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Monday
May 11, 1998

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–025–1]

Gypsy Moth Generally Infested Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the gypsy moth quarantine and regulations by adding areas in Ohio and Wisconsin. These changes affect 3 areas in Ohio and 14 areas in Wisconsin. This action is necessary to prevent the artificial spread of gypsy moth to noninfested States.

DATES: Interim rule effective May 11, 1998. Consideration will be given only to comments received on or before July 10, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–025–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–025–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Coanne E. O'Hern, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: cohern@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest and shade trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45–12 and referred to below as the regulations) quarantine certain States because of the gypsy moth and restrict the interstate movement of certain articles from generally infested areas in the quarantined States to prevent the artificial spread of the gypsy moth.

In accordance with § 301.45–2 of the regulations, generally infested areas are, with certain exceptions, those areas in which a gypsy moth general infestation has been found by an inspector, or each portion of a State which the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Less than an entire State will be designated as a generally infested area only if: (1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles; and (2) the designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth.

Designation of Areas as Generally Infested Areas

We are amending § 301.45–3(a) of the regulations, which lists generally infested areas, by adding Lorain, Medina, and Wayne Counties in Ohio; and Calumet, Kenosha, Marinette, Menominee, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Shawano, Sheboygan, Washington, Waukesha, and Winnebago Counties in Wisconsin.

We are taking this action because, in cooperation with the States, the United States Department of Agriculture conducted surveys that detected all life stages of the gypsy moth in these areas. Based on these surveys, we determined that reproducing populations exist at significant levels in these areas. Eradication of these populations is not considered feasible because these areas are immediately adjacent to areas currently recognized to be generally infested and therefore subject to continued reinfestation.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary because of the possibility that the gypsy moth could be spread artificially to noninfested areas of the United States, where it could cause economic loss due to defoliation of susceptible forest and shade trees.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action amends the list of generally infested areas under the gypsy moth quarantine and regulations by adding areas in Ohio and Wisconsin. Immediate action is necessary in order to prevent the artificial spread of gypsy moth to noninfested areas of the United States.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance

under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.45–3, paragraph (a) is amended by adding entries for Ohio and Wisconsin, in alphabetical order, to read as follows:

§ 301.45–3 Generally infested areas.

(a) * * *

* * * * *

Ohio

* * * * *

Lorain County. The entire county.

* * * * *

Medina County. The entire county.

* * * * *

Wayne County. The entire county.

* * * * *

Wisconsin

* * * * *

Calumet County. The entire county.

* * * * *

Kenosha County. The entire county.

* * * * *

Marinette County. The entire county.
Menominee County. The entire county.
Milwaukee County. The entire county.
Oconto County. The entire county.
Outagamie County. The entire county.
Ozaukee County. The entire county.
Racine County. The entire county.
Shawano County. The entire county.
Sheboygan County. The entire county.
Washington County. The entire county.
Waukesha County. The entire county.
Winnebago County. The entire county.

Done in Washington, DC, this 5th day of May 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–12396 Filed 5–8–98; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–056–11]

Mediterranean Fruit Fly; Addition to the Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by expanding the current quarantined area in Dade County, FL. The regulations restrict the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the continental United States.

DATES: Interim rule effective May 5, 1998. Consideration will be given only to comments received on or before July 10, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–056–11, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–056–11. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78–10; referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States.

In an interim rule effective on June 16, 1997, and published in the **Federal Register** on June 20, 1997 (62 FR 33537–33539, Docket No. 97–056–2), we added a portion of Hillsborough County, FL, to the list of quarantined areas and restricted the interstate movement of regulated articles from that quarantined area. In a second interim rule effective on July 3, 1997, and published in the **Federal Register** on July 10, 1997 (62 FR 36976–36978, Docket No. 97–056–3), we expanded the quarantined area in Hillsborough County, FL, and added areas in Manatee and Polk Counties, FL, to the list of quarantined areas. In a third interim rule effective on August 7, 1997, and published in the **Federal Register** on August 13, 1997 (62 FR 43269–43272, Docket No. 97–056–4), we further expanded the quarantined area by adding new areas in Hillsborough County, FL, and an area in Orange County, FL, to the list of quarantined areas. In that third interim rule, we also revised the entry for Manatee County, FL, to make the boundary lines of the quarantined area more accurate. In a fourth interim rule effective on September 4, 1997, and published in the **Federal Register** on September 10, 1997 (62 FR 47553–47558, Docket No. 97–056–5), we quarantined a new area in Polk County, FL, and an area in Sarasota County, FL. In a fifth interim rule effective on October 15, 1997, and published in the **Federal Register** on October 21, 1997 (62 FR 54571–54572, Docket No. 97–056–7), we removed all or portions of the quarantined areas in Hillsborough, Manatee, Orange, Polk, and Sarasota Counties, FL, from the list of quarantined areas. In a sixth interim rule effective on November 14, 1997, and published in the **Federal Register**

on November 20, 1997 (62 FR 61897–61898, Docket No. 97–056–8), we removed all of the quarantined areas in Polk County, FL, from the list of quarantined areas. In a seventh interim rule effective April 17, 1998, and published in the **Federal Register** on April 22, 1998 (63 FR 19797–19798, Docket No. 97–056–9), we removed the quarantined area in Hillsborough County, FL, from the list of quarantined areas. In an eighth interim rule also effective on April 17, 1998, and published in the **Federal Register** on April 23, 1998 (63 FR 20053–20054, Docket No. 98–046–1), we added a portion of Dade County, FL, to the list of quarantined areas and restricted the interstate movement of regulated articles from the quarantined area.

Recent surveys by inspectors of Florida State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have detected Medfly larvae in fruit in the currently quarantined area in Dade County, FL. This indicates a reproducing Medfly population in the area. For this reason, we are expanding the quarantined area in Dade County, FL, to prevent the spread of Medfly to noninfested areas.

The regulations in § 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Medfly. The boundary lines for a portion of a State being designated as quarantined are set up approximately four-and-one-half-miles from the detection sites. The boundary lines may vary due to factors such as the location of Medfly host material, the location of transportation centers such as bus stations and airports, the pattern of persons moving in that State, the number and patterns of distribution of the Medfly, and the use of clearly identifiable lines for the boundaries.

In accordance with these criteria and the recent Medfly finding described above, we are amending 301.78–3 by expanding the current quarantined area in Dade County, FL. The resulting quarantined area is described in the rule portion of this document.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Medfly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the Medfly regulations by expanding the current quarantined area in Dade County, FL. This action is necessary on an emergency basis to prevent the spread of the Medfly into noninfested areas of the United States.

This interim rule affects the interstate movement of regulated articles from the newly quarantined area of Dade County, FL. We estimate that there are 63 entities in this area of Dade County, FL, that sell, process, handle, or move regulated articles; this estimate includes 14 mobile vendors, 34 stores/markets, and 15 nurseries. The number of these entities that meet the U.S. Small Business Administration's (SBA) definition of a small entity is unknown, since the information needed to make that determination (i.e., each entity's gross receipts or number of employees) is not currently available. However, it is reasonable to assume that most of the 63 entities are small in size, since the overwhelming majority of businesses in Florida, as well as the rest of the United States, are small entities by SBA standards.

We believe that few, if any, of the 63 entities will be significantly affected by the quarantine action taken in this interim rule because few of these types of entities move regulated articles outside the State of Florida during the normal course of their business. Nor do consumers of products purchased from these types of entities generally move those products interstate. The effect on the small entities that do move regulated articles interstate from the quarantined area will be minimized by the availability of various treatments that, in most cases, will allow those small entities to move regulated articles interstate with very little additional costs. Also, many of these types of small entities sell other items in addition to regulated articles, so the effect, if any, of the interim rule should be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

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

Executive Order 12988

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

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The site specific environmental assessment and programmatic Medfly environmental impact statement provide a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were

prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

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

List of Subject in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.78–3, paragraph (c), the entry for Florida is revised to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

FLORIDA

Dade County. That portion of Dade County beginning at the intersection of Northwest 87th Avenue and Northwest 103rd Street (State Highway 932); then east along Northwest 103rd Street (State Highway 932) (also known as 49th Street) to the section line dividing sections 4 and 5, T. 53 S., R. 41 E.; then south along the section line dividing sections 4 and 5, T. 53 S., R. 41 E., to Northwest 36th Street (State Highway 948); then west along Northwest 36th Street to Northwest 87th Avenue; then north along Northwest 87th Avenue to the point of beginning.

Done in Washington, DC, this 5th day of May 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–12395 Filed 5–8–98; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AB73

Simplification of Deposit Insurance Rules

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is revising its deposit insurance regulations by adopting three substantive amendments and numerous technical amendments. The purpose of these amendments is to increase the public's understanding of the regulations through simplification. The substantive amendments in the final rule will: Relax the FDIC's recordkeeping requirements for certain agency or fiduciary accounts; create a six-month ''grace period'' following the death of a depositor for the restructuring of accounts; and clarify the insurance coverage of revocable trust accounts when an account is held by the depositor pursuant to a formal ''living trust'' agreement.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Christopher L. Hencke, Counsel, (202) 898–8839, or Joseph A. DiNuzzo, Senior Counsel, (202) 898–7349, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Simplifying the deposit insurance regulations is one of the FDIC's corporate operating projects under its Strategic Plan. The purpose is to promote public understanding of deposit insurance and, particularly, to clarify and illustrate rules that have been misunderstood. The public's misunderstanding of certain of the rules has been reflected in the large volume of letters and phone calls received by the FDIC concerning deposit insurance. Also, this simplification effort is in furtherance of section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4803(a), requiring the federal banking agencies to reduce regulatory burden and improve efficiency.

The FDIC's insurance regulations are codified at 12 CFR part 330. In recent years, the FDIC has revised these regulations twice (not including a third revision that dealt only with certain disclosure requirements). In 1980, following the termination of the Federal Savings and Loan Insurance Corporation (FSLIC), the FDIC issued uniform regulations applicable to deposits in all insured depository institutions including those previously insured by the FSLIC. The issuance of uniform regulations was mandated by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. 101–73 (1989)). In 1993, the FDIC revised the rules applicable to the deposits of employee benefit plans and retirement plans. This revision was mandated by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242 (1991)). Notwithstanding these relatively recent revisions, the Board of Directors (Board) believes that the final rule is necessary for the purpose of simplification.

All revisions to the insurance regulations must be consistent with section 11(a) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1821(a). Section 11(a) provides that deposits maintained by a depositor in the same capacity and the same right at the same insured depository institution must be aggregated and insured up to $100,000. The FDI Act does not define ''depositor'', ''capacity'' or ''right''. Through the insurance regulations, the FDIC has implemented these terms by recognizing different categories of accounts based on ownership. Each type of account is entitled to separate insurance up to the $100,000 limit if it satisfies certain requirements. For example, single ownership accounts owned by a particular depositor are not added to qualifying joint accounts partly owned by the same depositor.

The final rule is the product of a process that began in May of 1996. At that time, the FDIC published an Advance Notice of Proposed Rulemaking (ANPR). See 61 FR 25596 (May 22, 1996). The ANPR was followed, in May of 1997, by the publication of a proposed rule. See 62 FR 26435 (May 14, 1997). The evolution of the final rule is discussed in greater detail below.

The final rule does not complete the FDIC's simplification efforts. As discussed below, the FDIC is still studying other possible revisions to its

insurance regulations pertaining to joint accounts and ''payable-on-death'' accounts.

II. The Proposed Rule

Through the ANPR (61 FR 25596), the FDIC broadly solicited comments on how the insurance regulations could be simplified. Also, the FDIC sought comments on a number of specific revisions. The comment period ended on August 20, 1996. Almost all of the comments (sixty-eight in number) supported the FDIC's simplification efforts.

The FDIC did not include some of the revisions mentioned in the ANPR in the proposed rule (62 FR 26435). In particular, the proposed rule did not include revisions that would: (1) Eliminate the first step in the two-step process for determining the insurance coverage of joint accounts under current § 330.7 (new § 330.9); and (2) expand the list of qualifying beneficiaries for revocable trust accounts under current § 330.8 (new § 330.10). In publishing the proposed rule, the FDIC explained that these revisions required additional study. Before deciding on these revisions, the Board wished to learn more about the extent to which the revisions would affect the scope of deposit insurance coverage.

The proposed rule suggested three substantive revisions to the insurance regulations: (1) Relaxing the recordkeeping rules for fiduciary accounts; (2) providing a ''grace period'' following the death of a depositor; and (3) clarifying the operation of the revocable trust account rules in cases in which an account is held by a depositor in connection with a ''living trust.'' Each of these revisions is discussed in detail below.

A. Recordkeeping Rules for Fiduciary Accounts

The FDIC's recordkeeping rules are largely premised on the concept of ''pass-through'' insurance. If an agent on behalf of a principal deposits funds at an insured depository institution, the FDIC does not treat the agent as the owner of the deposit for purposes of the $100,000 insurance limit. Rather, the FDIC insures the funds to the principal or actual owner. In other words, the insurance coverage ''passes through'' the agent to the owner. See 12 CFR 330.6 (new 330.7).

The fact that agency accounts are insured on a ''pass-through'' basis does not mean that agency accounts represent a separate category of ownership or that agency accounts are entitled to insurance up to $100,000 separate from all other accounts. On the contrary, agency accounts are subject to aggregation with any other accounts maintained by or for the principal in the same right and capacity at the same insured depository institution. For example, funds in an account held by an agent for a principal, in the principal's single ownership capacity, will be aggregated with any single ownership accounts held directly by the principal.

''Pass-through'' insurance as described above is subject to an important qualification. Under section 12(c) of the FDI Act (12 U.S.C. 1822(c)), the FDIC is not required to recognize as the owner of a deposit any person whose interest is not disclosed on the records of the failed depository institution. In other words, in the absence of adequate disclosure, an account held by an agent is not entitled to ''pass-through'' insurance coverage. The FDIC has implemented section 12(c) by establishing certain recordkeeping rules for accounts held by agents or fiduciaries.

Under the FDIC's recordkeeping rules, the deposit account records of the failed depository institution must expressly disclose, by way of specific references, the existence of any fiduciary relationship including, but not limited to, relationships involving a trustee, agent, nominee, guardian, executor or custodian, pursuant to which funds in an account are deposited and on which a claim for insurance coverage is based. See 12 CFR 330.4(b)(1) (new 330.5(b)(1)). Assuming such disclosure, the details of the relationship and the interests of other parties in the account must be ascertainable either from the deposit account records of the insured depository institution or from records maintained, in good faith and in the regular course of business, by the depositor or by some person or entity that has undertaken to maintain such records for the depositor. See 12 CFR 330.4(b)(2) (new 330.5(b)(2)).

The rules quoted above are based upon a basic principle: In paying insurance, the FDIC is entitled to rely on the account records of the failed depository institution. If the FDIC, in its sole discretion, determines that the deposit account records of the insured depository institution are clear and unambiguous, those records are considered binding on the depositor, and no other records shall be considered, as to the manner in which the funds are owned. See 12 CFR 330.4(a)(1). In other words, under the current regulations, the account records must be unclear or ambiguous before the FDIC will consider evidence outside of the account records in determining the ownership of an account.

The FDIC's strict reliance on the account records serves multiple purposes. First, it enables the FDIC to estimate the amount of insured deposits when considering resolution options for a failing insured depository institution. Speed and accuracy in accounting for the assets and liabilities of the failing institution are critical when the institution is resolved through a purchase and assumption agreement (i.e., a transfer of some assets and liabilities, including the deposit liabilities, to a healthy depository institution). Second, strict reliance on the account records enables the FDIC to pay insurance very quickly following the failure of an institution. If the FDIC could not rely on the records, depositors would not receive their insurance until the FDIC had completed a lengthy investigation as to the actual legal ownership of the accounts. Third, strict reliance on the records discourages the making of fraudulent claims for insurance. If depositors were not bound by the account records, some depositors over the $100,000 limit might be tempted to fabricate outside evidence (such as agency or trust agreements) as to the actual ownership of their accounts.

For the reasons stated above, the insurance regulations purposefully restrict the FDIC's ability to consider outside evidence (i.e., evidence outside of the deposit account records) in determining the ownership of an account for insurance purposes. Again, under the current or unrevised regulations, outside evidence will not be considered unless the FDIC determines—in its own discretion—that the account records are unclear or ambiguous.

At times, the restrictions on the FDIC's ability to consider outside evidence has produced results that could be viewed as severe. At one failed bank, for example, a deposit account was held by a title company as agent for customers who were buying or selling houses. Because the bank's deposit account records did not indicate the agency nature of the account, the funds were deemed to be owned by the title company and insured to a limit of $100,000. The funds were not insured up to $100,000 on a ''pass-through'' basis for the interest of each customer (in aggregation with any other account(s) that each customer might have held at the same bank). This result was severe because the name of the agent by itself was suggestive of a possible agency or fiduciary relationship.

The proposed rule addressed the problem by adding a provision to the

regulations that would relax the FDIC's recordkeeping requirements in certain situations. Specifically, the proposed rule provided that the FDIC would be free to consider outside evidence of ownership if the titling of the deposit account and the underlying deposit account records sufficiently indicate the existence of a fiduciary relationship. Examples of accounts covered by the proposed rule would be accounts in the name of escrow agents or title companies.

In requesting comments on this part of the proposed rule, the FDIC also requested comments on the recordkeeping requirements applicable to accounts held by multiple levels of fiduciaries. See 12 CFR 330.4(b)(3) (new 330.5(b)(3)). These requirements specify two methods for disclosing such multi-tiered relationships. Under the second method, according to the current regulations, the deposit account records must state that the depositor is acting in a fiduciary capacity on behalf of certain persons or entities who may, in turn, be acting in a fiduciary capacity for others. See 12 CFR 330.4(b)(3)(ii)(A). In complying with this requirement, fiduciaries have opened accounts with awkward and unwieldy account titles. To alleviate this problem, the FDIC proposed to require—under the second method—that the account records merely indicate that there are multiple levels of fiduciary relationships.

B. ''Grace Period'' Following the Death of a Depositor

The second substantive revision included in the proposed rule was the creation of a ''grace period'' following the death of a depositor. Under the deposit contract or applicable state law, the death of a depositor may result in an immediate and automatic change in ownership of the deposit account. This is significant for insurance purposes because deposit insurance is based primarily on legal ownership. Though ownership under state law is not sufficient for, or decisive in, determining deposit insurance coverage, the regulations provide that ownership under state law of deposited funds is a necessary condition for deposit insurance. See 12 CFR 330.3(h) (new 330.3(h)).

Under the current regulations, the FDIC presumes—for certain types of accounts—that the ownership of the account changes immediately upon the death of a depositor. This presumption is applied to accounts characterized by survivorship rights, i.e., joint accounts and revocable trust or ''payable-on-death'' (POD) accounts. For the sake of uniformity, the FDIC applies this presumption irrespective of the laws of the state in which the depository institution is located. In some cases, following the death of a depositor, the presumption will cause a dramatic decrease in deposit insurance coverage.

For example, a husband and wife could hold a joint account, a joint revocable trust (or POD) account for the benefit of their child, and two individual accounts in their respective names. Assuming the satisfaction of all applicable requirements, these four accounts could be insured up to a total of $500,000. Upon the death of either the husband or wife, however, the surviving spouse would become the sole owner of the joint account and the joint revocable trust account. Under the FDIC's established interpretation of the current regulations, the joint account would be transformed into a single ownership account subject to aggregation with the surviving spouse's individual account. (The single ownership account in the name of the deceased spouse would continue to be insured separately from the other accounts.) Moreover, the maximum coverage of the joint revocable trust account would be reduced from $200,000 to $100,000 (i.e., $100,000 for each combination of settlors and qualifying beneficiaries). In total, the maximum coverage of the four accounts would be reduced—immediately upon the death of the husband or wife—from $500,000 to $300,000.

If the depository institution failed before the surviving spouse restructured the accounts or transferred funds to another institution, in the example above, the loss to the surviving spouse could be very substantial. (For the single ownership account in the name of the deceased spouse, the insurance money would be paid to the trustee of the decedent's estate.)

The interpretation described above has been criticized as ''penalizing'' the survivors of deceased depositors. Some people have complained that the immediate restructuring of an account upon the death of a depositor may not be practicable. For example, in order to restructure an account, the survivor of an accountholder may be required to present proof of the accountholder's death to the depository institution. Also, during a time of grief, the survivors may not view the restructuring of bank accounts as a matter of high priority.

Another criticism of the FDIC's interpretation of the current regulations is that some state laws might not provide for the immediate change in ownership presumed by the FDIC.

In response to the criticisms and concerns described above, the proposed rule created a ''grace period'' of six months following the death of a depositor. During this ''grace period,'' the insurance coverage of the decedent's accounts would not change unless the accounts were restructured by those authorized to take such action. Because the six-month ''grace period'' was not intended to reduce coverage, the proposed rule also provided that the ''grace period'' would not be applied if its application would result in a decrease in deposit insurance coverage.

The six-month ''grace period'' prescribed by the proposed rule was consistent with a policy applied by the former FSLIC. The rationale of that policy was to ''lessen hardship.''

In publishing the proposed rule, the FDIC specifically requested comments as to whether six months was the appropriate length of time for the ''grace period.''

C. The Insurance Coverage of ''Living Trust'' Accounts

The third substantive revision included in the proposed rule was the insertion into the regulations of language clarifying the insurance coverage of accounts held pursuant to ''living trust'' agreements. A ''living trust'' is a formal revocable trust in which the owner retains control of the trust assets during his or her lifetime. Upon the owner's death, the trust generally becomes irrevocable.

As a type of revocable trust account, a ''living trust'' account is subject to the rules prescribed by § 330.8 (new § 330.10). Subject to the requirements discussed below, that section of the regulations provides that funds deposited in a revocable trust account (also referred to as a ''payable-on-death'' or ''POD'' account or ''Totten trust'' account) shall be insured up to $100,000 for the prospective interest of each of the owner's designated beneficiaries. Such insurance is separate from the insurance coverage afforded to any single ownership accounts held by the owner or beneficiary at the same insured depository institution. The revocable trust account will not be entitled to such separate insurance, however, unless the account satisfies certain requirements. First, each of the designated beneficiaries must be the owner's spouse, child or grandchild. Second, the beneficiaries must be specifically named (i.e., named by name) in the account records of the depository institution. Third, the title of the account must include a term such as ''in trust for'' or ''payable-on-death to'' (or any acronym therefor). Fourth, the revocable trust agreement must provide unequivocally that the funds shall belong to the designated beneficiaries

upon the death of the owner. See 12 CFR 330.8(a) (new 330.10(a)).

In many cases, the trust agreement is simply the signature card for the account. Generally, in these cases, the fourth requirement above does not present a problem because the signature card will not include any conditions upon the interests of the designated beneficiaries. In other words, the signature card—in simple language—will provide that the funds shall belong to the beneficiaries upon the death of the owner. In contrast, most formal ''living trust'' agreements provide that the funds might belong to the beneficiaries depending upon various conditions. The FDIC refers to such conditions as ''defeating contingencies'' if they create the possibility that the beneficiaries or the estate or heirs of the beneficiaries will never receive the funds following the death of the owner. In the presence of a ''defeating contingency,'' the revocable trust account will not be entitled to separate insurance coverage under § 330.8 (new § 330.10). Rather, the account will be aggregated with any single ownership accounts held by the owner at the same insured depository institution.

The subject of ''defeating contingencies'' is explained at length in FDIC Advisory Opinion 94–32 (May 18, 1994). That advisory opinion is entitled ''Guidelines for Insurance Coverage of Revocable Trust Accounts (Including 'Living Trust' Accounts).'' Though this advisory opinion is available upon request, the FDIC continues to receive numerous inquiries regarding the insurance coverage of ''living trust'' accounts. Moreover, even people who have read the Guidelines often remain confused about the coverage of such accounts.

In response to the public's confusion, the proposed rule inserted clarifying language into the regulations. Specifically, the proposed rule stated that the presence of a ''defeating contingency'' in a ''living trust'' agreement would prevent the account from receiving separate insurance coverage (i.e., separate from any single ownership accounts held by the owner at the same insured depository institution).

III. The Final Rule

The FDIC received twenty-six written comments on the proposed rule. Most of the comments were submitted by depository institutions or their holding companies. Several comments were submitted by bankers' associations; several others were submitted by financial services companies. The FDIC also received a small number of comments from individuals and one comment from a building company. The comments are discussed below as they relate to the various components of the final rule.

A. Recordkeeping Rules for Fiduciary Accounts

Sixteen commenters addressed the proposed relaxation of the FDIC's recordkeeping requirements for agency or fiduciary accounts. All of the commenters expressed support for the proposed rule but some also expressed reservations. The concern expressed by some commenters was that the proposed rule might impose additional recordkeeping obligations or other regulatory burdens on insured depository institutions. The FDIC does not intend to create any such additional burdens. The proposed rule was directed at the FDIC itself and not at depository institutions. As previously explained, the proposed rule granted greater flexibility to the FDIC in considering outside evidence (i.e., evidence other than the deposit account records) in determining the ownership of an account. Specifically, the proposed rule provided that the FDIC would be free to consider outside evidence if the FDIC determined, in its sole discretion, that the titling of the account and the underlying deposit account records sufficiently indicate the existence of a fiduciary relationship. Examples are accounts in the names of escrow agents, title companies or entities (or nominees of such entities) whose primary business is to hold—for safekeeping reasons—deposits of others.

The Board has decided to adopt, in the final rule, the proposed revision to its recordkeeping requirements. As revised, these requirements will be codified at § 330.5. The revised requirements will increase the FDIC's ability to pay insurance to the real owners of some deposits without undercutting the general rule that unambiguous deposit account records of a failed depository institution are binding on depositors.

Also, the final rule includes two revisions to the recordkeeping requirements applicable to accounts held by multiple levels of fiduciaries. As revised, these requirements will be codified at paragraph (b)(3) of § 330.5. First, the FDIC has changed the regulation to clarify that there are two and not three methods of satisfying these recordkeeping requirements. Second, in connection with the second method of satisfying the requirements, the FDIC has removed the necessity of stating in the account records that the depositor is acting in a fiduciary capacity on behalf of certain persons or entities who may, in turn, be acting in a fiduciary capacity for others. Instead, the deposit account records must expressly indicate that there are multiple levels of fiduciary relationships. The FDIC has made this change in recognition of the fact that fiduciaries have been placing the required information in the titles of deposit accounts. As a result of this revision, the titles of multi-tiered fiduciary accounts should be less unwieldy. Several commenters expressed support for this provision.

B. ''Grace Period'' Following the Death of a Depositor

Nineteen commenters addressed the proposed creation of a six-month ''grace period'' following the death of a depositor. As previously explained, this ''grace period'' primarily would affect the insurance coverage of deposit accounts with survivorship rights (i.e., joint accounts and revocable trust or ''payable-on-death'' accounts). During this ''grace period,'' the insurance coverage of such accounts would not change unless the accounts are restructured by those authorized to take such action. The FDIC would apply the ''grace period'' only if its application would increase rather than decrease deposit insurance coverage.

