and does not contain any CAIR SO_2 allowances, the Administrator may notify the CAIR SO_2 authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR SO_2 allowances into the account under § 96.260 or a statement submitted by the CAIR SO_2 authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GGG—CAIR SO_2 Allowance Transfers

§ 96.260 Submission of CAIR SO_2 allowance transfers.

(a) A CAIR SO_2 authorized account representative seeking recordation of a CAIR SO_2 allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR SO_2 allowance transfer shall include the following elements, in a format specified by the Administrator:

(1) The numbers identifying both the transferor and transferee accounts;

(2) The serial number of each CAIR SO_2 allowance (which must be in the transferor account) to be transferred; and

(3) The name and signature of the CAIR SO_2 authorized account representatives of the transferor and transferee accounts and the dates signed.

(b)(1) The CAIR SO_2 authorized account representative for the transferee account can meet the requirements in paragraph (a)(3) of this section by submitting, in a format prescribed by the Administrator, a statement signed by the CAIR SO_2 authorized account representative and identifying each account into which any transfer of allowances, submitted on or after the date on which the Administrator receives such statement, is authorized. Such authorization shall be binding on any CAIR SO_2 authorized account representative for such account and shall apply to all transfers into the account that are submitted on or after such date of receipt, unless and until the Administrator receives a statement signed by the CAIR SO_2 authorized account representative retracting the authorization for the account.

(2) The statement under paragraph (b)(1) of this section shall include the following: "By this signature I authorize any transfer of allowances into each account listed herein, except that I do not waive any remedies under State or Federal law to obtain correction of any erroneous transfers into such accounts. This authorization shall be binding on any authorized account representative for such account unless and until a statement signed by the authorized account representative retracting this authorization for the account is received by the Administrator."

§ 96.261 EPA recordation.

(a) Within 5 business days of receiving a CAIR SO_2 allowance transfer, except as provided in paragraph (b) of this section, the

Administrator will record a CAIR SO_2 allowance transfer by moving each CAIR SO_2 allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 96.260; and

(2) The transferor account includes each CAIR SO_2 allowance identified by serial number in the transfer.

(b) A CAIR SO_2 allowance transfer that is submitted for recordation after the CAIR SO_2 allowance transfer deadline and that includes any CAIR SO_2 allowances allocated for a control period in any year before the year of the CAIR SO_2 allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 96.254 for the control period in the year immediately before the year of the CAIR SO_2 allowance transfer deadline.

(c) Where a CAIR SO_2 allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 96.262 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a CAIR SO_2 allowance transfer under § 96.261, the Administrator will notify the CAIR SO_2 authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a CAIR SO_2 allowance transfer that fails to meet the requirements of § 96.261(a), the Administrator will notify the CAIR SO_2 authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a CAIR SO_2 allowance transfer for recordation following notification of non-recordation.

Subpart HHH—Monitoring and Reporting

§ 96.270 General Requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subparts F and G of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 96.202 and in § 72.2 of this chapter shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in part 75 of this chapter shall be deemed to refer to the terms "CAIR unit," "CAIR designated representative," and "continuous emission monitoring system" (or "CEMS") respectively, as defined in § 96.202. The owner or operator of a unit that is not a CAIR unit but that is monitored under § 75.16(b)(2) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CAIR unit shall:

(1) Install all monitoring systems required under this subpart for monitoring SO_2 mass emissions and individual unit heat input. This includes all systems required to monitor SO_2 concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, in accordance with §§ 75.11 and 75.16 of this chapter;

(2) Successfully complete all certification tests required under § 96.271 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* The owner or operator shall meet the certification . and other requirements of paragraphs (a)(1) and (a)(2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.

(1) For the owner or operator of a CAIR unit that commences commercial operation before July 1, 2008, by January 1, 2009.

(2) For the owner or operator of a CAIR unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:

(i) January 1, 2009; or

(ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

(3) For the owner or operator of a CAIR unit for which construction of a new stack or flue or installation of add-on SO_2 emission controls is completed after the applicable deadline under paragraph (b)(1) or (b)(2) of this section, by the earlier of 90 unit operating days or 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on SO_2 emissions controls.

(c) *Reporting data prior to initial certification.* The owner or operator of a CAIR unit that does not meet the applicable compliance date set forth in paragraph (b) of this section shall determine, record, and report maximum potential (or, in some cases, minimum potential) values for SO_2 concentration, SO_2 emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine SO_2 mass emissions and heat input in accordance with § 75.31(b)(2) or § 75.31(c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter.

(d) *Prohibitions*

(1) No owner or operator of a CAIR unit shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with § 96.275.

(2) No owner or operator of a CAIR unit shall operate the unit so as to discharge, or allow to be discharged, SO_2 emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CAIR unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording SO_2 mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CAIR unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 96.205 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 96.271(d)(3)(i).

§ 96.271 Initial certification and recertification procedures.

(a) The owner or operator of a CAIR unit shall be exempt from the initial certification requirements of this section if the following conditions are met:

(1) In 2008, the unit is subject to an Acid Rain limitation; and

(2) Under the Acid Rain Program, all of the monitoring systems required under this subpart for monitoring SO_2 mass emissions and heat input have been previously certified in accordance with part 75 of this chapter; and

(3) The applicable quality-assurance requirements of § 75.21 of this chapter, or appendix B, or appendix D to part 75 of this chapter are fully met in 2008 for all of the certified monitoring systems described in paragraph (a)(2) of this section.

(b) The recertification provisions of this section shall apply to the monitoring systems exempted from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under §§ 75.16(b)(2)(ii) of this chapter for apportioning the SO_2 mass emissions measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.11 or § 75.16 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 96.275(a) to determine whether the approval applies under the CAIR SO_2 Trading Program.

(d) The owner or operator of a CAIR unit that is not exempted under paragraph (a) of this section from the initial certification requirements of this section shall comply with the following initial certification and recertification procedures, for CEMS and for excepted monitoring systems under appendix D of part 75 of this chapter. The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each monitoring system required by § 96.270(a) and paragraph (c) of § 75.10 of this chapter, each moisture monitoring system required by § 75.11(b), and each monitoring system required by § 75.11(d) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 96.270(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous monitoring system required by § 96.270(a) that may significantly affect the ability of the system to accurately measure or record SO_2 mass emissions or heat input rate or to meet the requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to CEMS that require recertification include: Replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Fuel flowmeter systems are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* Paragraphs (d)(3)(i) through (d)(3)(iv) of this section apply to both initial certification and recertification of continuous monitoring systems. For recertifications, replace the words "certification" and "initial certification" with the word "recertification", replace the word "certified" with the word "recertified," and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) *Notification of certification.* The CAIR designated representative shall submit to the permitting authority, to the appropriate EPA Regional Office, and to the Administrator written notice of the dates of certification testing, in accordance with § 96.273.

(ii) *Certification application.* The CAIR designated representative shall submit to the permitting authority a certification application for each monitoring system required under paragraph (d) of this section. A complete certification application shall include the information specified in § 75.63 of this chapter. Notwithstanding this requirement, a certification application is not required if the monitoring system has been previously certified in accordance with the Acid Rain Program or in accordance with the NO_X Budget Trading Program or another applicable State or Federal NO_X mass emission reduction program that adopts the requirements of subpart H of part 75 of this chapter.

(iii) *Provisional certification date.* Except for units using the low mass emission excepted methodology under § 75.19 of this chapter, the provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CAIR SO_2 Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the permitting authority.

(iv) *Certification application formal approval process.* The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR SO_2 Trading Program.

(A) *Approval notice.* If the certification application is complete and

shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* A certification application will be considered complete when all of the applicable information required to be submitted under paragraph (d)(3)(ii) of this section has been received by the permitting authority. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin prior to receipt of a complete certification application.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter, or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section has been met, then the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) *Audit decertification.* The permitting authority may issue a notice of disapproval of the certification status of a monitor in accordance with § 96.272(b).

(v) *Procedures for loss of certification.* If the permitting authority issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(b)(5), § 75.20(g)(7) or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(*1*) For disapproved SO_2 pollutant concentration monitors and flow monitors, respectively, the maximum potential concentration of SO_2 and the maximum potential flow rate, as defined in §§ 2.1.1.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(*2*) For disapproved moisture and diluent gas monitoring systems, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable), as defined in §§ 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(*3*) For disapproved fuel flowmeter systems, the maximum potential fuel flow rate, as defined in § 2.4.2.1 of appendix D to part 75 of this chapter.

(B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3) (i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) *Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter.* The owner or operator of a gas-fired or oil-fired (as defined in § 72.2 of this chapter) unit using low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) in part 75 of this chapter. If the owner or operator of a low mass emissions unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) *Certification/recertification procedures for alternative monitoring systems.* The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall comply with the notification and application procedures of paragraph (d)(1) of this section before using the system under the CAIR SO_2 Trading Program. The CAIR designated representative shall also comply with the applicable notification and application procedures of paragraph (d)(2) of this section. Section 75.20(f) of this chapter shall apply to such alternative monitoring system.

§ 96.272 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality assurance or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable procedures in subpart D or appendix D of part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 96.271 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority will issue a notice of disapproval of the certification status of such system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority revokes prospectively the certification status of the system. The data measured and recorded by the system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 96.271 for each disapproved system.

§ 96.273 Notifications.

The CAIR designated representative for a CAIR unit shall submit written notice to the permitting authority and the Administrator in accordance with § 75.61 of this chapter, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is

only required to be sent to the permitting authority.

§ 96.274 Recordkeeping and reporting.

(a) *General provisions.* The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements in subparts F and G of part 75 of this chapter, and the requirements of § 96.210(e)(1).

(b) *Monitoring Plans.* The owner or operator of a CAIR unit shall comply with requirements of §§ 75.62 of this chapter.

(c) *Certification Applications.* The CAIR designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under § 96.271, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The CAIR designated representative shall submit quarterly reports, as follows:

(1) The CAIR designated representative shall report SO_2 mass emissions data and heat input data, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009 through March 31, 2009. Data shall be reported from the first hour on January 1, 2009; or

(ii) For a unit that commences commercial operation on or after July 1, 2008, the calendar quarter corresponding to the earlier of the date of provisional certification or the relevant deadline for initial certification under § 96.270(b), unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009 through March 31, 2009. Data shall be reported from the later of the date and hour corresponding to the date and hour of provisional certification or the first hour on January 1, 2009.

(2) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.64 of this chapter.

(3) For CAIR units that are also subject to an Acid Rain emissions limitation, the NO_X Budget Trading Program or another applicable State or Federal NO_X mass emission reduction program that adopts the requirements of subpart H of part 75 of this chapter, or an applicable State or Federal Hg mass emission reduction program that adopts the requirements of subpart I of part 75 of this chapter, quarterly reports shall include the applicable data and information required by subparts F through I of part 75 of this chapter as applicable, in addition to the SO_2 mass emission data, heat input data, and other information required by this subpart.

(e) *Compliance certification.* The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and

(2) For a unit with add-on SO_2 emission controls and for all hours where SO_2 data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B of part 75 of this chapter and the substitute data values do not systematically underestimate SO_2 emissions.

§ 96.275 Petitions.

(a) The CAIR designated representative of a CAIR unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved by the Administrator, in consultation with the permitting authority.

(b) The CAIR designated representative of a CAIR unit that is not subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved by both the permitting authority and the Administrator.

§ 96.276 Additional Requirements to Provide Heat Input Data.

The owner or operator of a CAIR unit that monitors and reports SO_2 mass emissions using a SO_2 concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in part 75 of this chapter.

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Part IV

Department of Housing and Urban Development

24 CFR Part 570
Community Development Block Grant Program; Small Cities and Insular Areas Programs; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4919–I–01]

RIN 2506–AC17

Community Development Block Grant Program; Small Cities and Insular Areas Programs

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule establishes regulations to implement a statutory change moving Community Development Block Grant (CDBG) program assistance for insular areas from section 107 (Special Purpose Grants) to section 106 (Allocation and Distribution of Funds) of the Housing and Community Development Act of 1974. As in the past under the Special Purpose Grant program, HUD will continue to make grants to insular area jurisdictions under the Insular Areas CDBG program for activities which principally benefit low- and moderate-income persons, aid in the elimination of slums or blighting conditions, or meet other community development needs having a particular urgency. This interim rule codifies the amended statutory funding mechanism for allocation of CDBG funds to insular areas, includes the Insular Areas CDBG program in subpart F and streamlines that subpart by removing sections no longer necessary for the Small Cities CDBG program, identifies the process by which insular areas will receive and report on grant funds under section 106, enables insular areas to apply for the Section 108 Loan Guarantee program, and makes other conforming and technical amendments.

DATES: *Effective Date:* July 12, 2004.

Comment Due Date: August 9, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Electronic comments may be submitted through Regulations.gov (*http://www.regulations.gov*). Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jamie Spakow, Community Planning and Development Specialist, State and Small Cities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Room 7184, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–1322 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The CDBG program, authorized under the Housing and Community Development Act of 1974 (HCD Act) (42 U.S.C. 5301 *et seq.*), has provided discretionary assistance as special purpose grants to qualifying insular area jurisdictions since Fiscal Year (FY) 1982. Through the CDBG program, HUD allocates funds by formula among eligible state and local governments, and also makes funds available to insular areas, for activities which principally benefit low- and moderate-income persons, aid in the elimination of slums or blighting conditions, or meet other community development needs having a particular urgency. HUD's regulations for the portions of the CDBG program administered by HUD's Office of Community Planning and Development are located in 24 CFR part 570.

Title V of Public Law 108–186 (117 Stat. 2685, approved December 16, 2003) (title V) amended title I of the HCD Act, moving the insular areas funding authorization from section 107(a) (42 U.S.C. 5307(a)) to section 106(a) (42 U.S.C. 5306(a)). This revision identified a specific portion of the CDBG allocation for insular areas that is separate from the distribution for special purpose grants as well as from the entitlement and state formula distribution. The change provides the insular areas of Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa with greater assurance of annual CDBG program funding.

With respect to the allocation of funds, title V establishes total ongoing annual insular areas funding at a level of $7,000,000, consistent with the level of funding received by insular areas while under the special purpose grant section of the HCD Act. Title V provides for the distribution of amounts to insular areas on the basis of the ratio of the population of each insular area to the population of all insular areas, which is also consistent with the past basis for distribution under the special purpose grant section. Title V also provides HUD with the authority to include other statistical criteria in the distribution formula as additional data become available from the Bureau of the Census, if such distribution criteria are contained in a regulation promulgated by HUD after notice and public comment. Finally, the greater assurance of continued funding provided by inclusion under section 106 of the HCD Act and the placement of the Insular Areas CDBG regulations in subpart F provide insular areas with the opportunity to apply for loan guarantees as described in section 108 of the HCD Act and subpart M of 24 CFR 570.

Because the Consolidated Appropriations Act, 2004 (Public Law 108–199, approved January 23, 2004) made funds available to insular areas under section 107 rather than section 106, the regulations at 24 CFR 570.405 applicable to insular areas grants under section 107 will govern FY2004 insular areas funding. The regulations added by this rule to govern insular areas funding under section 106 will apply to funds made available under section 106.

II. This Interim Rule

This interim rule amends HUD's part 570 regulations for the CDBG program to establish the policies and procedures governing the Insular Areas CDBG program consistent with section 106 of the HCD Act. The Insular Areas CDBG regulations that will govern funding under section 106 are added to subpart F (renamed "Small Cities and Insular Areas Programs" by this rule) of 24 CFR part 570. This interim rule codifies in HUD's regulations the statutory basis for allocation of CDBG funding to insular area jurisdictions under section 106, identifies eligible activities and costs, and makes other conforming and technical amendments.

To the greatest extent possible, this interim rule applies existing CDBG program regulatory requirements to Insular Areas CDBG awards under section 106. This interim rule enables insular areas to apply for the Section 108 Loan Guarantee program. This rule also streamlines subpart F by removing sections no longer necessary for the Small Cities CDBG program and identifies the process by which insular areas will receive and report on grant funds under section 106.

The following discussion provides an overview of the specific regulatory amendments made by this interim rule:

A. Purpose and Primary Objective

This interim rule expands the scope of subpart F, which formerly contained

only regulations applicable to the HUD-administered Small Cities CDBG program. Subpart F now contains regulations applicable to two types of nonentitlement area CDBG funds: (1) The HUD-administered Small Cities program, and (2) the Insular Areas program. Conforming amendments are made to § 570.1 in subpart A and § 570.420 in subpart F to reflect this change. Regulations pertaining to the third type of nonentitlement CDBG program, the state-administered nonentitlement program, remain separate under Subpart I without revision.

B. Definitions

This interim rule codifies the definitions that apply to the Insular Areas CDBG program in § 570.3, which contains the definitions that also apply to other components of the CDBG program. The interim rule also makes technical corrections to § 570.3 to remove terms related to the Indian CDBG program, as this program is now administered by HUD's Office of Public and Indian Housing and is codified separately at 24 CFR part 1003. The specific changes to § 570.3 are as follows:

1. *Insular area.* Given enactment of title V and authorization of Insular Area CDBG funding under section 106 of the HCD Act, HUD is codifying the statutory definition of "insular area" in § 570.3. Accordingly, this interim rule provides that the term "insular area" has the same meaning as provided in section 102(a)(24) of the Act. The term "insular area" means each of Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

2. *Applicant.* This interim rule makes a technical correction by removing the reference to Indian tribes as eligible applicants for the CDBG program administered through HUD's Office of Community Planning and Development and codified at 24 CFR part 570. The Indian CDBG program is separately codified at 24 CFR part 1003 and administered by HUD's Office of Public and Indian Housing. Indian tribes are no longer eligible applicants under the part CDBG program codified at 24 CFR part 570. Eligible applicants for CDBG under part 570 now include only states or units of general local government (including insular areas) making applications pursuant to the provisions of subparts D, E, F, G, I, or M of 24 CFR part 570.

3. *Indian tribe.* The part 570 definition of Indian tribe is removed, as this definition is no longer relevant to the CDBG program administered by the Office of Community Planning and Development.

C. Allocation of Funds

This interim rule makes a conforming change to § 570.4(a) to include a reference to the allocation of appropriated funds to insular areas as being governed by the policies and procedures described in sections 106 and 107 of the HCD Act, as appropriate.

D. General Policies

Section 570.200 of subpart C (applicable to all categories of the part 570 CDBG program, except the state-administered program under subpart I) has been revised to conform the applicability and implementation of the national and primary objectives under section 106 of the HCD Act for the Insular Areas program. Conforming changes are made to § 570.200(a)(2) and (a)(3) to specifically include insular area CDBG recipients. The change to § 570.200(a)(3) allows these recipients to determine compliance with the 70 percent low- and moderate-income requirement over a period of up to three years for grants funded under section 106 of the HCD Act. The option of choosing a one- to three-year compliance measurement period in recipient certifications is already available to other recipients under section 106. Because § 570.200(a)(3) specifies that this flexibility applies to grants under section 106, insular area grantees must continue to determine compliance for funds received under section 107 of the HCD Act on an annual basis.

E. Special Purpose Grants

Until funds made available under section 107 are fully expended and these grants are closed out, insular area jurisdictions must continue to comply with the special purpose grant requirements of § 570.400, § 570.405, and other sections of part 570 applicable to the program at time of funding, as well as the terms of the grant agreements for those grants, and to implement their activities as outlined in each insular application and approved by HUD. A conforming change is made to § 570.420(a) to state that fund reservations for insular areas under section 107 shall remain governed by the policies and procedures described in section 107(a)(1)(A) of the Act and §§ 570.400 and 570.405.

F. Subpart F—General Section

Subpart F formerly referred only to the Small Cities program. This interim rule revises the General section of subpart F at § 570.420 to include the Insular Areas program and to clarify the applicability of the remaining subpart F sections to the Small Cities and Insular Areas CDBG programs.

1. *Administration of nonentitlement CDBG funds.* Introductory language at § 570.420(a) has been revised to indicate that two categories of nonentitlement CDBG programs are now covered in this subpart, the Small Cities and Insular Areas programs. The description of the Small Cities program that originally composed the entire text of paragraph (a) has been redesignated as § 570.420(a)(1), and § 570.420(a)(2) has been added to describe the Insular Areas program in accordance with the statutory change.

2. *Scope and applicability.* This interim rule simplifies and clarifies the applicability of the remaining sections of subpart F, while also incorporating regulations to administer the Insular Areas program. References to regulatory sections applicable to the Small Cities program are further delineated as applicable only to New York, Hawaii, or small city grant recipients from either state. A new § 570.420(b)(2) has been added to refer to sections applicable to the Insular Areas program, including the treatment of grants under section 107. The previous § 570.420(b)(2) (except for the first sentence, which has been redesignated as § 570.420(f)(1), as described below) has been redesignated as § 570.420(b)(3), and outlines the applicability of the other subparts of part 570 to the Small Cities and Insular Areas programs. A new reference about the applicability of subpart M, loan guarantees, has been added. This reference supports the continued ability to apply for section 108 loan guarantees under the Small Cities program, and provides this option for insular area grantees for the first time.

3. *Public notification requirements.* Section 570.420(c)(3) has been added to indicate that Section 102 of the HUD Reform Act of 1989 (42 U.S.C. 3545) is not applicable to the Insular Areas CDBG program under section 106, since these funds are not distributed by HUD on a competitive basis.

4. *Abbreviated consolidated plan.* A conforming revision to § 570.420(d) includes the Insular Areas program under section 106 in the requirement to include a certification of consistency of proposed housing activities with an applicant's consolidated plan.

5. *National and primary objectives.* Consistent with the conforming change made in § 570.200(a)(3), discussed above, § 570.420(e)(3) has been added to provide the options that Insular Areas grantees under section 106 will have for measuring compliance with the primary

objective of 70 percent benefit to low- and moderate-income persons. Under the Special Purpose Grant program pursuant to section 107, insular area recipients were required to measure compliance based on each individual funding award. For funds made available under section 106, insular area jurisdictions will have the same flexibility afforded to entitlement and state grantees of measuring compliance on a one- to three-year basis. In the certifications to their consolidated plan, insular area jurisdictions must specify the measurement period to be used.

6. *Allocation of Funds.* This rule redesignates the first sentence of § 570.420(b)(2), which describes the Small Cities allocation method, as § 570.420(f)(1) and adds the allocation method for the Insular Areas program under section 106 as § 570.420(f)(2).

G. Obsolete Small Cities Regulations

Under the Small Cities CDBG program, HUD directly administers allocations for nonentitlement areas in states that have not elected to administer their own nonentitlement programs. In recent years, HUD has administered the Small Cities program in only two states—New York and Hawaii. The State of New York currently administers its own nonentitlement funding under the State CDBG program, beginning with FY2000 funding. The Consolidated Appropriations Act, 2004 contained provisions to fund directly the three county recipients of the Hawaii Small Cities program as urban counties under the Entitlement CDBG program, starting in FY2005, if the State of Hawaii does not elect to administer the State CDBG program. HUD intends to separately issue revised regulations to implement the Hawaii program's change in status. In order to simplify subpart F, along with the incorporation of new Insular Areas program regulations, this interim rule removes the following regulatory sections of the Small Cities Program that are no longer required (because the State of New York now administers its own program): § 570.422—Applications from joint applicants; § 570.423—Application for the HUD-administered New York Small Cities Grants; § 570.424—Grants for imminent threats to public health and safety (under the New York Small Cities program), § 570.425—HUD review and actions on applications for New York State applicants, and § 570.428—Reallocated (Small Cities) funds.

This rule also makes a conforming change to remove from 24 CFR 570.206(f) the reference to § 570.433, a section that was previously removed from the subpart F CDBG program regulations.

H. Application Requirements for Insular Area Grants Funded Under Section 106

Subpart F of this interim rule establishes CDBG grant application requirements under section 106 for use by insular areas.

1. *Consolidated plan.* In § 570.440, this rule provides the options for insular area jurisdictions to prepare either an abbreviated consolidated plan following the requirements of 24 CFR 91.235, or a full consolidated plan under part 91 following the requirements of subparts A—General, B—Citizen Participation and Consultation, C—Local Governments: Contents of Consolidated Plan, and F—Other General Requirements. Most insular areas have submitted information in the past under section 107 that is similar to an abbreviated consolidated plan under section 106 as part of the annual application for funding under the Special Purpose Grant program. Section 570.440 also uses the section 106 terminology of proposed and final "statements" rather than "applications" to recognize the recent change in Insular Areas CDBG program status under title V. HUD specifically invites comments on the issue of whether future regulatory revisions should require insular areas funded under section 106 to complete a full consolidated plan.

2. *Certifications.* This interim rule specifies the required Insular Areas CDBG certifications at § 570.440(e), consistent with those already required in a consolidated plan.

3. *Submission requirement.* Consistent with the existing consolidated plan requirements, § 570.440(d) of this interim rule provides insular area jurisdictions with additional flexibility in determining their program year under section 106 and requires submission of final statements at least 45 days before the start of the program year. Under the Special Purpose Grant program pursuant to section 107, all insular areas use October 1 as their program year start date. October 1 is the start of the federal fiscal year. October 1, 2004, will continue to be the program year start date for FY2004 funds, which are being made available under section 107. This rule allows insular area jurisdictions to change their program year start dates in future years under section 106. HUD does not recommend choosing a program year start date during the six months following the beginning of a federal fiscal year, as there may be delay in a jurisdiction's ability to access funds. For example, choosing a FY2005 program year start date of January 1, 2005 might result in the jurisdiction's inability to access federal fiscal year 2005 funds until several months into that program year because of the time required to make the funds available to the jurisdiction. Similarly, a jurisdiction should also consider the impact of program year timing issues relative to 24 CFR 91.10 and 91.15 on its operations under full consolidated plan requirements.

4. *HUD actions.* This interim rule specifies that HUD will notify insular area jurisdictions promptly of actions taken with regard to a final statement submitted for funding under section 106, and describes the conditions necessary for approval at § 570.440(f). This section is consistent with existing requirements applicable to nonentitlement grantees in subpart F and in subpart O of part 570.

5. *Program amendments.* Section 570.440(j) of this rule outlines an insular area jurisdiction's responsibility for including policies and procedures for program amendments in its citizen participation plan and HUD's minimum requirements in this area, including a public comment period for substantial amendments, consistent with the consolidated plan requirements at § 91.105. Citizen participation requirements are further described in this interim rule at § 570.441.

6. *Other flexibilities and requirements.* At § 570.440, this interim rule changes, for purposes of funding under section 106, the process for an insular area jurisdiction to be reimbursed for preaward costs. Insular areas will be subject to the requirements of § 570.200(h) for costs incurred prior to its program year start date. That section prescribes a limit of the greater of 25 percent of that year's grant or $300,000 for preaward costs that meet the other requirements of this section, including consolidated plan, environmental, and citizen participation requirements. Under the Special Purpose Grant program pursuant to section 107 at § 570.405, preaward costs require specific HUD approval at the application level before they can be incurred. At § 570.440(i), an insular area under section 106 has the additional flexibility to incorporate float funding in its program, the same option available to entitlements. This option is possible as a result of the greater assurance of funding provided by inclusion under section 106 of the HCD Act. These changes are applicable only to awards under section 106.

I. Citizen Participation

At § 570.441, the interim rule requires, for funding under section 106, insular area jurisdictions to develop and follow detailed citizen participation plans. There are two primary options available to insular area jurisdictions. Jurisdictions preparing abbreviated consolidated plans in accordance with § 91.235 must follow the citizen participation requirements outlined in § 570.441, which are consistent with the nonentitlement area citizen participation requirements at § 570.431. Jurisdictions preparing full consolidated plans must follow the citizen participation requirements detailed in the consolidated plan regulations at 24 CFR 91.100 and 91.105. There is one notable exception based in statute to the latter requirement—an insular area jurisdiction does not have to comply with the § 91.100(a)(4) requirement for consultation with adjacent units of general local government. Adjacent units of general local government outside of the insular area itself are not relevant because such other jurisdictions are not contiguous with the insular areas.

HUD notes that insular areas intending to make applications for the Section 108 Loan Guarantee program must ensure that they follow the presubmission and citizen participation requirements outlined in the loan guarantee regulations at § 570.704.

J. Subpart M Loan Guarantees

Some minor revisions to the Section 108 Loan Guarantee program regulations at §§ 570.704(a)(1)(v) and 570.705(a)(2)(iii) are necessary to clarify the ability of insular areas jurisdictions to apply for loan guarantees. Section 570.704(a)(1)(v) is amended to permit a "nonentitlement public entity," a term that includes insular areas, to submit loan guarantee and grant applications simultaneously. In § 570.705(a)(2)(iii), the words "in an insular area" and reference to the new insular area regulations at § 570.440 are added to allow each insular area jurisdiction to have an unpaid balance of loan guarantees up to five times the amount of its most recent grant. HUD notes that while insular area jurisdictions may now apply for the Section 108 Loan Guarantee program, the approval of insular area applications (as with any other type of application) will be subject to all of the program's underwriting and other criteria.

K. Timeliness

HUD will establish timeliness standards for the Insular Areas program under section 106 by regulation at a later date. Until then, insular area jurisdictions that will be funded under section 106 are encouraged to adopt and achieve the timeliness standards for section 570.902(a) currently applicable to entitlement jurisdictions. In the meantime, HUD specifically invites comments on the idea of adopting the § 570.902(a) standards as the Insular Areas program timeliness standards under section 106.

III. Justification for Interim Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impractical, unnecessary, or contrary to the public interest" (24 CFR 10.1). For the following reasons, HUD has determined that it would be unnecessary to delay the effectiveness of this rule in order to solicit prior public comments.

This interim rule merely codifies in HUD's regulations the statutory policies and procedures mandated by title V, which transfer the Insular Areas program from eligibility under section 107 of the HCD Act to eligibility under section 106 of the HCD Act, and makes existing sections of 24 CFR parts 91 and 570 that apply to section 106 nonentitlement grants also applicable to the Insular Areas program. Accordingly, the interim rule only changes the administration of the Insular Areas program from being subject to regulatory requirements relevant to section 107 to being subject to existing regulatory requirements relevant to section 106, consistent with the title V statutory amendments. In addition, section 501(g) of title V requires HUD to issue regulations carrying out the amendments made by title V to take effect not later than the expiration of the 90-day period beginning on the date of the enactment of Public Law 108–186.

Although HUD believes that good cause exists to publish this rule for effect without prior public comment, HUD recognizes the value of public comment in the development of its regulations. HUD has, therefore, issued these regulations on an interim basis and has provided the public with a 60-day comment period. HUD welcomes comments on the regulatory amendments made by this interim rule, as well as advance comments on the adoption of full consolidated planning and reporting requirements and timeliness standards for insular area CDBG grantees as discussed in more detail under the applicable sections of this preamble. The public comments will be addressed in the final rule or, if necessary, in a new proposed rule.

IV. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538)(UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This interim rule does not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the executive order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule and in so doing certifies that this rule will not have a significant

economic impact on a substantial number of small entities for the following reasons. This rule only codifies in HUD's regulations statutory policies and procedures that transfer the Insular Areas program from eligibility under section 107 of the HCD Act to eligibility under section 106 of the HCD Act and makes existing sections of 24 CFR parts 91 and 570 that apply to section 106 nonentitlement grants also applicable to the Insular Areas program. As such, the rule does not significantly differ from the current status in terms of the impact on the number of entities, the amount of funding, or the governing requirements applicable.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the CDBG Small Cities Program is 14.219.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

■ Accordingly, HUD amends 24 CFR parts 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 1. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

■ 2. In § 570.1, revise paragraph (a)(2) to read as follows:

§ 570.1 Purpose and primary objective.

(a) * * *

(2) Nonentitlement Funds: HUD-administered Small Cities and Insular Area programs (subpart F);

* * * * *

■ 3. In § 570.3, revise the definition of *applicant*, remove the definition of *Indian tribe*, and add, in alphabetical order, the definition of *insular area*, to read as follows:

§ 570.3 Definitions.

* * * * *

Applicant means a State or unit of general local government that makes application pursuant to the provisions of subpart E, F, G or M.

* * * * *

Insular area shall have the meaning provided in section 102(a)(24) of the Act.

* * * * *

■ 4. In § 570.4, revise paragraph (a) to read as follows:

§ 570.4 Allocation of funds.

(a) The determination of eligibility of units of general local government to receive entitlement grants, the entitlement amounts, the allocation of appropriated funds to States for use in nonentitlement areas, the reallocation of funds, the allocation of appropriated funds to insular areas, and the allocation of appropriated funds for discretionary grants under the Secretary's Fund shall be governed by the policies and procedures described in sections 106 and 107 of the Act, as appropriate.

* * * * *

■ 5. In § 570.200, revise paragraph (a)(2) and the introductory paragraph of (a)(3) to read as follows:

§ 570.200 General policies.

(a) * * *

(2) *Compliance with national objectives.* Grant recipients under the Entitlement and HUD-administered Small Cities programs and recipients of insular area funds under section 106 of the Act must certify that their projected use of funds has been developed so as to give maximum feasible priority to activities which will carry out one of the national objectives of benefit to low- and moderate-income families or aid in the prevention or elimination of slums or blight. The projected use of funds may also include activities that the recipient certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. Consistent with the foregoing, each recipient under the Entitlement or HUD-administered Small Cities programs, and each recipient of insular area funds under section 106 of the Act must ensure and maintain evidence that each of its activities assisted with CDBG funds meets one of the three national objectives as contained in its certification. Criteria for determining whether an activity addresses one or more of these objectives are found in § 570.208.

(3) *Compliance with the primary objective.* The primary objective of the Act is described in section 101(c) of the Act. Consistent with this objective, Entitlement recipients, recipients of the HUD-administered Small Cities program in Hawaii, and recipients of insular area funds under section 106 of the Act must ensure that over a period of time specified in their certification not to exceed three years, not less than 70 percent of the aggregate of CDBG fund expenditures shall be for activities meeting the criteria under § 570.208(a) or under § 570.208(d)(5) or (6) for benefiting low- and moderate-income persons. For grants under section 107 of the Act, insular area recipients must meet this requirement for each separate grant. See § 570.420(e)(3) for additional discussion of the primary objective requirement for insular areas funded under section 106 of the Act. The requirements for the HUD-administered Small Cities program in New York are at § 570.420(e)(2). Additional requirements for the HUD-administered Small Cities program in Hawaii are at § 570.430(e). In determining the percentage of funds expended for such activities:

* * * * *

■ 6. In § 570.206, revise the first sentence of paragraph (f) to read as follows:

§ 570.206 Program administrative costs.

* * * * *

(f) *Submission of applications for federal programs.* Preparation of documents required for submission to HUD to receive funds under the CDBG and UDAG programs. * * *

* * * * *

■ 7. Revise the heading of subpart F in part 570 to read as follows:

Subpart F—Small Cities and Insular Areas Programs

■ 8. Revise § 570.420 to read as follows:

§ 570.420 General.

(a) *Administration of nonentitlement CDBG funds by HUD or Insular Areas*—(1) *Small cities.* The Act permits each State to elect to administer all aspects of the CDBG program annual fund allocation for the nonentitlement areas within its jurisdiction. This subpart sets forth policies and procedures applicable to grants for nonentitlement areas in States that have not elected, in a manner and time prescribed by the Secretary, to administer the CDBG program. States that elected to administer the program after the close of fiscal year 1984 cannot return administration of the program to HUD. A decision by a State to discontinue administration of the program would result in the loss of CDBG funds for nonentitlement areas in that State and the reallocation of those funds to all States in the succeeding fiscal year.

(2) *Insular areas.* Title V of Public Law 108–186 amended the Act to move the insular areas funding authorization from sections 107(a) and (b) to section 106(a). This revision identified a specific portion of the CDBG allocation for insular areas that is separate from the distribution for special purpose grants, as well as from the Entitlement and State formula distribution. The insular areas of Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa are permitted to administer all aspects of their Community Development Block Grant (CDBG) program under section 106 of the Act in accordance with their final statement as further described at § 570.440.

(b) *Scope and applicability.* (1) This subpart describes the policies and procedures of the Small Cities Program that apply to nonentitlement areas in States where HUD administers the CDBG program. HUD currently administers the Small Cities program in only two States—New York (for grants prior to FY2000) and Hawaii. The small cities portion of this subpart principally addresses the requirements for New York in §§ 570.421, 570.426, 570.427, and 570.431. Sections 570.429 and 570.430 identify special procedures applicable to Hawaii. Section 570.432 is applicable to both New York and Hawaii.

(2) This subpart also describes the policies and procedures governing community development block grants to insular areas under section 106 of the Act. Sections 570.440 and 570.441 identify procedures applicable to the Insular Areas program under section 106 of the Act. Fund reservations for insular areas under section 107 of the Act shall remain governed by the policies and procedures described in section 107(a)(1)(A) of the Act and §§ 570.400 and 570.405 of this part.

(3) The policies and procedures set forth in the following identified subparts of this part apply to the HUD-administered Small Cities and Insular Areas programs, except as modified or limited under the provisions thereof or this subpart:

(i) Subpart A—General Provisions;
(ii) Subpart C—Eligible Activities;
(iii) Subpart J—Grant Administration;
(iv) Subpart K—Other Program Requirements;
(v) Subpart M—Loan Guarantees; and
(vi) Subpart O—Performance Reviews.

(c) *Public notification requirements.* (1) Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. All competitive grants in the HUD-administered Small Cities program in New York are affected by this statute, and the requirements identified at 24 CFR part 4 apply to them. Imminent threat grants under § 570.424 and section 108 repayment grants under § 570.432 are not affected by section 102 because they are not competitive grants.

(2) The Hawaii HUD-administered Small Cities program is not subject to section 102 because the funds are not distributed by HUD on a competitive basis.

(3) The Insular Areas program under section 106 of the Act is not subject to section 102 because the funds are not distributed by HUD on a competitive basis.

(d) *Abbreviated consolidated plan.* Applications for the HUD-administered Small Cities Program and the Insular Areas program under section 106 of the Act that contain housing activities must include a certification that the proposed housing activities are consistent with the applicant's consolidated plan as described at 24 CFR part 91.

(e) *National and primary objectives.* (1) Each activity funded through the Small Cities program and the Insular Areas program under section 106 of the Act must meet one of the following national objectives as defined under the criteria in § 570.208:

(i) Benefit low- and moderate-income families;

(ii) Aid in the prevention or elimination of slums or blight; or

(iii) Be an activity that the grantee certifies is designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available to meet such needs.

(2) In addition to the objectives described in paragraph (e)(1) of this section, with respect to grants made through the Small Cities program, not less than 70 percent of the total of grant funds from each grant and Section 108 loan guarantee funds received under subpart M of this part within a fiscal year must be expended for activities which benefit low- and moderate-income persons under the criteria of § 570.208(a) or of § 570.208(d)(5) or (6). In the case of multiyear plans in New York State approved in response to NOFAs published prior to calendar year 1997, not less than 70 percent of the total funding for grants approved pursuant to a multiyear plan for a time period of up to three years must be expended for activities which benefit low- and moderate-income persons. Thus, 70 percent of the grant for year 1 of a multiyear plan approved in response to NOFAs published prior to calendar year 1997 must meet the 70 percent requirement, 70 percent of the combined grants from years 1 and 2 must meet the requirement, and 70 percent of the combined grants from years 1, 2, and 3 must meet the requirement. In determining the percentage of funds expended for such activity, the provisions of § 570.200(a)(3)(i), (iii), (iv), and (v) shall apply.

(3) In addition to the objectives described in paragraph (e)(1) of this section, grants made through the Insular Areas program shall also comply with the primary objective of 70 percent benefit to low- and moderate-income persons. Insular area recipients must meet this requirement for each separate grant under section 107 of the Act. For grants made under section 106 of the Act, insular area recipients must ensure that over a period of time specified in their certifications not to exceed three years, not less than 70 percent of the aggregate of CDBG fund expenditures shall be for low- and moderate-income activities meeting the criteria under § 570.208(a) or under § 570.208(d)(5) or (6). See also § 570.200(a)(3) for further discussion of the primary objective.

(f) *Allocation of funds*—(1) *Small cities.* The allocation of formula CDBG funds for use in nonentitlement areas of Hawaii is as provided in subpart A of this part.

(2) *Insular areas.* The allocation of appropriated funds for insular areas under section 106 of the Act shall be governed by the policies and procedures described in section 106(a)(2) of the Act and §§ 570.440 and 570.441 of this subpart. The annual appropriations described in this section shall be distributed to insular areas on the basis of the ratio of the population of each insular area to the population of all insular areas.

§ 570.422 [Removed]

■ 9. Remove § 570.422.

§ 570.423 [Removed]

■ 10. Remove § 570.423.

§ 570.424 [Removed]

■ 11. Remove § 570.424.

§ 570.425 [Removed]

■ 12. Remove § 570.425.

§ 570.428 [Removed]

■ 13. Remove § 570.428.

■ 14. Add a new § 570.440 in subpart F to read as follows:

§ 570.440 Application requirements for insular area grants funded under section 106.

(a) *Applicability.* The requirements of this section apply to insular grants funded under section 106 of the Act. An insular area jurisdiction may choose to prepare program statements following either:

(1) The abbreviated consolidated plan procedures described in this subpart and in 24 CFR 91.235; or

(2) The complete consolidated plan procedures applicable to local governments, discussed at 24 CFR 91.200 through 91.230.

(b) *Proposed statement.* An insular area jurisdiction shall prepare and publish a proposed statement and comply with the citizen participation requirements described in § 570.441, if it submits an abbreviated consolidated plan under 24 CFR 91.235. The jurisdiction shall follow the citizen participation requirements of 24 CFR 91.105 and 91.100 (with the exception of § 91.100(a)(4)), if it submits a complete consolidated plan.

(c) *Final statement.* The insular area jurisdiction shall submit to HUD a final statement describing its community development objectives and activities. The statement also must include a priority nonhousing community development plan in accordance with 24 CFR 91.235. This final statement shall be submitted, together with the required certifications, to the appropriate field office in a form prescribed by HUD.

(d) *Submission requirement.* Each insular area jurisdiction shall submit its final statement to HUD no later than 45 days before the start of its program year. Each jurisdiction may choose the start date for the annual period of its program year that most closely fits its own needs. HUD may grant an extension of the submission deadline for good cause.

(e) *Certifications.* The insular area jurisdiction's final statement must be accompanied by appropriate certifications as further described under 24 CFR 91.225. The jurisdiction should submit all general certifications, as well as all program certifications for each program from which it receives funding, if it submits a complete consolidated plan. For insular area jurisdictions receiving CDBG funds under an abbreviated consolidated plan, these certifications shall include at a minimum:

(1) The following general certifications described at § 91.225(a) of this title: Affirmatively furthering fair housing; anti-displacement and relocation plan; drug-free workplace; anti-lobbying; authority of jurisdiction; consistency with plan; acquisition and relocation; and Section 3.

(2) The following CDBG certifications described at § 91.225(b) of this title: Citizen participation; community development plan; following a plan; use of funds; excessive force; compliance with anti-discrimination laws; compliance with lead-based paint procedures; and compliance with laws.

(f) *HUD action on final statement.* Following the review of the statement, HUD will promptly notify each jurisdiction of the action taken with regard to its statement. HUD will approve a grant if the jurisdiction's submissions have been made and approved in accordance with 24 CFR part 91, and if the certifications required in such submissions are satisfactory to HUD. The certifications will be satisfactory to HUD for this purpose, unless HUD determines pursuant to subpart O of this part that the jurisdiction has not complied with the requirements of this part, has failed to carry out its consolidated plan (or abbreviated consolidated plan) as provided under § 570.903, or has determined that there is evidence, not directly involving the jurisdiction's past performance under this program, that tends to challenge in a substantial manner the jurisdiction's certification of future performance. If HUD makes any such determination, however, further assurances may be required to be submitted by the jurisdiction as HUD may deem warranted or necessary to find the jurisdiction's certification satisfactory.

(g) *Reimbursement for pre-award costs.* Insular area jurisdictions may request reimbursement for pre-award costs in accordance with § 570.200(h).

(h) *Float funding.* An insular area jurisdiction may use undisbursed funds in the line of credit and its CDBG program account that are budgeted in final statements or action plans for one or more activities that do not need the funds immediately, subject to the limitations described in § 570.301(b).

(i) *Program amendments.* (1) The insular area jurisdiction's citizen participation plan (*see* § 570.441) must specify the criteria the jurisdiction will use for determining what changes in the jurisdiction's planned or actual activities will constitute a substantial amendment to its final statement. It must include changes in the use of CDBG funds from one eligible activity to another among the changes that qualify as a substantial amendment.

(2) The citizen participation plan must provide citizens with reasonable notice and an opportunity to comment on substantial amendments. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given, as well as provide a period of not less than 30 days to receive comments on the substantial amendment before the amendment is implemented.

(3) The citizen participation plan shall require the jurisdiction to consider comments or views of citizens received in writing, or orally at public hearings, if any, in preparing the substantial amendment of its statement. A summary of comments or views not accepted and the reasons for non-acceptance shall be attached to the substantial amendment.

(4) Any program amendment, regardless of whether it is considered to be substantial, must be fully documented in the jurisdiction's records.

(j) *Performance reports.* Each insular area jurisdiction must submit annual performance reports in accordance with 24 CFR 91.520.

■ 15. Add a new § 570.441 in subpart F to read as follows:

§ 570.441 Citizen participation—insular areas.

(a) *General.* An insular area jurisdiction submitting an abbreviated consolidated plan under 24 CFR 91.235 shall comply with the citizen

participation requirements described in this section. An insular area jurisdiction submitting a complete consolidated plan in accordance with 24 CFR 91.200 through 91.230 shall follow the citizen participation requirements of § 91.100 and § 91.105, except for § 91.100(a)(4). For funding under section 106 of the Act, these requirements are applicable to all aspects of the Insular Areas program, including the preparation of the proposed statement and final statements as described in § 570.440., The requirements for citizen participation do not restrict the responsibility or authority of the jurisdiction for the development and execution of its community development program.

(b) *Citizen participation plan.* The insular area jurisdiction must develop and follow a detailed citizen participation plan and must make the plan public. The plan must be completed and available before the statement for assistance is submitted to HUD, and the jurisdiction must certify that it is following the plan. The plan must set forth the jurisdiction's policies and procedures for:

(1) Giving citizens timely notice of local meetings and reasonable and timely access to local meetings, information, and records relating to the grantee's proposed and actual use of CDBG funds including, but not limited to:

(i) The amount of CDBG funds expected to be made available for the coming year, including the grant and anticipated program income;

(ii) The range of activities that may be undertaken with those funds;

(iii) The estimated amount of those funds proposed to be used for activities that will benefit low- and moderate-income persons;

(iv) The proposed CDBG activities likely to result in displacement and the jurisdiction's plans, consistent with the policies developed under § 570.606(b), for minimizing displacement of persons as a result of its proposed activities; and

(v) The types and levels of assistance the jurisdiction plans to make available (or to require others to make available) to persons displaced by CDBG-funded activities, even if the jurisdiction expects no displacement to occur;

(2) Providing technical assistance to groups representative of persons of low- and moderate-income that request assistance in developing proposals. The level and type of assistance to be provided is at the discretion of the jurisdiction. The assistance need not include the provision of funds to the groups;

(3) Holding a minimum of two public hearings for the purpose of obtaining citizens' views and formulating or responding to proposals and questions. Each public hearing must be conducted at a different stage of the CDBG program. Together, the hearings must address community development and housing needs, development of proposed activities, and review of program performance. There must be reasonable notice of the hearings, and the hearings must be held at times and accessible locations convenient to potential or actual beneficiaries, with reasonable accommodations including material in accessible formats for persons with disabilities. The jurisdiction must specify in its plan how it will meet the requirement for hearings at times and locations convenient to potential or actual beneficiaries;

(4) Meeting the needs of non-English speaking residents in the case of public hearings where a significant number of non-English speaking residents can reasonably be expected to participate;

(5) Responding to citizen complaints and grievances, including the procedures that citizens must follow when submitting complaints and grievances. The jurisdiction's policies and procedures must provide for timely written answers to written complaints and grievances within 15 working days after the receipt of the complaint, where practicable; and

(6) Encouraging citizen participation, particularly by low- and moderate-income persons who reside in areas in which CDBG funds are proposed to be used.

(c) *Publication of proposed statement.* (1) The insular area jurisdiction shall publish a proposed statement consisting of the proposed community development activities and community development objectives in order to afford affected citizens an opportunity to:

(i) Examine the statement's contents to determine the degree to which they may be affected;

(ii) Submit comments on the proposed statement; and

(iii) Submit comments on the performance of the jurisdiction.

(2) The requirement for publishing in paragraph (c)(1) of this section may be met by publishing a summary of the proposed statement in one or more newspapers of general circulation and by making copies of the proposed statement available at libraries, government offices, and public places. The summary must describe the contents and purpose of the proposed statement and must include a list of the locations where copies of the entire proposed statement may be examined.

(d) *Preparation of a final statement.* An insular area jurisdiction must prepare a final statement. In the preparation of the final statement, the jurisdiction shall consider comments and views received relating to the proposed statement and may, if appropriate, modify the final statement. The final statement shall be made available to the public and shall include the community development objectives, projected use of funds, and the community development activities.

(e) *Program amendments.* To assure citizen participation on program amendments to final statements, the insular area grantee shall:

(1) Furnish citizens information concerning the amendment;

(2) Hold one or more public hearings to obtain the views of citizens on the proposed amendment;

(3) Develop and publish the proposed amendment in such a manner as to afford affected citizens an opportunity to examine the contents, and to submit comments on the proposed amendment;

(4) Consider any comments and views expressed by citizens on the proposed amendment and, if the grantee finds it appropriate, modify the final amendment accordingly; and

(5) Make the final amendment to the community development program available to the public before its submission to HUD.

(f) *Performance reports.* (1) The citizen participation plan must provide citizens with reasonable notice and an opportunity to comment on performance reports. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given. The citizen participation plan must provide a period of not less than 15 days to receive comments on the performance report before it is to be submitted to HUD.

(2) The citizen participation plan shall require the jurisdiction to consider comments or views of citizens received in writing or orally at public hearings in preparing the performance report. A summary of these comments or views shall be attached to the performance report.

(g) *Application for loan guarantees.* Insular area jurisdictions intending to apply for the Section 108 Loan Guarantee program must ensure that they follow the applicable presubmission and citizen participation requirements of § 570.704.

■ 16. In § 570.704, revise paragraph (a)(1)(v) to read as follows:

§ 570.704 Application requirements.

(a) * * *

(1) * * *

(v) If an application for loan guarantee assistance is to be submitted by an entitlement or nonentitlement public entity simultaneously with the public entity's submission for its grant, the public entity shall include and identify in its proposed and final consolidated plan the activities to be undertaken with the guaranteed loan funds, the national objective to be met by each of these activities, the amount of any program income expected to be received during the program year, and the amount of guaranteed loan funds to be used. The public entity shall also include in the consolidated plan a description of the pledge of grants, as required under § 570.705(b)(2). In such cases the proposed and final application requirements of paragraphs (a)(1)(i), (iii), and (iv) of this section will be deemed to have been met.

* * * * *

■ 17. Revise the introductory paragraph of § 570.705(a)(2)(iii) to read as follows:

§ 570.705 Loan requirements.

(a) * * *

(2) * * *

(iii) *Nonentitlement public entities eligible under subpart F of this part.* No commitment to guarantee shall be made with respect to a nonentitlement public entity in an insular area or the State of Hawaii if the total unpaid balance of debt obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under § 570.705(b)(1)) on behalf of the public entity would thereby exceed an amount equal to five times the amount of the most recent grant made pursuant to § 570.429 or § 570.440 (as applicable) to the public entity.

* * * * *

Dated: May 11, 2004.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 04–12954 Filed 6–9–04; 8:45 am]

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Part V

Securities and Exchange Commission

17 CFR Part 240
Issuer Restrictions or Prohibitions on Ownership by Securities Intermediaries; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–49809, File No. S7–24–04]

RIN 3235–AJ26

Issuer Restrictions or Prohibitions on Ownership by Securities Intermediaries

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing a new rule under the Securities Exchange Act of 1934 ("Exchange Act") that would prohibit registered transfer agents from effecting any transfer of any equity security registered under section 12 or any equity security that subjects an issuer to reporting under 15(d) of the Exchange Act if such security is subject to any restriction or prohibition on transfer to or from a securities intermediary, such as clearing agencies, banks, or broker-dealers, is restricted or prohibited. The primary purpose of the proposed rule is to promote the integrity and efficiency of the U.S. clearance and settlement system.

DATES: Comments should be received on or before July 12, 2004.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–24–04 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–24–04. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Jerry Carpenter, Assistant Director, or Susan M. Petersen, Special Counsel, Office of Risk Management, 202/942–4187, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: Recently, a number of issuers of equity securities trading in the public markets have imposed restrictions on their securities to limit or to prohibit ownership of the securities by securities intermediaries such as depositories, broker-dealers, and banks. Such restrictions require these securities to be certificated and transactions in these securities to be manually cleared, settled, and transferred on a transaction-by-transaction basis.

To facilitate the clearance and settlement of securities transactions, securities held by a securities intermediary on behalf of its customers or another securities intermediary are commonly registered in the name of the securities intermediary or in its nominee name, which makes the securities intermediary the registered owner.[1] This is often referred to as holding a security in "street name."[2] Holding securities in street name at a securities depository facilitates the transfer of negotiable certificates and obviates the need for investor signatures and delivery of certificates. Registered clearing agencies acting as securities depositories help to centralize and automate the settlement of securities, in part by reducing the physical movement of securities traded in the U.S. markets through the use of book-entry movements. On occasion, other securities intermediaries, such as broker-dealers or banks, may perform similar functions for securities by holding a certificate registered in the name of securities intermediary but held on behalf of its customers and internally adjust its books to reflect customers' purchases and sales of that security.

The use of securities depositories in order to minimize the physical movement in connection with the settlement for securities traded in the public market is essential to the prompt and accurate clearance and settlement of securities transactions.[3] The effort by some issuers to restrict ownership of publicly traded securities by securities intermediaries can result in many of the inefficiencies and risks Congress sought to avoid when promulgating Section 17A of the Exchange Act.[4] Restrictions on intermediary ownership deny investors the ability to use a securities intermediary to hold their securities and to efficiently and safely clear and settle their securities transactions by book-entry movements.

The Commission is proposing Rule 17Ad–20 that would prohibit registered transfer agents[5] from effecting any transfer of any equity security registered under section 12 or any equity security that subjects an issuer to reporting under 15(d) of the Exchange Act[6] if such security is subject to any restriction or prohibition on transfer to or from a securities intermediary.[7] Under the proposed rule, the term

[1] The registered owner is the name of the individual shareholder recorded on the official records of the issuer (sometimes referred to as the record owner or legal owner of the securities).