Only one commenter opposed the creation of a ''grace period.'' That commenter stated that deposit insurance should be based on the ownership of accounts. If ownership changes upon the death of a depositor, in the opinion of this commenter, the insurance coverage also should change. Another commenter did not oppose a ''grace period'' but expressed concern that it would create additional recordkeeping obligations on the depository institution. A third commenter supported a ''grace period'' but favored a ninety-day period as opposed to a six-month period. With the exceptions noted above, the commenters supported the proposed rule.

The Board has decided to adopt the proposed creation of a six-month ''grace period.'' The rule will be codified at paragraph (j) of § 330.3. The FDIC believes that the ''grace period'' is consistent with the general principle that insurance coverage is based on ownership but also based on the satisfaction of recordkeeping requirements. Following the death of a depositor, the actual ownership of an account will not be reflected by the account records unless the account is restructured. For example, a joint account immediately following the death of one of two co-owners will

appear to remain a joint account. By themselves, the account records will not indicate that the account is a single ownership account until the account has been restructured by the survivor. The FDIC's strict reliance on ownership, under these circumstances, contrasts with the FDIC's general reliance on the account records.

The FDIC believes that a six-month ''grace period'' will create an equitable balance between ownership and recordkeeping in cases involving deceased depositors. Also, the FDIC does not believe that the ''grace period'' will create any recordkeeping burdens on the depository institution because the ''grace period'' is directed solely at the FDIC itself and the survivors of deceased depositors. The FDIC would apply the ''grace period'' only after the depository institution had failed.

In the case of a revocable trust account, the ''grace period'' will be triggered by the death of the owner but not by the death of a beneficiary. Similarly, in the case of an irrevocable trust account, the ''grace period'' will be triggered by the death of the legal owner or settlor but not by the death of a beneficiary. The death of the settlor may or may not be significant under the terms of the irrevocable trust agreement.

Under many ''living trust'' agreements (discussed in greater detail below), a revocable trust becomes irrevocable upon the death of the owner. Through the operation of the ''grace period,'' such ''living trust'' accounts that qualify as revocable trust accounts for insurance purposes could be insured up to six months as revocable trust accounts—rather than irrevocable trust accounts—notwithstanding the death of the owner.

As mentioned above, only one commenter thought that six months was not the appropriate length of time for the ''grace period.'' That commenter favored a period of ninety days. As noted by other commenters, however, a six-month period is consistent with the six-month period of ''separate insurance'' following the assumption of the deposits of one insured depository institution by another insured depository institution (e.g., a merger). See 12 U.S.C. 1818(q). The FDIC agrees with the majority of the commenters that a period of six months is reasonable.

C. The Insurance Coverage of ''Living Trust'' Accounts

Twelve commenters addressed the proposed insertion into the regulations of language clarifying the insurance coverage of revocable trust accounts held pursuant to ''living trust'' agreements. As previously explained, this language would state expressly that the presence of a ''defeating contingency'' in the ''living trust'' agreement would prevent the account from receiving separate insurance coverage (i.e., separate from any single ownership accounts held by the owner at the same insured depository institution).

Ten commenters supported the proposed revision as a means of reducing depositors' confusion regarding the coverage of such accounts. The other two commenters did not oppose the insertion of clarifying language into the regulations but urged the FDIC to take stronger measures. Specifically, they urged the FDIC to abolish the concept of ''defeating contingencies'' altogether so that a ''living trust'' account would be entitled to separate insurance coverage irrespective of any such contingencies. The approach recommended by these commenters would represent an abrupt departure from the FDIC's established interpretation of the regulations. See FDIC Advisory Opinion 94–32 (May 18, 1994), entitled ''Guidelines for Insurance Coverage of Revocable Trust Accounts (Including 'Living Trust' Accounts).'' Though this approach would remove one source of confusion regarding the operation of the insurance regulations, the recommended approach could create other problems. For example, an owner's ''living trust'' agreement with various contingencies could specify that one qualifying beneficiary could assume ownership of the trust funds under one set of circumstances but that two qualifying beneficiaries (or no qualifying beneficiaries) could assume ownership of the funds under another set of circumstances. Following the failure of the depository institution, the FDIC would be faced with the problem of deciding whether the maximum separate insurance coverage of the account is $100,000 (one qualifying beneficiary) or $200,000 (two qualifying beneficiaries).

At this time, the FDIC is not prepared to abandon its long-standing interpretation of its regulations regarding the insurance coverage of ''living trust'' accounts. As a means of reducing some of the confusion surrounding these accounts, however, the Board has adopted—in the final rule—the proposed clarifying language. This language will be codified at paragraph (f) of § 330.10.

IV. Comments on Other Aspects of the Proposed Rule

In addition to addressing the three substantive revisions discussed above, some commenters addressed other aspects of the proposed rule. For example, several commenters applauded the insertion into the regulations of examples. Another commenter criticized the renumbering of the sections. Specifically, this commenter stated that the renumbering of the sections will affect the accuracy of training materials. Though this concern is understandable, the FDIC believes that renumbering is necessary as a means of increasing depositors' understanding of certain rules. For example, the placement of current paragraph (g) of § 330.3 in new § 330.4 will highlight this rule governing the continuation of separate deposit insurance after merger of insured depository institutions.

A number of commenters addressed the revisions in the ANPR that were not included in the proposed rule. Notably, several voiced disappointment that the FDIC had not included in the proposed rule revisions to the joint account and POD account rules. They emphasized that the current joint account rules, in particular, are very confusing to both the industry and the public. The Board is mindful of these comments and has instructed the staff to continue studying the policy, economic and other implications of amending the joint account and POD account rules. If the Board determines that such amendments are warranted, it will authorize the issuance of a proposed rule to obtain public comment on specific changes to those rules.

A comment regarding the insurance coverage of annuity contract accounts is addressed below in connection with new § 330.8.

V. Section-by-Section Discussion of the Final Rule

Section 330.1—Definitions

This section has been expanded to include some definitions currently placed in other sections of part 330. Also, ''Corporation'' has been defined as the FDIC.

Section 330.2—Purpose

This section has been reduced by eliminating a narrative description of the FDIC's authority to issue deposit insurance regulations. This information is unnecessary.

Section 330.3—General principles

This section has been amended in several ways. First, examples have been added to illustrate some of the general principles. Second, in recognition of its importance, current paragraph (g) of § 330.3 has been moved from this

section to new § 330.4 dealing with the continuation of separate deposit insurance after merger of insured depository institutions. Third, current § 330.13 has been added to this section as new paragraph (g) dealing with bank investment contracts. Fourth, a new provision has been added to provide the survivors of deceased depositors with a six-month ''grace period'' for the restructuring of accounts. The provision is new paragraph (j). It is discussed in detail above.

Section 330.4—Continuation of separate deposit insurance after merger of insured depository institutions

This is a new section composed of the provisions in current paragraph (g) of § 330.3. It addresses the deposit insurance implications of bank mergers and acquisitions. The placement of the rule in a separate section of the regulations should make the rule more accessible.

Section 330.5—Recognition of deposit ownership and recordkeeping requirements

This section is current § 330.4 with two substantive amendments. First, the FDIC's recordkeeping requirements have been amended by adding an exception to the general rule that the deposit account records of a depository institution must expressly disclose the existence of a fiduciary relationship in order for the FDIC to recognize the fiduciary nature of the account. The exception provides that the general requirement would not apply if the FDIC determines, in its sole discretion, that the titling of the account and the underlying deposit account records of the depository institution indicate the existence of a fiduciary relationship. The section specifies that the exception might apply, for example, where the deposit account title or records indicate that the account is held by an escrow agent, title company, or an entity (or its agent or nominee) whose business is to hold, for safekeeping reasons, deposits for others. Second, the recordkeeping requirements for accounts held pursuant to multi-tiered fiduciary relationships (current paragraph (b)(3) of § 330.3 and new paragraph (b)(3) of § 330.5) have been modified so that the titles of such accounts can be less unwieldy. These revisions are discussed above.

Section 330.6—Single ownership accounts

This section is current § 330.5. The definition of a ''sole proprietorship'' has been moved from this section to new § 330.1. Also, in the section dealing with a decedent's account, a cross-reference has been added to new paragraph (j) of § 330.3. The latter provides a six-month ''grace period'' for the restructuring of accounts following the death of a depositor.

Section 330.7—Accounts held by an agent, nominee, guardian, custodian or conservator

This section is current § 330.6. The provision on mortgage servicing accounts has been clarified to indicate that such accounts are not entitled to separate insurance. Rather, they are insured as custodial or agency accounts subject to aggregation with other accounts held by the owner at the same insured depository institution. Also, the provisions on annuity contract accounts have been moved from this section to new § 330.8.

Section 330.8—Annuity contract accounts

This is a new section composed of the provisions in current paragraph (f) of § 330.6. Under this section, funds held by an insurance company for the sole purpose of funding life insurance or annuity contracts are insured up to $100,000 per annuitant if certain requirements are satisfied. The FDIC is placing this rule in a separate section of the regulations—rather than keeping the rule in the section dealing with the ''pass-through'' coverage of agency accounts—because annuity contract accounts represent a separate category of insurance. Also, in stating that such accounts shall be insured separately in the amount of up to $100,000 per annuitant, the FDIC is adding the word ''separately.''

One commenter objected to the addition of the word ''separately.'' In the opinion of this commenter, the addition of this word would result in a windfall for insurance companies by creating a new category of insured deposits.

Subject to the requirements in the regulation, the FDIC's long-standing staff position is that annuity contract accounts represent a separate category of insured deposits. In other words, the revision does not create a new category of insured deposits but simply clarifies the existing coverage of such accounts. The need for such clarification is emphasized by the comment.

While adding the word ''separately,'' the FDIC has removed the phrase ''different right and capacity.'' The phrase is unnecessary and confusing.

Section 330.9—Joint ownership accounts

This section is current § 330.7. Though it has not been changed substantively, the section has been clarified through the addition of several examples.

Section 330.10—Revocable trust accounts

This section is current § 330.8. For the purpose of clarification, the section has been rephrased and examples have been added. Also, a paragraph has been added to clarify the insurance coverage of revocable trust accounts held pursuant to formal ''living trust'' agreements. The paragraph states specifically that the presence of a ''defeating contingency'' in the trust agreement would prevent a beneficiary's interest from receiving separate insurance under this section. The addition of this new paragraph is explained in detail above.

Section 330.11—Accounts of a corporation, partnership or unincorporated association

This section is current § 330.9. The definition of ''independent activity'' has been moved from this section to § 330.1.

Section 330.12—Accounts held by a depository institution as the trustee of an irrevocable trust

This section is current § 330.10. The modifications are slight and not substantive.

Section 330.13—Irrevocable trust accounts

This section is current § 330.11. The definitions of ''trust interest'' and ''non-contingent trust interest'' have been moved from this section to § 330.1.

Section 330.14—Retirement and other employee benefit plan accounts

This section is current § 330.12. It is unchanged except for the deletion of current paragraph (h)(2)(ii) of § 330.12, which required a notice to certain depositors within ten business days after July 1, 1995. That provision is obsolete.

Section 330.15—Public unit accounts

This section is current § 330.14. It is essentially unchanged.

Section 330.16—Effective dates

Changes have been made to this section to indicate that the designated effective dates apply to former changes to part 330. The FDIC has retained this information in part 330 because the effective dates might be relevant in connection with time deposits issued prior to December 19, 1991, until the maturity date of such deposits.

In addition to the changes explained above, two sections have been

eliminated by the final rule. First, current § 330.13 (''Bank investment contracts'') has been reduced and moved to new paragraph (g) of § 330.3. Second, current § 330.15 (''Notice to depositors'') has been removed altogether as unnecessary.

VI. Paperwork Reduction Act

No collection of information pursuant to the Paperwork Reduction Act is contained in the final rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

VII. Regulatory Flexibility Act

The Board of Directors certifies that the final rule will not have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The revisions to the deposit insurance rules will impose no new reporting, recordkeeping or other compliance requirements upon those entities. Accordingly, the Act's requirements relating to an initial and final regulatory flexibility analysis are not applicable.

VIII. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed. The effective date is July 1, 1998.

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

The Board of Directors of the Federal Deposit Insurance Corporation hereby revises part 330 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

Sec.

330.1 Definitions.
330.2 Purpose.
330.3 General principles.
330.4 Continuation of separate deposit insurance after merger of insured depository institutions.
330.5 Recognition of deposit ownership and recordkeeping requirements.
330.6 Single ownership accounts.
330.7 Accounts held by an agent, nominee, guardian, custodian or conservator.
330.8 Annuity contract accounts.
330.9 Joint ownership accounts.
330.10 Revocable trust accounts.
330.11 Accounts of a corporation, partnership or unincorporated association.
330.12 Accounts held by a depository institution as the trustee of an irrevocable trust.
330.13 Irrevocable trust accounts.
330.14 Retirement and other employee benefit plan accounts.
330.15 Public unit accounts.
330.16 Effective dates.

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818(q), 1819(Tenth), 1820(f), 1821(a), 1822(c).

§ 330.1 Definitions.

For the purposes of this part:

(a) *Act* means the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(b) *Corporation* means the Federal Deposit Insurance Corporation.

(c) *Default* has the same meaning as provided under section 3(x) of the Act (12 U.S.C. 1813(x)).

(d) *Deposit* has the same meaning as provided under section 3(l) of the Act (12 U.S.C. 1813(l)).

(e) *Deposit account records* means account ledgers, signature cards, certificates of deposit, passbooks, corporate resolutions authorizing accounts in the possession of the insured depository institution and other books and records of the insured depository institution, including records maintained by computer, which relate to the insured depository institution's deposit taking function, but does not mean account statements, deposit slips, items deposited or cancelled checks.

(f) *FDIC* means the Federal Deposit Insurance Corporation.

(g) *Independent activity.* A corporation, partnership or unincorporated association shall be deemed to be engaged in an ''independent activity'' if the entity is operated primarily for some purpose other than to increase deposit insurance.

(h) *Insured branch* means a branch of a foreign bank any deposits in which are insured in accordance with the provisions of the Act.

(i) *Insured deposit* has the same meaning as that provided under section 3(m)(1) of the Act (12 U.S.C. 1813(m)(1)).

(j) *Insured depository institution* is any depository institution whose deposits are insured pursuant to the Act, including a foreign bank having an insured branch.

(k) *Natural person* means a human being.

(l) *Non-contingent trust interest* means a trust interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031–7 of the Federal Estate Tax Regulations (26 CFR 20.2031–7) or any similar present worth or life expectancy tables which may be adopted by the Internal Revenue Service.

(m) *Sole proprietorship* means a form of business in which one person owns all the assets of the business, in contrast to a partnership or corporation.

(n) *Trust estate* means the determinable and beneficial interest of a beneficiary or principal in trust funds but does not include the beneficial interest of an heir or devisee in a decedent's estate.

(o) *Trust funds* means funds held by an insured depository institution as trustee pursuant to any irrevocable trust established pursuant to any statute or written trust agreement.

(p) *Trust interest* means the interest of a beneficiary in an irrevocable express trust (other than an employee benefit plan) created either by written trust instrument or by statute, but does not include any interest retained by the settlor.

§ 330.2 Purpose.

The purpose of this part is to clarify the rules and define the terms necessary to afford deposit insurance coverage under the Act and provide rules for the recognition of deposit ownership in various circumstances.

§ 330.3 General principles.

(a) *Ownership rights and capacities.* The insurance coverage provided by the Act and this part is based upon the ownership rights and capacities in which deposit accounts are maintained at insured depository institutions. All deposits in an insured depository institution which are maintained in the same right and capacity (by or for the benefit of a particular depositor or depositors) shall be added together and insured in accordance with this part. Deposits maintained in different rights and capacities, as recognized under this part, shall be insured separately from each other.

(Example: Single ownership accounts and joint ownership accounts are insured separately from each other.)

(b) *Deposits maintained in separate insured depository institutions or in separate branches of the same insured depository institution.* Any deposit accounts maintained by a depositor at one insured depository institution are insured separately from, and without regard to, any deposit accounts that the same depositor maintains at any other

separately chartered and insured depository institution, even if two or more separately chartered and insured depository institutions are affiliated through common ownership.

(Example: Deposits held by the same individual at two different banks owned by the same bank holding company would be insured separately, per bank.)

The deposit accounts of a depositor maintained in the same right and capacity at different branches or offices of the same insured depository institution are not separately insured; rather they shall be added together and insured in accordance with this part.

(c) *Deposits maintained by foreigners and deposits denominated in foreign currency.* The availability of deposit insurance is not limited to citizens and residents of the United States. Any person or entity that maintains deposits in an insured depository institution is entitled to the deposit insurance provided by the Act and this part. In addition, deposits denominated in a foreign currency shall be insured in accordance with this part. Deposit insurance for such deposits shall be determined and paid in the amount of United States dollars that is equivalent in value to the amount of the deposit denominated in the foreign currency as of close of business on the date of default of the insured depository institution. The exchange rates to be used for such conversions are the 12 PM rates (the ''noon buying rates for cable transfers'') quoted for major currencies by the Federal Reserve Bank of New York on the date of default of the insured depository institution, unless the deposit agreement specifies that some other widely recognized exchange rates are to be used for all purposes under that agreement, in which case, the rates so specified shall be used for such conversions.

(d) *Deposits in insured branches of foreign banks.* Deposits in an insured branch of a foreign bank which are payable by contract in the United States shall be insured in accordance with this part, except that any deposits to the credit of the foreign bank, or any office, branch, agency or any wholly owned subsidiary of the foreign bank, shall not be insured. All deposits held by a depositor in the same right and capacity in more than one insured branch of the same foreign bank shall be added together for the purpose of determining the amount of deposit insurance.

(e) *Deposits payable solely outside of the United States and certain other locations.* Any obligation of an insured depository institution which is payable solely at an office of such institution located outside the States of the United States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, is not a deposit for the purposes of this part.

(f) *International banking facility deposits.* An ''international banking facility time deposit,'' as defined by the Board of Governors of the Federal Reserve System in Regulation D (12 CFR 204.8(a)(2)), or in any successor regulation, is not a deposit for the purposes of this part.

(g) *Bank investment contracts.* As required by section 11(a)(8) of the Act (12 U.S.C. 1821(a)(8)), any liability arising under any investment contract between any insured depository institution and any employee benefit plan which expressly permits ''benefit responsive withdrawals or transfers'' (as defined in section 11(a)(8) of the Act) are not insured deposits for purposes of this part. The term ''substantial penalty or adjustment'' used in section 11(a)(8) of the Act means, in the case of a deposit having an original term which exceeds one year, all interest earned on the amount withdrawn from the date of deposit or for six months, whichever is less; or, in the case of a deposit having an original term of one year or less, all interest earned on the amount withdrawn from the date of deposit or three months, whichever is less.

(h) *Application of state or local law to deposit insurance determinations.* In general, deposit insurance is for the benefit of the owner or owners of funds on deposit. However, while ownership under state law of deposited funds is a necessary condition for deposit insurance, ownership under state law is not sufficient for, or decisive in, determining deposit insurance coverage. Deposit insurance coverage is also a function of the deposit account records of the insured depository institution, of recordkeeping requirements, and of other provisions of this part, which, in the interest of uniform national rules for deposit insurance coverage, are controlling for purposes of determining deposit insurance coverage.

(i) *Determination of the amount of a deposit*—(1) *General rule.* The amount of a deposit is the balance of principal and interest unconditionally credited to the deposit account as of the date of default of the insured depository institution, plus the ascertainable amount of interest to that date, accrued at the contract rate (or the anticipated or announced interest or dividend rate), which the insured depository institution in default would have paid if the deposit had matured on that date and the insured depository institution had not failed. In the absence of any such announced or anticipated interest or dividend rate, the rate for this purpose shall be whatever rate was paid in the immediately preceding payment period.

(2) *Discounted certificates of deposit.* The amount of a certificate of deposit sold by an insured depository institution at a discount from its face value is its original purchase price plus the amount of accrued earnings calculated by compounding interest annually at the rate necessary to increase the original purchase price to the maturity value over the life of the certificate.

(3) *Waiver of minimum requirements.* In the case of a deposit with a fixed payment date, fixed or minimum term, or a qualifying or notice period that has not expired as of such date, interest thereon to the date of closing shall be computed according to the terms of the deposit contract as if interest had been credited and as if the deposit could have been withdrawn on such date without any penalty or reduction in the rate of earnings.

(j) *Continuation of insurance coverage following the death of a deposit owner.* The death of a deposit owner shall not affect the insurance coverage of the deposit for a period of six months following the owner's death unless the deposit account is restructured. The operation of this grace period, however, shall not result in a reduction of coverage. If an account is not restructured within six months after the owner's death, the insurance shall be provided on the basis of actual ownership in accordance with the provisions of § 330.5(a)(1).

§ 330.4 Continuation of separate deposit insurance after merger of insured depository institutions.

Whenever the liabilities of one or more insured depository institutions for deposits are assumed by another insured depository institution, whether by merger, consolidation, other statutory assumption or contract:

(a) The insured status of the institutions whose liabilities have been assumed terminates on the date of receipt by the FDIC of satisfactory evidence of the assumption; and

(b) The separate insurance of deposits assumed continues for six months from the date the assumption takes effect or, in the case of a time deposit, the earliest maturity date after the six-month period. In the case of time deposits which mature within six months of the date the deposits are assumed and which are renewed at the same dollar amount (either with or without accrued

interest having been added to the principal amount) and for the same term as the original deposit, the separate insurance applies to the renewed deposits until the first maturity date after the six-month period. Time deposits that mature within six months of the deposit assumption and that are renewed on any other basis, or that are not renewed and thereby become demand deposits, are separately insured only until the end of the six-month period.

§ 330.5 Recognition of deposit ownership and recordkeeping requirements.

(a) *Recognition of deposit ownership*—(1) *Evidence of deposit ownership.* Except as indicated in this paragraph (a)(1) or as provided in § 330.3(j), in determining the amount of insurance available to each depositor, the FDIC shall presume that deposited funds are actually owned in the manner indicated on the deposit account records of the insured depository institution. If the FDIC, in its sole discretion, determines that the deposit account records of the insured depository institution are clear and unambiguous, those records shall be considered binding on the depositor, and the FDIC shall consider no other records on the manner in which the funds are owned. If the deposit account records are ambiguous or unclear on the manner in which the funds are owned, then the FDIC may, in its sole discretion, consider evidence other than the deposit account records of the insured depository institution for the purpose of establishing the manner in which the funds are owned. Despite the general requirements of this paragraph (a)(1), if the FDIC has reason to believe that the insured depository institution's deposit account records misrepresent the actual ownership of deposited funds and such misrepresentation would increase deposit insurance coverage, the FDIC may consider all available evidence and pay claims for insured deposits on the basis of the actual rather than the misrepresented ownership.

(2) *Recognition of deposit ownership in custodial accounts.* In the case of custodial deposits, the interest of each beneficial owner may be determined on a fractional or percentage basis. This may be accomplished in any manner which indicates that where the funds of an owner are commingled with other funds held in a custodial capacity and a portion thereof is placed on deposit in one or more insured depository institutions without allocation, the owner's insured interest in the deposit in any one insured depository institution would represent, at any given time, the same fractional share as his or her share of the total commingled funds.

(b) *Recordkeeping requirements*—(1) *Disclosure of fiduciary relationships.* The ''deposit account records'' (as defined in § 330.1(e)) of an insured depository institution must expressly disclose, by way of specific references, the existence of any fiduciary relationship including, but not limited to, relationships involving a trustee, agent, nominee, guardian, executor or custodian, pursuant to which funds in an account are deposited and on which a claim for insurance coverage is based. No claim for insurance coverage based on a fiduciary relationship will be recognized if no fiduciary relationship is evident from the deposit account records of the insured depository institution. The general requirement for the express indication that the account is held in a fiduciary capacity will not apply, however, in instances where the FDIC determines, in its sole discretion, that the titling of the deposit account and the underlying deposit account records sufficiently indicate the existence of a fiduciary relationship. This exception may apply, for example, where the deposit account title or records indicate that the account is held by an escrow agent, title company or a company whose business is to hold deposits and securities for others.

(2) *Details of fiduciary relationships.* If the deposit account records of an insured depository institution disclose the existence of a relationship which might provide a basis for additional insurance (including the exception provided for in paragraph (b)(1) of this section), the details of the relationship and the interests of other parties in the account must be ascertainable either from the deposit account records of the insured depository institution or from records maintained, in good faith and in the regular course of business, by the depositor or by some person or entity that has undertaken to maintain such records for the depositor.

(3) *Multi-tiered fiduciary relationships.* In deposit accounts where there are multiple levels of fiduciary relationships, there are two methods of satisfying paragraphs (b)(1) and (b)(2) of this section to obtain insurance coverage for the interests of the true beneficial owners of a deposit account.

(i) One method is to:

(A) Expressly indicate, on the deposit account records of the insured depository institution, the existence of each and every level of fiduciary relationships; and

(B) Disclose, at each level, the name(s) and interest(s) of the person(s) on whose behalf the party at that level is acting.

(ii) An alternative method is to:

(A) Expressly indicate, on the deposit account records of the insured depository institution, that there are multiple levels of fiduciary relationships;

(B) Disclose the existence of additional levels of fiduciary relationships in records, maintained in good faith and in the regular course of business, by parties at subsequent levels; and

(C) Disclose, at each of the levels, the name(s) and interest(s) of the person(s) on whose behalf the party at that level is acting. No person or entity in the chain of parties will be permitted to claim that they are acting in a fiduciary capacity for others unless the possible existence of such a relationship is revealed at some previous level in the chain.

(4) *Exceptions to recordkeeping requirements*—(i) *Deposits evidenced by negotiable instruments.* If any deposit obligation of an insured depository institution is evidenced by a negotiable certificate of deposit, negotiable draft, negotiable cashier's or officer's check, negotiable certified check, negotiable traveler's check, letter of credit or other negotiable instrument, the FDIC will recognize the owner of such deposit obligation for all purposes of claim for insured deposits to the same extent as if his or her name and interest were disclosed on the records of the insured depository institution; provided, that the instrument was in fact negotiated to such owner prior to the date of default of the insured depository institution. The owner must provide affirmative proof of such negotiation, in a form satisfactory to the FDIC, to substantiate his or her claim. Receipt of a negotiable instrument directly from the insured depository institution in default shall, in no event, be considered a negotiation of said instrument for purposes of this provision.

(ii) *Deposit obligations for payment of items forwarded for collection by depository institution acting as agent.* Where an insured depository institution in default has become obligated for the payment of items forwarded for collection by a depository institution acting solely as agent, the FDIC will recognize the holders of such items for all purposes of claim for insured deposits to the same extent as if their name(s) and interest(s) were disclosed as depositors on the deposit account records of the insured depository institution, when such claim for insured deposits, if otherwise payable, has been

established by the execution and delivery of prescribed forms. The FDIC will recognize such depository institution forwarding such items for the holders thereof as agent for such holders for the purpose of making an assignment to the FDIC of their rights against the insured depository institution in default and for the purpose of receiving payment on their behalf.