[2] In the case of securities held in street name, generally the securities are held by a securities depository (e.g., The Depository Trust Company) who as the registered owner holds the securities on behalf of another securities intermediary (e.g., a broker-dealer or bank) who in turn holds the securities for its customers, the beneficial owners. All the rights and obligations of the securities are passed through the registered holder to the beneficial owners. For more information on the relationship between securities intermediaries and beneficial owners, *see infra* note 23.

[3] Section 17A of the Exchange Act directs the Commission to use its authority to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transaction in securities. 15 U.S.C. 78q–1(e).

[4] 15 U.S.C. 78q–1 *et seq.*

[5] The Exchange Act defines transfer agent as any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by book-entry without the physical issuance of securities certificates. 15 U.S.C. 78c(a)(25). Accordingly, issuers acting as their own transfer agent would be subject to the rule.

[6] Pursuant to section 12(g) of the Exchange Act and the rules thereunder, a company must generally register a class of equity securities if on the last day of its fiscal year it has total assets of more than $10 million and the class is held of record by more than 500 persons. 15 U.S.C. 78*l*(g). Under section 12 (b), all securities registered on a securities exchange must also be registered with the Commission. 15 U.S.C. 78*l*(b). Section 15(d) of the Exchange Act generally requires a company with an effective Securities Act registration statement to file the same periodic reports as a company that has a section 12 registered class of securities. 15 U.S.C. 78o(d).

[7] Section 17A(c)(1) makes it unlawful for any transfer agent, unless registered with the Commission, to directly or indirectly perform the function of a transfer agent with respect to any security registered under Section 12 of the Act or which would be required to be registered except for the exemption from registration proved by section 12(g)(2)(B) (investment companies) or section 12(g)(2)(G) (certain securities issued by insurance companies). 15 U.S.C. 78q–1(c)(1).

"securities intermediary" would be defined as a clearing agency registered under Section 17A of the Exchange Act or a person, including a bank, broker, or dealer, that in the ordinary course of its business maintains securities accounts for others. The Commission is proposing to exclude from proposed Rule 17Ad–20 any equity security issued by a partnership, as defined in Item 901 of Regulation S–K.[8] For tax or other reasons,[9] partnerships may have an appropriate need to restrict ownership and issue a securities certificate. The Commission invites comment on the proposed rule, the proposed timetable for implementation, and the costs and benefits of such a rule.

I. Background

A. Legislative History of the National System for Clearance and Settlement of Securities Transactions

In the late 1960s and early 1970s, the securities industry experienced a "paperwork crisis" that nearly brought the industry to a standstill and that directly or indirectly caused the failure of a large number of broker-dealers.[10] This crisis primarily resulted from drastically increasing trade volume coupled with inefficient, duplicative, and extensively manual clearance and settlement systems; the extensive use of securities certificates; poor records; and insufficient controls over funds and securities.[11] To address the concerns raised by the paperwork crisis, Congress amended the Exchange Act to add, among other things, section 17A.[12]

In section 17A(a), Congress made findings that (1) the prompt and accurate clearance and settlement of securities transactions, including the transfer of registered ownership and safeguarding of securities and funds related to clearance and settlement activities, are necessary for the protection of investors and those acting on behalf of investors,[13] and (2) inefficient clearance and settlement procedures impose unnecessary costs on investors and those acting on their behalf.[14] To address these concerns, Congress gave the Commission the authority and responsibility to regulate, coordinate, and direct the processing of securities transactions in order to establish a national system for the prompt and accurate clearance and settlement of transactions in securities.[15] The basic purpose of Section 17A is to promote the development of a modern, nationwide system for the safe and efficient processing of securities transactions that serves the interests of the financial community and the investing public.[16] Congress expressly provided the Commission with jurisdiction over clearing agencies and transfer agents, as well as other participants in the national system for clearance and settlement.[17] Furthermore, specifically recognizing that the use of securities certificates to transfer registered ownership decreases efficiency and safety in the capital markets, Congress also directed the Commission to end the physical movement of securities certificates in connection with the settlement among brokers and dealers.[18]

B. The Role of Securities Intermediaries

The process for delivering and transferring certificated securities is almost entirely manual and as such, is labor-intensive, expensive, and time-consuming.[19] The use of securities certificates can result in significant delays and expense in processing securities transactions. Moreover, as negotiable instruments, certificates also can be lost, stolen, or forged.[20] All this adversely affects the national system for clearance and settlement. The concern associated with lost certificates was dramatically demonstrated after September 11, 2001, when thousands of certificates at broker-dealers or banks (either being held in custody in vaults or being processed for transfer) either were destroyed or were unavailable for transfer. Certificates have also been identified by the financial services industry as an obstacle to achieving streamlined processing (*i.e.*, straight-through-processing) and shorter settlement cycles.[21]

Securities intermediaries hold securities on behalf of others in order to facilitate more efficient clearance and settlement of securities transactions by reducing the need to transfer certificates. Investors' securities generally are held in the name of a securities intermediary, such as a securities depository, broker-dealer, or

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[8] Item 901(b)(1) defines the term partnership to mean any: (i) finite-life limited partnership or (ii) other finite-life entity. 17 CFR 229.901(b)(1). The Commission has the authority under section 36 of the Exchange Act to conditionally or unconditionally exempt any security or class of securities from the provisions of the Exchange Act to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. 15 U.S.C. 78mm(a)(1).

[9] A "publicly traded partnership" as defined in Section 7704 of the Internal Revenue Code is subject to treatment as a corporation rather than a partnership for tax purposes. 26 CFR 1.7704–1.

[10] Securities and Exchange Commission, Study of Unsafe and Unsound Practices of Brokers and Dealers, H.R. Doc. No. 231, 92nd Cong., 1st Sess. 13 (1971). Congress held hearings to investigate the problems and ultimately enacted the Securities Acts Amendments of 1975. Securities Acts Amendments of 1975: Hearings on S. 3412, S. 3297, S. 2551 Before the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, 92nd Cong., 2nd Sess. (1972).

[11] S. Rep. No. 75, 94th Cong., 1st Sess. at 4 (1975).

[12] 15 U.S.C. 78q–1 *et seq.*

[13] 15 U.S.C. 78q–1(a)(1)(A).

[14] 15 U.S.C. 78q–1(a)(1)(B).

[15] 15 U.S.C. 78q–1(a)(2)(A)(i). Congress expressly envisioned the Commission's authority to extend to every facet of the securities handling process involving securities transactions within the United States, including activities by clearing agencies, depositories, corporate issuers, and transfer agents. *See* S. Rep. No. 75, 94th Cong., 1st Sess. at 55 (1975).

[16] *See* S. Rep. No. 75, 94th Cong., 1st Sess. at 122 (1975).

[17] *See e.g.*, section 17A(c)(1) of the Exchange Act, which makes it unlawful for any transfer agent, unless registered with the Commission, to directly or indirectly perform the function of a transfer agent with respect to any security registered under section 12 of the Act or which would be required to be registered except for the exemption from registration proved by section 12(g)(2)(B) (investment companies) or section 12(g)(2)(G) (certain securities issued by insurance companies). 15 U.S.C. 78q–1(c)(1) and 15 U.S.C. 78*l*(a) respectively. Exchange Act Section 17A(d)(1) prohibits any registered clearing agency or registered transfer agent from engaging in any activity as a clearing agency or transfer agent in contravention of rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act. 15 U.S.C. 78q–1(d)(1).

[18] Section 17A(e) directs the Commission to use its authority "to end the physical movement of the securities certificates in connection with the settlement among brokers and dealers of transactions in securities consummated by means of the mails or other means or instrumentalities of interstate commerce." 15 U.S.C. 78q–1(e).

[19] For more information on the costs and risks associated with processing certificates, see Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004), [File No. S7–13–04] (concept release regarding securities transaction settlement concept).

[20] In an effort to identify lost, counterfeit, and stolen securities, Exchange Act Rule 17f–1 requires, among other entities, every exchange, the securities association, broker, dealer, transfer agent, registered clearing agency, and many banks to report to the Securities Information Center ("SIC") missing, lost, counterfeit, or stolen securities certificates. *See* 17 CFR 240.17f–1. SIC operates a centralized database that records lost and stolen securities. When a broker-dealer receives a security certificate to sell, the broker-dealer will submit information about the certificate to SIC so that SIC may search its database to see if the certification has been reported as missing, lost, stolen, or counterfeited. (For more information about SIC, see *www.secic.com.*) If a broker-dealer is unable to have the security reregistered into the name of the buyer or the buyer's securities intermediary after trade date, the rejection of the transfer after trade date exposes the customer to the costs and risks that she may have to buy in the security and exposes the broker-dealer to the costs and risks associated with buy-ins. Investors bear direct costs as well. Transfer agents require investors to obtain a surety bond before the transfer agent will issue a replacement certificate for lost and stolen certificates. We understand that generally most transfer agents charge investors between 2%–4% of the current market value of the securities to obtain a surety bond.

[21] *See* Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004), [File No. S7–13–04].

bank, or its nominee, for the benefit of the security intermediary's customers. The securities intermediary or its nominee is generally the registered owner of the securities while the securities intermediary's customer typically is the beneficial owner.[22] Securities registered in the name of the securities intermediary or its nominee allows the securities to be immobilized[23] and held in fungible bulk[24] thereby significantly reducing the number of certificates that need to be delivered and transferred. This in turn reduces the risk and cost associated with transferring the securities. Transfers in ownership of securities held in the name of a securities intermediary are accomplished by making book-entry adjustments to the accounts on the securities intermediary's records.

Consistent with Congress' directive to establish a national system for clearance and settlement and to decrease the inefficiencies and risks associated with processing securities certificates, the Commission has long encouraged the use of alternatives to holding securities in certificated form. The Commission's approval of the registration of securities depositories as clearing agencies in 1983 constituted an important step in achieving the mandates established by Congress by immobilizing securities in a registered clearing agency and settling transactions by book-entry movements.[25] The Commission also has approved the rule filings of self-regulatory organizations that require their members to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities[26] and that require securities to be made depository eligible if possible before they can be listed for trading.[27]

Registered clearing agencies acting as securities depositories immobilize securities and centralize and automate securities settlements.[28] Holding securities positions in book-entry form at securities depositories reduces the physical movement of publicly traded securities in the U.S. markets and significantly improves efficiencies and safeguards in processing securities certificates, which in turn reduces the costs of those transactions to investors and market professionals alike.

DTC, the largest securities depository in the world, provides custody and book-entry transfer services for the vast majority of securities transactions in the U.S. market involving equities, corporate and municipal debt, money market instruments, American depositary receipts, and exchange-traded funds.[29] In accordance with its rules, DTC accepts deposits of securities from its participants (*i.e.*, broker-dealers and banks),[30] credits those securities to the depositing participants' accounts, and effects book-entry movements of those securities.[31] The securities deposited with DTC are registered in DTC's nominee name[32] and are held in fungible bulk for the benefit of its participants and their customers.[33] Each participant having an interest in securities of a given issue credited to its account has a pro rata interest in the securities of that issue held by DTC.[34]

Some securities trading in the public market are not deposited at a securities depository because either the securities are not eligible for deposit[35] or the securities intermediary chooses not to deposit the securities.[36] To clear and settle securities transactions without the use of a securities depository, broker-dealers must make independent arrangements to provide for delivery of securities (in certificated form) and payment on a trade-by-trade basis. In

[22] The relationship between various levels of securities intermediaries and beneficial owners is complex. There may be many layers of beneficial owners (some of which may also be securities intermediaries) with all ultimately holding securities on behalf of a single beneficial owner, who is sometimes referred to as the ultimate beneficial owner. For example, an introducing broker-dealer may hold its customer's securities in its account at a clearing broker-dealer, that in turn holds the introducing broker-dealer's securities in an account at The Depository Trust Company (DTC). In this context, DTC or its nominee is the registered owner and DTC's participants (*i.e.*, broker-dealers and banks) are beneficial owners, as are the participants' customers. However, DTC, the clearing broker-dealer (the DTC participant), and the introducing broker-dealer are all securities intermediaries. These distinctions may be important under both federal and state law when determining the rights and obligations of the parties holding securities on behalf of others.

[23] Immobilization of securities occurs where a securities depository holds the underlying certificate and transfers of ownership are recorded through book-entry movements between the depository's participants' accounts. An issue is partially immobilized (as is the case with most equity securities traded on an exchange or at the NASD) when the street name positions are immobilized (*i.e.*, those held through broker-dealers that are participants of a depository), but certificates are still available to individual shareholders upon request. For more information about immobilization and dematerialization, *see* Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004), [File No. S7–13–04].

[24] Fungible bulk means that no participant or customer of a participant has any claim or ownership rights to any particular certificate held by DTC. Rather, participants have a securities entitlement to obtain a certificate representing securities held in their DTC accounts.

[25] Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (October 3, 1983), [File Nos. SR–600–5 and 600–19] (order approving the clearing agency registration of four depositories and four clearing corporations).

[26] Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679 (June 18, 1993), [File Nos. SR–Amex–93–07; SR–BSE–93–08; SR–MSE–93–03; SR–NASD–93–11; SR–NYSE–93–13; SR–PSE–93–04; and SR–Phix–93–09)] (order approving rules requiring members, member organizations, and affiliated members of the New York Stock Exchange, National Association of Securities Dealers, American Stock Exchange, Midwest Stock Exchange, Boston Stock Exchange, Pacific Stock Exchange, and Philadelphia Stock Exchange to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities with another financial intermediary). In rare circumstances, DTC will be unable to accept a deposit of a security because it is unable to process it. In those cases, the rules of the self-regulatory organizations do not require the security to be depository eligible.

[27] Exchange Act Release No. 35798 (June 1, 1995), 60 FR 30909 (June 12, 1995), [File Nos. SR–Amex–95–17; SR–BSE–95–09; SR–CHX–95–12; SR–NASD–95–24; SR–NYSE–95–19; SR–PSE–95–14; SR–PHLX–95–34] (order approving rules setting forth depository eligibility requirements for issuers seeking to have their shares listed on the American Stock Exchange, Boston Stock Exchange, Chicago Stock Exchange, National Association of Securities Dealers, New York Stock Exchange, Pacific Stock Exchange, and the Philadelphia Stock Exchange).

[28] Securities depositories work in conjunction with securities clearing corporations. Both types of entities must be registered as clearing agencies under section 17A of the Exchange Act. Clearing corporations, such as the National Securities Clearing Corporation, serve to compare trades submitted to it by its participants and net those trades to a single position at the end of the day. The trade position data is then submitted to the depository in order to effectuate settlement by debiting or crediting the participants' book-entry securities position at DTC and facilitating the payments to or from the participants.

[29] Of the four depositories registered as clearing agencies in 1983, DTC is the only one still operating. DTC estimates that as of December 31, 2002, approximately 84% of the shares issued by domestic companies listed on the NYSE and 88% of the domestic companies listed on the Nasdaq are deposited at DTC. (These statistics do not include ADRs.) E-mail from Joseph Trezza, Senior Product Manager, DTCC, to the Commission staff (November 14, 2003).

[30] In the case of "book-entry-only" securities (*e.g.*, no securities certificates are available), the issuer will authorize DTC to credit the account or accounts of participants with all of the issuer's outstanding shares.

[31] *See, e.g.*, Rules 5 and 6 of DTC's Rules.

[32] DTC registers securities in the name of its nominee, Cede & Co., which makes it the registered owner of the securities.

[33] Securities deposited at DTC by its participants or the issuers in the case of book-entry-only securities are legally or beneficially owned by the participants or their customers at the time of the deposit and are subsequently transferred into DTC's nominee name.

[34] While DTC is the registered owner, the participants and their customers are the beneficial owners. At no time does an issuer have an ownership interest in the securities deposited at DTC. *See* supra note 22.

[35] A securities depository determines whether a security is eligible for deposit. Certain securities may not be eligible for a variety of reasons such as the security cannot conform to the depository's processing systems or ownership of the security is restricted in such a manner that it cannot be freely transferred.

[36] For example, DTC participants may choose to not deposit the securities in the depository if the security is not widely traded and instead hold certificated securities registered in the name of either the participant's nominee or its customer.

cases where an issuer has prohibited ownership of their securities by certain securities intermediaries, such as DTC, some broker-dealers register their customers' positions in the name of the broker-dealer so that certificates do not need to be issued for each customer and transferred on each trade. However, securities transactions between broker-dealers would still have to be manually processed. Thus, clearing and settling securities transactions outside of a depository raises greater risks and inefficiencies, including credit risk issues and risk of defaults, than transfers within a depository. Furthermore, the payment of dividends and proceeds from corporate actions for securities held outside a depository typically are slower and more costly because issuers must send a check to each shareholder rather than make a single deposit of the funds at DTC.[37]

In addition to encouraging the use of securities depositories, the Commission has also long supported industry efforts to develop other alternatives to securities certificates, particularly for those investors who want to retain the registration of the securities in their own names.[38] The Commission issued a concept release in 1994 seeking public comment on the policy implications and the regulatory issues raised by use of a system that would allow individual investors to register securities in their own names but hold their positions in book-entry form on the books of the issuers or its transfer agent. Such a system, known as the Direct Registration System ("DRS") began operating in mid 1990s. DRS provides investors with the ability to register their securities in their own names directly on the issuer's records in book-entry form and to electronically transfer by book-entry movements the securities positions between the issuer or its transfer agent and the investors' broker-dealers.[39] In place of a certificate, issuers send a periodic statement to reflect the number of shares registered in the name of and held in DRS by the shareholder. Today over 750 issuers have made their securities eligible for DRS and nearly 40 million investors hold their shares in DRS.[40]

II. Need for the Proposed Rule

A small but growing number of issuers whose securities are registered under section 12 or are reporting under section 15(d) of the Exchange Act[41] recently have restricted, or indicated their intention to restrict, ownership of their securities by prohibiting their transfer agents from acknowledging ownership of shares registered in the name of DTC or by prohibiting transfer of their securities to DTC or in some cases to any securities intermediary.[42] Most, if not all, of the issuers restricting ownership of their securities have also required that the shares be represented in certificated form.[43] In several cases, the issuer has required the broker-dealer to disclose the name of the ultimate beneficial owner before reregistering any securities held by the broker-dealer either in the name of the broker-dealer or in the name of DTC.[44] Some brokers refused because they believed disclosure of the customer's name would violate federal securities laws[45] or contractual obligations to the customer. Other broker-dealers could not disclose the name of the ultimate beneficial owner because they knew only the identity of their customer and not necessarily for whom their customer was holding the securities.

Issuers imposing these restrictions, sometimes referred to as "custody-only trading," frequently state that they are imposing ownership or transfer restrictions on their securities to protect their shareholders and their share price from "naked" short selling.[46] These issuers believe that requiring all securities to be in certificated form and precluding ownership by certain securities intermediaries forces broker-dealers to deliver certificates on each transaction, thereby eliminating the ability of naked short sellers to maintain a naked short sale position.[47]

A number of issuers imposing ownership or transfer restrictions sought to withdraw from DTC all securities issued by them and indicated that they would not allow their securities to be reregistered in the name of DTC.[48] In June 2003, the Commission approved a DTC rule change clarifying that DTC's rules and procedures provide only for participants (*i.e.*, broker-dealers and banks) to submit withdrawal instructions for securities deposited at DTC and do not require DTC to comply with withdrawal requests from issuers.[49]

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[37] Payments from issuers submitted to DTC are immediately distributed to DTC participants (generally the same day) who then pay the dividends to their investor clients.

[38] *See* "Progress and Prospects: Depository Immobilization of Securities and the Use of Book-Entry Systems," Staff Report, Division of Market Regulation, U.S. Securities and Exchange Commission (June 14, 1985). In 1990, the Commission held a Roundtable on Clearance and Settlement to discuss the implementation of the Group of Thirty's U.S. Working Committee regarding clearance and settlement. "Clearance and Settlement in the World's Securities Markets," Group of Thirty (March 1989). The Committee noted in its report that the pressure to have securities available for settlement in shorter settlement timeframes would increase the need for immobilizing securities certificates and the use of book-entry transfer at the retail level. The roundtable participants envisioned a transfer agent operated book-entry registration system that would allow investors to be "directly registered" in electronic form on the books of the issuer and receive a periodic statement reflecting their ownership interest. "Providing Alternatives to Certificates For the Retail Investor," Group of Thirty, U.S. Working Committee, Clearance and Settlement Project (August 1991).

[39] Prior to full implementation of DRS's electronic transfer capability (the "Profile Modification System"), shareholders wanting to sell shares held in DRS had to certificate and physically deliver the securities to the broker-dealer. With DTC's Profile Modification System, DRS shares can be electronically transferred between DTC participants and transfer agents. Exchange Act Release Nos: 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR–DTC–96–15] (order granting approval to establish DRS); 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999), [File No. SR–DTC–99–16] (order approving implementation of the Profile Modification System); 42704 (April 19, 2000), 65 FR 24242 (April 25, 2000), [File No. SR–00–04] (order approving changes to the Profile Modification System); 43586 (November 17, 2000), 65 FR 70745 (November 27, 2000), [File No. SR–00–09] (order approving the Profile Surety Program in DRS); 44696 (August 14, 2001), 66 FR 43939 (August 21, 2001), [File No. SR–DTC–2001–07] (order approving movement of DRS issues into the Profile Modification System and the establishment of the "S" position as the default in DRS). DRS also can be used as a means for issuers to dematerialize their securities (*i.e.*, so that certificates are no longer issued to evidence security ownership).

[40] DRS statistics are as of April 5, 2004. E-mail to industry participants from Joseph Trezza, DTC, May 5, 2004.

[41] *See supra* note 6.

[42] *See e.g.*, *www.jagnotes.com* or *www.nutk.com*. Also see "Intergold Corporation Announces Custody Only CommonShare Transfer System," PRNewswire-First Call (January 30, 2003).

[43] *Id.* The certification requirement does not in and of itself preclude securities from being deposited at DTC. In fact, DTC's nominee owns most securities deposited at DTC in certificated form, generally by a global or balance certificate.

[44] *See supra note 42.* Registration of a transfer is necessary to change registered ownership of a security.

[45] For example, some broker-dealers have expressed concern that such disclosure may cause them to violate Exchange Act Rule 14b–1 that requires a broker to provide a requesting issuer only with the identities of beneficial owners who have not objected to disclosures of this information to issuers. 17 CFR 240.14b–1.

[46] *See* Exchange Act Release No. 47978 (June 4, 2003), 68 FR 35037 (June 11, 2003). A short sale is a sale of a security that the seller does not own or is effectuated by the delivery of borrowed securities. Although a "naked short sale" is not a defined term under federal securities laws, it generally refers to situations where a seller sells a security without owning or borrowing the security and does not deliver when delivery is due.

[47] *Id.*

[48] *Id.*

[49] Exchange Act Release Nos. 47365 (February 13, 2003), 68 FR 8535 (February 21, 2003), [File No. SR–DTC–2003–02] (notice of proposed rule change); 47978 (June 4, 2003), 68 FR 35037 (June 11, 2003), [File No. SR–DTC–2003–02] (order approving proposed rule change concerning requests for withdrawal of certificates by issuers). DTC noted in a response letter to commenters on File No. SR–DTC–2003–02 that DTC, on behalf of

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In response, a number of issuers indicated that they had adopted or would adopt restrictions, assertedly pursuant to state corporation laws, to prohibit ownership of their securities by a depository, securities intermediaries, or both.[50] Issuers' actions to implement the restrictions caused numerous clearance and settlement problems. Some of these issuers refused to recognize positions that had been registered in the name of DTC's nominee or in the name of broker-dealers before the adoption of the restriction and refused to transfer (or allow their transfer agent to transfer) stock to the name of any entity or person that the issuer believed was not the ultimate beneficial owner.[51] Where issuers refused to recognize ownership positions registered in the name of securities intermediaries, the broker-dealers and banks were forced individually to negotiate a solution directly with the issuer.

In order to compel securities intermediaries to register stock only in the names of the ultimate beneficial owners, some issuers initiated corporate actions or "reorganizations." These corporate actions or reorganizations, such as stock dividends, exchanges, reverse splits, or name changes, were intended to force the intermediaries to either comply with the issuers' instructions to deliver securities to the issuer or its agent for exchange and reregistration into the name of the ultimate beneficial owner or exclude their customers from participating in a corporate action or dividend.[52] In situations where broker-dealers refused to comply with the issuer demands to disclose the name of customers so that new restricted shares may be issued, the new securities remain unissued.

Where securities intermediaries are precluded from having securities registered in their names, the securities intermediaries' ability to hold and move securities is severely limited. As a result, trading and clearance and settlement efficiency suffers, and costs and risks increase. This consequence of issuer restrictions is not compatible with the congressional objective that trades in the securities of publicly traded companies should be settled through the national system for clearance and settlement and benefit from its efficiencies and risk reductions and is a significant step backwards in our progress to develop the national system. Furthermore, forced certification of securities is inconsistent with the industry's goals of streamlining processing of securities transactions.[53]

These types of restrictions have also caused investors increased costs and delays. By forcing securities intermediaries to submit securities as part of an issuer's recapitalization, the transfer agent must transfer the securities by canceling the certificate registered in the name of the securities intermediary and re-register a new certificate in the name of the beneficial owner. Transfer agent registration fees, which may range from $10.00 to $75.00 per transfer, and costs for secure delivery of securities certificates, can be more than the market value of the securities being processed.[54] In some cases, the broker-dealers assume these costs but in many cases the cost is passed along to investors. Broker-dealers that did reregister securities received numerous complaints from investors about the fees, particularly where the investors had not issued instructions to reregister the securities. In addition, broker-dealers had to deliver the securities certificates to an issuer's transfer agent and the transfer agent similarly had to deliver the newly registered certificates. As a result, there were significant costs and delays in obtaining certificates, which could ultimately impede the customers' ability to sell or otherwise negotiate the security in the marketplace.

The Commission understands that some issuers view this mechanism as a means of deterring manipulative naked short selling.[55] These issuers believe that by requiring securities be processed through the national system for clearance and settlement, the securities are subject to manipulative naked short selling, which, they argue, can result in issuers and investors suffering losses due to the diminution in the market value or adverse effects on ownership (*e.g.*, dilution, decrease in market value, or loss of voting rights).[56] The Commission has recently published for comment proposed rules directly relating to issues raised by short selling.[57] The Commission does not believe that naked short selling concerns should or can be addressed by issuers attempting to control the ownership or transferability of their securities that trade in the public market. Restrictions on securities can often make the stock less liquid, causing reduction in the value of the securities, and interfere with efficient processing. Accordingly, we are proposing a rule that would prohibit registered transfer agents from transferring any equity security registered under section 12 or any equity security that subjects an issuer to reporting under section 15(d), other than equity securities issued by partnerships, if such security is subject to any restriction or prohibition on transfer to or from a securities intermediary. The objective of the proposed rule is to prohibit registered transfer agents from effecting transfers in securities of public companies that have restricted their stock in a manner that prevents trades in these securities from being processed through the national clearance and settlement system.

III. Description of Proposed Rule 17Ad–20

A. Rule Text

Proposed Rule 17Ad–20 would provide that a registered transfer agent[58] is prohibited from effecting any transfer of any equity security registered under section 12 or any equity security that subjects an issuer to reporting

its participants or their customers, owned these securities without restrictions at the time of the deposit into the depository. DTC also stated that in the situations where the issuers attempted to restrict transferability of its shares, none of their securities bore any legend, conspicuous or otherwise, noting the restrictions.