§ 330.6 Single ownership accounts.

(a) *Individual accounts.* Funds owned by a natural person and deposited in one or more deposit accounts in his or her own name shall be added together and insured up to $100,000 in the aggregate. Exception: Despite the general requirement in this paragraph (a), if more than one natural person has the right to withdraw funds from an individual account (excluding persons who have the right to withdraw by virtue of a Power of Attorney), the account shall be treated as a joint ownership account (although not necessarily a qualifying joint account) and shall be insured in accordance with the provisions of § 330.9, unless the deposit account records clearly indicate, to the satisfaction of the FDIC, that the funds are owned by one individual and that other signatories on the account are merely authorized to withdraw funds on behalf of the owner.

(b) *Sole proprietorship accounts.* Funds owned by a business which is a ''sole proprietorship'' (as defined in § 330.1(m)) and deposited in one or more deposit accounts in the name of the business shall be treated as the individual account(s) of the person who is the sole proprietor, added to any other individual accounts of that person, and insured up to $100,000 in the aggregate.

(c) *Single-name accounts containing community property funds.* Community property funds deposited into one or more deposit accounts in the name of one member of a husband-wife community shall be treated as the individual account(s) of the named member, added to any other individual accounts of that person, and insured up to $100,000 in the aggregate.

(d) *Accounts of a decedent and accounts held by executors or administrators of a decedent's estate.* Funds held in the name of a decedent or in the name of the executor, administrator, or other personal representative of his or her estate and deposited into one or more deposit accounts shall be added together and insured up to $100,000 in the aggregate; provided, however, that nothing in this paragraph (d) shall affect the operation of § 330.3(j). The deposit insurance provided by this paragraph (d) shall be separate from any insurance coverage provided for the individual deposit accounts of the executor, administrator, other personal representative or the beneficiaries of the estate.

§ 330.7 Accounts held by an agent, nominee, guardian, custodian or conservator.

(a) *Agency or nominee accounts.* Funds owned by a principal or principals and deposited into one or more deposit accounts in the name of an agent, custodian or nominee, shall be insured to the same extent as if deposited in the name of the principal(s). When such funds are deposited by an insured depository institution acting as a trustee of an irrevocable trust, the insurance coverage shall be governed by the provisions of § 330.13.

(b) *Guardian, custodian or conservator accounts.* Funds held by a guardian, custodian, or conservator for the benefit of his or her ward, or for the benefit of a minor under the Uniform Gifts to Minors Act, and deposited into one or more accounts in the name of the guardian, custodian or conservator shall, for purposes of this part, be deemed to be agency or nominee accounts and shall be insured in accordance with paragraph (a) of this section.

(c) *Accounts held by fiduciaries on behalf of two or more persons.* Funds held by an agent, nominee, guardian, custodian, conservator or loan servicer, on behalf of two or more persons jointly, shall be treated as a joint ownership account and shall be insured in accordance with the provisions of § 330.9.

(d) *Mortgage servicing accounts.* Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of principal and interest, shall be insured in accordance with paragraph (a) of this section for the interest of each owner (mortgagee, investor or security holder) in such accounts. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in accordance with paragraph (a) of this section for the ownership interest of each mortgagor in such accounts.

(e) *Custodian accounts for American Indians.* Paragraph (a) of this section shall not apply to any interest an individual American Indian may have in funds deposited by the Bureau of Indian Affairs of the United States Department of the Interior (the ''BIA'') on behalf of that person pursuant to 25 U.S.C. 162(a), or by any other disbursing agent of the United States on behalf of that person pursuant to similar authority, in an insured depository institution. The interest of each American Indian in all such accounts maintained at the same insured depository institution shall be added together and insured, up to $100,000, separately from any other accounts maintained by that person in the same insured depository institution.

§ 330.8 Annuity contract accounts.

(a) Funds held by an insurance company or other corporation in a deposit account for the sole purpose of funding life insurance or annuity contracts and any benefits incidental to such contracts, shall be insured separately in the amount of up to $100,000 per annuitant, provided that, pursuant to a state statute:

(1) The corporation establishes a separate account for such funds;

(2) The account cannot be charged with the liabilities arising out of any other business of the corporation; and

(3) The account cannot be invaded by other creditors of the corporation in the event that the corporation becomes insolvent and its assets are liquidated.

(b) Such insurance coverage shall be separate from the insurance provided for any other accounts maintained by the corporation or the annuitants at the same insured depository institution.

§ 330.9 Joint ownership accounts.

(a) *Separate insurance coverage.* Qualifying joint accounts, whether owned as joint tenants with right of survivorship, as tenants in common or as tenants by the entirety, shall be insured separately from any individually owned (single ownership) deposit accounts maintained by the co-owners.

(Example: If A has a single ownership account and also is a joint owner of a qualifying joint account, A's interest in the joint account would be insured separately from his or her interest in the individual account.) Qualifying joint accounts in the names of both husband and wife which are comprised of community property funds shall be added together and insured up to $100,000, separately from any funds deposited into accounts bearing their individual names.

(b) *Determination of insurance coverage.* Step one: all qualifying joint accounts owned by the same combination of individuals shall be added together; the aggregate amount is insurable up to a limit of $100,000.

(Example: A qualifying joint account owned by ''A&B'' would be added to a

qualifying joint account owned by ''B&A'' and the insurable limit on the combined balances in those accounts would be $100,000. Moreover, the insurable limit on a single qualifying joint account owned by ''A&B'' would be $100,000. Thus, any qualifying joint account (or group of qualifying joint accounts owned by the same combination of persons) with a balance over $100,000 will be over the insurance limit.)

Step two: the interests of each co-owner in all qualifying joint accounts, whether owned by the same or different combinations of persons, shall then be added together and the total shall be insured up to $100,000.

(Example: ''A&B'' have a qualifying joint account with a balance of $100,000; ''A&C'' have a qualifying joint account with a balance of $150,000; and ''A&D'' have a qualifying joint account with a balance of $100,000. The balance in the account owned by ''A&C'' exceeds $100,000, so under step one the excess amount, $50,000, would be uninsured. A's combined ownership interests in the insurable amounts in the accounts would be $150,000, of which under step two $100,000 would be insured and $50,000 would be uninsured; B's ownership interest would be $50,000, all of which would be insured; C's insurable ownership interest would be $50,000, all of which would be insured; and D's ownership interest would be $50,000, all of which would be insured.)

(c) *Qualifying joint accounts*. (1) A joint deposit account shall be deemed to be a qualifying joint account, for purposes of this section, only if:

(i) All co-owners of the funds in the account are ''natural persons'' (as defined in § 330.1(k)); and

(ii) Each co-owner has personally signed a deposit account signature card; and

(iii) Each co-owner possesses withdrawal rights on the same basis.

(2) The signature-card requirement of paragraph (c)(1)(ii) of this section shall not apply to certificates of deposit, to any deposit obligation evidenced by a negotiable instrument, or to any account maintained by an agent, nominee, guardian, custodian or conservator on behalf of two or more persons.

(3) All deposit accounts that satisfy the criteria in paragraph (c)(1) of this section, and those accounts that come within the exception provided for in paragraph (c)(2) of this section, shall be deemed to be jointly owned provided that, in accordance with the provisions of § 330.5(a), the FDIC determines that the deposit account records of the insured depository institution are clear and unambiguous as to the ownership of the accounts. If the deposit account records are ambiguous or unclear as to the manner in which the deposit accounts are owned, then the FDIC may, in its sole discretion, consider evidence other than the deposit account records of the insured depository institution for the purpose of establishing the manner in which the funds are owned. The signatures of two or more persons on the deposit account signature card or the names of two or more persons on a certificate of deposit or other deposit instrument shall be conclusive evidence that the account is a joint account (although not necessarily a qualifying joint account) unless the deposit records as a whole are ambiguous and some other evidence indicates, to the satisfaction of the FDIC, that there is a contrary ownership capacity.

(d) *Nonqualifying joint accounts*. A deposit account held in two or more names which is not a qualifying joint account, for purposes of this section, shall be treated as being owned by each named owner, as an individual, corporation, partnership, or unincorporated association, as the case may be, and the actual ownership interest of each individual or entity in such account shall be added to any other single ownership accounts of such individual or other accounts of such entity, and shall be insured in accordance with the provisions of this part governing the insurance of such accounts.

(e) *Determination of interests*. The interests of the co-owners of qualifying joint accounts, held as tenants in common, shall be deemed equal, unless otherwise stated in the depository institution's deposit account records. This section applies regardless of whether the conjunction ''and'' or ''or'' is used in the title of a joint deposit account, even when both terms are used, such as in the case of a joint deposit account with three or more co-owners.

§ 330.10 Revocable trust accounts.

(a) *General rule*. Funds owned by an individual and deposited into an account evidencing an intention that upon the death of the owner the funds shall belong to one or more qualifying beneficiaries shall be insured in the amount of up to $100,000 in the aggregate as to each such named qualifying beneficiary, separately from any other accounts of the owner or the beneficiaries. For purposes of this provision, the term ''qualifying beneficiaries'' means the owner's spouse, child/children or grandchild/grandchildren.

(Example: If A establishes a qualifying account payable upon death to his spouse, two children and one grandchild, assuming compliance with the requirements of this provision, the account would be insured up to $400,000 separately from any other different types of accounts either A or the beneficiaries may have with the same depository institution.)

Accounts covered by this provision are commonly referred to as tentative or ''Totten trust'' accounts, ''payable-on-death'' accounts, or revocable trust accounts.

(b) *Required intention*. The required intention in paragraph (a) of this section that upon the owner's death the funds shall belong to one or more qualifying beneficiaries must be manifested in the title of the account using commonly accepted terms such as, but not limited to, ''in trust for,'' ''as trustee for,'' ''payable-on-death to,'' or any acronym therefor. In addition, the beneficiaries must be specifically named in the deposit account records of the insured depository institution. The settlor of a revocable trust account shall be presumed to own the funds deposited into the account.

(c) *Interests of nonqualifying beneficiaries*. If a named beneficiary of an account covered by this section is not a qualifying beneficiary, the funds corresponding to that beneficiary shall be treated as individually owned (single ownership) accounts of such owner(s), aggregated with any other single ownership accounts of such owner(s), and insured up to $100,000 per owner.

(Examples: If A establishes an account payable upon death to his or her nephew, the account would be insured as a single ownership account owned by A. Similarly, if B establishes an account payable upon death to her husband, son and nephew, two-thirds of the account balance would be eligible for POD coverage up to $200,000 corresponding to the two qualifying beneficiaries (i.e., the spouse and child). The amount corresponding to the non-qualifying beneficiary (i.e., the nephew) would be deemed to be owned by B in her single ownership capacity and insured accordingly.)

(d) *Joint revocable trust accounts*. Where an account described in paragraph (a) of this section is established by more than one owner and held for the benefit of others, some or all of whom are within the qualifying degree of kinship, the respective interests of each owner (which shall be deemed equal unless otherwise stated in the insured depository institution's deposit account records) held for the benefit of each qualifying beneficiary shall be separately insured up to $100,000. However, where a husband and a wife establish a revocable trust account naming themselves as the sole beneficiaries, such account shall not be insured according to the provisions of this section but shall instead be insured

in accordance with the joint account provisions of § 330.9.

(e) *Definition of ''children'' and ''grandchildren''.* For the purpose of establishing the qualifying degree of kinship set forth in paragraph (a) of this section, the term ''children'' includes any biological, adopted and step-children of the owner and ''grandchildren'' includes biological, adopted, or step-children of any of the owner's children.

(f) *Living trusts.* This section also applies to revocable trust accounts held in connection with a so-called ''living trust,'' a formal trust which an owner creates and retains control over during his or her lifetime. If a named beneficiary in a living trust is a qualifying beneficiary under this section, then the deposit account held in connection with the living trust may be eligible for deposit insurance under this section, assuming compliance with all the provisions of this part. If, however, for example, the living trust includes a ''defeating contingency'' relative to that beneficiary's interest in the trust assets, then insurance coverage under this section would not be provided. For purposes of this section, a ''defeating contingency'' is defined as a condition which would prevent the beneficiary from acquiring a vested and non-contingent interest in the funds in the deposit account upon the owner's death.

§ 330.11 Accounts of a corporation, partnership or unincorporated association.

(a) *Corporate accounts.* (1) The deposit accounts of a corporation engaged in any ''independent activity'' (as defined in § 330.1(g)) shall be added together and insured up to $100,000 in the aggregate. If a corporation has divisions or units which are not separately incorporated, the deposit accounts of those divisions or units shall be added to any other deposit accounts of the corporation. If a corporation maintains deposit accounts in a representative or fiduciary capacity, such accounts shall not be treated as the deposit accounts of the corporation but shall be treated as fiduciary accounts and insured in accordance with the provisions of § 330.7.

(2) Notwithstanding any other provision of this part, any trust or other business arrangement which has filed or is required to file a registration statement with the Securities and Exchange Commission pursuant to section 8 of the Investment Company Act of 1940 or that would be required so to register but for the fact it is not created under the laws of the United States or a state or but for sections 2(b), 3(c)(1), or 6(a)(1) of that act shall be deemed to be a corporation for purposes of determining deposit insurance coverage.

(b) *Partnership accounts.* The deposit accounts of a partnership engaged in any ''independent activity'' (as defined in § 330.1(g)) shall be added together and insured up to $100,000 in the aggregate. Such insurance coverage shall be separate from any insurance provided for individually owned (single ownership) accounts maintained by the individual partners. A partnership shall be deemed to exist, for purposes of this paragraph, any time there is an association of two or more persons or entities formed to carry on, as co-owners, an unincorporated business for profit.

(c) *Unincorporated association accounts.* The deposit accounts of an unincorporated association engaged in any independent activity shall be added together and insured up to $100,000 in the aggregate, separately from the accounts of the person(s) or entity(ies) comprising the unincorporated association. An unincorporated association shall be deemed to exist, for purposes of this paragraph, whenever there is an association of two or more persons formed for some religious, educational, charitable, social or other noncommercial purpose.

(d) *Non-qualifying entities.* The deposit accounts of an entity which is not engaged in an ''independent activity'' (as defined in § 330.1(g)) shall be deemed to be owned by the person or persons owning the corporation or comprising the partnership or unincorporated association, and, for deposit insurance purposes, the interest of each person in such a deposit account shall be added to any other deposit accounts individually owned by that person and insured up to $100,000 in the aggregate.

§ 330.12 Accounts held by a depository institution as the trustee of an irrevocable trust.

(a) *Separate insurance coverage.* ''Trust funds'' (as defined in § 330.1(o)) held by an insured depository institution in its capacity as trustee of an irrevocable trust, whether held in its trust department, held or deposited in any other department of the fiduciary institution, or deposited by the fiduciary institution in another insured depository institution, shall be insured up to $100,000 for each owner or beneficiary represented. This insurance shall be separate from, and in addition to, the insurance provided for any other deposits of the owners or the beneficiaries.

(b) *Determination of interests.* The insurance for funds held by an insured depository institution in its capacity as trustee of an irrevocable trust shall be determined in accordance with the following provisions:

(1) *Allocated funds of a trust estate.* If trust funds of a particular ''trust estate'' (as defined in § 330.1(n)) are allocated by the fiduciary and deposited, the insurance with respect to such trust estate shall be determined by ascertaining the amount of its funds allocated, deposited and remaining to the credit of the claimant as fiduciary at the insured depository institution in default.

(2) *Interest of a trust estate in unallocated trust funds.* If funds of a particular trust estate are commingled with funds of other trust estates and deposited by the fiduciary institution in one or more insured depository institutions to the credit of the depository institution as fiduciary, without allocation of specific amounts from a particular trust estate to an account in such institution(s), the percentage interest of that trust estate in the unallocated deposits in any institution in default is the same as that trust estate's percentage interest in the entire commingled investment pool.

(c) *Limitation on applicability.* This section shall not apply to deposits of trust funds belonging to a trust which is classified as a corporation under § 330.11(a)(2).

§ 330.13 Irrevocable trust accounts.

(a) *General rule.* Funds representing the ''non-contingent trust interest(s)'' (as defined in § 330.1(l)) of a beneficiary deposited into one or more deposit accounts established pursuant to one or more irrevocable trust agreements created by the same settlor(s) (grantor(s)) shall be added together and insured up to $100,000 in the aggregate. Such insurance coverage shall be separate from the coverage provided for other accounts maintained by the settlor(s), trustee(s) or beneficiary(ies) of the irrevocable trust(s) at the same insured depository institution. Each ''trust interest'' (as defined in § 330.1(p)) in any irrevocable trust established by two or more settlors shall be deemed to be derived from each settlor pro rata to his or her contribution to the trust.

(b) *Treatment of contingent trust interests.* In the case of any trust in which certain trust interests do not qualify as non-contingent trust interests, the funds representing those interests shall be added together and insured up to $100,000 in the aggregate. Such insurance coverage shall be in addition to the coverage provided for the funds

representing non-contingent trust interests which are insured pursuant to paragraph (a) of this section.

(c) *Commingled accounts of bankruptcy trustees.* Whenever a bankruptcy trustee appointed under Title 11 of the United States Code commingles the funds of various bankruptcy estates in the same account at an insured depository institution, the funds of each Title 11 bankruptcy estate will be added together and insured up to $100,000, separately from the funds of any other such estate.

§ 330.14 Retirement and other employee benefit plan accounts.

(a) *''Pass-through''* insurance. Except as provided in paragraph (b) of this section, any deposits of an employee benefit plan or of any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457) in an insured depository institution shall be insured on a ''pass-through'' basis, in the amount of up to $100,000 for the non-contingent interest of each plan participant, provided that the FDIC's recordkeeping requirements, as prescribed in § 330.5, are satisfied.

(b) *Exception.* ''Pass-through'' insurance shall not be provided pursuant to paragraph (a) of this section with respect to any deposit accepted by an insured depository institution which, at the time the deposit is accepted, may not accept brokered deposits pursuant to section 29 of the Act (12 U.S.C. 1831f) unless, at the time the deposit is accepted:

(1) The institution meets each applicable capital standard; and

(2) The depositor receives a written statement from the institution indicating that such deposits are eligible for insurance coverage on a ''pass-through'' basis.

(c) *Aggregation*—(1) *Multiple plans.* Funds representing the non-contingent interests of a beneficiary in an employee benefit plan, or eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457), which are deposited in one or more deposit accounts shall be aggregated with any other deposited funds representing such interests of the same beneficiary in other employee benefit plans, or eligible deferred compensation plans described in section 457 of the Internal Revenue Code of 1986, established by the same employer or employee organization.

(2) *Certain retirement accounts.* (i) Deposits in an insured depository institution made in connection with the following types of retirement plans shall be aggregated and insured in the amount of up to $100,000 per participant:

(A) Any individual retirement account described in section 408(a) of the Internal Revenue Code of 1986 (26 U.S.C. 408(a));

(B) Any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457); and

(C) Any individual account plan defined in section 3(34) of the Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1002) and any plan described in section 401(d) of the Internal Revenue Code of 1986 (26 U.S.C. 401(d)), to the extent that participants and beneficiaries under such plans have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plans.

(ii) The provisions of this paragraph (c) shall not apply with respect to the deposits of any employee benefit plan, or eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986, which is not entitled to ''pass-through'' insurance pursuant to paragraph (b) of this section. Such deposits shall be aggregated and insured in the amount of $100,000 per plan.

(d) *Determination of interests*—(1) *Defined contribution plans.* The value of an employee's non-contingent interest in a defined contribution plan shall be deemed to be the employee's account balance as of the date of default of the insured depository institution, regardless of whether said amount was derived, in whole or in part, from contributions of the employee and/or the employer to the account.

(2) *Defined benefit plans.* The value of an employee's non-contingent interest in a defined benefit plan shall be deemed to be the present value of the employee's interest in the plan, evaluated in accordance with the method of calculation ordinarily used under such plan, as of the date of default of the insured depository institution.

(3) *Amounts taken into account.* For the purposes of applying the rule under paragraph (c)(2) of this section, only the present vested and ascertainable interests of each participant in an employee benefit plan or ''457 Plan,'' excluding any remainder interest created by, or as a result of, the plan, shall be taken into account in determining the amount of deposit insurance accorded to the deposits of the plan.

(e) *Treatment of contingent interests.* In the event that employees' interests in an employee benefit plan are not capable of evaluation in accordance with the provisions of this section, or an account established for any such plan includes amounts for future participants in the plan, payment by the FDIC with respect to all such interests shall not exceed $100,000 in the aggregate.

(f) *Overfunded pension plan deposits.* Any portion of an employee benefit plan's deposits which is not attributable to the interests of the beneficiaries under the plan shall be deemed attributable to the overfunded portion of the plan's assets and shall be aggregated and insured up to $100,000, separately from any other deposits.

(g) *Definitions of ''depositor'', ''employee benefit plan'', ''employee organization'' and ''non-contingent interest''.* Except as otherwise indicated in this section, for purposes of this section:

(1) The term *depositor* means the person(s) administering or managing an employee benefit plan.

(2) The term *employee benefit plan* has the same meaning given to such term in section 3(3) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1002) and includes any plan described in section 401(d) of the Internal Revenue Code of 1986.

(3) The term *employee organization* means any labor union, organization, employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.

(4) The term *non-contingent interest* means an interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031–7 of the Federal Estate Tax Regulations (26 CFR 20.2031–7) or any similar present worth or life expectancy tables as may be published by the Internal Revenue Service.

(h) *Disclosure of capital status*—(1) *Disclosure upon request.* An insured depository institution shall, upon request, provide a clear and conspicuous written notice to any depositor of employee benefit plan funds of the institution's leverage ratio, Tier 1 risk-based capital ratio, total risk-based capital ratio and prompt corrective action (PCA) capital category, as defined in the regulations of the institution's primary federal regulator, and whether, in the depository institution's judgment, employee benefit

plan deposits made with the institution, at the time the information is requested, would be eligible for ''pass-through'' insurance coverage under paragraphs (a) and (b) of this section. Such notice shall be provided within five business days after receipt of the request for disclosure.

(2) *Disclosure upon opening of an account.* An insured depository institution shall, upon the opening of any account comprised of employee benefit plan funds, provide a clear and conspicuous written notice to the depositor consisting of an accurate explanation of the requirements for ''pass-through'' deposit insurance coverage provided in paragraphs (a) and (b) of this section; the institution's PCA capital category; and a determination of whether or not, in the depository institution's judgment, the funds being deposited are eligible for ''pass-through'' insurance coverage.

(3) *Disclosure when ''pass-through'' coverage is no longer available.* Whenever new, rolled-over or renewed employee benefit plan deposits placed with an insured depository institution would no longer be eligible for ''pass-through'' insurance coverage, the institution shall provide a clear and conspicuous written notice to all existing depositors of employee benefit plan funds of its new PCA capital category, if applicable, and that new, rolled-over or renewed deposits of employee benefit plan funds made after the applicable date shall not be eligible for ''pass-through'' insurance coverage under paragraphs (a) and (b) of this section. Such written notice shall be provided within ten business days after the institution receives notice or is deemed to have notice that it is no longer permitted to accept brokered deposits under section 29 of the Act and the institution no longer meets the requirements in paragraph (b) of this section.

(4) *Definition of ''employee benefit plan''.* For purposes of this paragraph (h), the term ''employee benefit plan'' has the same meaning as provided under paragraph (g)(2) of this section but also includes any eligible deferred compensation plans described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457).

§ 330.15 Public unit accounts.

(a) *Extent of insurance coverage*—(1) *Accounts of the United States.* Each official custodian of funds of the United States lawfully depositing such funds in an insured depository institution shall be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all time and savings deposits; and

(ii) Up to $100,000 in the aggregate for all demand deposits.

(2) *Accounts of a state, county, municipality or political subdivision.* (i) Each official custodian of funds of any state of the United States, or any county, municipality, or political subdivision thereof, lawfully depositing such funds in an insured depository institution in the state comprising the public unit or wherein the public unit is located (including any insured depository institution having a branch in said state) shall be separately insured in the amount of:

(A) Up to $100,000 in the aggregate for all time and savings deposits; and

(B) Up to $100,000 in the aggregate for all demand deposits.

(ii) In addition, each such official custodian depositing such funds in an insured depository institution outside of the state comprising the public unit or wherein the public unit is located, shall be insured in the amount of up to $100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(3) *Accounts of the District of Columbia.* (i) Each official custodian of funds of the District of Columbia lawfully depositing such funds in an insured depository institution in the District of Columbia (including an insured depository institution having a branch in the District of Columbia) shall be separately insured in the amount of:

(A) Up to $100,000 in the aggregate for all time and savings deposits; and

(B) Up to $100,000 in the aggregate for all demand deposits.

(ii) In addition, each such official custodian depositing such funds in an insured depository institution outside of the District of Columbia shall be insured in the amount of up to $100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(4) *Accounts of the Commonwealth of Puerto Rico and other government possessions and territories.* (i) Each official custodian of funds of the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam, or The Commonwealth of the Northern Mariana Islands, or of any county, municipality, or political subdivision thereof lawfully depositing such funds in an insured depository institution in Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam, or The Commonwealth of the Northern Mariana Islands, respectively, shall be separately insured in the amount of:

(A) Up to $100,000 in the aggregate for all time and savings deposits; and

(B) Up to $100,000 in the aggregate for all demand deposits.

(ii) In addition, each such official custodian depositing such funds in an insured depository institution outside of the commonwealth, possession or territory comprising the public unit or wherein the public unit is located, shall be insured in the amount of up to $100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(5) *Accounts of an Indian tribe.* Each official custodian of funds of an Indian tribe (as defined in 25 U.S.C. 1452(c)), including an agency thereof having official custody of tribal funds, lawfully depositing the same in an insured depository institution shall be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all time and savings deposits; and

(ii) Up to $100,000 in the aggregate for all demand deposits.

(b) *Rules relating to the ''official custodian''*—(1) *Qualifications for an ''official custodian''.* In order to qualify as an ''official custodian'' for the purposes of paragraph (a) of this section, such custodian must have plenary authority, including control, over funds owned by the public unit which the custodian is appointed or elected to serve. Control of public funds includes possession, as well as the authority to establish accounts for such funds in insured depository institutions and to make deposits, withdrawals, and disbursements of such funds.

(2) *Official custodian of the funds of more than one public unit.* For the purposes of paragraph (a) of this section, if the same person is an official custodian of the funds of more than one public unit, he or she shall be separately insured with respect to the funds held by him or her for each such public unit, but shall not be separately insured by virtue of holding different offices in such public unit or, except as provided in paragraph (c) of this section, holding such funds for different purposes.

(3) *Split of authority or control over public unit funds.* If the exercise of authority or control over the funds of a public unit requires action by, or the consent of, two or more officers, employees, or agents of such public unit, then they will be treated as one ''official custodian'' for the purposes of this section.