[50] See e.g., *www.jagnotes.com* or *www.nutk.com*. Also see "Intergold Corporation Announces Custody Only CommonShare Transfer System," PRNewswire-First Call (January 30, 2003).

[51] Telephone conversation between Susan Geigel, Director, Legal and Regulatory Compliance, The Depository Trust Clearing Corporation and Staff, Division of Market Regulation, Commission (August 4, 2003).

[52] In the case of a stock dividend, some issuers would require broker-dealers to remit their shares registered in the name of either DTC's nominee or the broker-dealer and to disclose the names of their customers so that the current shares and the stock dividend could be reregistered in the name of the broker-dealer's customers (*i.e.*, the beneficial owners). In the case of a merger, a new entity would be formed for the sole purpose of requiring that outstanding securities in the old company to be remitted to the issuer and reregistered in the name of the beneficial owner.

[53] See Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004), [File No. S7–13–04] (securities transaction settlement concept release). *See also* "SIA T+1 Business Case Final Report," at 18–21 (August 2000) ("SIA Business Case Report"). The report is available online at *http://www.sia.com/t_plus_one_issue/pdf/BusinessCaseFinal.pdf*.

[54] Securities trading in the non-Nasdaq over-the-counter market are not subject to listing requirements and as such, have no rules governing fees charged for transfers of the issuers' securities.

[55] See Exchange Act Release No. 47978 (June 4, 2003), 68 FR 35037 (June 11, 2003), [File No. SR–DTC–2003–02].

[56] *Id.*

[57] Exchange Act Release No. 48709 (October 28, 2003), 68 FR 62972 (November 6, 2003), [File No. S7–23–03] (Regulation SHO proposing changes to Commission rules relating to short sales).

[58] See *supra* notes 5 and 7. Transfer agents will not be able to evade compliance with this proposed rule or any other transfer agent rule by failing to register as transfer agents when the Exchange Act requires such registration.

under section 15(d) of the Exchange Act[59] if such security is subject to any restriction or prohibition on transfer to or from a securities intermediary.[60] The term "securities intermediary" would be defined as a clearing agency registered under section 17A of the Exchange Act[61] or a person, including a bank, broker, or dealer, that in the ordinary course of its business maintains securities accounts for others.[62] Any equity security issued by a partnership, as defined in Item 901(b) of Regulation S–K,[63] is excluded from the proposed rule.[64]

The proposed rule will apply only to transfer agents who are registered or should be registered with the Commission pursuant to section 17A of the Exchange Act. Since the Exchange Act only requires registration of entities acting as transfer agents for securities registered under section 12, the proposed rule will not extend to unregistered transfer agents acting solely for securities not registered under section 12. In other words, if an unregistered transfer agent is acting as agent for only section 15(d) securities, the transfer agent would be able to transfer securities that have restrictions on intermediary ownership. But if a transfer agent is required to register, the agent would be required to comply with proposed Rule 17Ad–20 for any equity security registered under section 12 or any equity security that subjects an issuer to reporting under section 15(d) of the Exchange Act.

As agent of the issuer responsible for processing transfers, a transfer agent is in the optimal position to know if the issuer has restricted the stock in a manner covered by the rule. Under the proposed rule, registered transfer agents would be required to make a determination prior to effecting a transfer in an equity security registered under section 12 or an equity security that subjects an issuer to reporting under section 15(d) of the Exchange Act that the securities do not have a restriction or prohibition on transfer to or ownership by a securities intermediary. We understand that many transfer agents already have procedures in place to ascertain whether securities have other restrictions on trading or transfer. In addition, many transfer agents obtain representations from each issuer prior to becoming its transfer agent that the issuer's securities are properly registered under federal securities laws or exempt from registration.

The vast majority of securities trading on exchanges or Nasdaq are already subject to market rules requiring depository eligibility of securities and mandating members' use of depositories.[65] Most securities whose issuers restrict ownership of their securities by securities intermediaries are trading in the non-Nasdaq over-the-counter market. Accordingly, the proposed rule effectively would supplement the market rules to expand the scope of securities covered to include most public company securities (*i.e.*, registered under section 12 or securities of issuers subject to reporting under section 15(d)) that trade in the non-Nasdaq over-the-counter market.

B. Scope and Compliance Date

In order to achieve the goals of the national system for clearance and settlement, it is imperative that as many publicly traded securities as practicable be eligible to clear and settle through the national system for clearance and settlement and that investors and securities intermediaries retain the choice as to how to hold their securities in order to avail themselves of the benefits of the national system for clearance and settlement. Therefore the Commission proposes to apply the proposed rule to all covered equity securities that are either currently registered under section 12 or any equity security that subjects an issuer to reporting under section 15(d), not just those that are registered or become reporting companies after the rule's effective date. In order to provide sufficient notice and opportunity for issuers to remove restrictions from securities and for transfer agents to comply with the rule, if it were adopted, the Commission is proposing to require compliance with the rule on and after the ninetieth day after the date the Commission adopts the rule.

IV. Solicitation of Comment

The Commission invites commenters to address the merits of the proposed rule and specifically invites comment on specific costs and benefits of the proposed rule. The Commission seeks comment on the effects of the proposed rule on the national system for clearance and settlement and the national market system, as well as whether the approach and scope of the proposed rule is necessary or appropriate. Interested persons are also invited to comment on whether alternative approaches would address the concerns raised by issuer restrictions on publicly traded securities.

The Commission invites comment on the effect of the proposed rule on registered transfer agents, the entities primarily responsible for compliance with the proposed rule, and whether the transfer agent is the appropriate entity to be responsible for compliance or whether the compliance obligations should be placed on or extended to other market participant. Interested persons may comment on how registered transfer agents will ensure compliance, on the costs to comply, and on any risks, risk reduction, benefits, or savings that may result from the proposed rule. The Commission also seeks comment on what if any difficulties registered transfer agents may have in monitoring whether securities are registered under section 12 or any equity security that subjects an issuer to reporting under section 15(d). Interested persons are invited to comment on how registered transfer agents will address the situations where issuers refuse to remove the restrictions and whether the rule should address this concern.

The Commission invites comment on the effects of the proposed rule on issuers, and in particular, the costs and benefits of prohibiting the issuers' agents from transferring equity securities that are restricted in a manner prohibited by the proposed rule. Given that most of the companies that will be effected by the proposed rule are those currently not trading on a national exchange or Nasdaq, the Commission also seeks comment on the impact of the proposed rule on issuers, particularly small issuers, and its effect on ownership and capital formation.

The Commission invites comment on whether the scope of the proposed rule is appropriate and whether the

[59] 15 U.S.C. 78*l* and 15 U.S.C. 78o(d) respectively.

[60] The term "transfer" means (1) delivery of the security (*i.e.*, the certificate, or in the case of book-entry, an instruction); (2) a volitional act by the transferor which manifests an intent to change ownership or convey a security interest; and (3) reregistration of ownership. *See* Egon Guttman, *Modern Securities Transfers* § 6:2, at 6–4 (3d ed. 2002).

[61] 15 U.S.C. 78q–1 *et seq.*

[62] The term "securities intermediary" as used for purposes of the proposed rule differs from the definition of securities intermediary as adopted in the Uniform Commercial Code ("UCC") in that the clearing corporation or person that in the ordinary course of its business maintains securities accounts for others does not need to be acting in that capacity in order for prohibition to apply.

[63] *See supra* notes 8 and 9.

[64] The Commission has the authority under Section 36 of the Exchange Act to conditionally or unconditionally exempt any security or class of securities from the provisions of the Exchange Act to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. 15 U.S.C. 78mm(a)(1).

[65] *See supra* notes 26 and 27. As a result, most securities trading on exchanges or Nasdaq cannot be restricted in a manner that precludes ownership by or transfer to securities intermediaries.

application of the rule to any particular securities would create difficulties or costs for investors, issuers, transfer agents, or other market participant. The Commission invites comment on whether the exclusion of equity securities issued by partnerships as defined in Item 901 of Regulation S–K is appropriate. The Commission also requests comment on whether there should be other exclusions included in the proposed rule.

As proposed, the rule would apply to equity securities currently registered under section 12 or to equity securities that currently subjects an issuer to reporting under section 15(d) as well as those securities that will be section 12-registered securities or securities of issuers that will be subject to Section reporting in the future. The Commission seeks comment on whether the application of the proposed rule should not extend to those securities already registered or those securities of issuers already subject to reporting and whether by doing so, particular hardships or costs will ensue. Interested persons are invited to comment on whether 90 days is sufficient time for issuers to remove the restrictions and for transfer agents to operationally adjust their procedures.

V. Paperwork Reduction Act

The proposed Rule 17Ad–20 does not contain new "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[66] Accordingly, the PRA is not applicable to the proposed amendments because they do not impose any new collection of information requirements that would require approval of the Office of Management and Budget ("OMB").

VI. Costs and Benefits of Proposed Rule

The Commission is considering the costs and the benefits of proposed Rule 17Ad–20, which would prohibit registered transfer agents from effecting transfers of equity securities (other than those issued by certain partnerships) registered under section 12 or any equity security that subject an issuer to reporting under section 15(d) if such security is subject to any restriction or prohibition on transfer to or from a securities intermediary. The Commission is sensitive to the costs and benefits associated with proposed rule, and encourages commenters to discuss the costs and benefits addressed below, as well any additional costs or benefits that we may have not considered. In particular, the Commission requests comment on the potential costs for any modification to computer systems, operations, or procedures the proposed rule may require, as well as any potential benefits resulting from the proposal for investors, securities intermediaries (including, but not limited to, broker-dealers, depositories, and banks), transfer agents, other securities industry professionals, and others. To assist us in evaluating the costs and benefits that may result from the proposed rule, we encourage commenters to provide analysis and data to support their view.

A. Benefits

By prohibiting registered transfer agents from effecting a transfer in any equity security registered under section 12 or in any equity security that subjects an issuer to reporting under section 15(d) that restricts or prohibits transfers to or from securities intermediaries, proposed Rule 17Ad–20 would allow investors to clear and settle their securities transactions through the national system for clearance and settlement and thereby take advantage of benefits of that system. We believe that the use of the national system, which can only be accessed through securities intermediaries, provides significant benefits to U.S. investors, brokers, dealers, other securities intermediaries, and issuers, by increasing efficiencies and reducing risks associated with processing, transferring, and settling securities certificates. While some of these benefits may not be readily quantifiable in terms of dollar value, particularly those related to risk reduction, we nonetheless believe that investors and broker-dealers who choose to use a securities intermediary will lower their transactions costs and realize a reduction in certain risks related to settlement of securities transactions and transfer of securities to registered ownership.

Issuers restricting transfers of their securities to or from securities intermediaries are causing investors to have to certificate their positions, which must be reregistered after every purchase or sale transaction. The Securities Industry Association ("SIA") recently noted that the annual direct and indirect cost of processing and transferring certificates in the U.S. market, including those related to shipping, signature guarantees,[67] transfer fees, custody, and manual processing, exceeds $234,000,000.[68] Costs and risks associated with missing, lost, counterfeit, or stolen certificates are also significant. Between 1996 and 2000, the SIA estimated that an average of 1.7 million certificates were reported lost or stolen.[69] In 2001, that figure increased to 2.5 million certificates.[70] Reporting missing, lost, stolen, or counterfeit securities certificates to SIC, determining negotiability of these certificates, and paying for surety bonds for lost certificates costs the financial industry and investors millions of dollars each year.[71] In recent years, the fraudulent resale and fraudulent collateralization of cancelled certificates (certificates with no resale value) alone have cost investors and financial institutions millions of dollars.[72]

Furthermore, the process of manually transferring securities transactions on an individual trade basis through the transfer agent causes significant delays in settling securities transactions and registering ownership. These delays may prevent investors from effecting timed transactions in the market. All of these costs and risks are ultimately borne by investors. The Commission believes the costs and risks are substantially reduced or even eliminated through the use of book-entry transfers and automated settlement at a securities depository.

The Commission seeks comments, analysis, and empirical data on the extent to which the proposed rule will benefit investors by reducing costs associated with issuer-imposed restrictions on transferring securities to or from securities intermediaries. In particular, the Commission seeks

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[66] 44 U.S.C. 3501 *et seq.*

[67] Every endorsement of a securities certificate requires a signature guarantee by an acceptable guarantor. Securities Transfer Association Rule Book, Section 1.02 (1998). The Uniform Commercial Code that states that a signature guarantee is a warranty by the signature guarantor that, among other things, the endorser is an appropriate person to endorse and thus the transfer the security. UCC 8–312.

[68] Letter to Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, from Donald Kittell, Executive Vice President, SIA (August 20, 2003); letter to Annette Nazareth, Director, Division of Market Regulation, Commission, from Donald Kittell, Executive Vice President, SIA (March 24, 2003) ("Nazareth Letter"). These letters advocate the need to dematerialize the U.S. market.

[69] *Id.* The SIA's statistics on securities reported lost and stolen were obtained by the SIA directly from SIC.

[70] *Id.*

[71] Nazareth Letter. Investors who have either lost their certificates or had the certificates stolen generally must obtain a surety bond before the transfer agent will register a transfer of ownership in order to protect the transfer agent from the risk of wrongful transfers in the event that the lost or stolen certificates reappear at a later date. We understand that generally most transfer agent charge investors 2%–4% of the current market value of the securities for such a bond.

[72] *See* Exchange Act Release No. 48931 (December 16, 2003), 68 FR 74390 (December 23, 2003), [File No. S7–18–00] (order adopting rule relating to certificate destruction).

comment and data on the benefits to investors of the proposed rule to the extent it precludes decreased liquidity, increased risk, and increased transaction costs that may be associated with such issuer-imposed restrictions on securities. We also solicit comments and data on the potential benefits that may accrue due to a reduction in production, transfers, and processing of certificates, and the increased use of a depository.

Moreover, the proposed rule may benefit issuers by reducing the number of transfers recorded and the number of certificates produced. Many issuers pay their transfer agent a fee to produce a certificate and transfer securities. Accordingly, the Commission requests data on how many issuers, particularly those affected by the proposed rule, permit their transfer agent to charge a fee for transfers, and if so, whether that fee is paid by the issuer or the investor.

A number of broker-dealers have informed the Commission that they have had to undertake special communications with investors and institute manual processing in order to exit securities positions from DTC (or any other intermediary position) and to accommodate issuers' requests to certificate positions in the name of the ultimate beneficial owner. The Commission seeks comment as to any cost savings that may be realized, as well as any other potential benefits, resulting from not having to undertake these expenses should the proposed rule be adopted.

The Commission does not have data to quantify the value of the benefits described above. We are therefore seeking comment on how we may quantify these benefits and any other benefits not already identified that may result from the adoption of the proposed amendments.

B. Costs

The Commission seeks comment on what costs, if any, could be incurred if a registered transfer agent acted for an issuer that restricted or prohibited transfers, as the rule proposes to prohibit. For example, will there be handling, shipping, or insurance costs associated with the repackaging and returning non-transferable certificates? If so, what are these costs and are these costs incurred on a one-time or ongoing basis?

The proposed Rule 17Ad–20 would require registered transfer agents to determine whether or not securities subject to the proposed rule could be eligible for transfer prior to effecting a transfer and whether the person or class of persons restricted from ownership by the issuer are securities intermediaries. The Commission requests comment and data on what, if any, operational or procedural changes would need to be made to comply with the proposed rule and how much these changes would cost.

Issuers and registered transfer agents might obtain certain representations or indemnifications from each other to remove any current restrictions that would be prohibited by the proposed rule and to assist registered transfer agents in complying with the proposed rule, which might require one-time expenses related to contract revisions or legal fees. Accordingly, we request comment on the potential costs to issuers and registered transfer agents for any removal of restrictions, and developments of or modifications to systems, procedures, or records that might be necessary to determine whether a security is subject to the proposed rule.

The Commission understands that, if it were to adopt the proposed rule, some issuers might believe that the rule removes a mechanism by which they believe they can counter the negative effects of naked short selling in general, and manipulative naked short selling in particular.[73] As has been previously contended in comment letters to the Commission, by requiring these securities to participate in the national system for clearance and settlement, it has been alleged that both issuers and investors will suffer losses due to the diminution in the market value of these securities caused by naked short selling or by adverse effects on ownership (*e.g.*, market value and voting rights) stemming from such short sale transactions.[74] The Commission believes that these issues should be addressed through regulation rather than issuers attempting to control the ownership or transfer of securities that trade in the public market. As stated earlier in this release, we believe issuer-imposed restrictions on securities often make the stock less liquid, causing reduction in the trading volume of the securities. To the extent that there is any diminution of issuers' abilities to counter the perceived negative effects of naked short selling by restricting or prohibiting ownership or transfer by securities intermediaries, we do not believe this cost is significant and is likely justified by the benefits of the national system for clearance and settlement.[75] We request comment on whether this cost exists and the extent of these costs. We also request comment on whether the proposal will result in any other costs for issuers or their transfer agents to facilitate transfers of securities should the securities be held by a securities intermediary.

The Commission also seeks comments, analysis, and empirical data on any costs to investors or other market participants associated with any impact the proposed rule may have on the issuers or their transfer agent. Among other things, the Commission seeks comments and data on the extent to which, if any, investors may incur costs associated with any decrease in the capacity or propensity of the issuer to deter manipulative naked short selling as a result of the proposed rule.

VII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[76] a rule is "major" if it has resulted or is likely to result in: an annual effect on the economy of $100 million or more;

- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment regarding the potential impact of the proposed rule amendments on the economy on an annual basis. We also request that commenters provide empirical data and other factual support for their views.

VIII. Consideration of Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) the of the Exchange Act,[77] as amended by the National Securities Markets Improvement Act of 1996,[78] provides that whenever the Commission is engaged in rulemaking and is required to consider or to determine whether an action is necessary or appropriate in the public interest, it must also consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of any rule it adopts. Exchange Act section 23(a)(2) prohibits

[73] *See* Exchange Act Release No. 47978 (June 4, 2003), 68 FR 35037 (June 11, 2003), [File No. SR–DTC–2003–02].

[74] *Id.*

[75] As noted above, most securities trading on an exchange or Nasdaq are already subject to SRO rules that require depository eligibility. *See* supra notes 26 and 27.

[76] 5 U.S.C. 801 *et. seq.*

[77] 15 U.S.C. 78c.

[78] Pub. L. 104–290, 110 Stat. 3416 (1996).

the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission's preliminary view is that the proposed rule would promote the objectives of the national system for clearance and settlement as established in section 17A of the Exchange Act by allowing securities intermediaries and their customers effecting securities transactions in the public market to benefit from the increased efficiencies and risk reduction afforded by the national system for clearance and settlement. By permitting transfers to and from securities depositories and other intermediaries, the proposed rule should promote efficiency by reducing some of the costs and delays associated with the clearance and settlement of securities transactions and promote capital formation by making it easier for the securities to be traded in the marketplace. We solicit comment on whether the proposal would promote both efficiency and capital formation.

The proposed rule could enhance competition. While most companies listed on a national exchange or Nasdaq are already subject to rules that in essence prohibit restrictions on transfers to or from securities intermediaries,[79] those issues trading in the non-national market and not subject to any listing requirements have not been subject to this restriction, such as those securities trading in the Pink Sheets. Proposed Rule 17Ad–20 would help to level the playing field by extending these obligations to all companies issuing equity securities that are registered under section 12 or that subject issuers to reporting under section 15(d) of the Exchange Act and transferred by a registered transfer agent.[80] In doing so, the proposal would also promote liquidity in these securities by removing barriers to ownership of securities and decreasing transaction costs, thereby facilitating increased efficiency and capital formation. We request comment on the other effects on competition of the proposed rule to both issuers and transfer agents. We also request comment on any effects on efficiency or capital formation that may result under the proposed rules.

[79] *See supra* notes 26 and 27.

[80] As noted above, the proposed rule would not apply to equity securities of issuers subject to section 15(d) that are transferred by transfer agents that are not required to be registered under Section 17A of the Exchange Act.

IX. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with the provisions of the Regulatory Flexibility Act[81] regarding proposed Rule 17Ad–20 under the Exchange Act. The IRFA states the purpose of the proposal is to prohibit registered transfer agents from effecting transfers of certain equity securities where the issuer restricts or prohibits the transfer of an equity security to or from a securities intermediary.

The IRFA sets forth the statutory authority for the proposal. The IRFA also discusses the effect of the proposal on registered transfer agents that are small entities pursuant to Rule 0–10 under the Exchange Act.[82] A transfer agent is a small entity if it: (1) Received fewer than 500 items for transfer and fewer than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (2) transferred items only of issuers that would be deemed a "small business" or "small organizations" as defined in Rule 0–10 under the Exchange Act; (3) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business if shorter); and (4) is not affiliated with any person other than a natural person that is not a small business or small organization under Rule 0–10. The IRFA states that we estimate that 470 transfer agents of approximately 900 registered transfer agents qualify as "small entities" for purposes of RFA and would be subject to the requirements of the proposed Rule 17Ad–20.

The IRFA also discusses the effect of the proposal on issuers that are small entities pursuant to Rule 0–10 under the Exchange Act.[83] An issuer is a small entity if it had on the last day of its most recent fiscal year total assets of $5 million or less. The IRFA states that we estimate that 2500 issuers qualify as "small entities" for purposes of RFA and could be affected by the requirements of the proposed Rule 17Ad–20.

Proposed Rule 17Ad–20 would prohibit all registered transfer agents from transferring certain equity securities registered under section 12 or any equity security that subjects an issuer to reporting under section 15(d) that restrict or prohibit transfers to or from a securities intermediary. While there are no reporting or recordkeeping obligations associated with the rule, compliance by registered transfer agents will be subject to examination by the transfer agent's appropriate regulatory agency.[84]

The IRFA states that the Commission considered whether viable alternatives to the proposed rulemaking exist that accomplish the stated objectives of applicable statutes that minimize any significant economic impact of the proposed rules on small entities. As explained more fully in the IRFA, the Commission has considered alternatives to the proposed rules that would adequately address the problem posed by issuers imposing restrictions or prohibitions on ownership, and therefore restrictions or prohibitions on the transfer, of securities in the public market. The Commission believes that the establishment of different requirements for small entities is neither necessary nor practical because the proposal is designed to provide general standards that would protect the public and members of the financial community from increased inefficiencies, costs, and risks associated with trading, clearing, and settling securities without the protections afforded by the national system for clearance and settlement. Finally the IRFA addresses each of the other requirements set forth under 5 U.S.C. 603.

The Commission encourages the submission of written comments with respect to any aspect of the IRFA. These comments should specify costs of compliance with the proposed rule, and suggest alternatives that would accomplish the objective of proposed Rule 17Ad–20. A copy of the IRFA may be obtained by contacting Jerry W. Carpenter or Susan M. Petersen, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–1001.

X. Statutory Authority

The Commission is proposing to add § 240.17Ad–20 of chapter II pursuant to sections 3(b), 17A(a)(1), 17A(a)(2), 17A(d), 17A(e), 23(a), and 36 of the Exchange Act[85] in the manner set forth below.

[81] 5 U.S.C. 603.

[82] 17 CFR 240.0–10.

[83] *Id.*

[84] Registered transfer agents are currently subject to numerous rules under section 17A of Exchange Act and subject to examination by the transfer agents' appropriate regulatory authority. 15 U.S.C. 78q–1(d).

[85] 15 U.S.C. 78q–1(a)(1), 78q–1(a)(2), 78q–1(d), and 78w(a).

List of Subjects in 17 CFR Part 240

Securities, Securities intermediaries, Transfer agents.

Text of Proposed Rule

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The general authority citation for part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Section 240.17Ad–20 is added to read as follows:

§ 240.17Ad–20 Issuer Restrictions or Prohibitions on Ownership by Securities Intermediaries.

(a) Except as provided in paragraph (c) of this section, no registered transfer agent shall transfer any equity security registered pursuant to section 12 or any equity security that subjects an issuer to reporting under section 15(d) of the Act (15 U.S.C. 78*l* or 15 U.S.C. 78o(d)) if such security is subject to any restriction or prohibition on transfer to or from a securities intermediary.

(b) The term *securities intermediary* means a clearing agency registered under section 17A of the Act (15 U.S.C. 78q–1) or a person, including a bank, broker, or dealer, that in the ordinary course of its business maintains securities accounts for others.

(c) The provisions of this section shall not apply to any equity security issued by a partnership as defined in § 229.901(b) of Regulation S–K.

Dated: June 4, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13084 Filed 6–9–04; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Thursday,
June 10, 2004

Part VI

Department of Education

National Institute on Disability and Rehabilitation Research; Notices

DEPARTMENT OF EDUCATION

RIN 1820 ZA34

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities (NFP) for Community Integration for Individuals with Disabilities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces final priorities under the Rehabilitation Research and Training Centers (RRTC) Program for the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use one or more of these priorities for competitions in fiscal year (FY) 2004 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve community integration outcomes of persons with disabilities who have psychiatric or other mental health conditions.

EFFECTIVE DATE: These final priorities are effective July 9, 2004.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 550 12th Street, SW., room 6046, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or via Internet: *donna.nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Rehabilitation Research and Training Centers

RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disability conditions, or promote maximum social and economic independence for persons with disabilities. Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

General Requirements of Rehabilitation Research and Training Centers

RRTCs must:

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers for national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the RRTC. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment of approved grant objectives.

Analysis of Comments and Changes

We published a notice of proposed priorities (NPP) for this program in the **Federal Register** on March 25, 2004 (69 FR 15308). This Notice of Final Priorities (NFP) contains no significant differences from the NPP. In response to our invitation in the NPP, we received three comments. One commenter expressed general support for the priorities and one expressed support for the focus on children's mental health issues. The third commenter provided specific recommendations. An analysis of the comments follows.

Generally, we do not address technical and other minor changes and suggested changes that we are not authorized to make under the applicable statutory authority.

Comment: One commenter suggested that attention be paid to the effect of disability laws on self-determination, empowerment, and community reintegration for persons with disabilities, particularly in the context of psychiatric disability.

Discussion: Applicants are free to propose research topics that focus on these issues; however, NIDRR does not believe it is necessary to require that an applicant address these specific policy concerns. The peer review process will evaluate the merits of the proposals.

Changes: None.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational.

The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom/.*

These final priorities are in concert with NIDRR's 1999–2003 Long-Range Plan (Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under these final priorities, a specific reference is included for each priority presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/rschstat/research/pubs/index.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of

traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Priorities

The Assistant Secretary for Special Education and Rehabilitative Services announces three priorities for the funding of RRTCs that will focus on rehabilitation related to improving the community integration outcomes of persons with disabilities who have psychiatric or other mental health conditions. Applicants must select and focus research on one of the following priorities: Priority 1—Recovery and Recovery-Oriented Psychiatric Rehabilitation for Persons with Long Term Mental Illness; Priority 2—Developing and Implementing Integrated Systems of Care for Child and Adolescent Mental Health; or Priority 3—Strengthening Family and Youth Participation in Child and Adolescent Mental Health Services. Under each of these priorities, the RRTC must:

(1) Contribute substantially to the scientific knowledge-base relevant to its respective subject area,

(2) Research, develop, and evaluate interventions and tools to improve outcomes in its focus area,

(3) Develop, implement, and evaluate a comprehensive plan for training critical stakeholders (*e.g.*, consumers, family members, practitioners, service providers, researchers, and policymakers),

(4) Provide technical assistance, as appropriate, to critical stakeholders (*e.g.*, consumers, family members, practitioners, and service providers) to facilitate utilization of research findings in its respective area of research, and

(5) Develop a systematic plan for widespread dissemination of informational materials based on knowledge gained from the RRTC's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

In addition to the activities proposed by the applicant to carry out these purposes, each RRTC must—

- Conduct a state-of-the-science conference on its respective area of research in the third year of the grant cycle and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant cycle. This conference must include materials from experts internal and external to the RRTC;
- Coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer;
- Involve individuals with disabilities in planning and implementing its research, training, and dissemination activities, and in evaluating the RRTC;
- Demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds; and
- Articulate goals, objectives, and expected outcomes for the proposed research activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are designed to demonstrate outcomes that are consistent with the proposed goals. Applicants must include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness.