(c) *Public bond issues.* Where an officer, agent or employee of a public unit has custody of certain funds which by law or under a bond indenture are required to be set aside to discharge a debt owed to the holders of notes or bonds issued by the public unit, any deposit of such funds in an insured

depository institution shall be deemed to be a deposit by a trustee of trust funds of which the noteholders or bondholders are pro rata beneficiaries, and the beneficial interest of each noteholder or bondholder in the deposit shall be separately insured up to $100,000.

(d) *Definition of ''political subdivision''.* The term ''political subdivision'' includes drainage, irrigation, navigation, improvement, levee, sanitary, school or power districts, and bridge or port authorities and other special districts created by state statute or compacts between the states. It also includes any subdivision of a public unit mentioned in paragraphs (a)(2), (a)(3) and (a)(4) of this section or any principal department of such public unit:

(1) The creation of which subdivision or department has been expressly authorized by the law of such public unit;

(2) To which some functions of government have been delegated by such law; and

(3) Which is empowered to exercise exclusive control over funds for its exclusive use.

§ 330.16 Effective dates.

(a) *Prior effective dates.* Former §§ 330.1(j), 330.10(a), 330.12(c), 330.12(d)(3) and 330.13 (see 12 CFR part 330, as revised January 1, 1998) became effective on December 19, 1993.

(b) *Time deposits.* Except with respect to the provisions in former § 330.12 (a) and (b) (see 12 CFR part 330, as revised January 1, l998) and current § 330.14(a) and (b), any time deposits made before December 19, 1991 that do not mature until after December 19, 1993, shall be subject to the rules as they existed on the date the deposits were made. Any time deposits made after December 19, 1991 but before December 19, 1993, shall be subject to the rules as they existed on the date the deposits were made. Any rollover or renewal of such time deposits prior to December 19, 1993 shall subject those deposits to the rules in effect on the date of such rollover or renewal. With respect to time deposits which mature only after a prescribed notice period, the provisions of this part shall be effective on the earliest possible maturity date after June 24, 1993 assuming (solely for purposes of this section) that notice had been given on that date.

By order of the Board of Directors.

Dated at Washington, D.C., this 28th day of April, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–11987 Filed 5–8–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. 98N–0294]

Beverages: Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to lift the stay of the effective date for the allowable levels in the bottled water quality standard for nine chemical contaminants, i.e., antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and 2,3,7,8–TCDD (dioxin), that was imposed in a final rule published on March 26, 1996. By lifting the stay of the effective date, bottled water manufacturers will be required to monitor source waters and finished bottled water products at least once a year for these nine chemical contaminants under the current good manufacturing practice (CGMP) regulations for bottled water. FDA is required to issue monitoring requirements for the nine chemical contaminants under the Safe Drinking Water Act Amendments of 1996 (SDWA Amendments). FDA is using direct final rulemaking for this action because the agency expects that there will be no significant adverse comment on the rule. Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule under FDA's usual procedure for notice-and-comment rulemaking to provide a procedural framework to finalize the rule in the event the agency receives significant adverse comments and withdraws this direct final rule. The companion proposed rule and direct final rule are substantively identical.

DATES: The regulation is effective November 9, 1998. Submit written comments by July 27, 1998. If no timely significant adverse comments are received, the agency will publish a notice in the **Federal Register** no later than August 6, 1998, confirming the effective date of the direct final rule. If timely significant adverse comments are received, the agency will publish a notice of significant adverse comment in the **Federal Register** withdrawing this direct final rule no later than August 6, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Henry Kim, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–260–0631.

SUPPLEMENTARY INFORMATION:

I. Background

Before the enactment of the SDWA Amendments on August 6, 1996, section 410 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 349) required that, whenever the Environmental Protection Agency (EPA) prescribed interim or revised National Primary Drinking Water Regulations (NPDWR's) under section 1412 of the Public Health Service Act (SDWA) (42 U.S.C. 300f through 300j–9)), FDA consult with EPA and either amend its regulations for bottled drinking water in § 165.110 (21 CFR 165.110) or publish in the **Federal Register** its reasons for not making such amendments.

In accordance with section 410 of the act, FDA published in the **Federal Register** of March 26, 1996 (61 FR 13258), a final rule (hereinafter ''the March 1996 final rule'') that amended the quality standard for bottled water by establishing or revising the allowable levels for 5 inorganic chemicals (IOC's) and 17 synthetic organic chemicals (SOC's), including 3 synthetic volatile organic chemicals (VOC's), 9 pesticide chemicals, and 5 nonpesticide chemicals. This action was in response to EPA's issuance of NPDWR's consisting of maximum contaminant levels (MCL's) for the same 5 IOC's and 17 SOC's in public drinking water (see 57 FR 31776, July 17, 1992).

However, in the March 1996 final rule, FDA stayed the effective date for the allowable levels for the five IOC's (antimony, beryllium, cyanide, nickel, and thallium) and four of the SOC's (diquat, endothall, glyphosate, and dioxin). This action was in response to bottled water industry comments (responding to the August 4, 1993, proposal (58 FR 41612)) which asserted that additional monitoring for these nine chemicals required under the bottled water CGMP regulations would pose an undue economic burden on bottlers. If the agency had not stayed the effective date for the allowable levels,

the bottled water CGMP regulations under part 129 (21 CFR part 129) would have been in effect for these nine chemical contaminants. The bottled water CGMP regulations require a minimum yearly monitoring of source water and finished bottled water products for chemical contaminants for which allowable levels have been established in the bottled water quality standard. The comments requested that FDA adopt reduced frequency monitoring requirements for chemical contaminants that are not likely to be present in the source water for bottling or in the finished bottled water products. The comments submitted data that supported the request that FDA reconsider the current monitoring frequency requirements for chemical contaminants in the bottled water CGMP regulations.

Based on the information submitted by the comments, FDA stated in the March 1996 final rule (61 FR 13258 at 13261) that the matter of reduced frequency of monitoring (less frequently than once per year) requirements for chemical contaminants that are not likely to be found in bottled water merited consideration by the agency. FDA also stated, however, that any revision of the monitoring requirements for chemical contaminants in bottled water would require an amendment of the bottled water CGMP regulations (part 129). FDA stated that it intended to initiate, considering its resources and competing priorities, a separate rulemaking to address the issue of circumstances in which reduced frequency of monitoring requirements for chemical contaminants in bottled water products may be appropriate.

Therefore, FDA stayed the effective date for the nine chemical contaminants pending completion of a rulemaking to address the issue of reduced frequency monitoring for chemical contaminants in bottled water. Although the effect of the stay does not require bottled water manufacturers to monitor source waters and finished bottled water products annually for the nine chemical contaminants, FDA advised water bottlers to ensure, through appropriate manufacturing techniques and sufficient quality control procedures, that their bottled water products are safe with respect to levels of these nine chemical contaminants.

II. Direct Final Rulemaking

FDA has determined that the subjects of this rulemaking are suitable for a direct final rule. The actions taken should be noncontroversial and the agency does not anticipate receiving any significant adverse comments.

FDA is lifting the stay for the nine chemical contaminants for which the agency stayed the effective date in the March 1996 final rule. By lifting the stay, the bottled water CGMP requirements for annual testing for the nine chemical contaminants will become effective. This action will meet the statutory mandate provided in the SDWA Amendments that requires the agency to issue monitoring requirements for the nine chemical contaminants by August 6, 1998.

If FDA does not receive significant adverse comment on or before July 27, 1998, the agency will publish a notice in the **Federal Register** no later than August 6, 1998, confirming the effective date of the direct final rule. The agency intends to make the direct final rule effective 180 days after publication of the confirmation notice in the **Federal Register**.

A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. A comment recommending a rule change in addition to the rule will not be considered a significant adverse comment, unless the comment states why this rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment. If timely significant adverse comments are received, the agency will publish a notice of significant adverse comment in the **Federal Register** withdrawing this direct final rule no later than August 6, 1998.

The companion proposed rule, which is substantively identical to the direct final rule, provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of significant adverse comment. The comment period for the direct final rule runs concurrently with that of the companion proposed rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. Likewise, significant adverse comments submitted to the direct final rule will be considered as comments to the companion proposed rule and the agency will consider such comments in developing a final rule. FDA will not provide additional opportunity for comment on the companion proposed rule. A full description of FDA's policy on direct final rule procedures may be found in a guidance document published in the **Federal Register** of November 21, 1997 (62 FR 62466).

III. Action to Lift the Stay

Subsequent to the March 1996 final rule, on August 6, 1996, the SDWA Amendments were enacted. Section 305 of the SDWA Amendments requires that, for contaminants covered by a standard of quality regulation issued by FDA before the enactment of the SDWA Amendments for which an effective date had not been established, FDA issue monitoring requirements for such contaminants (e.g., the nine chemical contaminants: Antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and dioxin) not later than 2 years after the date of enactment of the SDWA Amendments. Under this mandate, FDA is required to issue monitoring requirements for the nine chemical contaminants for which it stayed the effective date in the March 1996 final rule by August 6, 1998, with an effective date of February 6, 1999. If FDA does not meet this statutory time period, the NPDWR's for the nine chemical contaminants become applicable to bottled water.

For the reasons set forth in this document, FDA is lifting the stay of the effective date for the allowable levels for the nine chemical contaminants (antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and dioxin). First, the agency's CGMP regulations for bottled water, which require that source waters and finished bottled water products be tested for these nine contaminants at least once a year, are protective of the public health. The agency considers at least annual testing, as set forth in its CGMP regulations in part 129 to be of sufficient frequency, absent circumstances that may warrant more frequent testing, to ensure that bottled water has been prepared, packed or held under sanitary conditions. Second, Congress mandated, under the SDWA Amendments, that the agency issue monitoring requirements for the nine chemical contaminants by August 6, 1998. The agency's action to lift the stay is consistent with this mandate. By lifting the stay of the effective date for the allowable levels for

the nine chemical contaminants in the bottled water quality standard, bottled water manufacturers will be required to monitor source waters and finished bottled water products at least once a year for these nine chemical contaminants under the CGMP provisions in part 129. Third, in the March 1996 final rule, FDA stated that it intended to initiate rulemaking to address the issue of whether there are circumstances in which reduced frequency of monitoring for contaminants is appropriate. However, such rulemaking would require consideration of all chemical contaminants, not just the nine chemical contaminants that are the subject of the stay. FDA is only addressing, in this rulemaking, the frequency of monitoring for the nine chemical contaminants that are the subject of the stay. FDA may consider, in a future rulemaking, the issue of reduced frequency of monitoring in the context of all chemical contaminants in bottled water subject to the bottled water CGMP regulations (part 129). Therefore, the agency is, at this time, electing to lift the stay of the effective date for the allowable levels in the bottled water quality standard for the nine chemical contaminants, i.e., antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and dioxin, and thereby require annual testing for these nine contaminants, consistent with the CGMP requirements for bottled water.

IV. Environmental Impact

The agency has determined under 21 CFR 25.32(a) 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.

V. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of this direct final rule under Executive Order 12866. 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). According to Executive Order 12866, a regulatory action is ''significant'' if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million, adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. FDA finds that this direct final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this direct final rule is not a major rule for the purpose of Congressional review. For the purpose of Congressional review, a major rule is one which is likely to cause an annual effect on the economy of $100 million; a major increase in costs or prices; significant effects on competition, employment, productivity, or innovation; or significant effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Final Regulatory Flexibility Analysis

FDA has examined the impact of the rule as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the RFA requires agencies to analyze options that would minimize the economic impact of that rule on small entities. The agency acknowledges that the direct final rule may have a significant economic impact on a substantial number of small entities. The agency is not, in this analysis, addressing comments received in response to an initial regulatory flexibility analysis. The nature of the direct final rule provides for a companion proposed rule published at the same time as the direct final rule. An initial regulatory flexibility analysis is contained in the companion proposed rule. The agency is publishing the direct final rule because the agency does not anticipate any significant adverse comment. Should the agency receive any significant adverse comment in response to the direct final rule, the agency will withdraw the direct final rule and use the companion proposed rule in developing a final rule.

1. Objectives

The RFA requires a succinct statement of the purpose and objectives of any rule that may have a significant economic impact on a substantial number of small entities. The agency is taking this action to lift the stay for nine chemical contaminants under a Congressional mandate, under the SDWA Amendments, that FDA issue monitoring requirements for these nine chemical contaminants in bottled water. Lifting the stay of the effective date for the allowable levels in the bottled water quality standard for the nine chemical contaminants (antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and dioxin) protects the public health. By lifting the stay, bottled water manufacturers will be required to monitor source waters and finished bottled water products at least once a year for the nine chemical contaminants under the bottled water CGMP regulations in part 129. The agency considers at least annual testing, as set forth in its CGMP regulations, to be of sufficient frequency, absent circumstances that may warrant more frequent testing, to ensure that bottled water has been prepared, packed, or held under sanitary conditions.

2. Description of Small Business and the Number of Small Businesses Affected

The RFA requires a description of small businesses used in the analysis and an estimate of the number of small businesses affected, if such estimate is available. Table 1 of this document describes small businesses affected and estimates the number of small businesses affected by the rule. The agency combined the Small Business Administration (SBA) definition of a small business as an upper bound of the total number in the analysis with data from Duns Market Identifiers (DMI) on the number of plants using SIC 2086. FDA has used the International Bottled Water Association (IBWA) estimate as a lower bound of the number of small entities in the industry. According to DMI, there are a total of 1,567 establishments in the industry group of which 66 percent of the entities (1,028 firms) have fewer than 500 employees. According to IBWA, there are approximately 560 member firms, of which 50 percent or 280 firms have annual sales below $1 million.

TABLE 1.—APPROXIMATE NUMBER OF SMALL ENTITIES COVERED BY THIS RULE

Type of Establishment	Standard Industry Classification Codes	Classification of Small Entities	Percentage of Category Defined as Small by SBA	No. of Small Establishments Covered by the Rule
IBWA	NA	Annual Sales below $1million	50%	280

TABLE 1.—APPROXIMATE NUMBER OF SMALL ENTITIES COVERED BY THIS RULE—Continued

Type of Establishment	Standard Industry Classification Codes	Classification of Small Entities	Percentage of Category Defined as Small by SBA	No. of Small Establishments Covered by the Rule
DMI	2,086	Less than 500 employees	66%	1,028

3. Description of the Economic Impact on Small Entities

a. *Estimated costs for testing source waters.* The estimated costs for testing source waters are the estimated total additional costs the small entity would incur to monitor source waters for the nine chemical contaminants annually. Table 2 of this document summarizes the expected additional costs. As discussed in the March 1996 final rule (61 FR 13258 at 13263), additional cost per sample is estimated to be $1,290, and an estimated 50 percent of source waters are from municipal sources that do not require testing.

TABLE 2.—ESTIMATED SUBTOTAL COSTS FOR TESTING SOURCE WATERS

No. of Small Establishments Covered by the Rule	Cost per Sample	Percent Water from Nonmunicipal Sources	Subtotal Annual Cost
Lower Bound–280	$1,290	50%	$180,600
Upper Bound–1028	$1,290	50%	$663,060

b. *Estimated costs for testing finished bottled water products.* The estimated costs for testing are the estimated total additional costs the small entity would incur to monitor finished bottled water products for the nine chemical contaminants annually. Table 3 of this document summarizes the expected costs. As discussed in the March 1996 final rule (61 FR 13258 at 13263), additional cost per sample is estimated to be $1,290.

TABLE 3.—ESTIMATED SUBTOTAL COSTS FOR TESTING FINISHED BOTTLED WATER PRODUCTS

No. of Small Establishments Covered by the Rule	Cost per Sample	Average Number of Products	Subtotal Annual Cost
Lower Bound–280	$1,290	2	$722,400
Upper Bound–1028	$1,290	2	$2,652,240

c. *Estimated total costs for testing source waters and finished bottled water products.* The estimated total testing costs are the sum of estimated costs to monitor source waters and finished bottled water products. The agency estimates that the lower bound cost is $900,000 and the upper bound cost is $3 million. Table 4 of this document summarizes the expected additional costs.

TABLE 4.—ESTIMATED TOTAL COSTS

No. of Small Establishments Covered by the Rule	Subtotal Costs for Testing Source Waters	Subtotal Costs for Testing Finished Bottled Water Products	Total Testing Costs[1]
Lower Bound–280	$180,600	$722,400	$900,000
Upper Bound–1028	$660,060	$2,652,240	$3,000,000

[1]Total Testing Costs are rounded to the nearest significant digit.

d. *Professional skills required for compliance.* The RFA requires a description of the professional skills necessary for the preparation of a report or record. This rule does not require professional skills for the preparation of a report or record. Any sampling of source water or finished bottled water product for analysis of chemical contaminants can be carried out by trained plant personnel who can ship such samples to a testing laboratory for analysis. Other trained skills would also include recording and maintaining the test result records at the plant for a minimum of 2 years.

e. *Recordkeeping requirements.* The RFA requires a description of the recordkeeping requirements of the rule. Table 5 of this document shows the provisions for making and maintaining records by small businesses, the number of small businesses affected, the annual frequency of making each record, the amount of time needed for making each record, and the total number of hours for each provision in the first year and then in subsequent years.

TABLE 5.—SMALL BUSINESS RECORDKEEPING REQUIREMENTS

Provision	No. of Small Entities Keeping Records	Annual Frequency	Hours per Record per Small Entity	Total Hours, First Year	Total Hours, Subsequent Years
Monitoring SOP	280	1	10	2,800	2,800
Monitoring SOP	1,028	1	10	10,280	10,280
Validation	280	1	5	1,400	1,400
Validation	1028	1	5	5,140	5,140
Record Maintenance	280	1	5	1,400	1,400
Record Maintenance	1,028	1	5	5,140	5,140
Totals-Lower Bound	280	1	20	5,600	5,600
Totals-Upper Bound	1,028	1	20	20,560	20,560

4. Minimizing the Burden to Small Entities

The RFA requires an evaluation of any regulatory alternatives that would minimize the costs to small entities. There are four alternatives that the agency has considered to provide regulatory relief for small entities. First, FDA considered the option of not lifting the stay of the effective date for the allowable levels in the bottled water quality standard for the nine chemical contaminants. Second, FDA considered the option of exempting small entities from the requirements of this rule. Third, FDA considered lengthening the compliance period for small entities. Fourth, FDA considered reducing the testing frequency.

a. *Not lifting the stay*. By convention, the option of taking no action is the baseline in comparison with the evaluation of the other options. Taking no action in this case means not lifting the stay of the effective date for the allowable levels in the bottled water quality standard for the nine chemical contaminants. By not lifting the stay, FDA would not meet the statutory mandate provided in the SDWA Amendments that requires the agency to issue monitoring requirements for the nine chemical contaminants by August 6, 1998. If FDA does not issue monitoring requirements by August 6, 1998, the NPDWR's for public drinking water for these nine contaminants would be considered to be the standard of quality regulations for bottled water under § 165.110. Under the NPDWR's, EPA's base monitoring requirements for ground water testing are once every 3 years for testing inorganic chemicals (e.g., antimony, beryllium, cyanide, nickel, and thallium), and four successive quarters every 3 years for ground water testing for synthetic organic chemicals (e.g., diquat, endothall, glyphosate, and dioxin). Under part 129, FDA requires at least annual testing for both the inorganic and synthetic organic chemicals. Therefore, the frequency of testing requirements under EPA's NPDWR's for public drinking water and FDA's frequency of testing requirements for bottled water differ.

Moreover, the regulatory scheme under EPA regulations for public drinking water contemplates State coordination, including the use of State-issued waivers in certain situations. EPA regulations address treated ground and surface water testing, whereas FDA regulations address source water (which in most cases involves testing of untreated ground water) and finished bottled water product testing. Source water testing provides a preliminary review of the safety and quality of the water source that a water bottler intends to manufacture into a bottled water product. FDA considers source water testing to be as important as finished bottled water product testing because the safety and quality of the source water, determined by source water testing, will affect the treatment necessary to produce a finished bottled water product that complies with the bottled water quality standard. However, if EPA's regulatory scheme for public drinking water would need to be considered for the nine chemical contaminants that are the subject of this rule for bottled water, it is unclear whether only finished bottled water product testing for these nine chemical contaminants, without source water testing, would be applicable.

Furthermore, EPA's monitoring requirements are designed to address water that is provided to customers through municipal water distribution systems while FDA's requirements address water that is produced to be sold to consumers in discrete units. Some differences between these two sets of monitoring requirements exist (e.g., criteria for determining when a system (or bottler) is not in compliance), because they address two fundamentally different production circumstances. FDA believes that its regulations for bottled water, which are designed to ensure that bottled water is prepared, packed, or held under sanitary conditions, should apply to the testing for these nine chemical contaminants in bottled water rather than having such contaminants subject to a regulatory scheme established for public drinking water.

Furthermore, the extent to which FDA would consider certain aspects of EPA's regulatory scheme for public drinking water as ''monitoring requirements'' is not clear. FDA has not had to apply EPA's regulations for public drinking water to bottled water under the bottled water quality standard regulations. Therefore, if FDA did not lift the stay and issue monitoring requirements under the agency's CGMP requirements in part 129 for these nine chemical contaminants, the application of section 410(b)(4)(A) of the act would create uncertainty for industry and regulators. The practical effect of the application of section 410(b)(4)(A) of the act may be additional burdens on small businesses if such businesses must adhere to two regulatory schemes for testing of their bottled water products rather than one comprehensive scheme for all bottled water testing. As stated earlier, FDA's CGMP requirements are protective of the public health and the application of these CGMP requirements to all bottled water would not result in uncertainty to industry and regulators. As discussed below in section V.B.3.d of this document, FDA believes that retaining the applicability of its CGMP requirements to all bottled water, with further evaluation of reduced frequency of testing in the context of all chemical contaminants in a future rulemaking, would be less confusing to small entities. Therefore, FDA believes that lifting the stay would be beneficial to the public.

b. *Exempt small entities*. One alternative for alleviating the burden for small entities would be to exempt them from the testing requirements of this rule. Although, this option would eliminate the cost of testing on small firms, it may also result in a decrease in the potential public health benefits of the rule. Small entities comprise a large part of the affected industry and

exempting them would affect the testing requirements for a large segment of the bottled water products on the market. Such products would not be subject to a certain frequency of testing that provides adequate assurance that such products manufactured by small businesses are as protective of the public health as those that have undergone the testing requirements for these nine contaminants under part 129. Therefore, exempting small businesses would reduce the potential public health benefits of lifting the stay.

c. *Extend compliance period*. FDA considered an extended compliance period. Lengthening the compliance period would provide regulatory relief to small entities because it would reduce the present value of the costs of testing. However, as stated in section V.B.4.b of this document, because small entities comprise a large part of the affected industry, longer compliance periods would delay any potential public health benefits of the rule. For example, if a small business had an excess level of one of the nine chemical contaminants in its bottled water product, it would not be aware of the potential public health problem as a result of the specific contaminant because the small business would not be testing during the longer compliance period. Therefore, the agency has concluded that lifting the stay is more protective of the public health.

d. *Reduced testing frequency*. Another alternative for alleviating the burden for small entities would be to reduce the testing frequency for certain chemical contaminants, including the nine chemical contaminants that are the subject of this rule. The agency believes that, in considering the issue of reduced frequency of testing, it needs to do so in the context of all chemical contaminants, not just the nine that are the subject of this rule. Reduced frequency of testing may include an entirely different scheme that may include waivers for certain chemical contaminants. The contemplation of such a scheme is better addressed in a context that includes consideration of all chemical contaminants, rather than considering and implementing a different regulatory scheme for only the nine chemical contaminants. Moreover, Congress mandated that the agency issue monitoring requirements for these nine chemical contaminants by August 6, 1998. Because the scope of this rule is limited to these nine chemical contaminants, and the agency does not have sufficient time to enlarge the scope of this rulemaking to the issue of reduced frequency of testing for all chemical contaminants, the agency is not pursuing this alternative in this rulemaking. However, the agency plans to consider the issue of reduced frequency of monitoring for all chemical contaminants in bottled water in a future rule.

5. Summary

FDA has examined the impact of the direct final rule on small businesses in accordance with RFA. This analysis, together with the preamble, constitutes RFA.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this direct final rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This rule does not require a written statement under section 202(a) of the UMRA because it does not impose a mandate that results in an expenditure of $100 million (adjusted annually for inflation) or more by State, local, and tribal governments in the aggregate, or by the private sector, in any one year.

VI. Paperwork Reduction Act of 1995

FDA concludes that this direct final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Comments

Interested persons may, on or before July 27, 1998, submit to the Dockets Management Branch (address above) written comments regarding this direct final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Effective Date

The agency intends to make the direct final rule effective 180 days after the publication of the confirmation notice in the **Federal Register**. The agency is providing a 180 day effective date to permit affected firms adequate time to take appropriate steps to bring their product into compliance with the standard imposed by the new rule.

List of Subjects in 21 CFR Part 165

Beverages, Bottled water, Food grades and standards, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 165 is amended as follows:

PART 165—BEVERAGES

1. The authority citation for 21 CFR part 165 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 343–1, 348, 349, 371, 379e.

§ 165.110 [Amended]

2. Section 165.110 *Bottled water* is amended in the table in paragraph (b)(4)(iii)(A) by removing the superscript ''1'' after the entries for ''Antimony,'' ''Beryllium,'' ''Cyanide,'' ''Nickel,'' and ''Thallium,'' and by removing the footnote to the table; in the table in paragraph (b)(4)(iii)(C) by removing the superscript ''1'' after the entries for ''Diquat,'' ''Endothall,'' ''Glyphosate,'' and ''2,3,7,8–TCDD (Dioxin),'' and by removing the footnote to the table; and by removing the note that follows paragraph (b)(4)(iii)(G)(*3*)(*iv*).

Dated: May 5, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–12381 Filed 5–6–98; 3:57 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Expedited Revocation Procedure for Parole Violators

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is adding to its regulations a provision whereby certain parolees who have been arrested and charged with violations of parole (or who are serving new sentences for crimes committed while on parole) may consent to revocation of parole upon the acceptance of a sanction within the applicable guideline range. The purpose of this procedure is to avoid the need for holding parole violators in local jails for revocation hearings, and to save the Parole Commission the time and expense of conducting hearings when an appropriate sanction can be imposed with the consent of the offender.

DATES: Effective June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General

Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: In certain categories of cases, the U.S. Parole Commission has found that an appropriate sanction for parole failure can be determined through a review of the parolee's record and by reference to the applicable reparole guidelines. The majority of these cases involve administrative violations, drug use, and drug treatment program failure, as well as petty crimes. The sanction is revocation and a presumptive reparole date. In other cases, the violation of parole may be serious enough that the only appropriate sanction is revocation and denial of reparole. The Commission has found that many arrested parole violators in these categories are willing to waive their right to a hearing under 18 U.S.C. 4214 in order to be removed from a local jail and complete the prescribed period of imprisonment in an institution where programming and other amenities are available.

Accordingly, in 1996, the Commission approved a pilot project for an ''expedited revocation procedure.'' After the preliminary interview has been conducted following the arrest of the accused parole violator, the Commission offers the parolee the opportunity to consent to revocation and a sanction of a definite number of months in prison. The procedure was initially limited to Category One violations on the guidelines at 28 CFR 2.20. Category Two violations and cases where the Commission proposed to deny reparole altogether (''continue to expiration'') were eventually added. The procedure is also used in the case of parolees who will complete an adequate sanction by serving a new state or federal sentence, but for whom revocation of parole is necessary in order to guarantee an adequate period of parole supervision following release from imprisonment. This is accomplished by an order forfeiting the time spent on parole, which accompanies an order of revocation.

Over the course of the pilot project, 1223 cases were considered for the expedited revocation procedure, with an acceptance rate of 76.2%. The project has saved agency resources as well as critical jail space without diminishing in any respect the sanctions normally imposed by the Commission on these types of parole violators. It is to be emphasized that the ''expedited revocation procedure'' is in no sense a form of plea-bargaining; the Parole Commission offers the accused violator the sanction that is considered appropriate by the Commission. If the parolee does not accept the proposed sanction, a revocation hearing is conducted. Following the hearing, any appropriate sanction may be imposed. Moreover, the parolee's acceptance of the Commission's offer does not create a ''plea agreement'' that can be subsequently enforced to avoid consequences required by regulation or law (*e.g.*, a consecutive sentence that is not referenced in the Commission's offer).

It is also to be emphasized that the Parole Commission may, in its discretion, decide not to offer an expedited revocation if there is any aspect of the case that appears to warrant an in-person revocation hearing, and may rescind an offer at any time in order to schedule an in-person hearing.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this proposed rule is not a significant rule within the meaning of Executive Order 12866, and the proposed rule has, accordingly, not been reviewed by the Office of Management and Budget. The proposed rule, if adopted, will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Final Rule

Accordingly, the U.S. Parole Commission makes the following changes to 28 CFR Part 2:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR Part 2 is amended by adding § 2.67 to read as follows:

§ 2.67 Expedited Revocation Procedure.

(a) In addition to the actions available to the Commission under § 2.47(a) and (b), and under § 2.48, the Commission may offer an alleged parole violator an opportunity to accept responsibility for his violation behavior, to waive a revocation hearing, and to accept the sanction proposed by the Commission in the Notice of Eligibility for Expedited Revocation Procedure that is sent to the alleged parole violator.

(b) The following cases may be considered under the expedited revocation procedure:

(1) Cases in which the alleged parole violator has been given a preliminary interview under § 2.48, and the alleged violation behavior would be graded Category One or Category Two;

(2) Cases in which the alleged violator has been given a preliminary interview under § 2.48 and the proposed decision is continue to expiration of sentence, regardless of offense category; and

(3) Cases in which an alleged violator has received a dispositional review under § 2.47, and the Commission determines that conditional withdrawal of the warrant would be appropriate, but forfeiture of street time is deemed necessary to provide an adequate period of supervision.

(c) The alleged violator's consent shall not be deemed to create an enforceable agreement with respect to any action the Commission is authorized to take by law or regulation, or to limit in any respect the normal statutory consequences of a revocation of parole or mandatory release.

Dated: May 5, 1998.

Michael J. Gaines,

Chairman, U.S. Parole Commission.

[FR Doc. 98–12388 Filed 5–8–98; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Electronic Issuance of Paroling Violation Warrants

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending a regulation that requires parole violation warrants to be issued by U.S. Mail. In order to expedite the receipt of warrants by the U.S. Marshals Service, the regulation is being amended to permit warrants to be sent by electronic transmission. Although an alleged parole violator may be arrested by authorized officials who have been alerted to the issuance of a warrant but have not actually received the warrant, a procedure that will ensure the immediate receipt of warrants by arresting authorities will avoid confusion as to the Commission's instructions and the parolee's status.

EFFECTIVE DATE: June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, 5550 Friendship Blvd., Chevy Chase, MD 20815. Telephone: (301) 492–5959.

SUPPLEMENTARY INFORMATION: The Commission has determined that cases of confusion over whether a warrant should be executed or placed as a detainer (if the alleged parole violator is already in custody on another charge) can be readily avoided if the Commission adopts a procedure designed to expedite the receipt of warrants by the U.S. Marshals Service. Other possibilities for delay and confusion prior to the receipt of a signed warrant can also be avoided. The only legal obligation under which the Commission operates with respect to the issuance of valid warrants is that a warrant must be issued prior to the expiration of the parolee's sentence. Issuance and delivery of a warrant are separate events. 18 U.S.C. 4213(d) (1976).

The term ''issue'' means to send out officially. *Hervey* v. *Secretary of Health and Human Services*, 88 F.3d 1001, 1002 (Fed. Cir. 1996). The long-accepted definition of the term ''issue'' has never been specific as to means of issuance. Accordingly, the Parole Commission may, by regulation, define the issuance of a warrant as being the electronic transmission of the signed warrant to the arresting authorities. The date and time of ''issuance'' of a warrant will be the date and time it is transmitted electronically. The signed original, having been thus issued, will remain in the Commission's file.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866, and the rule has, accordingly, not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Final Rule

Accordingly, the U.S. Parole Commission makes the following changes to 28 CFR Part 2.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR Part 2, § 2.44 (c) is revised to read as follows:

§ 2.44 Summons to appear or warrant for retaking of parolee.

* * * * *

(c) A summons or warrant may be issued only within the prisoner's maximum term or terms except that in the case of a prisoner released as if on parole pursuant to 18 U.S.C. 4164, such summons or warrant may be issued only within the maximum term or terms, less one hundred eighty days. A summons or warrant shall be considered issued when signed and either—

(1) Placed in the mail or

(2) Sent by electronic transmission to the intended authorities.

* * * * *

Dated: May 5, 1998.

Michael J. Gaines,

Chairman, U.S. Parole Commission.

[FR Doc. 98–12387 Filed 5–8–98; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Release of Information to the Public

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Commission's regulation concerning the disclosure of information about offenders under its jurisdiction currently addresses only those situations where disclosure is necessary to give notice to potential victims of individuals on parole, or to assist law enforcement authorities. No provision is made for the general disclosure of information about prisoners and parolees when such information is considered to be ''public sector'' information that may be disclosed without the consent of the subject. At 28 CFR 540.65(b), the Bureau of Prisons defines the information that is considered ''a matter of public record'' for disclosure to representatives of the media. The Parole Commission is now amending its regulation to define the information that it gives to the media and to the public generally.

EFFECTIVE DATE: Effective June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, 5550 Friendship Blvd., Chevy Chase, Maryland 20815. Telephone: (301) 492–5959.

SUPPLEMENTARY INFORMATION: The information defined as ''public sector'' information is consistent with the information defined in § 540.65(b), and with the current practice of the U.S. Parole Commission. The same policy will be followed for both U.S. and D.C. Code offenders.

It should be noted that, although Commission decisions may be disclosed, this does not necessarily include the statement of reasons provided by the Commission in support of each decision. Pursuant to its routine use exemptions from the Privacy Act of 1974 (published at 53 FR 7813, March 10, 1988), public disclosure of the full Notice of Action issued by the Parole Commission is only available if the Commission has determined that disclosure is appropriate ''* * * to further understanding of the criminal justice system by the public'' and has transmitted the Notice of Action to the Office of Public Affairs of the Department of Justice.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866, and the rule has, accordingly, not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Final Rule

Accordingly, the U.S. Parole Commission makes the following changes to 28 CFR Part 2:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR Part 2, § 2.37 is amended by adding the following new paragraph (c):

§ 2.37 Disclosure of information concerning parolees; Statement of policy.

* * * * *

(c) Information deemed to be ''public sector'' information may be disclosed to third parties without the consent of the file subject. Public sector information encompasses the following:

(1) Name;

(2) Register number;

(3) Offense of conviction;

(4) Past and current places of incarceration;

(5) Age;

(6) Sentence data on the Bureau of Prisons sentence computation record (BP–5);

(7) Date(s) of parole and parole revocation hearings; and

(8) The decision(s) rendered by the Commission following a parole or parole revocation proceeding, including the dates of continuances and parole dates. An inmate's designated future place of incarceration is not public information.

Dated: May 5, 1998.

Michael J. Gaines,

Chairman, U.S. Parole Commission.

[FR Doc. 98–12386 Filed 5–8–98; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Part 323

[Defense Logistics Agency Reg. 5400.21]

Privacy Act; Implementation

AGENCY: Defense Logistics Agency, DoD.

ACTION: Final rule.

SUMMARY: The Defense Logistics Agency is exempting a system of records identified as S500.60 CA, entitled 'DLA Complaint Program Records' from certain provisions of the Privacy Act. The exemptions are intended to increase the value of the system of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records.

EFFECTIVE DATE: May 5, 1998.

ADDRESSES: Send comments to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION:

Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act, and 44 U.S.C. Chapter 35.

This rule adds an exempt Privacy Act system of records to the DLA inventory of systems of records. DLA operates a complaint system whereby individuals may report instances of suspected fraud, waste, or abuse; mismanagement; contract deviations, noncompliance, or improprieties; administrative misconduct; or adverse treatment under the complaint program. Allegations are investigated and appropriate corrections are instituted. The exempt system reflects recognition that certain records in the system may be deemed to require protection from disclosure in order to protect confidential sources mentioned in the files and avoid compromising, impeding, or interfering with investigative and enforcement proceedings. The proposed rule was previously published on March 6, 1998, at 63 FR 11198. No comments were received, therefore, the Director is adopting the exemptions for the reasons provided.

List of subjects in 32 CFR part 323

Privacy.

Accordingly, 32 CFR part 323 is amended as follows:

Part 323 – Defense Logistics Agency Privacy Program.

1. The authority citation for 32 CFR Part 323 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Appendix H to Part 323 is to be amended by adding paragraph e. as follows:

Appendix H to Part 323-DLA Exemption Rules.

* * * * *

e. *ID: S500.60 CA (Specific exemption).*

1. *System name:* DLA Complaint Program Records.

2. *Exemption:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

3. *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5), subsections (c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (H), and (I), and (f).

4. *Reasons:* (i) From subsection (c)(3) because to grant access to an accounting of disclosures as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (d)(1) through (d)(4), and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence;

enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for law enforcement purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

Dated: May 5, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 98–12321 Filed 5–8–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5]

Privacy Act; Implementation

AGENCY: Department of the Navy,DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its Privacy Act regulation on exemptions for specific record systems. The administrative amendment consists of changing the system name of N05520-4, NIS Investigative Files System' to 'NCIS Investigative Files System'.

EFFECTIVE DATE: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION:

Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

The Department of the Navy is amending the system name of an exempt system of records published in 32 CFR part 701, subpart G. The administrative amendment consists of changing the system name of N05520-4, NIS Investigative Files System' to 'NCIS Investigative Files System'.

List of Subjects in 32 CFR Part 701

Privacy.

1. The authority citation for 32 CFR part 701, Subpart G continues to read as follows:

AUTHORITY: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 701.118, is amended by revising the heading of paragraph (m) as follows:

§ 701.118 Exemptions for specific Navy record systems.

* * * * *

(m) *System identifier and name:* N05520–4, NCIS Investigative Files System. * * *

Dated: May 5,1998.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–12322 Filed 5–8–98; 8:45 am]

BILLING CODE 5000–04–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–46–1–7384a; FRL–6009–1]

Approval and Promulgation of State Implementation Plans; Louisiana: Site-Specific Revision for the Exxon Company Baton Rouge Refinery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, the EPA is approving a site-specific revision to the Louisiana 15% Rate-of-Progress State Implementation Plan (SIP). The revision extends the date of compliance for the installation of particular Volatile Organic Liquid (VOL) storage tank controls for storage tanks located at the Baton Rouge Refinery of Exxon Company, U.S.A. Specifically, the revision extends the compliance date of the requirement for the installation of guide pole sliding cover gaskets on 33 storage tanks until the earlier of the next scheduled downtime of the subject tanks or December 2005.

In the proposed rules section of today's **Federal Register** (FR), the EPA is proposing and seeking public comment on the same conditional and final approvals of the Louisiana SIP that are discussed in this document. If relevant adverse comments are received on these approvals, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule did not take effect, and addressing the relevant comments received in a subsequent final rule, based on the related proposed rule. No additional opportunity for public comment will be provided.

DATES: This action is effective on July 10, 1998 unless adverse or critical comments are received by June 10, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule did not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, Region 6, Dallas, 1445 Ross Avenue, Texas 75202–2733, telephone: (214) 665–7214

Air Quality Division, Louisiana Department of Environmental Quality (LDEQ), 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810, telephone: (504) 765–7247.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Eaton R. Weiler, Air Planning Section (6PD-L), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone: (214) 665–2174.

SUPPLEMENTARY INFORMATION:

I. Background

A. VOL Storage Rule

In 61 FR 54737 (October 22, 1996) the EPA approved the Louisiana 15% Rate-of-Progress plan which describes how ozone nonattainment areas classified as moderate and above will achieve an actual reduction in emissions of volatile organic compounds during the first six years after the enactment of the 1990 Clean Air Act amendments. See section 182(b). Included in this plan is the State rule for controlling Volatile Organic Compound (VOC) emissions from VOL storage, Louisiana Administrative Code (LAC) 33:III.2103. The calculated emissions reductions from the implementation of this rule were credited towards the Louisiana 15% Rate-of-Progress plan.

The compliance date for rule LAC 33:III.2103 was November 15, 1996. The control requirements for external floating roof storage tanks of this rule include the installation of guide pole sliding cover gaskets. Relating to compliance date extensions, the rule states, ''Requests for extension of the November 15, 1996, compliance date will be considered on a case-by-case basis for situations which require the tank to be removed from service to install the controls and must be approved by the administrative authority.'' In this instance, the term ''administrative authority'' refers to both the Secretary or designee of the LDEQ, and the Administrator or authorized representative of the EPA.

B. Site Specific Request

In letters to the LDEQ dated November 13, 1996; May 14, 1997; and July 3, 1997; the Baton Rouge Refinery of Exxon Company, U.S.A. requested an extension of the compliance schedule of the requirement for the installation of guide pole sliding cover gaskets on 33 external floating roof tanks. These letters include a list of the tanks, the date of the next maintenance downtime, and emissions estimates for the tanks.

To accomplish the installation of the sliding cover gaskets, the guide pole roller brackets must be temporarily removed to allow the sliding cover to be elevated to insert the gasket. The roller brackets on these 33 tanks are welded in place (versus bolted in place) and require the use of cutting torches or other ''hotwork'' (spark generating cutting or welding) for removal.

Prematurely shutting down and cleaning the subject tanks to install the required sliding cover gaskets would result in considerable additional VOC emissions from each tank beyond that expected for normal maintenance and inspection. Where possible, the Refinery has complied with all other floating roof storage tank rules to limit emissions of VOC's.

Calculations provided by Exxon and reviewed and accepted by the LDEQ and the EPA show installation of the sliding gaskets would result in a reduction of VOC emissions by 12 tons per year. Premature shut down and degassing needed to install the sliding gaskets would result in additional VOC emissions of over 100 tons. Furthermore, the installation of the sliding gaskets represents a minuscule portion of the 2,500 tons per year of emission reductions from Exxon's tank controls as approved in the 15% Rate-of-Progress plan.

Therefore, the delayed reductions will not significantly impact the 15% Rate-of-Progress plan for the Baton Rouge ozone nonattainment area. The VOC emission impact of this extension is approximately 0.03 tons per day and will diminish as tanks come out of service and are retrofitted while reductions demonstrated in the 15% Rate-of-Progress plan exceed the required reductions by 1.4 tons per day; therefore, the plan will still demonstrate the required reductions.

In letters dated July 17, and September 12, 1997, the LDEQ notified Exxon of LDEQ's approval of the compliance date extensions for installation of the sliding cover gaskets. In a letter dated December 20, 1997, the Governor of Louisiana submitted the LDEQ-approved site-specific revision to the 15% Rate-of-Progress plan to the EPA for approval.

II. Final Action

By this action, the EPA is approving a revision to the Louisiana 15% Rate-of-Progress SIP to allow for a site-specific extension of the compliance date to LAC 33:III. 2103.D.4 for the installation of sliding pole gasket covers for 33 tanks located at the Exxon Company U.S.A., Baton Rouge Refinery until the earlier of the next scheduled downtime or December 2005.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective July 10, 1998 without further notice unless, by June 10, 1998, relevant adverse comments are received.

If EPA receives such comments, then the EPA will publish a timely withdrawal of the final rule in the **Federal Register** informing the public that the rule did not take effect. All relevant public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective July 10, 1998 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, EPA may

certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning SIPs on such grounds. See *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). The EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 10, 1998. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the SIP for the State of Louisiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 23, 1998.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

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

PART 52—[AMENDED]

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

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

Subpart T—Louisiana

2. Section 52.970 is amended by adding paragraphs (c)(79) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(79) Site-specific revision to the 15% Rate-of-Progress plan submitted by the Governor in a letter dated December 20, 1997. The revision provides for a schedule extension for installation of guide pole sliding cover gaskets on 33 external floating roof tanks located at the Baton Rouge refinery of Exxon Company U.S.A.

(i) Incorporation by reference.

Letters dated July 17, 1997, and September 12, 1997, from the LDEQ to Exxon Company U.S.A. approving the compliance date extension; which are included in the State Implementation Plan submittal entitled, ''Summary of 15% Rate-of-Progress State Implementation Plan Revision,'' dated December 20, 1997.

(ii) Additional material.

(A) Letter from the Governor of Louisiana dated December 20, 1997, transmitting a copy of the State Implementation Plan revision.

(B) Letters dated November 13, 1996; May 14, 1997; and July 3, 1997; from Exxon Company U.S.A. to the LDEQ requesting the compliance date extension and including a list of the subject tanks, the date of the next maintenance downtime, and emissions estimates for the tanks; which are included in the State Implementation Plan submittal entitled, ''Summary of 15% Rate-of-Progress State Implementation Plan Revision,'' dated December 20, 1997.

[FR Doc. 98–12433 Filed 5–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300646; FRL–5787–4]

RIN 2070–AB78

Bentazon; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the herbicide bentazon and its metabolites in or on succulent peas at 3 part per million (ppm) for an additional 1–year period, to June 30, 1999. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on succulent peas. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to

establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective May 11, 1998. Objections and requests for hearings must be received by EPA, on or before July 10, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300646], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300646], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail:Virginia Dietrich, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location , telephone number, and e-mail address: Rm. 272, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308–9359; e-mail:dietrich.virginia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of June 20, 1997 (62 FR 33563–33569) (FRL–5720–4) , which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of bentazon and its metabolites in or on succulent peas at 3 ppm, with an expiration date of June 30, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of bentazon on succulent peas for this year's growing season due to infestation with the weed Canada thistle. After having reviewed the submission, EPA concurs that emergency conditions exist for Minnesota. EPA has authorized under FIFRA section 18 the use of bentazon on succulent peas for control of Canada thistle in succulent peas.

EPA assessed the potential risks presented by residues of bentazon in or on succulent peas. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of June 20, 1997 (62 FR 33563–33569). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1–year period. Although this tolerance will expire and is revoked on June 30, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on succulent peas after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 10, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is 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 issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). 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.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which

will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 51/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300646]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerance that was previously extended by EPA under FFDCA section 408(d) 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). In addition, 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) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of this rule in today's **Federal Register**. This 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 recordkeeping requirements.

Dated: April 27, 1998.

James Jones,

Director, Registration Division, 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. 346a and 371.

§ 180.355 [Amended]

2. In § 180.355, the table to paragraph (b) is amended by changing the date ''6/30/98'' to read ''6/30/99''.

[FR Doc. 98–12425 Filed 5–8–98; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 60

RIN 0906–AA49

National Vaccine Injury Compensation Program (VICP): Effective Date Provisions of Coverage of Certain Vaccines to the Vaccine Injury Table

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule.

SUMMARY: Section 904(b) of the Taxpayer Relief Act of 1997 provides for an excise tax for three new vaccines, effective August 6, 1997. Petitions for compensation for injuries or deaths related to hepatitis B, Hib, and varicella vaccines may now be filed under the Vaccine Injury Compensation Program (VICP). This technical amendment amends the Code of Federal Regulations (CFR) to include a date certain (August 6, 1997) in § 100.3(c) of the Vaccine Injury Compensation regulations, so that there will be no uncertainty as to the coverage of these three vaccines.

EFFECTIVE DATE: This final rule is effective May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Geoffrey Evans, M.D., Medical Director, Division of Vaccine Injury Compensation, Bureau of Health Professions, (301) 443–4198, or David Benor, Senior Attorney, Office of the General Counsel (301) 443–2006.

SUPPLEMENTARY INFORMATION: The National Vaccine Injury Compensation Program (VICP), established by Subtitle 2 of Title XXI of the Public Health Service Act (the Act), provides a system of no-fault compensation for certain individuals who have been injured by specific childhood vaccines. The Vaccine Injury Table (the Table) establishes presumptions about causation of certain illnesses and conditions which are used by the U.S. Court of Federal Claims to adjudicate petitions. The Act provides that a revision to the Table, based on addition of new vaccines under section 2114(e) of the Act, shall take effect upon the effective date of a tax enacted to provide funds for compensation for injuries from vaccines that are added to the Table. (See section 13632(a)(3) of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, enacted August 10, 1993.)

On August 5, 1997, the President signed Public Law 105–34, the

''Taxpayer Relief Act of 1997.'' Section 904(a) of this Act provides that the excise tax on all covered vaccines under the VICP is 75 cents per dose and that combinations of vaccines are subject to an excise tax which is the sum of the amounts for each vaccine included in the combination. The amendments of the Taxpayer Relief Act also make effective the coverage of three new vaccines under the VICP—hepatitis B, Hib, and varicella vaccines.

On October 9, 1997, a Notice was published in the **Federal Register** (62 FR 52724) announcing the excise tax for these vaccines and that petitions for compensation for injuries or deaths related to hepatitis B, Hib, and varicella vaccines (items VIII, IX, X, and XI of the Table) may now be filed under the VICP. In accordance with section 2116(b) of the PHS Act, for injuries or deaths that occurred before August 6, 1997, for these three vaccines, petitions may be filed no later than August 6, 1999, provided that the injury or death occurred no earlier than August 6, 1989.

In accordance with section 904(b) of the Taxpayer Relief Act of 1997 which provides for an excise tax for these three new vaccines, this final rule (technical amendment) amends the CFR to include a date certain (August 6, 1997) in § 100.3(c) of the regulations for the coverage of these three new vaccines. Paragraph (c)(3) provides for inclusion of other new vaccines, as they may be added in the future under item XII of the Table.

Justification for Omitting Notice of Proposed Rulemaking

Since these amendments are of a technical nature, the Secretary has determined, pursuant to 5 U.S.C. 553 and departmental policy, that it is unnecessary and impractical to follow proposed rulemaking procedures or to delay the effective date of this final rule.

Economic Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, costs, benefits, incentives, equity, and available information. Regulations that are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Department has determined that no resources are required to implement the requirements in this regulation. Therefore, in accordance with the Regulatory Flexibility Act of 1980 (RFA), and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, the Secretary certifies that these regulations will not have a significant impact on a substantial number of small entities. The Secretary has also determined that this final rule does not meet the criteria for a major rule as defined by Executive Order 12866. This technical amendment sets forth the effective date provision of coverage of certain vaccines to the Vaccine Injury Table. As such, this rule would have no major effect on the economy or on Federal or State expenditures.

Paperwork Reduction Act of 1995

This Final rule has no information collection requirements.

List of Subjects in 42 CFR Part 100

Biologics, Health insurance, Immunization.

Approved: April 28, 1998.

Claude Earl Fox,

Acting Administrator, Health Resources and Services Administration.

Accordingly, 42 CFR part 100 is amended as set forth below:

PART 100—VACCINE INJURY COMPENSATION

1. The authority citation for 42 CFR part 100 is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act (42 U.S.C. 216); sec. 2115 of the PHS Act, 100 Stat. 3767, as revised (42 U.S.C. 300aa–15); § 100.3, Vaccine Injury Table, issued under secs. 312 and 313 of Pub. L. 99–660, 100 Stat. 3779–3782 (42 U.S.C. 300aa–1 note) and sec. 2114(c) and (e) of the PHS Act, 100 Stat. 3766 and 107 Stat. 645 (42 U.S.C. 300aa–14(c) and (e); and sec. 904(b) of Pub. L. 105–34, 111 Stat. 873).

2. Section 100.3(c) is amended by revising its title, by adding ''or (3)'' in the first sentence of paragraph (c)(1) after the words ''paragraph (c)(2)'', by revising paragraph (c)(2), and by adding a new paragraph (c)(3) to read as follows:

§ 100.3 Vaccine injury table.

* * * * *

(c) *Coverage provisions.* * * *

(c)(2) Hepatitis B, Hib, and varicella vaccines (Items VIII, IX, X, and XI of the Table) are included in the Table as of August 6, 1997.

(c)(3) Other new vaccines (Item XII of the Table) will be included in the Table as of the effective date of a tax enacted to provide funds for compensation paid with respect to such vaccines. An amendment to this section will be published in the **Federal Register** to announce the effective date of such a tax.

[FR Doc. 98–12389 Filed 5–8–98; 8:45 am]

BILLING CODE 4160–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part O

[GC Docket No. 97–143; FCC 97–332]

Implementation of the Electronic Freedom of Information Act Amendments of 1996; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission (FCC) published in the **Federal Register** of October 3, 1997, a document amending its Freedom of Information Act (FOIA) regulations to implement the Electronic Freedom of Information Act Amendments of 1996 (EFOIA). Inadvertently, in § 0.461 paragraphs (i)(2) through (i)(5) were deleted from the rules. This document restores those rules.

EFFECTIVE DATE: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Laurence H. Schecker, Office of General Counsel, (202) 418–1720.

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register** of October 3, 1997 (62 FR 51795), amending its FOIA regulations to conform to the EFOIA. In FR Doc. 97–26205, published in the **Federal Register** of October 3, 1997, in § 0.461 paragraphs (i)(2) through (i)(5) were inadvertently deleted from the regulations. This correction restores those rules.

In rule FR Doc. 97–26205 published on October 3, 1997, (62 FR 51795) make the following corrections.

1. On page 51797, in the second column, revise amendatory instruction 7. to read as follows: ''Section 0.461 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding paragraph (a)(2), revising paragraphs

(d)(1) and (d)(3), paragraph (g) introductory text, paragraph (g)(3) and the concluding text of paragraph (g), redesignating paragraphs (h)(1) through (h)(5) and (i) as paragraphs (i)(1) through (i)(5) and (j), revising newly designated paragraphs (i)(1) and (j), adding new paragraph (h), and revising paragraph (k) introductory text and paragraph (k)(3) to read as follows:''

2. On page 51798, in the first column, second line from the bottom, insert the designation ''(1)'' after the designation''(i)'' and before the word ''If''.