An RRTC must focus research on one of the following priorities:

Priority 1—Recovery and Recovery-Oriented Psychiatric Rehabilitation for Persons with Long Term Mental Illness: The purpose of the priority is to establish an RRTC on Recovery and Recovery-Oriented Psychiatric Rehabilitation for Persons with Long Term Mental Illness, in collaboration with the U.S. Department of Health and Human Services, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration. The RRTC must be outcomes-focused, with the aim of enabling adults with serious mental illness to live, work, learn, and participate fully in their communities. Emphasis must be placed on the development and translation into practice of scientific knowledge that is culturally competent and consumer and family centered. To achieve these goals, the RRTC will conduct research, training, technical assistance, and dissemination activities on individual and environmental factors relevant to recovery and recovery-oriented psychiatric rehabilitation. Relevant topic areas may include, but are not limited to—

- The concept and dimensions of recovery as it relates to people with long-term mental illness;
- Factors that inhibit recovery (*e.g.*, stigma and discrimination, fragmentation of the service delivery system, workforce shortages); or
- Factors that enhance recovery, including model interventions and supports (*e.g.*, culturally competent treatment, supported employment, supported education, and alternative and innovative practices such as exercise, peer supports, and personal assistance services).

The reference for this topic can be found in the Plan, chapter 6, Independent Living and Community Integration.

Priority 2—Developing and Implementing Integrated Systems of Care for Child and Adolescent Mental Health: The purpose of the priority is to establish an RRTC on development and implementation strategies for effective and integrated systems of care for children and adolescents with serious emotional disorders and their families and caregivers, in collaboration with the U.S. Department of Health and Human Services, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration. The RRTC must be outcomes-focused, with the aim of developing and implementing effective and integrated systems of care that provide children and families access to the services and supports they need in order to live, learn, work, and thrive in their communities. To achieve this, the RRTC must conduct research, training, technical assistance, and dissemination activities on relevant areas such as, but not limited to—

- Strategies for maximizing collaboration in planning, accountability, financing, and service delivery within and across service sectors (*e.g.*, mental health, juvenile justice, child welfare, education, substance abuse, primary health).
- Strategies for enhancing the child and adolescent mental health workforce so that it is more diverse and has the training, organizational support, and infrastructure necessary to implement family and community-based individualized service plans.
- Strategies for developing culturally competent policies, practices, and procedures, and incorporating them into the service delivery system.
- Performance measurement and quality improvement procedures designed to help systems of care make adjustments and improvements as needed to achieve their goals.
- Strategies for developing and implementing financial policies that are flexible and encourage home and community-based care provided in

accordance with individualized service plans.

• Strategies for maximizing translation of evidence-based research into systems of care that permit families' self-determination; maximize partnerships between schools, families, and communities; and provide access to effective family and community-based interventions.

The reference for this topic can be found in the Plan, chapter 6, Independent Living and Community Integration.

Priority 3—Strengthening Family and Youth Participation in Child and Adolescent Mental Health Services: The purpose of the priority is to establish an RRTC on promoting effective family-centered and community-based practices and supports for children and adolescents with serious emotional disorders and their families and other caregivers, in collaboration with the U.S. Department of Health and Human Services, Center for Mental Services, Substance Abuse and Mental Health Services Administration. The work of the RRTC must be outcomes-focused with the aim of increasing the extent to which families and youth have awareness of and access to supports and services that effectively promote their participation in family, school, work, and community life and roles. To achieve this, the RRTC will conduct research, training, technical assistance, and dissemination activities on relevant topic areas such as, but not limited to—

• Strategies for reducing stigma as a barrier to service delivery for children, families, and other caregivers.

• Strategies for integrating the concept of recovery (as discussed in the field of psychiatric rehabilitation) in service delivery for children and youth.

• Strategies for developing, delivering, and evaluating culturally competent youth and family-driven individualized service plans that are applicable across a variety of settings and service sectors.

• Strategies for maximizing the translation of evidence-based research into effective community-based practices.

• Strategies to support successful transitions across settings.

The reference for this topic can be found in the Plan, chapter 6, Independent Living and Community Integration.

Executive Order 12866

This notice of final priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priorities, we have determined that the benefits of the final priorities justify the costs.

Summary of Potential Costs and Benefits

The potential costs associated with these final priorities are minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the RRTC Program have been well established over the years in that similar projects have been completed successfully. These final priorities will generate new knowledge through research, dissemination, utilization, training, and technical assistance projects.

The benefit of these final priorities and project requirements will be the establishment of new RRTCs that generate, disseminate, and promote the use of new information to improve options and participation in the community for individuals with disabilities.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number: 84.133B, Rehabilitation Research and Training Center Program.)

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: June 7, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–13190 Filed 6–9–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Rehabilitation Research and Training Centers (RRTC) Program—Community Integration for Individuals With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–5.

DATES: *Applications Available:* June 10, 2004.

Deadline for Notice of Intent to Apply: July 9, 2004.

Deadline for Transmittal of Applications: August 3, 2004.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

Estimated Available Funds: $1,050,000. For funding information regarding individual priorities, see the chart in the Award Information section of this notice.

Estimated Average Size of Awards: See chart.

Maximum Award: We will reject any application that proposes a budget exceeding the amount shown in the chart for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Note: The maximum amount includes direct and indirect costs. The maximum allowable indirect cost rate is 15%.

Estimated Number of Awards: See chart.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RRTC program is to improve the

effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Act). For FY 2004, the competition for new awards focuses on projects designed to meet the priorities we describe in the Priorities section of this notice. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

Priorities: These priorities are from the notice of final priorities for this program, published elsewhere in this issue of the **Federal Register.**

Absolute Priorities: For FY 2004 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one of these priorities.

These priorities are:

Priority 1—Recovery and Recovery-Oriented Psychiatric Rehabilitation for Persons with Long Term Mental Illness; Priority 2—Developing and Implementing Integrated Systems of Care for Child and Adolescent Mental Health; or Priority 3—Strengthening Family and Youth Participation in Child and Adolescent Mental Health Services.

General requirements for all RRTCs funded under one of these priorities and specific requirements for each priority are in the notice of final priorities for this program, published elsewhere in this issue of the **Federal Register.** Applicants must select and focus research on one of these priorities. Applicants are allowed to submit more than one proposal as long as each proposal addresses only one priority.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97, (b) the regulations for this program in 34 CFR part 350, and (c) the notice of final priorities for this program, published elsewhere in this issue of the **Federal Register.**

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,050,000. For funding information regarding individual priorities, see chart.

Estimated Average Size of Awards: See chart.

Estimated Number of Awards: See chart.

Project Period: Up to 60 months.

APPLICATION NOTICE FOR FISCAL YEAR 2004—REHABILITATION RESEARCH AND TRAINING CENTERS PROGRAM

[CFDA No. 84.133B–5]

Funding priority	Estimated available funds	Estimated average size of awards	Maximum award amount (per year)	Estimated number of awards
Priority 1—Recovery and Recovery-Oriented Psychiatric Rehabilitation for Persons with Long Term Mental Illness	$750,000	$750,000	$750,000	1
Priority 2—Developing and Implementing Integrated Systems of Care for Child and Adolescent Mental Health	870,000	870,000	870,000	1
Priority 3—Strengthening Family and Youth Participation in Child and Adolescent Mental Health Services	800,000	800,000	800,000	1

Note: The Department is not bound by any estimates in this notice.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the ED Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: ED Pubs, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133B–5.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: Due to the open nature of the RRTC competition, and to assist with the selection of reviewers for this competition, NIDRR is requiring all potential applicants to submit a Letter of Intent (LOI). While the submission is mandatory, the content of the LOI will not be peer reviewed or otherwise used to rate an applicant's application. We will notify only those potential applicants who have failed to submit an LOI that meets the requirements listed below.

Each LOI should be limited to a maximum of four pages and include the following information: (1) The title of the proposed project, which absolute priority will be addressed, the name of the institution, the name of the Project Director or Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed project and a description of its activities at a sufficient level of detail to allow NIDRR to select potential peer reviewers; (3) a list of proposed project staff including the Project Director or PI and key personnel; (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.; and (5) contact information for the Project Director or PI. Submission of a

LOI is a prerequisite for eligibility to submit an application.

NIDRR will accept a LOI via surface mail, e-mail, or facsimile by July 9, 2004. The LOI must be sent to: Surface mail: Bonnie Gracer, U.S. Department of Education, 550 12th Street, SW., room 6065, Potomac Center Plaza, Washington, DC 20202; or fax (202) 205–8515; or e-mail: *bonnie.gracer@ed.gov*.

If a LOI is submitted via e-mail or facsimile, the applicant must also provide NIDRR with the original signed LOI within seven days after the date the e-mail or facsimile is submitted.

For further information regarding the LOI requirement contact Bonnie Gracer at (202) 245–7358.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (ED Standard Form 424); budget requirements (ED Form 524) and narrative justification: other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: June 10, 2004.

Deadline for Notice of Intent to Apply: July 9, 2004.

Deadline for Transmittal of Applications: August 3, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Rehabilitation Research and Training Centers Program—Community Integration for Individuals with Disabilities competition—CFDA Number 84.133B–5 is one of the programs included in the pilot project. If you are an applicant under the Rehabilitation Research and Training Centers Program—Community Integration for Individuals with Disabilities competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Rehabilitation Research and Training Centers Program—Community Integration for Individuals with Disabilities competition and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Rehabilitation Research and Training Centers Program—Community Integration for Individuals with Disabilities competition at: *http://e-grants.ed.gov.*

V. Application Review Information

Selection Criteria: The selection criteria for this competition are in 34 CFR 75.210 of EDGAR and 34 CFR 350.54. The specific selection criteria to be used for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert peer review, a portion of its grantees to determine:

- The degree to which the grantees are conducting high-quality research, as reflected in the appropriateness of study designs, the rigor with which accepted standards of scientific and engineering methods or both are applied, and the degree to which the research builds on and contributes to the level of knowledge in the field;
- The number of new or improved tools, instruments, protocols, and technologies developed and published by grantees that are deemed to improve the measurement of disability and rehabilitation-related concepts and to contribute to changes and improvements in policy, practice, and outcomes for individuals with disabilities and their families;
- The percentage of grantees deemed to be implementing a systematic outcomes-oriented dissemination plan, with measurable performance goals and targets, that clearly identifies the types of products and services to be produced and the target audiences to be reached, and describes how dissemination products and strategies will be used to meet the needs of end-users, including individuals with disabilities and those from diverse backgrounds, and promotes the awareness and use of information and findings or both from NIDRR-funded projects;
- The percentage of consumer-oriented dissemination products and services (based on a subset of products and services nominated by grantees to be their "best" outputs) that are deemed to be of high-quality and contributing to advances in knowledge and to changes and improvements or both in policy, practices, services, and supports by individuals with disabilities and other end-users, including practitioners, service providers, and policy makers; and
- The percentage of new studies funded each year that assess the effectiveness of interventions or demonstration programs using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department of Education Web site: *http://www.ed.gov/offices/OUS/PES/planning.html.*

Updates on the GPRA indicators, revisions and methods appear in the NIDRR Program Review Web site: *http://www.cessi.net/pr/grc/index.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 550 12th Street, SW., room 6046, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or via Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Information Relay Service (FIRS) 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 program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO

Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 7, 2004.

Troy R. Justesen,

Acting Deputy Assistant, Secretary for Special, Education and Rehabilitative Services.

[FR Doc. 04–13191 Filed 6–9–04; 8:45 am]

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Federal Register

Thursday,
June 10, 2004

Part VII

Environmental Protection Agency

40 CFR Part 86
Control of Emissions of Air Pollution From New Motor Vehicles: In-Use Testing for Heavy-Duty Diesel Engines and Vehicles; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[OAR–2004–0072; AMS–FRL–7672–8]

Control of Emissions of Air Pollution From New Motor Vehicles: In-Use Testing for Heavy-Duty Diesel Engines and Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: We are proposing to establish a manufacturer-run, in-use emissions testing program for 2007 and later model year heavy-duty diesel vehicles. The ground-breaking in-use test program will require the engine manufacturers to measure exhaust emissions from their diesel engines using portable emissions measurement systems. Also for the first time, all manufacturers will be regularly providing EPA with a significant quantity of emissions data generated from engines used in regular service, which EPA will evaluate to ensure the engines comply with specified emissions requirements. The proposed rule is a result of an agreement between EPA and the Engine Manufacturers Association. This proposal advances EPA's clean diesel activities by helping to ensure that the benefits of more stringent emission standards are realized under real-world driving conditions.

DATES: *Comments:* Comments must be received on or before August 16, 2004. See Section IV for more information about written comments.

Hearings: We will hold a public hearing on July 15, 2004. The hearing will start at 10 a.m. local time. If you want to testify at the hearing, notify the contact person listed below at least ten days before the hearing. See Section IV for more information.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0072, 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://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.

3. Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OAR–2004–0072. Also send your comments to: Carol Connell, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, Michigan, 48130, Attention Docket ID No. OAR–2004–0072.

4. Hand Delivery: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC., Attention Docket ID No. OAR–2004–0072. Such deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2004–0072. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Hearings: We will hold a public hearing at the following location: U.S. Environmental Protection Agency, 1310 L Street, NW., Washington, DC, 20460, Telephone: (202) 343–9540, Fax: (202) 343–2804.

See Section IV, "Public Participation" below for more information on the comment procedure and public hearings.

FOR FURTHER INFORMATION CONTACT: U.S. EPA, Office of Transportation and Air Quality, Assessment and Standards Division hotline at (734) 214–4636 or *asdinfo@epa.gov.*, or alternatively Carol Connell (734) 214–4349 or *connell.carol@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities

This action would affect you if you produce or import new heavy-duty diesel engines which are intended for use in highway vehicles such as trucks and buses, or produce or import such highway vehicles, or convert heavy-duty vehicles or heavy-duty engines used in highway vehicles to use alternative fuels.

The following table gives some examples of entities that may have to follow the regulations. But because these are only examples, you should carefully examine the regulations in 40 CFR parts 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble:

Category	NAICS codes [a]	SIC codes [b]	Examples of potentially regulated entities
Industry	336112 336120	3711	Engine and Truck Manufacturers.
Industry	811112 811198	7533 7549	Commercial Importers of Vehicles and Vehicle Components.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

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

Docket. EPA has established an official public docket for this action under Docket ID No. OAR–2004–0072. 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 Air 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) 566–1742, and the telephone number for the Air Docket is (202) 566–1742).

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 identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as Confidential Business Information (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 Section IV.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in 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.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

Outline of This Preamble

I. Overview

This section provides a summary of the proposed manufacturer-run, in-use Not-to-Exceed (NTE) testing program for on-highway, heavy-duty diesel vehicles and engines. It also contains background on the genesis of this proposal, an

overview of the origin and application of EPA's NTE emission standards, a brief description of our current in-use NTE testing program, and our future plans for establishing a manufacturer-run, in-use NTE test program for nonroad diesel engines. More detailed information on the NTE standards for heavy-duty diesel engines is contained in the Technical Support Document accompanying today's action, in addition to Section II. F. 1. of this preamble.

A. What Is EPA Proposing?

We are proposing to establish a manufacturer-run, in-use NTE testing program for vehicles with heavy-duty diesel engines, beginning in calendar year 2005. There will be a pilot program in calendar years 2005 and 2006. Beginning in calendar year 2007, the full in-use testing program will begin and will apply to 2007 and later model year engines. The proposed program addresses a long standing need to monitor the emissions performance of the engines installed in these on-highway vehicles when they are operated under a wide range of real world conditions. It is specifically intended to monitor compliance with the NTE exhaust emission standards and to help ensure that heavy-duty diesel engines will comply with all applicable emission standards (*e.g.*, including those based on the Federal Test Procedure (FTP)) throughout their useful lives. Background on our NTE standards is presented in Sections I.B. and C. of this Preamble.

The new testing program will require engine manufacturers for the first time to assess in-use exhaust emissions from heavy-duty diesel vehicles using onboard, portable emission measurement systems during typical operation on the road. Previously, engine emissions testing involved removing the engine from the vehicle and testing the engine in a laboratory on an engine dynamometer. Starting in the mid-1990s, EPA facilitated research into portable systems by developing and using prototype systems on a more limited basis in its compliance programs. Vehicles were instrumented with portable systems to measure their emissions performance during real-world operating conditions. It became clear that these systems offered advantages over conventional approaches to assess in-use exhaust emissions from engines for design improvement, research, modeling, and compliance purposes.

Under the proposed program, we will designate a certain number of heavy-duty diesel engine families for testing. Generally, no more than 25 percent of a manufacturer's engine families would be designated in any single year. We expect manufacturers will use their existing customer relationships and create new lines of communication with customers to recruit appropriate test vehicles from fleets or individual owners. Each selected vehicle will be equipped with a portable emission measurement system and driven by its normal operator, with a normal payload, over its regular driving route. All data and test results will be reported to EPA on a regular basis. The manufacturer of a designated heavy-duty engine family will pay for all of the expenses associated with the planning, vehicle procurement, testing, and data reporting.

We have designed a two phase test program. In the first phase of testing (Phase 1) the manufacturer will test a minimum of five and a maximum of 10 vehicles per engine family selected for testing. If five out of the first five vehicles, or five out of the first six vehicles pass a specified vehicle pass criteria, or vehicle testing criteria, no further testing or other data relating to that diesel engine family will be required from the manufacturer that year. However, we may choose that engine family for testing again in a later year. If the above conditions are not met, then a total of 10 vehicles will be tested in Phase 1. If eight out of the 10 vehicles pass the vehicle testing criteria, no further testing or other data relating to that diesel engine family will be required from the manufacturer for that year.

In all other cases, we will decide on a course of action depending on the number of vehicles from the designated engine family that fail to pass the vehicle testing criteria and other factors. In making our decision, we will thoroughly review the test results, consult with the engine manufacturer, allow the manufacturer to provide additional data, and consider other pertinent information. The action may include, but is not limited to, one of the following:

1. No further action because no significant nonconformance issues are indicated;
2. Initiate the second phase of testing (Phase 2); or
3. Seek some form of remedial action.

If five or fewer of the Phase 1 test vehicles satisfy the vehicle pass criteria, EPA may require the manufacturer to conduct Phase II testing. If only six or seven of the Phase I test vehicles pass the vehicle pass criteria, EPA may require the manufacturer to conduct Phase II testing under these regulations if the manufacturer agrees to perform such testing. However, if Phase 2 testing is conducted for any reason, even if the manufacturer elects to pursue the next phase of testing voluntarily, we may direct that up to 10 additional vehicles be tested. In this phase, we may also focus testing on one or more engine configurations within the engine family. Additionally, we may specify certain driving routes or other driving conditions (*e.g.*, geographic conditions or time of year). The purpose of these additional specifications is to better understand how widespread or under what conditions the Phase 1 test vehicles are failing to pass the vehicle pass criteria. In those instances, the specifications would be based on the Phase 1 test conditions that indicated a potential nonconformity.

As with Phase 1 testing, any remedial action we may choose to pursue based on Phase 2 testing will be made only after a thorough review of the test results, consultation with the engine manufacturer, and consideration of other pertinent information.

The proposed in-use testing program is primarily designed as an information-gathering program that will inform EPA's decision-making. The results of in-use testing for any particular engine family will not necessarily lead to, or necessarily insulate an engine family from, appropriate remedial actions, depending on the particular results of the testing and other information in EPA's possession. However, EPA believes that the results of the in-use testing and information gathered by the program will be a critical resource for EPA in determining how to direct our limited resources.

We expect that the wealth of in-use test data generated by the proposed program will have a number of valuable uses in addition to monitoring heavy-duty diesel engines for NTE compliance purposes under the program. For example, though EPA would not engage in routine NTE testing of engines or engine families that satisfy the Phase 1 test criteria unless new information indicates that a nonconformity exists, we may use the in-use data along with other information to make independent evaluations about the possible need to pursue further testing or actions. We may also use the information in the development of in-use emission factors for emissions and air quality modeling. Further, manufacturers have told us that they expect the proposed program will fortify the traditional laboratory-based engine development process. This will be done by enhancing a manufacturer's ability to evaluate the performance of the engine and emissions control system

under real world operating conditions and use, the results of which may be used to create cleaner and more durable future engine designs. Finally, the in-use test data will also be available to the public for review and analysis.

The proposed in-use NTE testing program will be fully enforceable beginning in 2007. To ensure a successful launch of this new program, we are also proposing a mandatory pilot program for calendar years 2005 and 2006 using only the first phase (Phase 1) of testing. During these two years both EPA and the heavy-duty diesel engine manufacturers will gain valuable experience with the in-use testing protocols, and the generation, interpretation, and reporting of in-use emissions data. If an engine family fails to meet the vehicle pass requirements of Phase 1 testing under the pilot program, we will not pursue any form of remedial action based solely on that data. However, we may utilize such information in conjunction with our own test data and other information to assess or pursue any enforcement or remedial action that otherwise may be authorized during that time.

B. Background on the Origins of This Proposal

On October 6, 2000, we published a final rule that promulgated new emission standards for on-highway heavy-duty engines. See 65 FR 59896. The final rule included new standards, applicable to 2007 and later model year heavy-duty diesel engines, called NTE standards. These standards are designed to apply under any conditions reasonably expected to occur during normal vehicle use. The test procedure for the NTE standards is different from most previous test procedures in that it is not based on a rigidly timed test cycle, but instead allows testing at a wide, though bounded, range of engine and ambient conditions that can occur in normal vehicle operations.

These NTE standards, as well as other provisions of the final rule, were particularly designed to ensure that engines and vehicles manufactured to meet the FTP standards over the engine certification test cycle in the laboratory continued to effectively control emissions under any conditions reasonably expected to occur during normal vehicle use. The final rule described our concerns regarding additional factors that may jeopardize the emission reductions expected in-use from the standards promulgated in that rule. See 65 FR at 59910 (October 6, 2000). Among these factors was the absence of an effective in-use compliance program for heavy duty engines and vehicles. We noted that we had received broad support from states, environmental organizations, and industry to move forward with developing a proposal to address this issue. The Engine Manufacturers Association (EMA) committed to work diligently and cooperatively with EPA and the California Air Resources Board (CARB) to resolve the open questions in a timely fashion. See 64 FR 58472, 58514 (October 29, 1999).

EMA and certain individual engine manufacturers challenged EPA's adoption of NTE standards in several rules.[1] EPA, CARB and the engine manufacturers, as well as state and environmental organizations, engaged in lengthy and ultimately productive discussions to settle these challenges and to go forward with a regulatory program that included robust measures to ensure that emission controls implemented to meet EPA and CARB standards remain effective under all normal vehicle operation. One result of these discussions was the identification of the basic program elements for a manufacturer run, in-use NTE testing program, and an agreement to go forward with a rulemaking to implement such a program for on-highway heavy-duty diesel engines.[2] Today's proposal initiates this rulemaking process.

C. Historical Context

1. Genesis and Description of NTE Standards

Traditionally, heavy-duty diesel vehicles and engines have been certified to exhaust emission standards in the laboratory. More specifically, the engine is tested separately from the vehicle using an engine dynamometer and a prescribed "driving cycle." Monitoring for compliance with the applicable emission standards during the life of these vehicles (*i.e.*, in-use) was also determined by removing the engine from the vehicle and then testing it using the same laboratory measurement procedures. Several years ago we became concerned that in-use emissions might inappropriately exceed the applicable standards when engines were operated under conditions not found during traditional laboratory testing (*i.e.*, off-cycle emissions). An investigation into off-cycle emissions performance confirmed that advances in engine technology had allowed some manufacturers to design engines with control strategies which resulted in substantially greater levels of emissions during typical real-world operating conditions than were emitted during the laboratory testing cycle required for certification.

To close the gap between laboratory and real world emissions performance, and to deter manufacturers from using such strategies in the future, we developed NTE emission standards for heavy-duty diesel engines. The NTE requirements establish an area or zone under the torque curve of an engine where emissions must not exceed a specified value for any of the regulated pollutants.[3] The provisions also define a specific range of operating conditions, *i.e.*, temperature, altitude, and humidity. The test itself does not involve a specific driving cycle of any specific length, *i.e.*, mileage or time, rather it involves all driving that could occur within the bounds of the NTE control area. The vehicle (or engine) is operated under conditions that may reasonably be expected to be encountered in normal vehicle operation and use, including operation under steady-state or transient conditions and under varying ambient conditions. Within the NTE control area, emissions must not exceed a specified multiple of the underlying FTP standards. For heavy-duty diesel engines, this multiple is generally 1.25 or 1.50 times the applicable FTP standards.

Initially, the NTE requirements were a key provision in consent decrees with several manufacturers of heavy-duty diesel engines that resulted from the investigation described above. This new requirement became effective in 1998 for most manufacturers involved in those consent decrees, and by November 2002 had been applied for such manufacturers to the NO_x standards set to go into effect in model year 2004. NTE requirements are currently being used as a screening tool for 2004 through 2006 model year engines not covered by the consent decrees. The NTE requirements will be mandatory for all 2007 and later heavy-duty diesel engines. We also promulgated NTE

[1] See *International Truck et al.* v. *EPA*, (DC Cir Nos. 00–1510 and 00–1512); *EMA et al* v. *EPA* (DC Cir. Nos. 01–1129 and 02–1080); *International Truck* v. *EPA*, No. 01–1137; *EMA* v. *EPA*, (DC Cir. No. 00–1066); and *EMA* v. *EPA*, (DC Cir. No. 03–1007)

[2] See Final Settlement Agreement, dated June 3, 2003, in the cases cited above.

[3] Torque is a measure of rotational force. The torque curve for an engine is determined by an engine "mapping" procedure specified in the Code of Federal Regulations. A graphical representation of the NTE control area is contained in the Technical Support Document accompanying this proposed rule.

standards for certain other mobile sources.[4]

The NTE test can be conducted in an emissions testing laboratory using an appropriate dynamometer or while the vehicle is being used on the road. It is this last feature that makes NTE testing a very powerful in-use compliance monitoring tool. In-use testing and compliance become much easier with the NTE standards since emissions may be sampled during normal vehicle use on the road using portable emission measurement systems. As already mentioned, traditional laboratory engine testing over a very specific driving schedule requires the engine be removed from the vehicle rendering in-use testing prohibitively cumbersome and expensive. Further, engine-based testing cannot account for the drive train and sensor interactions which occur during normal vehicle operation. As such, testing during normal vehicle use, using an objective numerical standard, makes enforcement easier and provides more certainty of what is occurring in-use versus a fixed laboratory procedure.