3. On page 51798, in the second column, insert 5 asterisks in a line following paragraph (i)(1) and proceeding paragraph (j).

Magalie Roman Salas,

Secretary.

[FR Doc. 98–12411 Filed 5–8–98; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991–AB43

Acquisition Regulation: Limitation on Allowability of Compensation for Certain Contractor Personnel

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) amends its Acquisition Regulation to incorporate the statutory provisions contained in Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85). Section 808 establishes a cap on allowable compensation costs for certain officers of Department of Defense and civilian agency contractors which applies to costs of compensation incurred after January 1, 1998 for executive compensation.

DATES: This rule is effective on May 11, 1998.

ADDRESSES: Terrence D. Sheppard, Office of Policy (HR–51), Office of Procurement and Assistance Policy, Department of Energy, 1000 Independence Avenue S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Terrence D. Sheppard (202) 586–8193; e-mail terry.sheppard@hq.doe.gov; fax (202) 586–0545.

SUPPLEMENTARY INFORMATION:

I. Background
II. Section by Section Analysis
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act
E. Review Under Executive Order 12612
F. Review Under Small Business Regulatory Enforcement Fairness Act of 1996
G. Review Under the Unfunded Mandates Reform Act of 1995

I. Background

This notice amends the Department of Energy Acquisition Regulation (DEAR) based on provisions contained in Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85). Section 808 establishes a cap on allowable compensation costs for certain officers of Department of Defense and civilian agency contractors which applies to costs of compensation incurred after January 1, 1998, under covered contracts entered into before, on, or after the date of enactment of the Act. Section 808 states that costs of compensation of senior executives of contractors for a fiscal year, regardless of the contract funding source, to the extent that such compensation exceeds the benchmark compensation amount determined applicable for the fiscal year by the Administrator for Federal Procurement Policy, are unallowable.

Further, for purposes of section 2324(e)(1)(P) of title 10, United States Code, and section 306(e)(1)(P) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256(e)(1)(P)), the Administrator shall review commercially available surveys of executive compensation and, on the basis of the results of the review, determine a benchmark compensation amount to apply for each fiscal year. In making determinations under this subsection the Administrator shall consult with the Director of the Defense Contract Audit Agency and such other officials of executive agencies as the Administrator considers appropriate.

The benchmark compensation amount applicable for a fiscal year is the median amount of the compensation provided for all senior executives of all benchmark corporations for the most recent year for which data is available at the time the determination under subsection (a) is made.

The term ''compensation'', for a fiscal year, means the total amount of wages, salary, bonuses and deferred compensation for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in an employer's cost accounting records for the fiscal year.

The term ''senior executive'', with respect to a corporation, means the chief executive officer of the corporation or any individual acting in a similar capacity for the corporation; the four most highly compensated employees in management positions of the corporation other than the chief executive officer; and in the case of a corporation that has components which report directly to the corporate headquarters, the five most highly compensated individuals in management positions at each such component.

The term ''benchmark corporation'', with respect to a fiscal year, means a publicly-owned United States corporation that has annual sales in excess of $50,000,000 for the fiscal year.

The term ''publicly-owned United States corporation'' means a corporation organized under the laws of a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States and the voting stock of which is publicly traded.

The term ''fiscal year'' means a fiscal year established by a contractor for accounting purposes.

II. Section by Section Analysis

1. The authority for Part 970 is restated.

2. Section 970.3102–2, Compensation for personnel services, is revised by adding a new paragraph (q) which addresses the statutory compensation limits.

3. Section 970.5204–13(d)(8) is revised by adding a new paragraph (viii) which addresses the statutory compensation limits.

4. Section 970.5204–14(d)(8) is revised by adding a new paragraph (viii) which addresses the statutory compensation limits.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following

requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction: (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftmenship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department of Energy has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Paperwork Reduction Act

No new information or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR do not change the environmental effect of the rule being amended (categorical exclusion A5). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

E. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This rule revises certain policy and procedural requirements. States which contract with DOE will be subject to this rule. However, DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

F. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department of Energy will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This rulemaking only affects private sector entities, and the impact is less than $100 million.

List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, DC on April 22, 1998.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42. U.S.C. 2201), sec 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254).

2. Section 970.3102–2 is amended by adding a new paragraph (q) to read as follows:

970.3102–2 Compensation for personal services.

* * * * *

(q) Limitation on allowability of compensation for certain contractor personnel. Costs incurred for compensation of a senior executive in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy, are unallowable. Allowable costs of executive compensation shall be determined pursuant to Federal Acquisition Regulation 31.205–6(p).

3. Section 970.5204–13 is amended by adding a new paragraph (d)(8)(viii) immediately after paragraph (d)(8)(vii) and before the Note to read as follows:

970.5204–13 Allowable costs and fixed-fee (management and operating contracts).

* * * * *

(d)(8) * * *

(viii) Compensation of a senior executive, provided that such compensation does not exceed the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy. Costs of executive compensation shall be determined pursuant to Federal Acquisition Regulation 31.205–6(p).

* * * * *

4. Section 970.5204–14 is amended by adding a new paragraph (d)(8)(viii) immediately after paragraph (d)(8)(vii) and before the Note to read as follows:

970.5204–14 Allowable costs and fixed-fee (support contracts).

* * * * *

(d)(8) * * *

(viii) Compensation of a senior executive, provided that such compensation does not exceed the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy. Costs of executive compensation shall be determined pursuant to Federal Acquisition Regulation 31.205–6(p).

* * * * *

[FR Doc. 98–12413 Filed 5–8–98; 8:45 am]

BILLING CODE 6450–01–P

Proposed Rules

Federal Register
Vol. 63, No. 90
Monday, May 11, 1998

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–27–AD]

RIN 2120–AA64

Airworthiness Directives; Textron Lycoming and Teledyne Continental Motors Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Textron Lycoming and Teledyne Continental Motors reciprocating engines that had crankshafts repaired by Nelson Balancing Service, Repair Station Certificate No. NB7R820J, Bedford, Massachusetts. This proposal would require removal from service of affected crankshafts, or a visual inspection, magnetic particle inspection, and dimensional check of the crankshaft journals, and, if necessary, rework or removal from service of affected crankshafts and replacement with serviceable parts. This proposal is prompted by reports of crankshafts exhibiting heat check cracking of the nitrided bearing surfaces which led to crankshaft cracking and subsequent failure. The actions specified by the proposed AD are intended to prevent crankshaft failure due to cracking, which could result in an inflight engine failure and possible forced landing.

DATES: Comments must be received by June 10, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–27–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Rocco Viselli, Aerospace Engineer (assigned to Textron Lycoming), New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth St., 3rd Floor, Valley Stream, NY 11581–1200; telephone (516) 256–7531, fax (516) 568–2716; or Jerry Robinette, Aerospace Engineer (assigned to Teledyne Continental Motors), Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1895 Phoenix Boulevard, One Crown Center, Suite 450, Atlanta, GA 30349; telephone (770) 703–6096, fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–27–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–27–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of crankshafts installed in certain Textron Lycoming and Teledyne Continental Motors (TCM) reciprocating engines cracking after repair by Nelson Balancing Service, Repair Stations Certificate No. NB7R820J, Bedford, Massachusetts. The investigation revealed that the crankshafts exhibit heat check cracking of the nitrided bearing surfaces. The cracking of the nitride surface is believed to be due to improper grinding procedures. Grinding occurred as part of the engine overhaul process. Improper grinding can result in overheating the crankshaft, which, in turn, results in cracking of the nitride surface. If the crankshaft is returned to service with the nitride surface cracked, the crankshaft will fail. The cracks occur in the forward and/or aft fillet of the main bearing journals and/or crankpin journals. The time to failure depends on the severity of the cracking but the crankshaft will not complete the overhaul cycle. There have been 28 cases of crankshafts installed on certain Textron Lycoming reciprocating engines that have been classified as cracked, 3 broken, and 2 later rejected by Nelson Balancing Service; and 3 reports of crankshaft failure and 7 cases of crankshafts being rejected when reinspected, due to heat check cracking, on certain TCM engines. This condition, if not corrected, could result in crankshaft failure due to cracking, which could result in an inflight engine failure and possible forced landing.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require removal from service of affected crankshafts, or a visual inspection, magnetic particle inspection, and dimensional check of the crankshaft journals, and, if necessary, rework or removal from service of affected crankshafts and replacement with serviceable parts.

There are approximately 250,000 engines of the designs listed in the applicability section of this AD in the worldwide fleet. The FAA estimates that 200,000 of those engines are installed on aircraft of U. S. registry. Of these it is estimated that 30% or 60,000 engines will have had an overhaul in the time frame of interest; however, only 291 would be required to take compliance action. Of this 60,000 it is estimated that 10,000 will require removal of the propeller spinner to determine applicability of the AD. The cost associated with the spinner removal/replacement is estimated to be $60 per work hour average labor rate times one hour. It will take approximately 90 work hours per engine to accomplish the proposed action and the average labor rate is $60 per work hour. Required parts would cost $115 per engine for gaskets, seals, etc. In addition, it is estimated that half of the 291 affected engines can be reworked at a cost of $1,800 per engine and that the other half of the 291 affected engines will be rejected, plus purchasing another crankshaft which will cost $4,000 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,048,765.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Textron Lycoming and Teledyne Continental Motors: Docket No. 98–ANE–27–AD.

Applicability: Textron Lycoming (LYC) O–235, O–235–C1, –235–C2C, O–235–L2C, O–235–N2C, O–290, O–290–D2, 0–320, O–320–A, O–320–A1A, O–320–A2B, O–320–B2B, O–320–B2C, O–320–D2J, O–320–D3G, O–320–E2A, O–320–E2D, O–320–E2G, O–320–E3D, –320–H2AD, O–360, O–360–A1A, O–360–A1D, O–360–A3A, O–360–A4A, O–360–A4K, O–360–B1B, IO–360–F1A6, AEIO–320–E1B, HIO–360–C1A, IO–320, IO–320–B1A, IO–360, IO–360–A1A, IO–360–A1B6, IO–360–B1E, IO–360–C, IO–360–CIC, IO–360–C1C6, IO–360–C1D6, IO–360–D, O–540–A1B5, O–540–A1D5, O–540–R2AD, IO–540, IO–540–C4B5, IO–540–S1A5, TIO–540–A2, LIO–320–C1A, LIO–360–C1E6, and O–720 reciprocating engines; and Teledyne Continental Motors (TCM) A–65, A65–3, A65–8, A75, A75–8, C75–12, C85, C85–8, C85–12, C90–8FJ, C90–12, O–200, O–200–A, O–300, O–300–D, IO–360–C, E–185–4, E–225–8, O–470, O–470–K, O–470–L, O–470–R, O–470–11, IO–470, IO–470–N, IO–470–S, IO–520, IO–520–D, GTSIO–520, and TSIO–520–VB reciprocating engines, with installed crankshafts repaired by Nelson Balancing Service, Bedford, Massachusetts, Repair Station Certificate No. NB7R820J, between February 1, 1995, and December 31, 1997, inclusive, as listed (by work order (W/O)) in Table 1 of this AD.

TABLE 1

Engine	Model	W/O	Date	Engine SER#
LYC	AEIO–320–E1B	1134	2/17/96	L–5653–55A
LYC	HIO–360–C1A	1155	2/7/96	L–12126–51A
LYC	IO–320	1141	1/17/96	
LYC	IO–320–B1A	1525	11/14/97	
LYC	IO–360	1314	12/17/96	
LYC	IO–360	IN6137	8/7/97	
LYC	IO–360–A1A	1230	6/10/96	L–474–51
LYC	IO–360–A1A	1289	10/23/96	L–4085–5174
LYC	IO–360–A1A	1415b	5/23/97	RL–3920–51A
LYC	IO–360–A1B6	1463	7/31/97	
LYC	IO–360–B1E	1312	12/12/96	L–4453–51A
LYC	IO–360–C	1146	1/23/96	R–51448–9–C
LYC	IO–360–C1C	1336	2/10/97	
LYC	IO–360–C1C	1518	12/9/97	
LYC	IO–360–C1C6	1530	11/25/97	
LYC	IO–360–C1C6	1537	12/9/97	L–19294–51A
LYC	IO–360–C1D6	1286	4/28/97	
LYC	IO–360–D	1540	12/2/97	
LYC	IO–360–F1A6	1176	3/7/96	L–27423–36A
LYC	IO–540	1014	2/8/95	
LYC	IO–540	1056	6/13/95	
LYC	IO–540	1302	12/5/96	
LYC	IO–540–C4B5	1313	12/17/96	L–19547–48
LYC	IO–540–S1A5	1513	10/27/97	L–19597–48A
LYC	IVO–435–G1A	1271		
LYC	LIO–320–C1A	1158	2/8/96	
LYC	LIO–360–C1E6	1280	10/7/96	

TABLE 1—Continued

Engine	Model	W/O	Date	Engine SER#
LYC	LIO–360–C1E6	1281	10/9/96	
LYC	O–235	1013	2/21/95	
LYC	O–235	1051	6/2/95	
LYC	O–235	1054	6/9/95	
LYC	O–235	1057	6/14/95	L–9041–15
LYC	O–235	1058	6/29/95	
LYC	O–235	1060	6/30/95	
LYC	O–235	1069	8/10/95	
LYC	O–235	1110	2/20/96	
LYC	O–235	1145	1/23/96	
LYC	O–235	1151	1/25/96	
LYC	O–235	1160	2/9/96	RL–24636–15
LYC	O–235	1305	12/5/96	L–22542–15
LYC	O–235	1329	2/11/97	
LYC	O–235	1332	2/11/97	
LYC	O–235	1481	9/2/97	
LYC	O–235–C1	1089	10/8/95	L–6475–15
LYC	O–235–C1	1188	4/2/96	L–7143–15
LYC	O–235–C1	1335	3/12/97	L–5569–15
LYC	O–235–C1	1367	3/24/97	
LYC	O–235–C2C	1019	2/24/95	L–12284–15
LYC	O–235–C2C	1040	5/8/95	
LYC	O–235–C2C	1105	12/1/95	L–12273–15
LYC	O–235–L2C	1030	4/6/95	L–14545–15
LYC	O–235–L2C	1036	4/24/95	
LYC	O–235–L2C	1037	4/24/95	L–23012–15
LYC	O–235–L2C	1050	6/2/95	L–15542–15
LYC	O–235–L2C	1062	7/5/95	L–18306–15
LYC	O–235–L2C	1067	8/8/95	
LYC	O–235–L2C	1070	8/10/95	L–16005–15
LYC	O–235–L2C	1095	11/14/95	RL–023227–15
LYC	O–235–L2C	1101	11/4/95	L–15300–15
LYC	O–235–L2C	1102	11/15/95	L–20183–15
LYC	O–235–L2C	1162	2/14/96	L–16114–15
LYC	O–235–L2C	1179	3/11/96	L–21215–15
LYC	O–235–L2C	1219	5/16/96	L–21215–15
LYC	O–235–L2C	1251	8/22/96	
LYC	O–235–L2C	1285	10/19/96	
LYC	O–235–L2C	1365	3/24/97	
LYC	O–235–L2C	1400	4/28/97	
LYC	O–235–L2C	1414	8/5/97	
LYC	O–235–L2C	1417	12/5/97	
LYC	O–235–L2C	1433	6/26/97	L–17074–15
LYC	O–235–L2C	1435	6/9/97	
LYC	O–235–L2C	1504	10/31/97	
LYC	O–235–L2C	1508	11/18/97	
LYC	O–235–L2C	1524	11/12/97	
LYC	O–235–L2C	1536	11/24/97	
LYC	O–235–L2C	2010	11/19/97	
LYC	O–235–N2C	1511	10/29/97	L–23857–15
LYC	O–290	1257	9/4/96	
LYC	O–290	1326	3/26/97	
LYC	O–290–D2	1082	9/26/95	L–6019–21
LYC	O–320	1018	2/22/95	
LYC	O–320	1024	3/17/95	
LYC	O–320	1038	5/3/95	L–39272–27A
LYC	O–320	1045	5/24/95	
LYC	O–320	1084	9/28/95	
LYC	O–320	1116	1/8/96	
LYC	O–320	1125	1/8/96	
LYC	O–320	1169	2/28/96	
LYC	O–320	1175	3/7/96	
LYC	O–320	1184	3/28/96	
LYC	O–320	1189	8/27/96	
LYC	O–320	1202	4/30/96	
LYC	O–320	1212	5/10/96	
LYC	O–320	1283	10/17/96	
LYC	O–320	1316	12/21/96	
LYC	O–320	1340	2/25/97	L–24367
LYC	O–320	1347	2/18/97	
LYC	O–320	1360	3/10/97	
LYC	O–320	1361	3/10/97	

TABLE 1—Continued

Engine	Model	W/O	Date	Engine SER#
LYC	O–320	1436	5/29/97	
LYC	O–320	1468	8/14/97	
LYC	O–320	1474	8/22/97	L–13130–39A
LYC	O–320	1477	9/13/97	
LYC	O–320	1477	9/13/97	
LYC	O–320	1507		
LYC	O–320	1519	11/21/97	
LYC	O–320	1546	12/7/97	
LYC	O–320	1171	3/1/96	
LYC	O–320–A	1192	4/13/96	
LYC	O–320–A	1194	4/13/96	
LYC	O–320–A	1196	4/13/96	
LYC	O–320–A1A	1244	8/13/96	L–5270–27
LYC	O–320–A2B	1081	9/22/95	
LYC	O–320–A2B	1461	9/9/97	L–12626–27
LYC	O–320–B2B	1452	7/10/97	L–2977–39
LYC	O–320–B2C	1315	12/17/96	
LYC	O–320–D2J	1172	3/4/96	L–13039–39A
LYC	O–320–D2J	1173	3/7/96	L–123412–39A
LYC	O–320–D2J	1253	9/4/96	
LYC	O–320–D2J	1534	11/25/97	
LYC	O–320–D2J	1539	12/3/97	
LYC	O–320–D3G	1077	9/17/95	
LYC	O–320–D3G	1114	1/8/96	L–10983–39A
LYC	O–320–D3G	1354	2/25/97	
LYC	O–320–D3G	1370	3/26/97	H45247
LYC	O–320–D3G	1544	12/3/97	
LYC	O–320–E2A	1103	11/10/95	L–26363–27A
LYC	O–320–E2A	1191	4/13/96	L–19377–27A
LYC	O–320–E2A	1317	12/21/96	L–15219–27A
LYC	O–320–E2A	1439	6/9/97	L–38003–55A
LYC	O–320–E2D	1068	8/10/95	L–35528–27A
LYC	O–320–E2D	1078	9/17/95	
LYC	O–320–E2D	1177	3/9/96	L–44732–27A
LYC	O–320–E2D	1181	3/14/96	
LYC	O–320–E2D	1241	8/9/96	L–42691–27A
LYC	O–320–E2D	1245	8/13/96	L–40483–27A
LYC	O–320–E2D	1260	9/9/96	L–15300–15
LYC	O–320–E2D	1343	2/17/97	
LYC	O–320–E2D	1346	3/2/97	L–44320–27A
LYC	O–320–E2D	1385	4/16/97	
LYC	O–320–E2D	1458	7/18/97	
LYC	O–320–E2D	1533	11/25/97	
LYC	O–320–E2D	1549	12/12/97	
LYC	O–320–E2G	1338	3/10/97	L–38264–27A
LYC	O–320–E3D	1034	4/18/95	L–29668–27A
LYC	O–320–E3D	1074	8/24/95	L–29495–27A
LYC	O–320–E3D	1431	6/9/97	L–33770–27A
LYC	O–320–E3D	1444	6/13/97	
LYC	O–320–E3D	1500	10/7/97	L–33841–27A
LYC	O–320–H2AD	1322	1/22/97	L–1530–78T
LYC	O–360	1025	3/17/95	
LYC	O–360	1157	2/7/96	
LYC	O–360	1199	4/18/96	
LYC	O–360	1362	3/10/97	
LYC	O–360	1386	4/17/97	
LYC	O–360	1394	5/6/97	
LYC	O–360	1528	11/19/97	
LYC	O–360–A1A	1170	2/28/96	L–20677–36A
LYC	O–360–A1A	1214	5/14/96	L–20190–36A
LYC	O–360–A1A	1239	8/5/96	
LYC	O–360–A1D	1411	5/5/97	
LYC	O–360–A3A	1531	11/25/97	
LYC	O–360–A4A	1270	9/27/96	L–14008–36A
LYC	O–360–A4A	1464	7/30/97	L–24796–36A
LYC	O–360–A4A	1486	9/6/97	
LYC	O–360–A4A	1529	11/25/7	
LYC	O–360–A4K	1166	2/22/96	L–26455–36A
LYC	O–360–B1B	1262	9/9/96	L–5261–51A
LYC	O–540–A1B5	1129	12/29/95	
LYC	O–540–A1B5	1132	1/9/96	L–1165–40
LYC	O–540–A1D5	1462	7/28/97	L–5661–40

TABLE 1—Continued

Engine	Model	W/O	Date	Engine SER#
LYC	O–720	1510	10/26/97	
LYC	TIO–540–A2	1064	7/13/95	
LYC	TIO–540–A2	1111	1/10/96	
LYC	TIO–540–R2AD	1106	11/27/95	L–5949–61A
TCM	A–65	1152	1/25/96	
TCM	A–65	1154	2/7/96	7187
TCM	A–65	1183	2/22/96	
TCM	A–65	1185	3/28/96	
TCM	A–65	1233	6/23/96	
TCM	A–65	1290	10/29/96	
TCM	A–65	1296	11/14/96	4933868
TCM	A–65	1299	11/19/96	
TCM	A–65	1325	3/26/97	
TCM	A–65	1326	3/26/97	
TCM	A–65	1376	4/29/97	
TCM	A–65	1438	6/17/97	5890178
TCM	A–65–3	1243	8/13/96	324993
TCM	A–65–8	1541	12/2/97	
TCM	A65–8	1276	10/5/96	5762568
TCM	A75	1156	2/7/96	5321868
TCM	A75	1255	9/3/96	
TCM	A75	1256	9/4/96	
TCM	A75–8	1275	10/5/96	5162868
TCM	C75–12F	1293	11/4/96	3316–6–12
TCM	C85	1088	10/4/95	
TCM	C85	1092	10/18/95	
TCM	C–85	1198	4/17/96	29652–7–8
TCM	C–85	1297	11/14/96	
TCM	C–85	1352	3/10/97	
TCM	C–85	1381	4/28/97	
TCM	C–85	1391	4/19/97	
TCM	C–85	1392	4/19/97	
TCM	C–85	1484	9/4/97	28487–6–12
TCM	C–85–8FJ	1139	1/17/96	29845–7–8
TCM	C–85–8FJ	1420	5/12/97	29465–7–8
TCM	C–85–12	1031	4/6/95	
TCM	C–85–12	1182	3/18/96	21596–6–12
TCM	C–85–12	1217	5/15/96	
TCM	C–85–12	1265	9/12/96	14657
TCM	C–85–12	1298	11/14/96	23610–6–12
TCM	C–90–8F	1471	9/6/97	42838–1–8
TCM	C–90–12	1279	10/7/96	44747–6–12
TCM	E–185–4	1124	1/16/96	25700D–1–9
TCM	E–225–8	1505	10/28/97	35477–D–9–8–P
TCM	GTSIO–520	1208	5/7/96	210114–70H
TCM	IO–360–C	1126	12/28/95	F–51439–9–C
TCM	IO–470	1028	3/23/95	87329–R
TCM	IO–470–N	1421	5/13/97	95271–1–N
TCM	IO–470–S	1331	3/11/97	102412–2–S–I
TCM	IO–520	1174	3/4/96	
TCM	IO–520–D	1167	2/22/96	
TCM	O–200	1033	4/18/95	
TCM	O–200	1043	5/12/95	
TCM	O–200	1049	6/2/95	
TCM	O–200	1076	9/11/95	214668–27A
TCM	O–200	1104	11/21/95	213830–71A
TCM	O–200	1131	1/5/96	
TCM	O–200	1142	1/18/96	265349–R
TCM	O–200	1147	1/23/96	
TCM	O–200	1190	4/13/96	
TCM	O–200	1193	4/13/96	
TCM	O–200	1195	4/13/96	
TCM	O–200	1197	4/17/96	
TCM	O–200	1213	5/13/96	
TCM	O–200	1261	9/9/96	
TCM	O–200	1303	12/5/96	
TCM	O–200	1321	2/7/97	28115
TCM	O–200	1324	2/6/97	
TCM	O–200	1344	3/2/97	
TCM	O–200	1393	5/5/97	
TCM	O–200	1413	5/7/97	61001–5–4
TCM	O–200	1430	5/23/97	

TABLE 1—Continued

Engine	Model	W/O	Date	Engine SER#
TCM	O–200	1437	6/17/97	255759A–48
TCM	O–200	1488	9/7/97	
TCM	O–200	1506	11/18/97	
TCM	O–200	1522	11/11/97	
TCM	O–200–A	1052	6/21/95	254150–A–48
TCM	O–200–A	1085	9/29/95	
TCM	O–200–A	1120	12/29/95	253971
TCM	O–200–A	1161	2/9/96	24R–469
TCM	O–200–A	1215	5/15/96	
TCM	O–200–A	1240	8/5/96	69589–8–A
TCM	O–200–A	1254	9/3/96	6105–71–A–R
TCM	O–200–A	1264	9/12/96	
TCM	O–200–A	1356	3/10/97	
TCM	O–300	1027	3/20/95	
TCM	O–300	1042	5/12/95	34012–D–6–D
TCM	O–300	1083	9/26/95	
TCM	O–300	1096	10/23/95	464481
TCM	O–300	1137	1/17/96	
TCM	O–300	1259	9/4/96	
TCM	O–300	1387	4/22/97	
TCM	O–300	1397	4/26/97	5928–9A
TCM	O–300	1403	4/28/97	
TCM	O–300	1423	6/9/97	3834D8Z
TCM	O–300	1555	1/13/98	
TCM	O–300–A	1446	6/27/97	
TCM	O–300–D	1022	3/17/95	35110–D–6–D
TCM	O–300–D	1079	9/17/95	24276–D–0–D
TCM	O–300–D	1487	9/6/97	
TCM	O–300–D	1543	12/3/97	
TCM	O–470	1046	6/1/95	
TCM	O–470	1383	4/4/97	
TCM	O–470–11	1017	2/22/95	
TCM	O–470–11	1491	10/19/97	
TCM	O–470–11	1492	10/19/97	
TCM	O–470–11	1493	10/19/97	
TCM	O–470–11	1494	10/19/97	
TCM	O–470–F	1236	7/25/96	76956–4–F
TCM	O–470–K	1087	10/3/95	47172–6–K
TCM	O–470–L	1128	1/10/96	68681–8–L
TCM	O–470–L	1359	5/19/97	68245–8–L
TCM	O–470–L	1399	4/28/97	
TCM	O–470–R	1016	2/10/95	133087–6–R
TCM	O–470–R	1086	10/3/95	
TCM	O–470–R	1165	2/22/96	
TCM	O–470–R	1178	3/10/96	
TCM	O–470–R	1201	6/2/96	83164–1–R
TCM	O–470–R	1319	1/6/97	459408
TCM	TSIO–520–VB	1055	6/9/95	

Note 1: Blank spaces indicate unknown data. Where the engine serial no. is blank in this table, it is either unknown or the crankshaft may not be installed in an engine.