2. Current EPA In-Use NTE Testing

We have been conducting our own in-use NTE testing of heavy-duty diesel engines for the past three years. Over that period, an average of 40 on-highway vehicles were tested annually. Vehicles are procured through the voluntary participation of commercial and municipal fleets and emissions are tested during normal service operation. Portable emission measurement systems are installed on-site at the fleet's facility before the vehicle begins its service day. EPA uses a prototype portable sampling system which measures hydrocarbons (HC), carbon monoxide (CO), and oxides of nitrogen (NO_X). Our experience with this program has aided us in developing today's proposal for a manufacturer-run, in-use NTE test program.

3. Plans for Nonroad Diesel Engine In-Use NTE Testing

We recently promulgated NTE requirements that accompany our new transient-cycle emission standards for nonroad diesel engines. This new test cycle will be phased into the certification requirements between 2011 and 2013, depending on an engine's horsepower rating. The NTE provisions are similar to those described in this notice for on-highway heavy-duty diesel engines. Presently, we are developing an outline for a proposed manufacturer-run, in-use NTE test program for nonroad diesel engines covered by the new requirements. We expect this program will have similar characteristics to today's proposal, but will address some unique issues pertaining to the nonroad market. Among these are such things as the widely varying power ranges of nonroad engines, including those much smaller and much bigger than highway engines), and broad array of equipment applications that may use the same engine type or model. We anticipate publishing a proposed rulemaking for public comment near the beginning of 2005.

D. California's Intent To Adopt an In-Use NTE Test Program

California's involvement in the development of this program was critical in assuring that engine manufacturers are subject to a consistent national in-use NTE test program. CARB intends to adopt an identical program for 2007 soon after EPA completes its final rule for this program. EPA and CARB expect to coordinate in the annual selection of engine families to be in-use tested and to work together in determining whether Phase 2 testing is warranted for families where the number of passing engines in Phase 1 does not automatically lead to no further testing. CARB has its own authority and decision process in determining remedial action for failing families, but CARB expects to work with EPA and the manufacturers in this process in 2007 and subsequent model years.

II. Details of the Proposal

This section presents the details of our proposal for a two phase in-use NTE testing program for heavy-duty diesel vehicles. It focuses primarily on the fully enforceable program that will begin with the 2007 model year. A number of the special program features for a pilot program during 2005 and 2006 calendar years are also described. Key aspects of the pilot program are further summarized in II. M. of this section.

A. Applicability

The proposed requirements apply to diesel engines certified for use in heavy-duty vehicles with gross vehicle weight ratings (GVWR) greater than 8,500 pounds, except that the requirements do not apply to any heavy-duty diesel vehicle that was certified using a chassis dynamometer under our CAP 2000 certification program, including medium-duty passenger vehicles with GVWRs of between 8,500 and 10,000 pounds. The manufacturer of heavy-duty diesel engines subject to the proposed program is responsible for all of the costs associated with project planning, vehicle procurement, testing, and reporting.

We are proposing a fully enforceable, two-phase test program for heavy-duty diesel engines beginning with the 2007 model year. We are also proposing a mandatory pilot program for calendar years 2005 and 2006. Under the pilot program, 2002 through 2006 model year vehicles may be tested. The pilot program will utilize only the first phase of the two-phase program developed for 2007 and later model years.

B. Engine Family Selection

1. Number of Engine Families

EPA currently estimates that 96 heavy-duty diesel engine families are being certified by 14 manufacturers that would potentially be eligible for in-use testing under this proposed program. Our goal in deciding how many engine families should be tested each year is to conduct enough testing to assure in-use compliance with the applicable emission standards, while at the same time keep the program from being overly burdensome for the engine manufacturers. We believe that our proposed approach satisfies this objective.

As a general premise, we think it is reasonable to test all of a manufacturer's heavy-duty diesel engine families over a four-year period. So, we propose to designate up to 25 percent of a manufacturer's total number of engine families for testing per calendar year. The number of engine families that are tested in a given year will be based on the actual number of engine families certified by that manufacturer in that year, rounded up or down as appropriate. However, for the purpose of calculating the number of engine families certified in a given year, we propose to only include engine families with a production volume greater than 1,500 engines. This designation strategy will provide in-use test data for most of the diesel engine population and, at the same time, not overburden manufacturers that have several small production engine families. If a manufacturer has three or fewer engine families that exceed the annual 1,500 engine production limit, including

[4] The use of NTE testing as a screening tool for 2004–2006 on-highway heavy-duty diesel engines is discussed in Advisory Circular 24–3. The final rule applying the NTE to 2007 and model year engines is published at 65 FR 59896 (October 6, 2000). Other final rules promulgated by EPA extended the NTE approach to new marine compression-ignition engines at or above 37 horsepower, 64 FR 73300 (December 29, 1999) and 67 FR 68242 (November 8, 2002); and to a new and more stringent phase of on-highway heavy duty engine standards 66 FR 5002 (January 18, 2001).

when a manufacturer has no families with production levels above that limit, we propose testing only one engine family per year.

We also propose to cap the maximum number of families designated for testing over any four-year period to the average number of families for that manufacturer over that four-year period, rounding up or down as appropriate.

Several examples showing how many engine families we can designate each year for testing under the proposed in-use, manufacturer-run program are provided below. The illustrations are arranged in an increasing order of complexity. Additional examples and other relevant information are presented in the Technical Support Document for today's proposal.

The first two examples illustrate how we would calculate the annual number of engine families for testing using the 25 percent per year limit for engine families above the 1,500 units per year level, and when a manufacturer only has engine families with annual production less than 1,500 units per year. First, Manufacturer A has 12 certified engine families in production in a given model year, and only 8 out of the 12 families have annual productions levels of over 1,500 engines. Then the maximum number of engine families we can designate for in-use testing from Manufacturer A in that calendar year is 2 (*i.e.*, 25 percent of 8 engine families). Second, Manufacturer B has 8 engine families, all with annual production less than 1500 engines. In this situation, we are limited to selecting only 1 engine family for testing in that calendar year.

The next two examples are somewhat more complex. The first of these examples shows how the four-year limitation (*i.e.*, cap) on the maximum number of designated engine families works with a constant number of engine families over time. First, Manufacturer C has 3 engines families in production in each of four consecutive years, or an average of 3 engine families per year over a four-year period. Additionally, all the families have annual production volumes over 1,500 units. In this situation, 1 engine family per year can be designated for testing in three of the four calendar years. However, no family can be selected in one of the four years because the number of families tested would otherwise exceed the average number of families produced over the four-year period. Second, Manufacturer D produces 7 engine families each year during a four-year period and all the families are over 1,500 units per year. In this situation, we can select up to 2 engine families per year under the 25 percent annual limit (*i.e.*, 25 percent of 7 families is 1.75, which rounds up to 2). So, 2 engine families can be designated for testing in three of the four calendar years, but only 1 family can be tested in a fourth year because the four-year cap on the maximum number of engines tested would otherwise be exceeded.

The last example is the most complex. It once again illustrates how the four-year cap on the maximum number of designated engine families applies, but in this case for a scenario were the number of engine families varies over time, and when the fully enforceable program is just beginning (*i.e.*, the 2007 calendar year). Manufacturer E produces 6 engine families in the 2004 through 2009 model years and 7 engine families in the 2010 through 2014 model years. We can order testing for 2 engine families each in 2007, 2008 and 2009 under the 25 percent annual limit (*i.e.*, 25 percent of 6 families is 1.5, which rounds up to 2 using standard rounding practices).[5] In 2010, however we cannot order testing of any families because the average number of certified families in the four years preceding testing (including the current model year) is 6.25, rounded down to 6. Since we have already tested 6 engine families in the previous three years, we cannot test another engine family in the fourth year because the total number of engine families in the four-year period would be greater than the average number of engine families produced in the past four years (*i.e.*, 6). In 2011, we can order the testing of 2 families under the 25 percent annual limit. Here, the average number of engine families in the four years preceding testing (including the current model year) is 6.5. This rounds down to 6, again using standard rounding practices. Since we have only tested 4 engine families in the previous three years, we can test another 2 engine families in the fourth year. For 2012 the average number of engine families in the four-year period is 6.75 (6 families in model year 2009 and 7 families in model years 2010 through 2012). Rounding up from 6.75, we can order testing for 7 engine families in the four-year period prior to 2012. Since we have only ordered testing for 4 families in the previous three years, we can order testing for 2 families under the 25 percent annual limit in 2012. Similarly, we can order the testing of 2 families in 2013. However, in 2014, we can order testing for only 1 engine family because the average number of families produced in the applicable four-year period is 7 and we have already ordered testing for 6 engine families in the previous three years.

After the number of engine families that are eligible for in-use testing is determined for a calendar year, we may select any engine family for testing that a manufacturer has in production that model year, or any other engine families produced by the manufacturer in previous model years covered by the testing program. We also reserve the right to designate any engine family previously tested under this program in a subsequent calendar year. This will allow us to evaluate the emission performance of heavy-duty diesel vehicles as they accumulate mileage over a number of years. It will also allow us to assess a manufacturer's remedy of any previous nonconformance problem, which was discovered under the proposed in-use testing program. When evaluating past model years for testing, we will also consider such factors as the likely number of vehicles remaining in service and their perspective mileage relative to their certified useful life.

In order to provide manufacturers with adequate lead time to properly plan and conduct testing under the proposed program, we propose that in-use testing of any engine family be completed and reported to EPA within 18 months. (See Section II. K. of this preamble for more information on reporting requirements.) The 18-month testing period begins from the date EPA officially notifies the manufacturer that an engine family has been designated for in-use testing. We intend to make our engine family selections by approximately June 30 of each calendar year. Waiting until the mid-point of the calendar year to select engine families for testing increases the likelihood that EPA will be able to choose from a manufacturer's entire product offering for that same model year. Typically, all of a manufacturer's engines for a given model year are covered by a certificate of conformity by the mid-point of that same calendar year. For example, all 2007 model year engines are expected to be certified, in most cases, by the June 30, 2007. This also allows EPA to calculate the number of engine families to be ordered for testing in a given calendar year without having to continually update that number and order further testing. In the event one or more engine families are certified by a

[5] See, "Guide for the Use of the International System of Units (SI), NIST Special Publication 811, 1995 Edition, National Institute of Standards and Technology, U.S. Department of Commerce." Under the rounding convention contained in this reference, when the first digit discarded is exactly 5, the last digit retained should be rounded upward if it is an odd number, but no adjustment made if it is an even number.

manufacturer after June 30, we will update our calculation of the number of engine families we can order tested in that calendar year and, if appropriate, order further testing. We still may select any engine family by the end of that calendar year for testing, including the newly certified family, with the understanding that the manufacturer has 18 months from the date of selection to complete testing.

We will use the most recent and accurate sales information to identify engine families with annual U.S.-directed production volumes of 1,500 engines or less when determining the potential number of engine families we may require a manufacturer to test in any year. When an engine family has reached the end of its production, the actual sales for an engine family that is already required to be submitted to EPA at the end of each model year as part of the certification program will be used for this purpose. If the engine family has not ended production and final sales are not available, then we may use the sales projection that is provided as part of a manufacturer's certification application.

2. Treatment of Nonconforming Engine Families

A manufacturer may be required to test a number of engine families that exceeds the numerical limits described in Section II. B.1. above, if there is clear evidence of an emissions nonconformity with respect to one or more of that manufacturer's families. More specifically, we propose that an engine family for which such a determination is made may be designated for testing in the manufacturer-run, in-use NTE testing program in any subsequent year without counting toward the otherwise applicable limit on the number of families we may select in any year.

For the purposes of the proposed in-use testing program only, if an engine family was subject to a recall action (voluntary or mandatory), that failure is clear evidence of a nonconformity for any carryover engine family produced in a prior or subsequent model year.[6] [7] The remedied engine family may have been normally selected for testing under the proposed in-use testing program, but did not pass the vehicle pass criteria and was subject to a recall action. Alternatively, the remedied family may have been recalled based the results of an EPA in-use testing program. This linkage of carryover engine families helps ensure that manufacturers will be sufficiently motivated to remedy in a timely manner any noncompliance which is strongly suspected to cut across multiple engine families. As with other aspects of this program, we will consult with the manufacturer when contemplating a determination of clear evidence. An engine family selected using the "no count" designation may have never been tested under the proposed manufacturer-run, in-use NTE testing program, or it may have been tested but no remedial action was initiated based on the test results.

3. Small or Unavailable Engine Families

We recognize the possibility that a manufacturer may find it difficult or impossible to locate a sufficient number of vehicles from a designated diesel engine family to complete testing even after a diligent and good faith recruiting effort. This might especially happen for families with limited sales, or if a significantly older model year is designated for testing. Of course, we will attempt to avoid such an outcome in our engine family selection process. However, if a manufacturer encounters this problem and cannot complete either the Phase 1 or Phase 2 testing in the time frame or manner required, we propose that the manufacturer may ask us to modify the testing requirements for such engine family or designate a different diesel engine family for testing.

C. Phase 1 Testing Scheme

1. Focus of Initial Testing

The first phase of testing, Phase 1, is intended to quickly screen a designated heavy-duty diesel engine family for conformity with the applicable NTE standards. If enough of the engines tested from the family pass the initial screening, no additional testing is required of that family under the in-use testing program in that year. If the early test results from Phase 1 indicate a potential nonconformity, then several more vehicles will be tested to generate additional information regarding the significance of any potential problem, or whether more testing in the next phase of the program, Phase 2, is needed to further evaluate the emissions performance of that engine family.

2. Engine Family Evaluation Criteria and Outcomes

For Phase 1 testing, we propose that a manufacturer test a minimum of five and a maximum of 10 different vehicles within a designated engine family. The exact number of vehicles depends on how many of the tests exceed a specified numerical emissions limit, or the vehicle pass criteria (see Section II. E. for a description of the vehicle pass criteria). We believe that requiring up to 10 vehicle tests will provide sufficient information for us to decide if further testing or other information is needed to better evaluate a potential nonconformity, or if some form of remedial action may be warranted. This level of testing is intended to provide a quick indication of an engine family's emissions compliance without being overly burdensome to engine manufacturers. Our proposed multi-step engine family evaluation criteria and the outcomes associated with how many vehicles pass the in-use testing requirements at various levels within the testing hierarchy are described below.

A manufacturer will initiate Phase 1 by testing 5 vehicles. If all five satisfy the vehicle pass criteria (*i.e.*, 5 out of 5 pass), testing stops and no other action is required of the manufacturer for that diesel engine family under the program for that year. If only one of the initial test vehicles fails the vehicle pass criteria, the manufacturer will test another vehicle. The manufacturer may stop testing if the sixth vehicle satisfies the vehicle pass criteria (*i.e.*, 5 out of 6 pass). In the event that neither of the above conditions are met (*i.e.*, 4 or fewer out of 6 pass), the manufacturer must test a total of 10 vehicles.

Various outcomes are possible based on the observed number of vehicle passes or failures from the Phase 1 testing, as well as other supplemental information. If all four of the additional test vehicles met the vehicle pass criteria and only two of the original six test vehicles exceeded the criteria (*i.e.*, 8 out of 10 pass), testing stops and no other action is required of the manufacturer for that diesel engine family under the program for that year. When six or seven of the 10 test vehicles satisfy the vehicle pass criteria (*i.e.*, 6 or 7 out of 10 pass), the manufacturer must join EPA in follow-up discussions to determine whether any further testing, investigations, data submissions, or other actions may be warranted. In such

[6] Manufacturers designate carryover engine families during the certification process. The carryover designation indicates that the engine family for which a certificate is being requested is nearly identical to an engine family which has been previously certified. In such instances, the emissions results from the previously certified engine family are directly applied or carried over to the engine family for which a certificate is being requested.

[7] Section 207(c) of the Clean Air Act (CAA) authorizes EPA to require manufacturers to recall vehicles or engines for the purpose of remedying noncompliance with EPA regulations that occur during the regulatory useful life of the vehicle or engine. EPA may only require a recall when the noncompliance involves a substantial number of a class or category of vehicles or engines which have been properly maintained and used. (See CAA Section 207(c)). The procedures EPA uses to administer emissions recalls are described in 40 CFR part 85, subpart S.

a case, three outcomes are possible. First, we may ultimately decide not to take further action if no significant nonconformity is indicated after a thorough evaluation of the causes or conditions that caused vehicles in the engine family to fail the vehicle pass criteria, and a review of any other supplemental information obtained separately by EPA or submitted by the manufacturer shows that no significant nonconformity exists. Testing would then stop and no other action is required of the manufacturer for that diesel engine family under the program for that year. Second, we may seek some form of remedial action from the manufacturer based on our evaluation of the Phase 1 test results and review of other supplemental information. Third, and finally, the engine manufacturer may undertake Phase 2 testing, if both EPA and the manufacturer agree this is the best course of action. Of course, a manufacturer may always voluntarily conduct Phase 2 testing.

In the event that fewer than six test vehicles comply with the vehicle pass criteria (i.e., 5 or fewer out of 10 pass), the manufacturer must consult with EPA just as when six or seven out of 10 pass as described above. Once again, EPA may decide not to take further action if no significant nonconformity is indicated. If a possible nonconformity is indicated, the consultation may lead us to mandate Phase 2 testing even if the manufacturer does not voluntarily elect to do so. In situations where a significant nonconformity is observed during Phase 1 testing, we may order a recall action for the diesel engine family in question if the manufacturer does not voluntarily initiate an acceptable remedial action.

D. Phase 2 Testing Scheme

1. Initiation and Focus of Additional Testing

The primary purpose of our proposed Phase 2 test program is to gain further information regarding the extent to which, and under what conditions, the vehicles from the designated engine family are failing to pass the vehicle pass criteria. If appropriate, we may direct a manufacturer's testing to focus on certain test conditions or a subclass of engines within the designated heavy-duty diesel engine family as outlined below. As described previously, EPA and the manufacturer may agree that it is appropriate to initiate Phase 2 testing if six or seven of the 10 test vehicles in Phase 1 satisfy the vehicle pass criteria. Phase 2 testing may also be mandated by us in the event that only five or fewer of the test vehicles in Phase 1 meet the vehicle pass criteria. (See Section II.C. for additional information regarding the conditions under which Phase 2 may be initiated.)

2. Number of Engines and Test Conditions

We propose to require a manufacturer to test up to 10 vehicles from the designated heavy-duty diesel engine family under Phase 2. We may, at our discretion, require the testing of fewer than 10 vehicles. A pass/fail determination for each vehicle will be made by comparing its measured emissions to the same vehicle pass criteria used in Phase 1. We believe that testing up to 10 additional vehicles under this phase of the program will provide valuable information regarding whether the engine family conforms with the applicable requirements.

We also propose that we may direct a manufacturer to test one or more specific engine and emission control or power configurations (i.e., subclasses) within the designated engine family. Additionally, we may specify certain driving routes or other driving conditions (e.g., temperatures, altitudes, geographic conditions, or time of year). As already discussed, the purpose of these additional specifications is to better understand the extent to which, and under what conditions, the vehicles in the engines family are failing to pass the vehicle pass criteria. Therefore, the specifications would be based on the Phase 1 test conditions that indicated a potential nonconformity.

We also request comment on whether EPA should similarly be allowed to direct a manufacturer to test specific engine configurations, test routes, and driving conditions for Phase 1 testing when we have particular information suggesting that these stipulations may help focus testing on areas where EPA has particular emission-related concerns. Such an initial focus may not only improve the overall effectiveness of the in-use program, and might reduce the number of tests a manufacturer may otherwise need to conduct if Phase 2 testing is conducted for any reason. Further, we request comment on the extent to which the manufacturer should be consulted in selecting the engine configurations or test conditions if EPA were to specify such test parameters in Phase 1.

E. Vehicle Pass Criteria

Generally, our proposed vehicle pass criteria involve measuring the emissions from the test engine each time it operates for 30 seconds or more in the NTE control area. The NTE control area is a defined range of engine operating conditions that are subject to the NTE emission standards (see Section I.C.1. of this preamble for more information on the NTE control area). Each excursion into the NTE control area for thirty or more seconds is called an NTE sampling event. The 30 second minimum is intended to moderate the influence of short-duration, high intensity emission spikes that do not have a significant bearing on overall, real-world emissions in the compliance determination. The average emission level of the NTE sampling event for each regulated pollutant is then compared to an NTE emission threshold. The NTE emission threshold is the sum of the applicable NTE standard, any in-use compliance margin already allowed by the regulations, and a proposed in-use measurement margin allowance. The vehicle pass criteria then require a comparison of the number of NTE sampling events that were below the NTE threshold to all of the sampling events from the test. The NTE threshold is further described in Section II. F. of this preamble. Also, for the first three years of the program, no sampling event may be higher than a specific maximum emission limit. The maximum emission limit for these engine families is described below.

More specifically, we propose that all valid NTE sampling events be used in the vehicle pass determination. A valid NTE event is any sample that meets the 30 second minimum period described above, excluding any engine operation that is exempt from the NTE standards under the existing regulations. NTE carve-out provisions either exclude certain operating points from the NTE engine control area or exempt engines from the NTE standards when operating in defined regions of the NTE engine control area. Currently, an engine may also be allowed to temporarily exceed the NTE standards under certain limited circumstances under the NTE deficiency provisions.[8] If 90 percent of the valid NTE samples on a time-weighted basis for any regulated pollutant are no greater than the applicable NTE threshold, then the test engine meets the vehicle pass criteria. However, model year 2007 through 2009 engines must meet certain additional requirements. For these years, 100 percent of the valid NTE samples for any regulated pollutant must also be less than two times (2X) the applicable NTE threshold, except when the engine is certified to a Family Emission Limit (FEL) for NO_X of 0.50 g/bhp-hr or less. In this case, 100 percent

[8] For more information on NTE control area limits and exclusions, see 65 FR 59912, 59914 (October 6, 2000), and 66 FR 5040 (January 18, 2001).

of the valid NTE NO_X samples must be less than two times the NTE threshold or less than 2.00 g/bhp-hr, whichever is numerically greater. While operation in the area of an approved deficiency or carve-out is excluded from being a valid NTE event for the purposes of this in-use testing program, manufacturers must still employ appropriate emissions control during operation in these regions as required by the prohibition against defeat devices. For any operation which occurs within the area of an approved NTE deficiency, EPA will compare the measured emissions results to the emissions estimates the manufacturer provided for that deficiency at the time of certification so we can determine whether the deficiency requirements have been met.

We believe that the 90 percent criterion provides a good indicator of compliance with the applicable emission standard, while at the same time allows for certain emissions behavior that may be very infrequent or unusual in nature and, therefore, atypical of overall in-use operation. We have fashioned the additional maximum NTE criteria for 2007–2009 model year engines because we believe it appropriately reflects the capability of current control technology when robustly designed and properly maintained. We do not envision any situation where the current technology could not be designed to avoid emissions above these maximum criteria, even in the atypical situations mentioned above. EPA will evaluate the need for, and level of, any such NTE maximum criteria for 2010 and later model year heavy-duty diesel vehicles based, in part, on data from the proposed in-use test program, the capability of technology used to comply with the 2010 model year requirements, and other relevant test information. If we decide that such criteria are appropriate based on this review, any new requirements will be established in a rulemaking action. If we take no action, the maximum NTE criteria will cease to exist after the 2009 model year.

The following multi-part methodology is proposed for determining if the engine complies with the 90 percent vehicle pass criterion for each regulated pollutant. First, find the average g/bhp-hr emission level for each valid NTE sample by dividing the total mass of measured emissions (e.g., grams) by the amount of work performed during the NTE event (e.g., brake horsepower-hour). (Note that this step is also used to determine compliance with the maximum NTE criteria for 2007–2009 model year engines as described above.) Second, determine for each valid NTE sampling event, whether the average emission level is less than or equal to the NTE threshold for each pollutant subject to an NTE standard. Third, calculate a time-weighted vehicle pass ratio, or the number of valid NTE sampling events that meet all applicable NTE thresholds compared to the total number of valid NTE sampling events, weighted by the time of each valid NTE event. To do this, begin by summing the time from each valid NTE sampling event whose average emission level is no greater than the NTE threshold for any pollutant, and then divide this value by the sum of the engine operating time from all valid NTE samples. The resulting value is the vehicle pass ratio. However, if any single valid NTE sampling event exceeds 600 seconds or 10 times the length of the shortest valid NTE event, the time contribution for that event must be limited to the smaller of 600 seconds or 10 times the shortest event for the above calculation. These conditions on the maximum allowable duration for any single NTE event are intended to prevent a small number of very long sampling events from inappropriately overwhelming the time-weighted results. The reader may refer to the Technical Support Document for today's proposal for a detailed example illustrating the above methodology.

We want to clarify that the vehicle pass criteria used for the manufacturer-run, in-use testing program do not correspond specifically to the criteria for showing compliance to the NTE standards. That is, the fact that a vehicle meets the vehicle pass criteria under this program does not mean that the vehicle passes the NTE standards, or that the engine family is in full compliance with the standards, and the use of these criteria to show a vehicle "pass" in this program does not indicate that the criteria would be appropriate for NTE testing in other contexts.

The vehicle pass criteria, along with the engine family evaluation criteria of the Phase 1 and Phase 2 test schemes (described later), are designed to help make the best use of manufacturers' and EPA's resources in determining what further action is appropriate regarding that engine family. Therefore, the vehicle pass criteria, the definition of a valid NTE sampling event, the criteria for moving from Phase I to Phase II, and all other aspects of the in-use testing program are solely for purposes of this manufacturer run, in-use test program and are not intended to revise, change, or interpret the NTE standards, the NTE test procedures, or to define compliance with the standards.

F. NTE Threshold Specification

The numerical value of the NTE threshold is defined as the applicable NTE standard, including any compliance margin already built into the standard for in-use testing, in addition to a new margin to account for the in-use measurement accuracy of the portable emission measurement systems. Therefore, these margins are added to the applicable standard or FEL to determine the numerical in-use compliance limit (*i.e.*, NTE threshold).

1. Not-to-Exceed Standards

NTE standards applicable to model year 2007 and later heavy-duty diesel engines apply to the exhaust emissions of non-methane hydrocarbons (NMHC), carbon monoxide (CO), particulate matter (PM) and oxides of nitrogen (NO_X) from these engines. The levels of the NTE standards for these pollutants are determined by applying a multiplier to the applicable FTP standard. The multiplier varies by pollutant and certification level, but it is generally either 1.25 times the FTP standard or 1.50 times the FTP standard. See 40 CFR 86.007–11(a)(4). For 2002–2006 model year engines tested under the pilot program, the applicable NTE limit used to develop the NTE threshold is 1.25 the FTP standard for that model year.

The FTP standards for 2002 and 2003 model year heavy-duty diesel engines are contained in 40 CFR 86.099–11, except that those engine families subject to NTE requirements under the Consent Decrees would use an NTE threshold based on the FTP levels found in the appropriate Consent Decree. The standards for 2004 to 2006 model year heavy-duty diesel engines are contained in 40 CFR 86.004–11. Those for 2007 and later model years are shown in 40 CFR 86.007–11.

2. Existing In-Use Compliance Margins

We previously established compliance margins for in-use NO_X and PM emissions testing of 2007 to 2010 model year heavy-duty diesel engines. For NO_X, the margin varies by mileage from 0.10 to 0.20 g/bhp-hr for engines certified to an FEL no higher than 1.3 g/bhp-hr. For PM, the margin is 0.01 g/bhp-hr. (See 40 CFR 86.007–11(h) for more details.)