Note 2: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent crankshaft failure due to cracking, which could result in an inflight engine failure and possible forced landing, accomplish the following:

(a) Within 10 hours time in service after the effective date of this AD, determine if this AD applies, as follows:

(1) Determine if any repair was conducted on the engine that required crankshaft removal during the February 1, 1995, to December 31, 1997, time frame; if the engine was not disassembled for crankshaft removal and repair in this time frame, no further action is required.

(2) If the engine and crankshaft was repaired during this time frame, determine from the maintenance records (engine log book), and Table 1 of this AD if the crankshaft was repaired by Nelson Balancing Service, Repair Station Certificate No. NB7R820J, Bedford, Massachusetts. The maintenance records should contain the Return to Service (Yellow) tag for the crankshaft that will identify the company performing the repair. Also the work order number contained in Table 1 of this AD was etched on the crankshaft propeller flange, adjacent to the closest connecting rod journal. Because some etched numbers will be difficult to see, if necessary, use a 10X magnifying glass with an appropriate light source to view the work order number. In addition, the propeller spinner, if installed, will have to be removed in order to see this.

(3) A person with a private pilot or higher rated certificate may make the determination of applicability of this AD provided the

propeller spinner does not have to be removed.

(4) If it cannot be determined who repaired the crankshaft, compliance with this AD is required.

(b) Within 10 hours time in service after the effective date of this AD, accomplish the following:

(1) Perform a visual inspection as defined in paragraph (b)(2) of this AD, magnetic particle inspection, and a dimensional check of the crankshaft journals, or remove from service affected crankshafts and replace with serviceable parts.

(2) For the purpose of this AD, a visual inspection of the crankshaft is defined as the inspection of all surfaces of the crankshaft for cracks which include heat check cracking of the nitrided bearing surfaces, cracking in the main or aft fillet of the main bearing journal and crankpin journal, including checking the bearing surfaces for scoring, galling, corrosion, or pitting.

Note 3: Further guidance on all inspection and acceptance criteria is contained in applicable TCM or LYC Overhaul or Maintenance Manuals, or other FAA-approved data.

(3) Replace any crankshaft that fails the visual inspection, magnetic particle inspection, or the dimensional check with a serviceable crankshaft, unless the crankshaft can be reworked to bring it in compliance with:

(i) All the overhaul requirements of the appropriate TCM or LYC Overhaul/Maintenance Manuals; or

(ii) All of the FAA-approved requirements for any repair station which currently has approval for limits other than those in the appropriate TCM or LYC Overhaul/Maintenance Manuals.

(4) For the purpose of this AD, a serviceable crankshaft is one which meets the requirements of paragraph (b)(3)(i) or (b)(3)(ii) of this AD.

Note 4: Crankshafts removed from TCM engine models IO–360, IO–520, and TSIO–520 series engines are also subject to compliance with AD 97–26–17.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York (LYC) or Atlanta (TCM) Aircraft Certification Offices. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York or Atlanta Aircraft Certification Offices.

Note 5: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification or New York Aircraft Certification Office, as applicable.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on May 1, 1998.

Thomas A. Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–12353 Filed 5–8–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–128–AD]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Model S10-V Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Stemme GmbH & Co. KG (Stemme) Model S10-V sailplanes. The proposed action would require replacing the propeller blade suspension forks with parts of improved design. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent propeller suspension fork failure caused by design deficiency, which, if not corrected, could result in loss of a propeller blade and loss of sailplane controllability.

DATES: Comments must be received on or before June 15, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE–128-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Federal Republic of Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426-6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire.

Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–128–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–128–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Stemme S10-V sailplanes. The LBA reports one incident of a failure of the propeller blade suspension fork during flight, which caused loss of sailplane controllability. Investigation of this incident revealed that the thread end groove area of the propeller blade suspension fork does not have an adequate design. This inadequate design causes fatigue of the propeller blade suspension fork to the point of failure.

This condition, if not corrected, could result in loss of the propeller blade

during flight and possible loss of sailplane controllability.

Relevant Service Information

Stemme has issued Service Bulletin No. A31–10–020, Am-index: 02.a, dated October 7, 1996, which specifies procedures for replacing the propeller blade suspension fork, part number (P/N) 10AP–V08, distance ring, P/N 10AP–V05, and nut, P/N 10AP–V06, with a new propeller blade suspension fork of improved design, P/N A09–10AP–V08, a new distance ring of improved design, P/N A09–10AP–05, and a new nut of improved design, P/N A09–10AP–V06.

The LBA classified this service bulletin as mandatory and issued German AD 95–177/2, dated January 30, 1997, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA, reviewed all available information, including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Stemme Model S10-V sailplanes of the same type design registered in the United States, the proposed AD would require replacing the propeller blade suspension fork, distance ring, and nut with parts of improved design. Accomplishment of the proposed installation would be in accordance with Stemme GmbH & Co. KG Service Bulletin No. A31–10–020, Am-index: 02.a, dated October 7, 1996.

Cost Impact

The FAA estimates that 7 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take 6 hours per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $930 per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $9,030.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Stemme GmbH & Co. KG: Docket No. 97–CE–128–AD.

Applicability: Model S10–V sailplanes (serial numbers (S/N) 14–002 through 14–026, and converted sailplanes S/N 4–003M through 14–036M), certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required upon the accumulation of 100 hours total time-in-service (TIS) on the sailplane propeller or within the next 10 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished.

To prevent propeller suspension fork failure caused by design deficiency, which, if not corrected, could result in loss of a propeller blade and loss of sailplane controllability, accomplish the following:

(a) Replace the propeller blade suspension fork, part number (P/N) 10AP–V08 (or an FAA-approved equivalent P/N), with new P/N A09–10AP–V08 (or an FAA-approved equivalent P/N), distance ring, P/N 10AP–V05 (or an FAA-approved equivalent P/N), with new P/N A09–10AP–V05 (or an FAA-approved equivalent P/N), and nut, P/N 10AP–V06 (or an FAA-approved equivalent P/N), with new P/N A09–10AP–V06 (or an FAA-approved equivalent part number) in accordance with Stemme GmbH & Co. KG Service Bulletin No. A31–10–020, Am-index: 02.a, dated October 7, 1996.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to pages 3 and 4 of Stemme GmbH & Co. KG Service Bulletin, Modification v.p. propeller/failure blade suspension, No. A31–10–020, Am-index: 02.a, dated October 7, 1996, should be directed to Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Federal Republic of Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD 95–177/2, dated January 30, 1997.

Issued in Kansas City, Missouri, on May 4, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–12383 Filed 5–8–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. 98N–0294]

Beverages: Bottled Water; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to lift the stay of the effective date for the allowable levels in the bottled water quality standard for nine chemical contaminants, i.e., antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and 2,3,7,8-TCDD (dioxin), that was imposed in a final rule published on March 26, 1996. By lifting the stay of the effective date, bottled water manufacturers will be required to monitor source waters and finished bottled water products at least once a year for these nine chemical contaminants under the current good manufacturing practice (CGMP) regulations for bottled water. FDA is required to issue monitoring requirements for the nine chemical contaminants under the Safe Drinking Water Act Amendments of 1996 (SDWA Amendments). This proposed rule is a companion to the direct final rule published elsewhere in this issue of the **Federal Register**.

DATES: Submit written comments by July 27, 1998. See section VIII. of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments on the companion proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Henry Kim, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–260–0631.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. The companion proposed rule and the direct final rule are substantively identical. This companion proposed rule will provide the procedural framework to finalize the rule in the event the direct final rule receives significant adverse comment and is withdrawn. The comment period for the companion proposed rule runs concurrently with the comment period of the direct final rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. FDA is publishing the direct final rule because the agency anticipates that it will receive no significant adverse comment. A detailed discussion of this rule is set forth in section II of the direct final rule. If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish a confirmation notice no later than August 6, 1998. FDA intends the direct final rule to become effective 180 days after publication of the confirmation notice. If FDA receives significant adverse comment, the agency will withdraw the direct final rule. FDA will proceed to respond to all of the comments received regarding the rule, and, if appropriate, the rule will be finalized under this companion proposed rule using notice-and-comment procedure. The comment period for this companion proposed rule runs concurrently with the comment period for the direct final rule. Any comments received under this companion proposed rule will also be considered as comments regarding the direct final rule.

Before the enactment of the SDWA Amendments on August 6, 1996, section 410 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 349) required that, whenever the Environmental Protection Agency (EPA) prescribed interim or revised National Primary Drinking Water Regulations (NPDWR's) under section 1412 of the Public Health Service Act SDWA (42 U.S.C. 300f through 300j–9)), FDA consult with EPA and either amend its regulations for bottled drinking water in § 165.110 (21 CFR 165.110) or publish in the **Federal Register** its reasons for not making such amendments.

In accordance with section 410 of the act, FDA published in the **Federal Register** of March 26, 1996 (61 FR 13258), a final rule (hereinafter ''the March 1996 final rule'') that amended the quality standard for bottled water by establishing or revising the allowable levels for 5 inorganic chemicals (IOC's) and 17 synthetic organic chemicals (SOC's), including 3 synthetic volatile organic chemicals (VOC's), 9 pesticide chemicals, and 5 nonpesticide chemicals. This action was in response to EPA's issuance of NPDWR's consisting of maximum contaminant levels (MCL's) for the same 5 IOC's and 17 SOC's in public drinking water (57 FR 31776; July 17, 1992).

However, in the March 1996 final rule, FDA stayed the effective date for the allowable levels for the five IOC's (antimony, beryllium, cyanide, nickel, and thallium) and four of the SOC's (diquat, endothall, glyphosate, and dioxin). This action was in response to bottled water industry comments (responding to the August 4, 1993 proposal (58 FR 41612)) which asserted that additional monitoring for these nine chemicals required under the bottled water CGMP regulations would pose an undue economic burden on bottlers. If the agency had not stayed the effective date for the allowable levels, the bottled water CGMP regulations under 21 CFR part 129 (part 129) would have been in effect for these nine chemical contaminants. The bottle water CGMP regulations require a minimum yearly monitoring of source water and finished bottled water products for chemical contaminants for which allowable levels have been established in the bottled water quality standard. The comments requested that FDA adopt reduced frequency monitoring requirements for chemical contaminants that are not likely to be present in the source water for bottling or in the finished bottled water products. The comments submitted data that supported the request that FDA reconsider the current monitoring frequency requirements for chemical contaminants in the bottled water CGMP regulations.

Based on the information submitted by the comments, FDA stated in the March 1996 final rule (61 FR 13258 at 13261) that the matter of reduced frequency of monitoring (less frequently than once per year) requirements for chemical contaminants that are not likely to be found in bottled water merited consideration by the agency. FDA also stated, however, that any revision of the monitoring requirements for chemical contaminants in bottled water would require an amendment of the bottled water CGMP regulations in part 129. FDA stated that it intended to initiate, considering its resources and competing priorities, a separate rulemaking to address the issue of

circumstances in which reduced frequency of monitoring requirements for chemical contaminants in bottled water products may be appropriate.

Therefore, FDA stayed the effective date for the nine chemical contaminants pending completion of a rulemaking to address the issue of reduced frequency monitoring for chemical contaminants in bottled water. Although the effect of the stay does not require bottled water manufacturers to monitor source waters and finished bottled water products annually for the nine chemical contaminants, FDA advised water bottlers to ensure through appropriate manufacturing techniques and sufficient quality control procedures that their bottled water products are safe with respect to levels of these nine chemical contaminants.

II. Additional Information

For additional information see the corresponding direct final rule published elsewhere in this issue of the **Federal Register**. All persons who wish to submit comments should review the detailed rationale for these amendments set out in the preamble discussion of the direct final rule.

A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment recommending a rule change in addition to the rule will not be considered a significant adverse comment, unless the comment states why this rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

III. Proposal to Lift the Stay

Subsequent to the March 1996 final rule, on August 6, 1996, the SDWA Amendments was enacted. Section 305 of the SDWA Amendments requires that, for contaminants covered by a standard of quality regulation issued by FDA before the enactment of the SDWA Amendments for which an effective date had not been established, FDA issue monitoring requirements for such contaminants (e.g., the nine chemical contaminants: Antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and dioxin) not later than 2 years after the date of enactment of the SDWA Amendments. Under this mandate, FDA is required to issue monitoring requirements for the nine chemical contaminants for which it stayed the effective date in the March 1996 final rule by August 6, 1998, with an effective date of February 6, 1999. If FDA does not meet this statutory time period, the NPDWR's for the nine chemical contaminants become applicable to bottled water.

FDA is proposing to lift the stay of the effective date for the allowable levels for the nine chemical contaminants (antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and dioxin) for the following reasons: First, the agency's CGMP regulations for bottled water, which require that source waters and finished bottled water products be tested for these nine contaminants at least once a year, are protective of the public health. The agency considers at least annual testing, as set forth in its CGMP regulations in part 129, to be of sufficient frequency, absent circumstances that may warrant more frequent testing, to ensure that bottled water has been prepared, packed, or held under sanitary conditions. Second, Congress mandated, under the SDWA Amendments, that the agency issue monitoring requirements for the nine chemical contaminants by August 6, 1998. The agency's action to lift the stay is consistent with this mandate. By lifting the stay of the effective date for the allowable levels for the nine chemical contaminants in the bottled water quality standard, bottled water manufacturers will be required to monitor source waters and finished bottled water products at least once a year for these nine chemical contaminants under the CGMP provisions in part 129. Third, FDA, in the March 1996 final rule, stated that it intended to initiate rulemaking to address the issue of whether there are circumstances in which reduced frequency of monitoring for contaminants is appropriate. However, such rulemaking would require consideration of all chemical contaminants, not just the nine chemical contaminants that are the subject of the stay. FDA is only addressing, in this rulemaking, the frequency of monitoring for the nine chemical contaminants that are the subject of the stay. FDA may consider, in a future rulemaking, the issue of reduced frequency of monitoring in the context of all chemical contaminants in bottled water subject to the bottled water CGMP regulations in part 129. Therefore, the agency is, at this time, electing to lift the stay of the effective date for the allowable levels in the bottled water quality standard for the nine chemical contaminants, i.e., antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and dioxin, and thereby require annual testing for these nine contaminants, consistent with the CGMP requirements for bottled water.

IV. Environmental Impact

The agency has determined under 21 CFR 25.32(a) 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.

V. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of this proposed rule under Executive Order 12866. Executive Order 12866 directs agencies to assess the 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 effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is ''significant'' if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million, adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. FDA finds that this proposed rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this proposed rule is not a major rule for the purpose of congressional review. For the purpose of Congressional review, a major rule is one which is likely to cause an annual effect on the economy of $100 million; a major increase in costs or prices; significant effects on competition, employment, productivity, or innovation; or significant effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Initial Regulatory Flexibility Analysis

FDA has examined the impact of the rule as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the RFA requires agencies to analyze options that would minimize the economic impact of that rule on small entities. The agency acknowledges that the proposed rule may have a significant economic impact on a

substantial number of small entities. If the agency receives any significant adverse comments to the direct final rule, the agency will withdraw the direct final rule and proceed with the rulemaking based on this proposed rule. In the context of the rulemaking based on this proposed rule, the agency will consider comments to the initial regulatory flexibility analysis.

1. Objectives

The RFA requires a succinct statement of the purpose and objectives of any rule that may have a significant economic impact on a substantial number of small entities. The agency is taking this action to lift the stay for nine chemical contaminants under a congressional mandate, under the SDWA Amendments, that FDA issue monitoring requirements for these nine chemical contaminants in bottled water. Lifting the stay of the effective date for the allowable levels in the bottled water quality standard for the nine chemical contaminants (antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and dioxin) protects the public health. By lifting the stay, bottled water manufacturers will be required to monitor source waters and finished bottled water products at least once a year for the nine chemical contaminants under the bottled water CGMP regulations in part 129. The agency considers at least annual testing, as set forth in its CGMP regulations, to be of sufficient frequency, absent circumstances that may warrant more frequent testing, to ensure that bottled water has been prepared, packed, or held under sanitary conditions.

2. Description of Small Business and the Number of Small Businesses Affected

The RFA requires a description of small businesses used in the analysis and an estimate of the number of small businesses affected, if such estimate is available. Table 1 describes small businesses affected and estimates the number of small businesses affected by the rule. The agency combined the Small Business Administration (SBA) definition of a small business as an upper bound of the total number in the analysis with data from Duns Market Identifiers (DMI) on the number of plants using SIC 2086. FDA has used the International Bottled Water Association (IBWA) estimate as a lower bound of the number of small entities in the industry. According to DMI, there are a total of 1,567 establishments in the industry group of which 66 percent of the entities (1,028 firms) have fewer than 500 employees. According to IBWA, there are approximately 560 member firms, of which 50 percent or 280 firms have annual sales below $1 million.

TABLE 1.—APPROXIMATE NUMBER OF SMALL ENTITIES COVERED BY THIS RULE

Type of establishment	Standard Industry Classification Codes	Classification of Small Entities	Percentage of Category Defined as Small by SBA	No. of Small Establishments Covered by the Rule
IBWA	NA	Annual sales below $1 million	50%	280
DMI	2,086	Less than 500 employees	66%	1,028

3. Description of the Economic Impact on Small Entities.

a. *Estimated costs for testing source waters*. The estimated costs for testing source waters are the estimated total additional costs the small entity would incur to monitor source waters for the nine chemical contaminants annually. Table 2 summarizes the expected additional costs. As discussed in the March 1996 final rule (61 FR 13258 at 13263), additional cost per sample is estimated to be $1,290, and an estimated 50 percent of source waters are from municipal sources that do not require testing.

TABLE 2.—ESTIMATED SUBTOTAL COSTS FOR TESTING SOURCE WATERS

No. of Small Establishments Covered by the Rule	Cost per Sample	Percent Water From Nonmunicipal Sources	Subtotal Annual Cost
Lower bound-280	$1,290	50%	$180,600
Upper bound-1,028	$1,290	50%	$663,060

b. *Estimated costs for testing finished bottle water products*. The estimated costs for testing are the estimated total additional costs the small entity would incur to monitor finished bottled water products for the nine chemical contaminants annually. Table 3 summarizes the expected costs. As discussed in the March 1996 final rule (61 FR 13258 at 13263), additional cost per sample is estimated to be $1,290.

TABLE 3.—ESTIMATED SUBTOTAL COSTS FOR TESTING FINISHED BOTTLE WATER PRODUCTS

No. of Small Establishments Covered by the Rule	Cost per Sample	Average Number of Products	Subtotal Annual Cost
Lower bound-280	$1,290	2	$722,400
Upper bound-1,028	$1,290	2	$2,652,240

c. *Estimated total costs for testing source waters and finished bottled water products*. The estimated total testing costs are the sum of estimated costs to monitor source waters and finished bottled water products . The agency estimates that the lower bound cost is $900,000 and the upper bound cost is $3 million. Table 4 summarizes the expected additional costs.

TABLE 4.—ESTIMATED TOTAL COSTS

No. of Small Establishments Covered by the Rule	Subtotal Costs for Testing Source Waters	Subtotal Costs for Testing Finished Bottled Water Products	Total Testing Costs[1]
Lower bound-280	$180,600	$722,400	$900,000
Upper bound-1,028	$660,060	$2,652,240	$3,000,000

[1] Total Testing Costs are rounded to the nearest significant digit.

d. *Professional skills required for compliance*. The RFA requires a description of the professional skills necessary for the preparation of a report or record. This rule does not require professional skills for the preparation of a report or record. Any sampling of source water or finished bottled water product for analysis of chemical contaminants can be carried out by trained plant personnel who can ship such samples to a testing laboratory for analysis. Other trained skills would also include recording and maintaining the test result records at the plant for a minimum of 2 years.

e. *Recordkeeping requirements*. The RFA requires a description of the recordkeeping requirements of the rule. Table 5 shows the provisions for making and maintaining records by small businesses, the number of small businesses affected, the annual frequency of making each record, the amount of time needed for making each record, and the total number of hours for each provision in the first year and then in subsequent years.

TABLE 5.—SMALL BUSINESS RECORDKEEPING REQUIREMENTS

Provision	No. of Small Entities Keeping Records	Annual Frequency	Hours per Record per Small Entity	Total Hours, First Year	Total Hours, Subsequent Years
Monitoring SOP	280	1	10	2,800	2,800
Monitoring SOP	1,028	1	10	10,280	10,280
Validation	280	1	5	1,400	1,400
Validation	1,028	1	5	5,140	5,140
Record maintenance	280	1	5	1,400	1,400
Record maintenance	1,028	1	5	5,140	5,140
Totals-lower bound	280	1	20	5,600	5,600
Totals-upper bound	1,028	1	20	20,560	20,560

4. Minimizing the Burden to Small Entities

The RFA requires an evaluation of any regulatory alternatives that would minimize the costs to small entities. There are four alternatives that the agency has considered to provide regulatory relief for small entities. First, FDA considered the option of not lifting the stay of the effective date for the allowable levels in the bottled water quality standard for the nine chemical contaminants. Second, FDA considered the option of exempting small entities from the requirements of this rule. Third, FDA considered lengthening the compliance period for small entities. Fourth, FDA considered reducing the testing frequency.

a. *Not lifting the stay*. By convention, the option of taking no action is the baseline in comparison with the evaluation of the other options. Taking no action in this case means not lifting the stay of the effective date for the allowable levels in the bottled water quality standard for the nine chemical contaminants. By not lifting the stay, FDA would not meet the statutory mandate provided in the SDWA Amendments that requires the agency to issue monitoring requirements for the nine chemical contaminants by August 6, 1998. If FDA does not issue monitoring requirements by August 6, 1998, the NPDWR's for public drinking water for these nine contaminants would be considered to be the standard of quality regulations for bottled water under § 165.110. Under the NPDWR's, EPA's base monitoring requirements for ground water testing are once every 3 years for testing inorganic chemicals (e.g., antimony, beryllium, cyanide, nickel, and thallium), and four successive quarters every 3 years for ground water testing for synthetic organic chemicals (e.g., diquat, endothall, glyphosate, and dioxin). Under part 129, FDA requires at least annual testing for both the inorganic and synthetic organic chemicals. Therefore, the frequency of testing requirements under EPA's NPDWR's for public drinking water and FDA's frequency of testing requirements for bottled water differ.

Moreover, the regulatory scheme under EPA's regulations for public drinking water contemplates State coordination, including the use of state-issued waivers in certain situations. EPA regulations address treated ground and surface water testing, whereas FDA's regulations address source water (which in most cases involves testing of untreated ground water) and finished bottled water product testing. Source water testing provides a preliminary review of the safety and quality of the water source that a water bottler intends to manufacture into a bottled water product. FDA considers source water testing to be as important as finished bottled water product testing because the safety and quality of the source water, determined by source water testing, will affect the treatment necessary to produce a finished bottled water product that complies with the bottled water quality standard. However, if EPA's regulatory scheme for public drinking water would need to be considered for the nine chemical contaminants that are the subject of this rule for bottled water, it is unclear whether only finished bottled water product testing for these nine chemical contaminants, in lieu of source water testing, would be applicable. Furthermore, EPA's monitoring requirements are designed to address water that is provided to customers through municipal water distribution systems while FDA's requirements address water that is produced to be sold to consumers in discrete units. Some differences between these two sets of monitoring requirements exist (e.g.,

criteria for determining when a system (or bottler) is not in compliance), because they address two fundamentally different production circumstances. FDA believes that its regulations for bottled water, which are designed to ensure that bottled water is prepared, packed, and held under sanitary conditions, should apply to the testing for these nine chemical contaminants in bottled water rather than having such contaminants subject to a regulatory scheme established for public drinking water.

Furthermore, the extent to which FDA would consider certain aspects of EPA's regulatory scheme for public drinking water as ''monitoring requirements'' is not clear. FDA has not had to apply EPA's regulations for public drinking water to bottled water under the bottled water quality standard regulations. Therefore, if FDA did not lift the stay and issue monitoring requirements under the agency's CGMP requirements in part 129 for these nine chemical contaminants, the application of section 410(b)(4)(A) of the act would create uncertainty for industry and regulators. The practical effect of the application of section 410(b)(4)(A) of the act may be additional burdens on small businesses if such businesses must adhere to two regulatory schemes for testing of their bottled water products rather than one comprehensive scheme for all bottled water testing. As stated earlier, FDA's CGMP requirements are protective of the public health and the application of these CGMP requirements to all bottled water would not result in uncertainty to industry and regulators. As discussed in option d of this section of this document, FDA believes that retaining the applicability of its CGMP requirements to all bottled water, with further evaluation of reduced frequency of testing in the context of all chemical contaminants in a future rulemaking, would be less confusing to small entities. Therefore, FDA believes that lifting the stay would be beneficial to the public.

b. *Exempt small entities*. One alternative for alleviating the burden for small entities would be to exempt them from the testing requirements of this rule. Although, this option would eliminate the cost of testing on small firms, it may also result in a decrease in the potential public health benefits of the rule. Small entities comprise a large part of the affected industry and exempting them would affect the testing requirements for a large segment of the bottled water products on the market. Such products would not be subject to a certain frequency of testing that provides adequate assurance that such products manufactured by small businesses are as protective of the public health as those that have undergone the testing requirements for these nine contaminants under part 129. Therefore, exempting small businesses would reduce the potential public health benefits of lifting the stay.

c. *Extend compliance period*. FDA considered an extended compliance period. Lengthening the compliance period would provide regulatory relief to small entities because it would reduce the present value of the costs of testing. However, as stated in option b of section V.B.4.c of this document, because small entities comprise a large part of the affected industry, longer compliance periods would delay any potential public health benefits of the rule. For example, if a small business had an excess level of one of the nine chemical contaminants in its bottled water product, it would not be aware of the potential public health problem as a result of the specific contaminant because the small business would not be testing during the longer compliance period. Therefore, the agency has concluded that the lifting the stay is more protective of the public health.

d. *Reduced testing frequency* Another alternative for alleviating the burden for small entities would be to reduce the testing frequency for certain chemical contaminants, including the nine chemical contaminants that are the subject of this rule. The agency believes that, in considering the issue of reduced frequency of testing, it needs to do so in the context of all chemical contaminants, not just the nine that are the subject of this rule. Reduced frequency of testing may include an entirely different scheme that may include waivers for certain chemical contaminants. The contemplation of such a scheme is better addressed in a context that includes consideration of all chemical contaminants, rather than considering and implementing a different regulatory scheme for only the nine chemical contaminants. Moreover, Congress mandated that the agency issue monitoring requirements for these nine chemical contaminants by August 6, 1998. Because the scope of this rule is limited to these nine chemical contaminants, and the agency does not have sufficient time to enlarge the scope of this rulemaking to the issue of reduced frequency of testing for all chemical contaminants, the agency is not pursuing this alternative in this rulemaking. However, the agency plans to consider the issue of reduced frequency of monitoring for all chemical contaminants in bottled water in a future rule.