3. New Measurement Margin for Portable Measurement Systems

We are proposing a new "accuracy" margin for portable emission measurement devices that was developed after consultation with CARB and EMA. This allowance is designed to account for any differences between the accuracy of the measurement

instruments currently available for use on a vehicle and the accuracy of those available for use in a laboratory. The allowance also takes into account the different way in which emissions are calculated in a laboratory versus in the field. This margin has been structured to encourage instrument manufacturers to develop more and more accurate portable measurement systems in the future. To this end, we intend to adjust or phase-out such a margin through future rulemaking based upon improvements to the measurement equipment. Any future action, however, will not take effect prior to 2010. The adjustment or phase-out would apply to any engine tested after such a rule became effective.

Specifically, we propose a fixed margin of five percent, or 0.05 times the applicable NTE emissions standard, including any existing in-use compliance margin. The magnitude of this allowance was determined by taking into account the accuracy and repeatability specifications for laboratory instruments and field testing instruments that are proposed in the companion NPRM discussed in Section II.L of this preamble, which will revise the testing procedures under Part 1065 of our regulations. Essentially, we calculated the fixed allowance by subtracting the laboratory instrumentation compliance margin from the field instrumentation compliance margin. The step by step error propagation for accuracy and repeatability throughout the laboratory and field testing calculations is detailed in Chapter 3 of the Technical Support Document of this notice.

We propose a fixed allowance as a means to encourage measurement instrument manufacturers to build more accurate and repeatable instruments. A fixed allowance creates the same situation that already exists for laboratory measurement instruments, which encourages more accurate and repeatable instruments. That is, with no allowance or a fixed allowance, a more accurate and repeatable instrument will allow engine manufacturers to allocate a smaller fraction of their compliance margin to instrument error.

Another option we considered was a variable measurement allowance. This allowance would become smaller as accuracy and repeatability improved. However, this approach provides no incentive to procure a more accurate or repeatable instrument, because the investment in an improved system would net an unchanged compliance margin.

A final option we studied was a measurement margin that simply decreased over time. To justify such an approach, we would have to estimate the rate of improvement in accuracy and repeatability for a wide variety of measurement technology. If we overestimated the rate of instrument improvement, then no instrument would be commercially available to meet our specifications. Therefore, we feel that attempting to predict the rate of instrument improvement at this time would be counterproductive if engine manufacturers became exempt from having to measure certain emissions because instruments that meet our specifications were unavailable.

Based on the above, we believe that a fixed measurement margin appears to be the best way to encourage the development of more accurate and repeatable portable measurement systems. Again, we will revisit this issue in the future to determine if this margin should be reduced or eliminated based on technical advances in these devices.

We want to emphasize that although we are proposing a new measurement accuracy margin for the in-use NTE testing program, we are not making any broader commitments or statements regarding the need for such an accuracy margin, or one of this particular magnitude, generally for any other onboard testing or NTE testing. The need for accuracy margins for onboard testing will be determined as is appropriate for each situation, and improvements in the accuracy of measurement devices may lead to smaller margins, or no margins, being used in other contexts. Conversely, if the circumstance of a particular situation indicates that a larger margin is appropriate, we may decide to allow for a larger margin in that context.

G. Considerations in Deciding on Remedial Action

In determining whether to pursue some sort of remedial action following Phase 1 and Phase 2 testing, we will consider supplemental information obtained separately by us, or submitted by the engine manufacturer. This information could include emissions data from additional tests performed with onboard portable emissions measurement devices, as well as from testing conducted using engine dynamometers or chassis dynamometers. The information may include an evaluation of, among other things: the margin by which any exceedence was above the NTE threshold; the number of engines that showed exceedences; the frequency and duration of any exceedences as compared with the aggregate amount of time that all of the test vehicles were operated within the NTE zone; the emissions of the test vehicles over the entire test route, including average(s); the projected emissions impact of the exceedences; and the relationship of the exceedences at issue to the engine family's ability to comply with the applicable standards or FELs. We will also consider any other data or factors relevant to determining whether to pursue some form of remedial action.

H. Quantity of Data Collected

During the 2005 and 2006 pilot program, we are proposing that the minimum time for data collection from a test vehicle is one full shift (work) day of operation, provided that each test vehicle operates in non-idle modes for at least 3 hours during a typical shift day. Prior to the commencement of in-use testing, the manufacturer will screen-out from Phase 1 testing any vehicle that the manufacturer reasonably determines is unlikely to operate in non-idle modes for at least 3 hours over a full shift.

In the event that a selected test vehicle does not operate in non-idle modes for at least 3 hours over the full shift day, we are proposing that the vehicle must be tested over a second full shift day of operation. Testing shall not be required beyond the second full shift day even if that second day of testing also fails to yield, in the aggregate, 3 hours of vehicle operation in non-idle modes. In the event that no valid NTE sampling events are recorded from a selected test vehicle, that vehicle will be deemed to have satisfied the vehicle pass/fail criteria for the purposes of this in-use testing program. At their option, manufacturers may conduct in-use testing for a longer duration.

While we are proposing this method of data collection for the fully enforceable in-use testing program beginning with model year 2007, an evaluation of in-use test data prior to 2007 could change the final value for the data collection period. During 2005 and 2006, we will perform a statistical analysis, in collaboration with EMA, of the available in-use testing data, particularly the data generated under the proposed pilot program described below, to determine the necessary parameters of the test regime. The end result could be either a longer or a shorter period of data collection, or other revisions to the in-use NTE testing program. We will, if appropriate, amend the regulations based on the outcome of this analysis.

I. Screening, Adjustment, and Mileage of Test Vehicles

To help ensure that testing is conducted on a diverse sample of "qualified" vehicles, we are proposing a number of general pre-selection criteria for prospective test vehicles within a designated engine family. First, test vehicles must be obtained from at least two sources. We envision the most common source of engine will be fleet operators, but could also include independent operators. As stated previously, we believe manufacturers will be able to leverage existing relationships with its customers or use this program as an opportunity to strengthen those relationships. Second, manufacturers must screen each selected vehicle for proper use and maintenance and reject those vehicles which have not been properly maintained and used. Third, prospective test vehicles must be screened to identify those that are reasonably likely to operate in non-idle modes for at least 3 hours over the course of a full shift day (see Section II. H. of this preamble for more on the non-idle and shift day requirements). Fourth, vehicle engines that have been tampered with, rebuilt, or subjected to major repairs that could affect emissions, will not be used in testing. Fifth, test engines must have their adjustable parameters set to the specifications contained in the vehicle/engine maintenance manual (*i.e.*, set to spec). Sixth, manufacturers must establish appropriate means to ensure that test vehicles are operated only on diesel fuels meeting the requisite specifications for the model year in which they were emissions certified. Seventh, and finally, no prospective test vehicles may be rejected because of high mileage, except for those whose engines that exceed their regulatory useful life.

For the emissions results of the program to be useful, manufacturers must screen all candidate vehicles for compliance with the above general criteria. A candidate vehicle is any prospective vehicle that is identified as potentially fulfilling the requirements for the in-use testing program. We are requiring manufacturers to submit a general plan that describes how they will identify, locate, and screen vehicle for in-use testing. The general plan is intended to cover all engine families selected for testing by EPA. The plan must indicate whether the procurement and screening method may result in an emphasis on testing engines from a particular type of driving route or from a particular geographic area. The plan should identify business relationships, such as with vehicle manufacturers or fleet operators, used to recruit vehicles. Finally, the plan must describe the methods that will be used to gather available information about whether vehicles and engines meet the seven general vehicle criteria described above, including any forms or procedures that will be used.

For example, the plan could describe a questionnaire the manufacturer might require an interested vehicle owner or operator to complete about the candidate vehicle. The questionnaire could inquire about the maintenance and usage history of the vehicle, including fuel usage and current milage. The plan must describe the specific quantitative thresholds being used to accept individual vehicles for into the in-use testing program. The questionnaire would contain those quantitative thresholds beyond which a candidate vehicle would be eliminated from consideration for testing.

The vehicle acceptance criteria for proper maintenance and use must be derived from the emissions-related maintenance intervals and usage restrictions contained in the owner's manual supplied by the engine manufacturer. We expect the criteria could include a grace period which would be added to the manufacturer's maintenance interval. This grace period would be designed to reflect that it may not be practical for even owners of properly maintained and used vehicles to have maintenance performed by the required interval in every instance. For example, a typical oil change interval of 25,000 miles could be extended to an allowable period of 30,000 miles for the purposes of acceptance into the manufacturer in-use testing program. The grace period will be based on commonly accepted practice in the trucking industry will be established by the manufacturers in consultation with EPA and ARB. EPA and ARB will work with industry to develop the procurement and screening plans as well as the quantitative vehicle acceptance criteria. We believe it is most effective to develop those criteria separate from this proposal due to the complex and numerous possible situations that must be considered.

We anticipate the criteria contained in the plan could cover situations not specifically addressed by the above seven cases. For example, a vehicle's onboard diagnostics (OBD) system may have illuminated the malfunction indicator light (MIL) and the cause is found to be an electrical circuit discontinuity problem. If the discontinuity was relatively easy to repair and would have no long-term, detrimental effect on the engine or emissions system performance, the vehicle would not be automatically excluded from the proposed in-use testing program. A disconnected fuel level sensor or a glow plug would likely fall into this category. Conversely, a vehicle that has been misfueled with high-sulfur diesel fuel (*e.g.*, as evidenced by the fuel tank containing high-sulfur, off-highway diesel fuel), may in some cases accelerate engine or engine component degradation with an accompanying long-term, negative effect on emissions performance. In these cases, the vehicle might be excluded from the in-use testing program.

As this indicates, the presence of an OBD trouble code or an illuminated MIL is not automatic grounds for rejecting a candidate vehicle during screening, or eliminating a vehicle when preparing the vehicle for testing or testing the vehicle. OBD codes can contain valuable information regarding the vehicle's condition. An OBD code may indicate that the vehicle has been badly maintained, but it may also indicate a problem with a component of the emissions control system, or the code may be caused by another problem, or may be unclear. While exclusion of a vehicle based on poor maintenance is valid, the existence of a problem with the emissions system is not a proper reason to exclude the vehicle, in particular because it may provide exactly the type of information that this in-use testing program is designed to find. In general, EPA will allow a manufacturer to reject a candidate vehicle based on an OBD trouble code or MIL illumination if the code or MIL, and other relevant information, indicate that the vehicle has not been properly maintained and used or has been tampered with, misfueled, etc., consistent with the discussion above. However, a manufacturer should not otherwise exclude a vehicle based on an OBD trouble code or illuminated MIL. EPA will not generally approve a manufacturer's request to reject a vehicle for reasons other than those discussed above. The existence of a trouble code or MIL does not by itself justify rejection of the vehicle.

Similarly, once a vehicle has been accepted into the program, the presence of an OBD trouble code or illuminated MIL would not be automatic grounds for eliminating a vehicle or aborting a test, once it has begun. If a code or MIL is discovered prior to testing, you can either test the vehicle with the code or you can ask for approval to remedy the cause of the code. We will generally allow manufacturers to remedy the cause of the code if it is related to

maintenance issues, but we will not allow manufacturers to remedy the code if the code is related to other concerns, or the cause of the code is unclear. If a code or illumination occurs after a test is started, the test must be completed without fixing the cause of the code. A manufacturer may remedy the cause of the code following the test and then retest the vehicle, but the original test will be the test used to determine compliance with the pass criteria. We will, however, consider the results of the retest in determining what further actions are appropriate.

In general, we do not anticipate significant maintenance and usage issues for the vehicles covered by this rulemaking. Trucks powered by heavy-duty diesel engines are typically revenue generating assets for businesses, and their proper maintenance and use are critical to minimizing operating costs. As such, many businesses establish sophisticated controls to ensure vehicles are operated and maintained per the engine manufacturer's specifications. Further, most electronically controlled heavy-duty diesel engines require minimal maintenance. Oil changes and valve lash adjustments are the most common maintenance items, although that could change with the advent of add-on emission controls such as exhaust gas recirculation (EGR) and aftertreatment systems.

EPA must approve the procurement and screening plan prior to any testing, as well as any deviations from the plan. Situations where the procurement and screening process results in an emphasis on a particular engine configuration, application or service class should be treated as a deviation from the plan. EPA has 14 working days from receipt of a request for a deviation to accept it. Otherwise, the deviation is considered acceptable.

Manufacturers must report information about the procurement and screening process used for any designated engine family, including copies of any questionnaires or other supporting documentation. Manufacturers may instead refer to the approved screening and procurement plan when the criteria being used is contained in that plan. Manufacturers must also notify EPA when a vehicle is rejected for some reason other than a failure to meet the approved criteria in the plan. Manufacturers must maintain all records which depict the responses of owners or operators interested in participating in the in-use test program and any other records, including forms, related to vehicle procurement and screening process.

We also expect manufacturers will also establish procedures and forms that will facilitate preparing any accepted vehicle for emissions testing. Any adjustments specified in those pre-test maintenance procedures would have to be derived from the maintenance schedule for normal vehicle operation contained in the owner's manual. A parameter may be adjusted only if it is outside of its adjustable range. In such a case, the adjustable parameter is to be set to the mid-point of its adjustable range, unless we grant a request to do otherwise. EPA must approve the adjustment of anything not considered to be an adjustable parameter.

EPA and ARB will work with manufacturers to develop general maintenance procedures and protocols. We believe it is most efficient for manufacturers to contact EPA prior to performing any maintenance designed to determine the cause of a failure to comply with the vehicle pass criteria. The manufacturer may choose to retest such a vehicle after it has performed any corrective actions, and EPA will consider the results of the retest when making a compliance determination about the engine family. However, we need to understand the nature of any adjustments performed prior to that test, and we request the opportunity to participate in the diagnostic process. We will continue to afford the same courtesy when conducting our in-use testing programs. Manufacturers are required to keep records of all maintenance and adjustments and report them to us.

J. Test Conditions

For all Phase 1 testing, we are proposing that test vehicles must to be operated over normal driving routes, carrying routine loads during normal atmospheric/environmental conditions, with the vehicle's normal owner/operator doing the driving. Our intent is to record the emissions from the test vehicles as they are used and operated on a normal day-to-day basis.

For Phase 2 testing, we are proposing to retain the discretion to direct engine manufacturers to use a generic or specific test route and other conditions that replicate those observed in the Phase 1 testing that indicated a potential nonconformity. These other conditions may include but not be limited to specifying the State and/or contiguous States in which testing must be performed, or specifying the time period (of no less than 3 months in duration during which the testing must be performed. (This latter condition may also be used to ensure prompt testing of Phase 2 vehicles or to ensure testing during periods of particular atmospheric conditions.) In deciding to make these elections, we will take into account lead time and vehicle availability constraints.

K. Reporting Requirements

1. Emission Test Results and Notification of Vehicle Failures

Manufacturers will report test data and other relevant information to EPA on a regular basis. Specifically, we propose that manufacturers send us reports for all engines tested during a calendar year quarter within 30 days after the quarter ends. Alternatively, manufacturers may send us a report for individual engines within 30 days after testing is completed. In the case of individual engine failures, manufacturers must report the emissions and engine data along with any diagnostic results and conclusions to EPA within 15 days of conducting the emissions test. The accelerated reporting period for failing vehicles is designed to afford EPA the opportunity to participate in the diagnosis of vehicle failures and any resulting follow-up activities. As mentioned previously, we propose that all testing be finished and reported for a heavy-duty diesel engine family within 18 months after we designate that family for testing.

These reports will be comprehensive in scope. Manufacturers will be asked to detail all emissions data, engine operating parameters, test conditions, test equipment specifications, vehicle and engine information generated during the manufacturer test program (*e.g.*, information on vehicle maintenance and usage history with reasons for rejected vehicles, restorative maintenance performed prior to testing), vehicle pass results, etc. Engine operating parameters include all relevant, readily available information that is electronically sensed, measured, calculated, or otherwise stored by the engine's onboard computer. This would normally include, but is not limited to, engine speed, engine torque, engine coolant temperature, and manifold absolute pressure, and any parameter sensed or controlled in order to modulate the emissions control system. It is necessary to report any parameters used to modulate the emissions control system so that we can readily identify operation where an approved deficiency or carve-out applies, and the state of the engine during that operation. Toward that goal, we are requesting comment on whether manufacturers should be required to explicitly identify when the engine is operating in the area of an approved carve-out or deficiency and

report that information as a data output to the portable emissions measurement systems. Flagging the presence of a carve-out or deficiency in such a manner would likely require minor revisions to the engine's on-board computer software. We envision the software revisions would be limited to manipulating already broadcast or stored parameters.

Engine manufacturers will follow a standardized, electronic reporting format. We intend to jointly develop the exact content and form of the reports with ARB and the engine manufacturers. Participation by ARB will ensure that the reporting requirements are nationally consistent when it establishes an in-use NTE testing program of its own. The reporting requirements are detailed in the regulatory text accompanying today's proposed rule. Additional details, including the final reporting format, will be published separately by EPA as a guidance document.

2. Carve Outs, Deficiencies, or Other NTE Control Area Exclusions

Depending on the applicable standards, several provisions in the existing heavy-duty diesel engine regulations allow a manufacturer to temporarily exceed the NTE standards under certain limited circumstances, or otherwise exclude defined regions of the NTE engine control zone from NTE compliance. We propose that these exceptions also be allowed in determining if a vehicle passes the vehicle pass criteria. However, all such exclusions and associated test data must be described and reported to EPA when reporting emission test results under the proposed program. (*See* 65 FR 59912 and 59914 (October 6, 2000), and 66 FR 5040 (January 18, 2001)).

L. Measurement of Emissions

We are proposing to adopt the test procedures in part 1065, subpart J, "Field Testing" for conducting any emissions testing required in this program, as well as any other onboard testing required for heavy-duty engines under part 86, subpart N. Note that we are proposing changes to the current version of part 1065, which are being published in a separate companion Notice of Proposed Rulemaking (NPRM) to this document.

Part 1065 was originally promulgated on November 8, 2002 (67 FR 68242), and was initially applicable to standards regulating large nonroad SI engines and recreational vehicles under parts 1048 and 1051. The recently promulgated nonroad diesel engine rule has also made part 1065 applicable to those engines. The test procedures currently in part 1065 are sufficient to conduct testing, but the new test procedure NPRM proposes to reorganize and add content to improve these procedures. The new content includes proposed procedures for measuring very low concentrations of emissions, using new measurement technology, and performing field testing. Regarding field testing, the companion rule proposes that in general, field testing equipment and measurement instruments meet the same specifications and performance checks that laboratory instruments meet. However, for field testing instruments, the test procedure rule proposes to allow certain deviations from the laboratory specifications. It proposes a procedure for preparing and conducting a field test, and additional drift and noise allowances for emissions analyzers. Comments regarding the test procedures proposed in the separate companion NPRM to this notice should be directed as comments toward that notice and not to this notice.

1. Pollutants

We are proposing to require the in-use measurement of all regulated pollutants for heavy-duty diesel engines: total hydrocarbons (THC), carbon monoxide (CO), oxides of nitrogen (NO_X), and particulate matter (PM). We are also proposing to require the measurement of carbon dioxide (CO_2) and oxygen (O_2) as a component of test measurement specifications and as a means of assuring quality control. Recognizing that experience may show that the effectiveness, durability and overall performance of new engine technologies and exhaust aftertreatment systems may demonstrate that in-use testing for certain pollutants is unnecessary, we will consider requests from the engine manufacturers to discontinue reporting and/or measurement of one or more pollutants from some or all engines based on future test experience. We are requesting comment on whether we should also require in-use measurement of non-methane hydrocarbons NMHC (or non-methane hydrocarbon equivalence (NMHCE) for methanol-fueled vehicles). The 2007 hydrocarbon standards for heavy-duty engines are written in terms of NMHC (or NMHCE) not THC. In addition, recent testing indicates that the traditional relationship of NMHC to THC in diesel exhaust (typically, NMHC is 98% of THC) is no longer applicable when aftertreatment like PM filters are used. Therefore, there is less of an exact correlation between THC and NMHC emissions and the traditional way of correlating such emissions in our regulations could lead to overestimation of NMHC emissions. Also, as discussed below, NMHC can be measured on-vehicle without significant further effort. As a result, we believe there may be strong reasons to require NMHC measurement, with little extra burden, and we request comment on whether the final regulations should require such measurement.

2. Portable Emission Measurement Systems

Portable emission measurement systems will be used to measure the emissions and activity of vehicles tested in this program. These systems have been under development for a little over ten years. The technologies used in these systems have been shown in studies conducted by EPA, CARB, and product manufacturers to be effective in general at accurately measuring emissions from in-use motor vehicles under the various conditions that could be expected in this test program. Portable units are already commercially available for use in the 2005 to 2006 pilot program from a number of manufacturers that measure gaseous emissions at the required levels. Particulate measurement technology, which is available from equipment manufacturers today, has been tested in the laboratory environment with good results. Although this demonstrates that the overall technology is available, more work is needed to demonstrate its accuracy and efficacy in the laboratory and in the field for the purposes of this program. In addition, work is continuing to miniaturize the on-board sampling devices and develop suitable exhaust dilution sampling techniques and hardware.

We are confident that portable systems with the capability to measure PM emissions at the exhaust concentrations associated with the 2007 and later model year standards will be readily available for the fully enforceable in-use program starting in 2007. Further, we think it is possible that these systems will be available in time to start the 2005 pilot program. For this reason, we are proposing that particulate emissions be measured in the pilot program along with gaseous emissions. Nonetheless, we recognize that development work on PM measurement technology remains to be done.

EPA intends to be fully involved in the continued development of portable PM measurement systems and will continue to carefully monitor the work being done by others in the time between this proposal and the subsequent final rulemaking. In order to

help us with this assessment and defining the final requirements, we request comments in this area. If EPA determines that these systems are not available for the start of the 2005 pilot program, we may consider delaying the PM requirement until 2006 or 2007, or temporarily relaxing the equipment measurement tolerances.

The Technical Support Document (Chapter 2) that accompanies today's proposal contains more information on the status and development of portable emission measurement systems, including efforts to miniaturize and improve the accuracy of these units.

Also, as the Technical Support Document indicates, our measurement instrumentation requirements specify that onboard measurement systems must be accurate such that they are no more than 5 percent less accurate than laboratory measurements. As noted above, we have added a 5 percent measurement margin to the NTE Threshold under this program to account for these accuracy considerations.

M. 2005 and 2006 Pilot Program

To ensure a successful launch of the fully enforceable program in 2007, we are proposing a more limited mandatory pilot program for calendar years 2005 and 2006. Under the pilot, we will designate engine families for testing as described in Section II. B. of this preamble. In all likelihood, we will select 2002 through 2006 model year engines for testing under the pilot program. After receiving our selections, manufacturers will then conduct in-use testing based on the Phase 1 testing criteria according to the scheme set forth in Section II. C. of this preamble. During these two years both EPA and the heavy-duty diesel engine manufacturers will gain valuable experience with the in-use testing protocols, and the generation, interpretation, and reporting of in-use NTE emissions data.

The evaluation of these data for compliance purposes is limited to screening for exceedences of the FTP certification standards as well as the potential use of defeat devices as outlined in prior Agency guidance. The pilot program data could also be used to screen consent decree engines certified to pull ahead NTE requirements for compliance with the applicable NTE limits. If the pilot program test results clearly show that the designated heavy-duty diesel engine family passes the Phase 1 testing criteria (*i.e.*, 5 out of 5, 5 out of 6, or 8 out of 10 vehicles pass), no further testing will be is required of that engine family in that year. If the designated engine family does not clearly pass the test criteria (*i.e.*, 7 or fewer out of 10 vehicles pass) we will not pursue any form of remedial action based solely on that data. However, we may utilize these latter test results in conjunction with our own test data and other information to assess or pursue any appropriate enforcement or regulatory action.

N. Implications for Other EPA Programs

1. EPA Testing and Supplemental Information

EPA reserves its preexisting authority to conduct repeat testing or initiate our own in-use testing of a manufacturer's heavy-duty diesel engine family. The purpose of this testing would be primarily to verify and supplement, not duplicate, the testing program to be conducted by manufacturers. Therefore, we do not intend to conduct routine in-use NTE testing of engines or engine families that satisfy the Phase 1 testing criteria, unless new information indicates that a potential nonconformity exists. We will also inform and invite the affected manufacturer to observe any in-use testing that we may conduct which is related to this program.

2. Selective Enforcement Audit (SEA) Testing

We will limit the existing SEA program after full implementation of the manufacturer-run, in-use program solely to instances where credible evidence indicates the existence of a nonconformity. Such evidence may include: past noncompliance occurring in new engines or very early in the life of in-use engines, a manufacturer's quality assurance/quality control (QA/QC) reporting that identifies or otherwise indicates a problem, a significant number of consumer complaints or defect reports, or test data of any type.

In general, we anticipate that a robust, mature manufacturer-run in-use program would significantly reduce the role SEA plays in EPA's compliance program. Assembly line emissions audits ensure that the prototype emission control designs approved during the certification process successfully transfer into mass produced engines. More specifically, SEAs evaluate whether manufacturers' design enough compliance margin into the certified emissions levels to account for the emissions variability inherent to the design and manufacture of a particular engine and emissions control system.

It is expected that the in-use program will require manufacturers to target emissions performance with enough compliance margin below the standards to account for expected in-use deterioration, and that this margin will exceed normal emissions variability experienced in new engines. The use of aftertreatment as the primary means for emissions control is expected further to reduce EPA's reliance on SEAs as a compliance tool. These systems typically function at high efficiency levels and without catastrophic failure on newer engines. If problems were to occur, it is often only apparent after the aftertreatment-equipped engine has been in service for some period of time. During SEA testing, the aftertreatment system will have experienced little mileage accumulation and, therefore, is expected perform at essentially undeteriorated levels. For these reasons, EPA believes SEA testing will be less critical for a vigorous enforcement program.

As mentioned previously, there are circumstances where SEAs would still be warranted. Those situations typically involve known or expected problems which occur relatively early in the engine's useful life, but have not been remedied by the manufacturer. In those cases, it is less expensive and more effective to remedy the problem well in advance of in-use testing. EPA is also interested in occasionally conducting SEAs for small engine families that may not be the focus of testing under the manufacturer-run, in-use testing program.

3. Deterioration Factor Testing

Under our current emissions certification program requirements, manufacturers of heavy-duty diesel engines are allowed considerable flexibility in generating deterioration factors (DFs). The regulations only generally specify how to stabilize the engine system prior to conducting the durability testing. All other aspects of generating DFs, such as the durability test cycle and the duration of the testing, are left to the good engineering judgment of the engine manufacturer. Given this latitude, manufacturers have settled on a fairly standard set of methodologies for generating DFs.

Deterioration factors are generated in the laboratory using an engine dynamometer. After the engine is stabilized, it is exercised over a durability driving cycle for a period of time or mileage established by the engine manufacturer as mentioned previously. Emissions are measured over this cycle at intervals specified by the engine manufacturer. The measured emissions are plotted as a function of time or mileage and a statistical curve

fitting method is used to calculate emissions deterioration over time. Since the emission tests are not typically performed to the end of engine's useful life, the curve-fit is extrapolated to estimate useful life emissions. Either the measured initial, early-life emissions are subtracted from the extrapolated useful life emissions (additive DF), or the useful life emissions are divided by the early-life emissions (multiplicative DF), depending on the emissions control technology, to calculate the DF and arrive at the official deteriorated certification test results.

The 2004 and 2007 low emission standards required for heavy-duty diesel engines has placed the efficacy of how these traditional DF methodologies are developed and applied under increased scrutiny by both EPA and the engine manufacturers. The reasons are twofold. First, aftertreatment and add-on emissions control technologies such as cooled-EGR are more prone to deterioration compared to past engine designs. Second, compliance with the emissions standards becomes more sensitive to the uncertainty in the emissions trends resulting from these common DFs methods as the stringency of the standards increases. In the past, manufacturers could target emissions far enough below the relatively relaxed emissions standards in order to account for the inherent DF variability. The increased stringency of the 2004 and 2007 standards have reduced those traditional compliance margins, leaving less headroom to account for DF uncertainty. Exacerbating the issue is the traditional use of multiplicative DFs which mathematically result in a larger deteriorated emissions value compared to an additive approach.

The most likely solution for addressing the loss in confidence with current DF methods in the near term is for EPA and the engine manufacturers to work cooperatively to establish more robust accelerated DF methodologies in the laboratory. This would provide more certain deteriorated certification emission results. Discussions on such a solution have already started on an informal basis with individual manufacturers and will become more structured with industry in the near future.

As a longer term approach, it may be possible to reduce or eliminate the current laboratory-based DF methods by using the test results generated as part of the proposed manufacturer-run in-use testing program or test data from other in-use testing that utilizes portable emission measurement systems to more accurately predict in-use deterioration. For example, a manufacturer may be able to demonstrate that DFs generated from the in-use data are superior predictors of useful life deterioration, or at least correlate well with the more traditional laboratory approach to developing these factors. To this end, we intend to assess the generation and submission of DFs based on the proposed 2005 and 2006 pilot program. We will examine potential ways to diminish or eliminate burdens on manufacturers of generating and submitted DFs, while still generating DFs that accurately predict in-use deterioration. Any appropriate revisions for generating DFs would be promulgated in a subsequent rulemaking action, particularly in the rulemaking reexamining the accuracy margin discussed in II. F. above.

O. Limitations of Warranty Claims

An exceedence of the NTE found through the in-use testing program is not by itself sufficient to show a breach of the warranty under section 207(a)(1)(A) or (B). A breach of this warranty would also require either: (1) That, at the time of sale, the engine or vehicle was designed, built and equipped in a manner that does not conform in all material respects reasonably related to emission controls to the engine as described in the application for certification and covered by the certificate, or (2) a defect in materials and workmanship of a component or part that causes the vehicle or engine to fail to conform to the applicable regulations for its useful life. To the extent that in-use NTE testing does not reveal such a material deficiency at the time of sale in the design or manufacture of an engine compared to the certified engine, or a defect in the materials and workmanship of a component or part, test results showing an exceedence of the NTE by itself would not show a breach of the warranty under section 207(a)(1).

III. Economic Impacts

The costs associated with our proposal to implement a manufacturer-run, in-use NTE testing program for heavy-duty diesel engines depends primarily on how many vehicles are eventually tested under the Phase 1 and 2 testing schemes. This is difficult to estimate because the actual number for each designated engine family depends on how may vehicles pass, or fail, the vehicle pass criteria at various points in the tiered testing design. It is also highly dependent on the how manufacturers chose to conduct the test program and the availability of test vehicles. Obviously, it is difficult to project these variables for an all new program. However, based on our experience with in-use emissions testing, including the development and use of portable measurement systems for compliance testing, we identified a set of reasonable testing scenarios that allow us to estimate the potential costs associated with the proposed program.

Our analysis shows a total cost of approximately $870 thousand to $1.0 million per year for the case where no manufacturer must test more than the minimum number of vehicles under Phase 1 (*i.e.*, 5 vehicles per engine family). If all manufacturers were to test the maximum number of vehicles required under Phase 1 (*i.e.*, 10 vehicles per engine family), the total cost could range from $1.1 to $1.4 million per year. In the most unlikely worst case scenario where all manufacturers must test the maximum vehicles in Phase 1 and 2 (*i.e.*, 20 vehicles per engine family), the total cost could range from $1.5 to $2.0 million per year. Our best estimate of the overall cost of the proposed program is $1.0 million per year for the entire industry. The Technical Support Document for this proposal contains a detailed description of our economic analysis.

Overall, while not insignificant, these costs are quite low compared to other in-use compliance programs, and especially in comparison to a more traditional in-use testing program where the engine must be extracted from the vehicle and tested on an engine dynamometer in the laboratory.

IV. Public Participation

We request comment on all aspects of this proposal. This section describes how you can participate in this process.

A. How and to Whom Do I Submit Comments?

We are opening a formal comment period by publishing this document. We will accept comments for the period indicated under **DATES** above. If you have an interest in the program described in this document, we encourage you to comment on any aspect of this rulemaking. We request comment on various topics throughout this proposal.

Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. If you disagree with parts of the proposed program, we encourage you to suggest and analyze alternate approaches to accomplish these same goals described in this proposal. You should send all comments, except those containing proprietary information, to our Air Docket (see **ADDRESSES**) before

the end of the comment period. You should also send a copy to the Contact Person listed above (see **FOR FURTHER INFORMATION CONTACT**).

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification 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 Section IV.B. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

B. 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. Send or deliver information identified as CBI only to the following address: U.S. Environmental Protection Agency, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI, 48105, Attention Docket ID No. OAR–2004–0072. 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 identified in the **FOR FURTHER INFORMATION CONTACT** section.

C. Will There Be a Public Hearing?

We will hold one public hearing in Washington, DC. The hearing will be held on the following date and start at the following time, and continue until everyone present has had an opportunity to speak.

Hearing location	Date	Time
U.S. Environmental Protection Agency, 1310 L Street, NW., Washington, DC, Telephone: (202) 343–9540, Fax: (202) 343–2804.	July 15, 2004	10 a.m. EDT.

If you would like to present testimony at a public hearing, we ask that you notify the contact person listed above at least ten days before the hearing. You should estimate the time you will need for your presentation and identify any needed audio/visual equipment. We suggest that you bring copies of your statement or other material for the EPA panel and the audience. It would also be helpful if you send us a copy of your statement or other materials before the hearing.

We will make a tentative schedule for the order of testimony based on the notifications we receive. This schedule will be available on the morning of each hearing. In addition, we will reserve a block of time for anyone else in the audience who wants to give testimony.

We will conduct the hearing informally, and technical rules of evidence will not apply. We will arrange for a written transcript of the hearing and keep the official record of the hearing open for 30 days to allow you to submit supplementary information. You may make arrangements for copies of the transcript directly with the court reporter.

D. Comment Period

The comment period for this rule will end on August 16, 2004.

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 identification 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.

V. 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 review by the Office of Management and Budget (OMB) and the requirements of this Executive Order. The Executive Order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

- 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;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rule is not a significant regulatory action under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget

(OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Agency proposes to collect information to ensure compliance with the provisions in this rule. Information-collection requirements related to engine manufacturers are in EPA ICR #1897.07. Section 208(a) of the Clean Air Act requires that manufacturers provide information the Administrator may reasonably require to determine compliance with the regulations; submission of the information is therefore mandatory. We will consider confidential all information meeting the requirements of section 208(c) of the Clean Air Act.

As shown in Table V–1, the total annual burden associated with this proposal is about 720 hours and $48,401, based on a projection of 14 respondents. The estimated burden for engine manufacturers is a total estimate for both new and existing reporting requirements. 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; and transmit or otherwise disclose the information.

TABLE V–1.—ESTIMATED BURDEN FOR REPORTING AND RECORDKEEPING REQUIREMENTS

Industry sector	Number of respondents	Annual burden hours	Annual costs
Engines	14	720	$48,401

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number OAR–2004–0072. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after June 10, 2004, a comment to OMB is best assured of having its full effect if OMB receives it by July 12, 2004. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business that is primarily engaged in the manufacturing of diesel engines as defined by NAIC codes 333618 with less than 1000 employees (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. The test procedures that are established by this proposed rule pertain to heavy-duty diesel engine manufacturers. EPA has previously analyzed this category for impact on small entities when emission standards were finalized for this category of engines in October of 2000 (65 FR 59895, October 6, 2000). At that time, EPA noted that only two small entities were known to be affected. Those entities were small businesses that certify alternative fuel engines or vehicles, either newly manufactured or modified from previously certified gasoline engines. The test procedures proposed by this action do not pertain to the engines manufactured by these small businesses and recent analysis supports that there are no additional small businesses that would be impacted by this proposed action. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law. 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

This rule contains no federal mandates for state, local, or tribal

governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities.

EPA has determined that this rule contains no federal mandates that may result in expenditures of more than $100 million to the private sector in any single year. EPA believes that the proposal represents the least costly, most cost-effective approach to achieve the emission compliance goals of the rule. The costs associated with the proposal are discussed in the Draft Technical Support Document.

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."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (*i.e.*, the rules 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). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This proposed 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.

Although Section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives STAPPA/ALAPCO, which represents state and local air pollution officials.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

This proposed rule does not have tribal implications as specified in Executive Order 13175. This rule will be implemented at the Federal level and impose compliance costs only on engine manufacturers and ship builders. Tribal governments will be affected only to the extent they purchase and use equipment with regulated engines. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

The effects of ozone and PM on children's health were addressed in detail in EPA's rulemaking to establish the NAAQS for these pollutants, and EPA is not revisiting those issues here. EPA believes, however, that the emission reductions from the strategies proposed in this rulemaking will further reduce air toxic emissions and the related adverse impacts on children's health.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule is not related to any available and applicable voluntary consensus standards.

XI. Statutory Provisions and Legal Authority

Statutory authority for the proposed regulations is provided by the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*, in particular, sections 202–208 of the Act, 42 U.S.C. 7521–7542.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: June 3, 2004.

Michael O. Leavitt,

Administrator.

[FR Doc. 04–13179 Filed 6–9–04; 8:45 am]

BILLING CODE 6560–50–U

Federal Register

Thursday,
June 10, 2004

Part VIII

Department of Education

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Rehabilitation Research and Training Centers (RRTC) Program—Health and Function Outcomes for Individuals With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004; Notices

DEPARTMENT OF EDUCATION

RIN 1820 ZA37

National Institute on Disability and Rehabilitation Research; Grants and Cooperative Agreements; Availability, etc: Special Education and Rehabilitative Services—Rehabilitation Research and Training Centers Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities (NFP) for Health and Function Outcomes for Individuals with Disabilities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces final priorities under the Rehabilitation Research and Training Centers (RRTC) Program for the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use one or more of these priorities for competitions in fiscal year (FY) 2004 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve health and function outcomes for individuals with disabilities.

DATES: *Effective Date:* These final priorities are effective July 9, 2004.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 550 12th Street, SW., room 6046, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or via Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Rehabilitation Research and Training Centers

RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disability conditions, or promote maximum social and economic independence for persons with disabilities. Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

General Requirements of Rehabilitation Research and Training Centers

RRTCs must:

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers for national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the RRTC. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment of approved grant objectives.

We published a notice of proposed priorities (NPP) for this program in the **Federal Register** on March 25, 2004 (69 FR 15305). This Notice of Final Priorities (NFP) contains no significant differences from the NPP.

Analysis of Comments and Changes

In response to our invitation in the NPP, we received six comments. An analysis of the comments and any changes in the priorities since publication of the NPP is in the Appendix at the end of this notice.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register.** When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom/.*

These final priorities are in concert with NIDRR's 1999–2003 Long-Range Plan (Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under these final priorities, a specific reference is included for each priority presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/rschstat/research/pubs/index.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Priorities

The Assistant Secretary announces three priorities for the funding of RRTCs that will focus on improved outcomes measures, health status, and rehabilitation of persons with traumatic brain injury to facilitate the ability of individuals with disabilities to live in the community. Applicants must select and focus research on one of the following priorities: Priority 1—Measuring Rehabilitation Outcomes and Effectiveness; Priority 2—Health and

Wellness in Long-Term Disability; or Priority 3—Traumatic Brain Injury (TBI) Interventions. Under each of these priorities, the RRTC must:

(1) Contribute substantially to the scientific knowledge-base relevant to its respective subject area;

(2) Research, develop, and evaluate interventions or tools to assist with outcomes for its focus area;

(3) Develop, implement, and evaluate a comprehensive plan for training critical stakeholders (*e.g.*, consumers/family members, practitioners, service providers, researchers, and policymakers);

(4) Provide technical assistance, as appropriate, to critical stakeholders (*e.g.*, consumers/family members, practitioners, and service providers) to facilitate utilization of research findings in its respective area of research; and

(5) Develop a systematic plan for focused dissemination of informational materials based on knowledge gained from the RRTC's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

In addition to these activities, under each of the priorities, the RRTC must:

- Conduct a state-of-the-science conference on its respective area of research in the third year of the grant cycle and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant cycle. This conference must include materials from experts internal and external to the RRTC;
- Coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer;
- Involve individuals with disabilities in planning and implementing its research, training, and dissemination activities, and in evaluating the RRTC;
- Demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds; and
- Articulate goals, objectives, and expected outcomes for the proposed research activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are designed to demonstrate outcomes that are consistent with the proposed goals. Applicants must include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness.

Priorities

An applicant under this program must focus research on one of the following priorities:

Priority 1—Measuring Rehabilitation Outcomes and Effectiveness

This center must conduct research to advance the field of medical rehabilitation by increasing the utility, efficiency, and relevance of its outcomes measurement tools and processes. The research funded under this priority must be designed to contribute to the following outcomes:

- Improved measurement tools that can be used to track the outcomes of individuals across a wide variety of rehabilitation settings.
- Improved measurement tools that incorporate consumer perspectives to assess long-term community integration outcomes within a comprehensive model for evaluating rehabilitation effectiveness, such as the International Classification of Functioning, Disability, and Health (ICF).
- Increased efficiency of rehabilitation outcomes data collection, through the application of strategies such as item response theory and computer adaptive testing techniques.
- Identification of effective methods for translating outcomes data into information that can be utilized to inform decisions made by key rehabilitation stakeholders, including consumers, payers, provider organizations, and clinicians.

The reference for this topic can be found in the Plan, chapter 4, Health and Function: Research on Rehabilitation Outcomes, pp. 49–50.

Priority 2—Health and Wellness in Long-Term Disability

This center must conduct research that will help to overcome the health disparities of individuals with disabilities compared to individuals without disabilities. The research funded under this priority must be designed to contribute to the following outcomes:

- Identification of strategies to overcome barriers that impede access to routine healthcare for individuals with disabilities.
- Identification of interventions in areas such as exercise, nutrition, pain management, or complementary and alternative therapies, that promote health and wellness and minimize the occurrence of secondary conditions for persons with disabilities.
- Improved health status measurement tool(s) to assess health and well-being of individuals with disabilities regardless of functional ability.

The reference for this topic can be found in the Plan, chapter 4, Health and Function: Health Care at the Individual Level; Health Care at the Systems Level, pp. 42–43.

Priority 3—Traumatic Brain Injury (TBI) Interventions

This center must conduct research to improve long-term outcomes for persons with TBI. The research funded under this priority must be designed to contribute to one of the following outcomes:

- Identification of interventions that demonstrate efficacy, or effectiveness, or both, in promoting improved rehabilitation outcomes for adults with TBI; or
- Identification of interventions that demonstrate either efficacy, or effectiveness, or both, in promoting improved rehabilitation outcomes for children (under age 16) with TBI.

In addition, for either adults or children, the research funded under this priority must be designed to develop and evaluate improved techniques for assessing outcomes associated with TBI.

The reference for this topic can be found in the Plan, chapter 4, Health and Function: Research on Trauma Rehabilitation, p. 47.

Executive Order 12866

This notice of final priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priorities, we have determined that the benefits of the final priorities justify the costs.

Summary of potential costs and benefits: The potential costs associated with these final priorities are minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-

Application technology reduces mailing and copying costs significantly.

The benefits of the RRTC Program have been well established over the years in that similar projects have been completed successfully. These final priorities will generate new knowledge through research, dissemination, utilization, training, and technical assistance projects.

The benefit of these final priorities and project requirements will be the establishment of new RRTCs that generate, disseminate, and promote the use of new information to improve options and participation in the community for individuals with disabilities.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number: 84.133B, Rehabilitation Research and Training Center Program)

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: June 7, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

Apppendix—Analysis of Comments and Changes

We discuss substantive issues under the title of the priority to which they pertain. Generally, we do not address technical and other minor changes and suggested changes we are not authorized to make under the applicable statutory authority.

General

Comment: One commenter praised NIDRR for requiring that RRTCs articulate goals, objectives, and expected outcomes for the proposed research activities, but expressed concern about the lack of review criteria by which such activities can be reviewed objectively. The commenter suggested that the criteria be added or that these outcomes be treated as a competitive preference priority.

Discussion: The Department's regulations in CFR 350.54 contain objective criteria by which applicants' articulation of goals, objectives, and expected outcomes are reviewed through our peer review process.

Changes: None.

Measuring Rehabilitation Outcomes and Effectiveness

Comment: One commenter suggested that requiring applicants to address all four outcomes specified for this priority will result in pedestrian projects and suggested that applicants be allowed to chose a subset, perhaps no more than two of these outcomes, on which to concentrate.

Discussion: NIDRR thinks that the first three outcomes listed under the priority are interrelated and that it would diminish the usefulness of the proposed center to allow applicants to disaggregate the topics. The fourth outcome addresses the utilization of outcomes data. NIDRR is committed to ensuring utilization of research findings as documented in its Long Range Plan. Outcomes data can influence service delivery decisions, service quality, and payment. For this reason, NIDRR wants to conduct research that facilitates use of outcomes findings by key stakeholders.

Changes: None.

Health and Wellness in Long-Term Disability

Comment: One commenter asked whether NIDRR considers mental health disorders as long-term primary disabling conditions.

Discussion: NIDRR does consider mental health disorders as long-term primary disabling conditions.

Changes: None.

Comment: One commenter requested that NIDRR define long-term disabilities for the purpose of a competition under this program.

Discussion: Long-term disability has established definitions in a number of different contexts. Applicants are free to choose a definition, provided they give justification for the definition used. Applicants may specify uses of the term and applicable reference for the purposes of their proposal. The peer review process will evaluate merits of the proposals.

Changes: None.

Traumatic Brain Injury (TBI) Interventions

Comment: One commenter requested that the TBI interventions priority encourage the use of the ICF to assess functional outcomes in treatment of TBI.

Discussion: NIDRR agrees that the ICF is an important framework for use in assessing functional outcomes in treatment of TBI; however, NIDRR has no basis for requiring that all applicants use this framework. Nothing in the priority precludes an applicant from suggesting such an approach. The peer review process will evaluate the merits of the applicant's proposal.

Changes: None.

Comment: One commenter suggested that the TBI intervention priority should require applicants to identify or evaluate methodological issues that affect the ability to conduct research and to demonstrate the efficacy or effectiveness, or both, of this research.

Discussion: NIDRR agrees that better understanding of methodological issues that affect the ability to conduct research is important; however, NIDRR has no basis for requiring that all applicants address this issue. Nothing in the priority precludes an applicant from incorporating such study in the proposed research approach. The peer review process will evaluate the merits of the applicant's proposal.

Changes: None.

[FR Doc. 04–13238 Filed 6–9–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Rehabilitation Research and Training Centers (RRTC) Program—Health and Function Outcomes for Individuals With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–7.

DATES: *Applications Available:* June 10, 2004.

Deadline for Notice of Intent to Apply: July 9, 2004.

Deadline for Transmittal of Applications: August 3, 2004.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

Estimated Available Funds: $2,100,000.

Estimated Range of Awards: $675,000–$700,000.

Estimated Average Size of Awards: $700,000.

Maximum Award: We will reject any application that proposes a budget exceeding $700,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Note: The maximum amount includes direct and indirect costs. The maximum allowable indirect cost rate is 15%.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Act).

For FY 2004, the competition for new awards focuses on projects designed to meet the priorities we describe in the Priorities section of this notice. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

Priorities: These priorities are from the notice of final priorities for this program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2004 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one or more of these priorities.

These priorities are:

Priority 1—Measuring Rehabilitation Outcomes and Effectiveness; Priority 2—Health and Wellness in Long-Term Disability; and Priority 3—Traumatic Brain Injury (TBI) Interventions.

General requirements for all RRTCs funded under one of these priorities and specific requirements for each priority are in the notice of final priorities for this program, published elsewhere in this issue of the **Federal Register**. Applicants must select and focus research on one of these priorities. Applicants are allowed to submit more than one application as long as each application addresses only one priority.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97, (b) the regulations for this program in 34 CFR part 350, and (c) the notice of final priorities for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,100,000.

Estimated Range of Awards: $675,000–$700,000.

Estimated Average Size of Awards: $700,000.

Maximum Award: We will reject any application that proposes a budget exceeding $700,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs. The maximum allowable indirect cost rate is 15%.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the ED Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: ED Pubs, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133B–7.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: Due to the open nature of the RRTC competition, and to assist with the selection of reviewers for this competition, NIDRR is requiring all potential applicants to submit a Letter of Intent (LOI). While the submission is mandatory, the content of the LOI will not be peer reviewed or otherwise used to rate an applicant's application. We will notify only those potential applicants who have failed to submit an LOI that meets the requirements listed below.

Each LOI should be limited to a maximum of four pages and include the following information: (1) The title of the proposed project, which absolute priority will be addressed, the name of the institution, the name of the Project Director or Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed project and a description of its activities at a sufficient level of detail to allow NIDRR to select potential peer reviewers; (3) a list of proposed project staff including the Project Director or PI and key personnel; (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.; and (5) contact information for the Project Director or PI. Submission of a LOI is a prerequisite for eligibility to submit an application.

NIDRR will accept a LOI via surface mail, e-mail, or facsimile by July 9, 2004.

The LOI must be sent to: Surface mail: Ruth Brannon, U.S. Department of Education, 550 12th Street, SW., room 6054, Potomac Center Plaza, Washington, DC 20202; or fax (202) 205–8515; or e-mail: *ruth.brannon@ed.gov.*

If a LOI is submitted via e-mail or facsimile, the applicant must also provide NIDRR with the original signed LOI within seven days after the date the e-mail or facsimile is submitted.

For further information regarding the LOI requirement contact Ruth Brannon at (202) 245–7274.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (ED Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract; a Human Subjects narrative; a Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times: Applications Available:* June 10, 2004.

Deadline for Notice of Intent to Apply: July 9, 2004.

Deadline for Transmittal of Applications: August 3, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Rehabilitation Research and Training Centers Program—Health and Function Outcomes for Individuals with Disabilities competition—CFDA Number 84.133B–7 is one of the programs included in the pilot project. If you are an applicant under the Rehabilitation Research and Training Centers Program—Health and Function Outcomes for Individuals with Disabilities competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

• Your participation is voluntary.

• When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.

• You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.

You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Your e-Application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The institution's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Rehabilitation Research and Training Centers Program—Health and Function Outcomes for Individuals with Disabilities competition and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC, time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC, time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under For Further Information Contact (see VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Rehabilitation Research and Training Centers Program—Health and Function Outcomes for Individuals with Disabilities competition at: *http://e-grants.ed.gov*.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are in 34 CFR 75.210 of EDGAR and 34 CFR 350.54. The specific selection criteria to

be used for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert peer review, a portion of its grantees to determine:

- The degree to which the grantees are conducting high-quality research, as reflected in the appropriateness of study designs, the rigor with which accepted standards of scientific and engineering methods or both are applied, and the degree to which the research builds on and contributes to the level of knowledge in the field;
- The number of new or improved tools, instruments, protocols, and technologies developed and published by grantees that are deemed to improve the measurement of disability and rehabilitation-related concepts and to contribute to changes and improvements in policy, practice, and outcomes for individuals with disabilities and their families;
- The percentage of grantees deemed to be implementing a systematic outcomes-oriented dissemination plan, with measurable performance goals and targets, that clearly identifies the types of products and services to be produced and the target audiences to be reached, and describes how dissemination products and strategies will be used to meet the needs of end-users, including individuals with disabilities and those from diverse backgrounds, and promotes the awareness and use of information and findings or both from NIDRR-funded projects;
- The percentage of consumer-oriented dissemination products and services (based on a subset of products and services nominated by grantees to be their "best" outputs) that are deemed to be of high-quality and contributing to advances in knowledge and to changes and improvements or both in policy, practices, services, and supports by individuals with disabilities and other end-users, including practitioners, service providers, and policy makers; and
- The percentage of new studies funded each year that assess the effectiveness of interventions or demonstration programs using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/offices/OUS/PES/planning.html.*

Updates on the GPRA indicators, revisions and methods appear in the NIDRR Program Review Web site: *http://www.cessi.net/pr/grc/index.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 550 12th Street, SW., room 6046, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or via Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Information Relay Service (FIRS) 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 program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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Dated: June 7, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–13239 Filed 6–9–04; 8:45 am]

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Federal Register

Thursday,
June 10, 2004

Part IX

The President

Memorandum of June 3, 2004—Command and Control of National Guard for 2004 Group of Eight ("G8") Summit

Federal Register
Vol. 69, No. 112
Thursday, June 10, 2004

Presidential Documents

Title 3—

The President

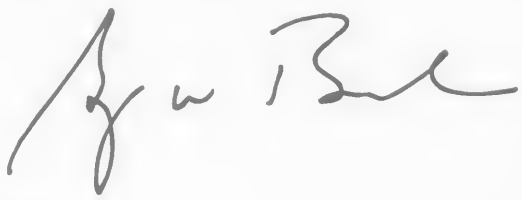
Memorandum of June 3, 2004

Command and Control of National Guard for 2004 Group of Eight ("G8") Summit

Memorandum for the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions and authority of the President contained in section 325 of title 32, United States Code, with respect to activities related to the G8 Summit.

You are further authorized and directed to make necessary arrangements to fund this activity from the proper appropriation and to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 3, 2004.

[FR Doc. 04–13344
Filed 6–9–04; 9:04 am]
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Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]
Nectarines and fresh pears and peaches grown in—
California; comments due by 6-14-04; published 4-14-04 [FR 04-08522]

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Section 108 application to consolidated group members; indebtedness income discharge; cross-reference; comments due by 6-14-04; published 3-15-04 [FR 04-05667]

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LIST OF PUBLIC LAWS

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H.R. 408/P.L. 108–229

To provide for expansion of Sleeping Bear Dunes National Lakeshore. (May 28, 2004; 118 Stat. 645)

H.R. 708/P.L. 108–230

To require the conveyance of certain National Forest System lands in Mendocino National Forest, California, to provide for the use of the proceeds from such conveyance for National Forest purposes, and for other purposes. (May 28, 2004; 118 Stat. 646)

H.R. 856/P.L. 108–231

To authorize the Secretary of the Interior to revise a repayment contract with the Tom Green County Water and Control and Improvement District No. 1, San Angelo project, Texas, and for other purposes. (May 28, 2004; 118 Stat. 648)

H.R. 923/P.L. 108–232

Premier Certified Lenders Program Improvement Act of 2004 (May 28, 2004; 118 Stat. 649)

H.R. 1598/P.L. 108–233

Irvine Basin Surface and Groundwater Improvement Act of 2004 (May 28, 2004; 118 Stat. 654)

H.R. 3104/P.L. 108–234

To provide for the establishment of separate campaign medals to be awarded to members of the uniformed services who participate in Operation Enduring Freedom and to members of the uniformed services who participate in Operation Iraqi Freedom. (May 28, 2004; 118 Stat. 655)

Last List May 20, 2004

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