5. Summary

FDA has examined the impact of the proposed rule on small businesses in accordance with the RFA. This analysis, together with the preamble, constitutes the RFA.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this proposed rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This rule does not require a written statement under section 202(a) of the UMRA because it does not impose a mandate that results in an expenditure of $100 million (adjusted annually for inflation) or more by State, local, and tribal governments in the aggregate, or by the private sector, in any 1 year.

VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that this companion proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Comments

Interested persons may, on or before July 27, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Effective Date

The agency intends to make any final rule based on this proposal effective 180 days following the date of publication of the final rule in the **Federal Register**. The agency is providing this time period to permit affected firms adequate time to take appropriate steps to bring their product into compliance with the standard imposed by the new rule.

List of Subjects in 21 CFR Part 165

Beverages, Bottled water, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 165 be amended as follows:

PART 165—BEVERAGES

1. The authority citation for 21 CFR part 165 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 343–1, 348, 349, 371, 379e.

§ 165.110 [Amended]

2. Section 165.110 *Bottled water* is amended in the table in paragraph (b)(4)(iii)(A) by removing the superscript ''1'' after the entries for ''Antimony,'' ''Beryllium,'' ''Cyanide,'' ''Nickel,'' and ''Thallium,'' and by removing the footnote to the table; in the table in paragraph (b)(4)(iii)(C) by removing the superscript ''1'' after the entries for ''Diquat,'' ''Endothall,'' ''Glyphosate,'' and ''2,3,7,8–TCDD (Dioxin),'' and by removing the footnote to the table; and by removing the note that follows paragraph (b)(4)(iii)(G)(*3*)(*iv*).

Dated: May 5, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–12382 Filed 5–6–98; 3:57 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 874

[Docket No. 98N–0249]

Ear, Nose, and Throat Devices; Classification of the Nasal Dilator, the Intranasal Splint, and the Bone Particle Collector

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to classify the nasal dilator, intranasal splint, and the bone particle collector into class I and exempt these devices from premarket notification procedures. FDA is also publishing the recommendations of the Ear, Nose, and Throat Devices Panel (the panel) regarding the classification of the devices. After considering public comments on the proposed classifications, FDA will publish a final regulation classifying the devices. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Written comments by August 10, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Harry R. Sauberman, Center for Devices and Radiological Health (HFZ–420), Food and Drug Administration, 9200 Corporate Blvd, Rockville, MD 20850, 301– 594–2080.

SUPPLEMENTARY INFORMATION:

I. Background

The act, as amended by the 1976 amendments (Pub. L. 94–295), the SMDA (Pub. L. 101–629), and FDAMA (Pub. L. 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval). Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the amendments) are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee), (2) published the panel's recommendations for comment, along with a proposed regulation classifying the device, and (3) published a final regulation classifying the device. A device that is first offered in commercial distribution after May 28, 1976, and which FDA determines to be substantially equivalent to a device classified under this scheme, is classified into the same class as the device to which it is substantially equivalent. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A device that was not in commercial distribution prior to May 28, 1976, and that has not been found by FDA to be substantially equivalent to a legally marketed predicate device, is classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process.

In the **Federal Register** of November 6, 1986 (51 FR 40378), FDA published a final rule classifying ear, nose and throat devices. At that time, FDA was not aware that the nasal dilator, the intranasal splint, and the bone particle collector were preamendments devices and inadvertently omitted classifying them.

II. Device Descriptions

FDA is proposing the following device descriptions based on the panel's recommendations (Ref. 1) and the agency's review:

(1) The nasal dilator is a device intended to provide temporary relief from breathing difficulties resulting from structural abnormalities in the nose. The external nasal dilator is described as a device constructed from layers of fabric material with a flat plastic spring inserted between the layers, with a skin adhesive applied to adhere to the skin of the nose. The device is placed externally on the lower third of the nose. The external nasal dilator acts with a pulling force to open the nares and the nasal valves thereby decreasing nasal airway resistance and increasing nasal air flow. The internal nasal dilator is constructed from metal or plastic and is placed inside the nostrils. It acts by pushing the nostrils open or by gently pressing on the columella, thereby decreasing nasal airway resistance and increasing nasal airflow;

(2) The intranasal splint is a device intended to minimize bleeding and edema and to prevent adhesions between the septum and the nasal cavity. The intranasal splint is constructed from plastic, silicone, or absorbent material and is placed in the nasal cavity after surgery or trauma; and

(3) The bone particle collector is a filtering device intended to be inserted into the suction tube line during the early stages of otologic surgery to collect bone particles for future use.

III. Recommendations of the Panel

In a public meeting held on October 25, 1990, the panel made classification recommendations for the nasal dilator, the intranasal splint, and the bone particle collector. The panel recommended that the devices be classified in class I (general controls). No recommendation was made to exempt these devices.

IV. Summary of the Reasons for the Recommendations

The panel concluded that the safety and effectiveness of the nasal dilator, intranasal splint, and bone particle collector can be reasonably assured by general controls. Specifically, the panel believed that the safety and effectiveness of the nasal dilator,

intranasal splint, and the bone particle collector can be reasonably assured by: (1) Registration and listing (section 510 of the act), and (2) the general requirements concerning reports (21 CFR 820.180), complaint files (21 CFR 820.198), and good manufacturing practices requirements (section 520(f) of the act (21 U.S.C. 360j(f)).

V. Risks to Health

The panel identified no specific risks associated with the use of the intranasal splint or the bone particle collector. The panel identified two potential risks to health associated with use of the nasal dilator: (1) The device could be lost inside a wide nose (internal dilator), and (2) the device can cause ulceration of skin or mucous membrane which could lead to infection. The panel further concluded that the risk of injury resulting from a dislodged dilator or from skin ulceration is low.

VI. Summary of the Data Upon Which the Proposed Recommendation Is Based

The panel based its recommendations on expert testimony presented to the panel and on the panel members' personal knowledge of and clinical experience with the nasal dilator, the intranasal splint, and the bone particle collector.

VII. FDA's Tentative Finding

FDA tentatively concurs with the recommendations of the panel that the nasal dilator, the intranasal splint, and the bone particle collector should be classified into class I (general controls) because the agency believes that sufficient information exists to determine that general controls will provide reasonable assurance of the safety and effectiveness of the devices. Consistent with the purpose of the act, class I (general controls) as defined by section 513(a)(1)(A) of the act would provide the least amount of regulation necessary to reasonably assure that current and future nasal dilators, intranasal splints, and bone particle collectors are safe and effective.

On November 21, 1997, the President signed FDAMA into law. Section 206 of FDAMA, in part, added a new section 510(l) to the act (21 U.S.C. 360(l)). Under section 501 of FDAMA, new section 510(l) became effective on February 19, 1998. New section 510(l) provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury (hereafter ''reserved criteria''). FDA has determined that these devices do not meet the reserved criteria and, therefore, they are exempt from the premarket notification requirements.

The agency, therefore, proposes to classify the nasal dilator, the intranasal splint, and the bone particle collector into class I, and to exempt them from the premarket notification requirements .

VIII. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Ear, Nose, and Throat Devices Panel, 35th meeting, transcript and meeting minutes, October 25–26, 1990.

IX. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this proposed classification 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.

X. Analysis of 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), as amended by Subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 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). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so it 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. As noted previously, FDA may classify devices into one of three regulatory classes according to the degree of control needed to provide reasonable assurance of safety and effectiveness. For these three devices, FDA is proposing that they be classified into class I, the lowest level of control allowed. In addition, FDA is proposing to exempt them from premarket notification requirements. These devices would be subject to a minimal level of control. The agency, therefore, certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and, therefore, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act is not required.

XI. Paperwork Reductions Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

XII. Comments

Interested persons may, on or before August 10, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 874

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 874 be amended as follows:

PART 874—EAR, NOSE, AND THROAT DEVICES

1. The authority citation for 21 CFR part 874 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 874.3900 is added to subpart D to read as follows:

§ 874.3900 Nasal dilator.

(a) *Identification.* A nasal dilator is a device intended to provide temporary relief from breathing difficulties resulting from structural abnormalities in the nose. These devices decrease airway resistance and increase nasal airflow. The external nasal dilator is

constructed from layers of fabric material with a flat plastic string inserted between the layers, with a skin adhesive applied to adhere to the skin of the nose. The external dilator acts with a pulling action to open the nares. The internal nasal dilator is constructed from metal or plastic and is placed inside the nostrils. It acts by pushing the nostrils open or by gently pressing on the columella.

(b) *Classification.* Class I (general controls). This device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

3. Section 874.4780 is added to subpart E to read as follows:

§ 874.4780 Intranasal splint.

(a) *Identification.* An intranasal splint is a device intended to minimize bleeding and edema to prevent adhesions between the septum and the nasal cavity. The intranasal splint is constructed between the septum and the nasal cavity. The intranasal splint is constructed from plastic, silicone, or absorbent material and is placed in the nasal cavity after surgery or trauma.

(b) *Classification.* Class I (general controls). The device is exempted from the premarket notification procedures in subpart E of part 807 of this chapter.

4. Section 874.4800 is added to subpart E to read as follows:

§ 874.4800 Bone particle collector.

(a) *Identification.* A bone particle collector is a filtering device intended to be inserted into the suction tube during the early stages of otologic surgery to collect bone particles for future use.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

Dated: May 1, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–12312 Filed 5–8–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209682–94]

RIN 1545–AS39

Adjustments Following Sales of Partnership Interests

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Postponement of hearing and requests to videoconference hearing.

SUMMARY: This document postpones the public hearing on proposed regulations relating to the optional adjustments to the basis of partnership property following certain transfers of partnership interests under section 743, the calculation of gain or loss under section 751(a) following the sale or exchange of a partnership interest, the allocation of basis adjustments among partnership assets under section 755, the allocation of a partner's basis in its partnership interest to properties distributed to the partner by the partnership under section 732(c), and the computation of a partner's proportionate share of the adjusted basis of depreciable property (or depreciable real property) under section 1017. In addition, this document announces that persons outside the Washington, DC area who wish to testify at the public hearing on the proposed regulations may request that the Service videoconference the public hearing to their sites.

DATES: Requests to videoconference the hearing to other sites must be received by Friday, May 29, 1998.

ADDRESSES: Requests must be sent to: CC:DOM:CORP:R (REG–209682–94), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Requests may also be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209682–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit requests electronically via the internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting requests directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax__regs/comments.html.

FOR FURTHER INFORMATION CONTACT: LaNita VanDyke of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Thursday, January 29, 1998 (63 FR 4408), announced that a public hearing with respect to proposed regulations relating to adjustments to a partner's basis in its partnership interest and a partnership's basis in its assets would be held on Wednesday, July 8, 1998, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC, and that requests to speak and outlines of oral comments should be received by Wednesday, June 24, 1998.

Subsequent to this announcement, the Service received a request that the hearing be videoconferenced. The Service recognizes that other persons outside the Washington, DC area may also wish to testify through videoconferencing. Those persons should now request to do so.

Requests to include other videoconferencing sites must be received by Friday, May 29, 1998. If the Service receives sufficient indications of interest to warrant videoconferencing to a particular city and if the Service has videoconferencing facilities in that city, the Service will accommodate the requests.

Accordingly, the public hearing originally scheduled for July 8, 1998, is postponed. The Service will issue a document in the **Federal Register** announcing the new date, time, and any videoconference sites of the public hearing.

Cynthia Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–12340 Filed 5–8–98; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–46–1–7384b; FRL–6008–9]

Approval and Promulgation of State Implementation Plans; Louisiana: Site-Specific Revision for the Exxon Company Baton Rouge Refinery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, the EPA proposes to approve a site-specific revision to the Louisiana 15% Rate-of-Progress State Implementation plan. The revision extends the date of compliance for the installation of particular Volatile Organic Liquid storage tank controls for storage tanks located at the Baton Rouge Refinery of Exxon Company, U.S.A. Specifically, the revision extends the compliance date of the requirement for the installation of guide pole sliding cover gaskets on 33 storage tanks until the earlier of the next scheduled downtime of the subject tanks or December 2005.

In the Rules and Regulations Section of this **Federal Register**, the 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 and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives relevant adverse comments, the EPA will publish a timely withdrawal in the **Federal Register.** All relevant public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by June 10, 1998.

ADDRESSES: Written comments on this action should be addressed to Thomas H. Diggs, Chief, Air Planning Section, at the EPA Region 6 Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Air Quality Division, Louisiana Department of Environmental Quality, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Mr. Eaton R. Weiler, of the EPA Region 6 Air Planning Section at the above address, telephone (214) 665–2174.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is published in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: April 23, 1998.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 98–12431 Filed 5–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6012–3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to grant a petition submitted by Occidental Chemical Corporation (Occidental Chemical), to exclude (or delist) certain solid wastes generated at its Ingleside, Texas, facility from the lists of hazardous wastes contained in 40 CFR 261.24, 261.31, and 261.32, (hereinafter all sectional references are to 40 CFR unless otherwise indicated). This petition was submitted under § 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273, and under § 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator specific'' basis from the hazardous waste lists. This proposed decision is based on an evaluation of waste-specific information provided by the petitioner. If this proposed decision is finalized, the petitioned waste will be excluded from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA). The EPA is also proposing the use of a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment, based on the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents that may be released from the petitioned waste, once it is disposed. The EPA is requesting public comments on this proposed decision and on the applicability of the fate and transport model used to evaluate the petition.

DATES: Comments will be accepted until June 25, 1998. Comments postmarked after the close of the comment period will be stamped ''late.''

Any person may request a hearing on this proposed decision by filing a request with Acting Director, Robert E. Hannesschlager, Multimedia Planning and Permitting Division, whose address appears below, by May 26, 1998. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: Send three copies of your comments. Two copies should be sent to the William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency EPA, 1445 Ross Avenue, Dallas, Texas 75202. A third copy should be sent to the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753. Identify your comments at the top with this regulatory docket number: ''F–97–TXDEL–OCCIDENTAL.''

Requests for a hearing should be addressed to the Acting Director, Robert E. Hannesschlager, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

The RCRA regulatory docket for this proposed rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202 and is available for viewing in the EPA Library on the 12th Floor from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this notice, contact Jon Rinehart, Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX 75202, (214) 665–6789.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

Individual waste streams may vary however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description

may not be. For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the EPA to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are ''delisted'' (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains nonhazardous based on the hazardous waste characteristics.

In addition, mixtures containing listed hazardous wastes are also considered hazardous wastes as are wastes derived from the treatment, storage, or disposal of listed hazardous waste. See § 261.3(a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the ''mixture/derived from'' rules and remanded them to the EPA on procedural grounds. *Shell Oil Co.* v. *EPA.*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278). These references should be consulted for more information regarding mixtures and residues.

B. Approach Used to Evaluate This Petition

Occidental Chemical's petition requests a delisting for listed hazardous wastes. In making the initial delisting determination, the EPA evaluated the petitioned wastes against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, the EPA agreed with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the wastes remained hazardous based on the factors for which the wastes were originally listed, EPA would have proposed to deny the petition.) The EPA then evaluated the wastes with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the wastes to be hazardous. The EPA considered whether the wastes are acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the wastes, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the wastes, plausible and specific types of management of the petitioned wastes, the quantities of wastes generated, and waste variability.

For this delisting determination, the EPA used such information gathered to identify plausible exposure routes (i.e., ground water, surface water, air) for hazardous constituents present in the petitioned wastes. The EPA determined that disposal in a Subtitle D landfill/surface impoundment is the most reasonable, worst-case disposal scenario for Occidental Chemical's petitioned wastes, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, the EPA is proposing to use a particular fate and transport model, the EPA Composite Model for Landfills (EPACML), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned wastes after disposal and to determine the potential impact of the disposal of Occidental Chemical's petitioned wastes on human health and the environment. Specifically, the EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the health-based levels at an assumed risk of 10^{-6} used in delisting decision-making for the hazardous constituents of concern.

The EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned wastes in a landfill/surface impoundment, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, may not pose a threat to human health or the environment. In most cases, because a delisted waste is no longer subject to hazardous waste control, the EPA is generally unable to predict, and does not presently control, how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model.

The EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, the EPA determined that it would be unnecessary to request ground water monitoring data. Specifically, Occidental Chemical currently disposes of a part of the petitioned wastes (Rockbox Residue and Limestone Sludge) generated at its facility in an off-site, RCRA hazardous waste landfill (which is not owned/operated by Occidental Chemical).[1] This landfill did not begin accepting this petitioned waste generated by the Occidental Chemical facility until 1991. This petitioned waste comprises a small fraction of the total waste managed in the unit. Therefore, the EPA, believes that any ground water monitoring data from the landfill would not be meaningful for an evaluation of the specific effect of this petitioned waste on ground water. Finally, there are presently no data from groundwater monitoring wells available, therefore there is no data to evaluate.

From the evaluation of Occidental Chemical's delisting petition, a list of constituents was developed for the verification testing conditions. Proposed maximum allowable leachable concentrations for these constituents were derived by back-calculating from

[1] The other portion of waste proposed to be excluded is not disposed but is instead treated onsite prior to discharge. Discharge of the waste is regulated under Section 402 of the Clean Water Act.

the delisting health-based levels through the proposed fate and transport model for a landfill management scenario. These concentrations (i.e., ''delisting levels'') are part of the proposed verification testing conditions of the exclusion.

Similar to other facilities seeking exclusions, Occidental Chemical's exclusion (if granted) would be contingent upon the facility conducting analytical testing of representative samples of the petitioned wastes at Ingleside. This testing would be necessary to verify that the treatment system is operating as demonstrated in the petition submitted on January 3, 1997. Specifically, the verification testing requirements, would be implemented to demonstrate that the processing facility will generate nonhazardous wastes (i.e., wastes that meet the EPA's verification testing conditions). The EPA's proposed decision to delist wastes from Occidental Chemical's facility is based on the information submitted in support of today's rule, i.e., description of the wastewater treatment system and analytical data from the Ingleside facility.

Finally, the HSWA specifically require the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

Occidental Chemical Corporation, Ingleside, Texas 78362.

A. Petition for Exclusion

Occidental Chemical Corporation, located in Ingleside, Texas, petitioned the EPA for an exclusion for 128 cubic yards of Rockbox Residue, 148,284 cubic yards of Caustic Neutralized Wastewater, and 1,114 cubic yards Limestone Sludge per calendar year resulting from its hazardous waste treatment process. The resulting wastes are presently listed, in accordance with § 261.3(c)(2)(i) (i.e., the ''derived from'' rule), as EPA Hazardous Waste No. K019, K020, F001, F003, F005, and F025. The listed constituents of concern for these waste codes are listed in Table 1.

TABLE 1.—HAZARDOUS WASTE CODES ASSOCIATED WITH WASTEWATER STREAMS

Waste code	Basis for characteristics/listing
K019/K020	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
F001	Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F003	N.A Waste is hazardous because it fails the test for the characteristic of ignitability, corrosivity, or reactivity.
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, 2-nitropropane.
F025	Chloromethane, dichloromethane, trichloromethane, carbon tetrachloride, chloroethylene,1,1-dichloroethane,1,2-dichloroethane, trans-1,2-dichloroethylene, 1,1-dichlorothylene, 1,1,1-trichloroethane,1,1,2-trichloroethane, trichlorothylene, 1,1,1,2-tetrachloroethane,1,1,2,2-tetrachloroethane, tetrachloroethylene, pentachloroethane, hexachloroethane, 3-chloropropene, dichloropropane, dichloropropene, 2-chloro-1,3-butadiene, hexachloro-1,3-butadiene, hexachlorocyclopentadiene, benzene, chlorobenzene, dichlorobenzene, 1,2,4-trichlorobenzene, tetrachlorobenzene, pentachlorobenzene, hexachlorobenzene, toluene, naphthalene.

Occidental Chemical petitioned to exclude the Rockbox Residue, Caustic Neutralized Wastewater, and Limestone Sludge treatment residues because it does not believe that the petitioned wastes meet the criteria for which they were listed. Occidental Chemical further believes that the wastes are not hazardous for any other reason (i.e., there are no additional constituents or factors that could cause the wastes to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the HSWA. See section 222 of HSWA, 42 U.S.C. § 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the EPA's evaluation of Occidental Chemical's petition.

B. Background

On January 3, 1997, Occidental Chemical petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, an annual volume of Rockbox Residue, Caustic Neutralized Wastewater, and Limestone Sludge which are generated as a result of the treatment of offgases from onsite incinerators. Specifically, in its petition, Occidental Chemical requested that the EPA grant an exclusion for 128 cubic yards of Rockbox Residue, 148,284 cubic yards of Caustic Neutralized Wastewater, and 1,114 cubic yards of Limestone Sludge generated per calendar year.

In support of its petition, Occidental Chemical submitted: (1) Descriptions of its wastewater treatment processes and the incineration activities associated with petitioned wastes; (2) results of the total constituent list for 40 CFR part 264 Appendix IX volatiles, semivolatiles, and metals except for pesticides, herbicides and PCBs; (3) results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals; (4) results for reactive sulfide, (5) results for reactive cyanide; (6) results for pH; (7) results of the total basis for dioxin and furan; and (8) results of dioxin and furan TCLP extract.

Occidental Chemical is an active plant that produces ethylene dichloride (EDC), vinyl chloride monomer (VCM), chlorine, and caustic soda. The plant utilizes chlorine, ethylene, and oxygen as feedstock and utilizes two permitted, onsite RCRA incinerators to burn process vent gases, intermediate wastes generated during the production of EDC and VCM (K019, K020, and F025), waste paint thinner (F001, F003, F005), and occasionally waste oil. These two incinerators have been in continuous operation since 1991. Occidental Chemical has previously classified three waste streams (Rockbox Residue, Caustic Neutralized Wastewater and Limestone Sludge) generated from the treatment of the offgas from the incinerators as hazardous based on the ''derived from'' rule in § 261.3(c)(2)(i).

The combustion products from the incinerators contain hydrochloric acid (HCl). Incinerator offgases are treated in the Incinerator Offgas Treatment System. In this system, the emissions are passed through absorption columns, dehumidifier columns, and caustic scrubbers to remove the HCl. Blowdown

water from the dehumidifier columns and caustic scrubber columns are routed to the Rockbox Tank (the Rockbox) as the first step in neutralizing the HCl. Excess HCl from the aqueous HCl storage tanks is commingled with the blowdown water and routed to the Rockbox. The influent to Rockbox normally contains 3 to 7 percent HCl. At times when excess HCl is not produced, the influent to the Rockbox is predominantly blowdown from the dehumidifier and caustic scrubber columns.

The Rockbox contains crushed limestone with small amounts of inert materials (silica oxide). These inert materials accumulate in the bottom of the Rockbox as the crushed limestone is utilized in the neutralization process. The accumulation of inert materials is the Rockbox Residue. The Rockbox Residue is a ''third generation'' waste since it is the residue of treating wastewater used to quench gaseous emissions from the incineration of listed wastes.

The pH of the effluent leaving the Rockbox is between 1 and 5. The effluent is passed through a primary pH adjustment tank where air is released into the water to remove carbon dioxide. Additionally, sodium hydroxide may be added to this tank. Mixing with air minimizes the formation of calcium carbonate precipitate upon introduction of caustic soda. The effluent is then passed through the secondary pH adjustment tank where caustic soda (sodium hydroxide) is added to raise the pH of the water to a pH between 7 and 9. The stream, consisting of water and calcium carbonate precipitant in suspension, flows through a clarifier where the sludge is settled out. The aqueous effluent from the clarifier tank is the Caustic Neutralized Wastewater which Occidental Chemical seeks to delist. This waste stream consists of an aqueous phase that no longer exhibits the hazardous waste characteristic of corrosivity.

The settled solids (calcium carbonate) from the clarifier are dewatered on a belt filter press and are dropped directly into rolloff bins for disposal. Water removed during the operation of the filter press is returned to the clarifier. The remaining filter cake is the Limestone Sludge, which Occidental Chemical also seeks to delist.

Rockbox Residue is generated on a batch basis every one to two years. For the past two years (1995 and 1996), the Rockbox Residue was generated annually. This is probable due to a higher than average concentration of inerts in the limestone purchased for the Rockbox. The Rockbox Residue is disposed of in an offsite permitted hazardous waste landfill.

Caustic Neutralized Wastewater and Limestone Sludge are generated on a continuous basis. The Caustic Neutralized Wastewater is treated in an onsite unit which has in an National Pollution Discharge Elimination System (NPDES) permitted outfall. The Limestone Sludge is transported to an offsite hazardous waste landfill for disposal.

Occidental Chemical developed a list of constituents of concern from comparing a list of all raw materials used in the plant that could potentially appear in the petitioned waste with those found in 40 CFR part § 264, as well as dioxins and furans. Based on the knowledge of process they determined that herbicides, pesticides and PCBs would be excluded from the Appendix IX analyte list. The EPA has included the dioxins and furans on the list, due the incineration of chlorinated compounds. Using the list of constituents of concern, Occidental analyzed the four composite samples for the total concentrations (i.e., mass of a particular constituent per mass of waste) of the volatiles and semivolatiles, and metals from Appendix IX. These four samples were also analyzed to determine whether the waste exhibited ignitable, corrosive, or reactive properties as defined under 40 CFR 261.21, 261.22, and 261.23, including analysis for total constituent concentrations of cyanide, sulfide, reactive cyanide, and reactive sulfide. These four samples were also analyzed for Toxicity Characteristic Leaching Procedure (TCLP) concentrations (i.e., mass of a particular constituent per unit volume of extract) of all the volatiles, semivolatiles, and metals on the Appendix IX list. This list was developed based on the availability of test methods and process knowledge. Two sampling events were conducted, one in 1995 and one in 1996.

C. EPA Analysis

Occidental Chemical used SW–846 Methods 8260A, 8270B, 6010, 8290 to quantify the total constituent concentrations of 40 CFR part 264, Appendix IX Volatiles (including 2-ethoxyethanol, chloroethylene, vinyldene chloride and trichloromethane), Appendix IX Semivolatiles (excluding PCBs, Pesticides, Herbicides) Appendix IX Metals, and Appendix IX Dioxins/Furans. Occidental Chemical used SW–846 Methods 9045, 9030, 9010, 1311 to quantify pH, Reactive Sulfide, and Reactive Cyanide. Occidental Chemical used SW–846 Methods 8260A, 8270B, 6010, 8290 to quantify the constituents from the TCLP extract. These analyses were performed on all three of the petitioned wastes: the Rockbox Residue, Limestone Sludge, and the Caustic Neutralized Wastewater. The Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater do not meet the definitions for reactivity and corrosivity as defined by §§ 261.22 and 261.23. Table 2 presents the maximum total constituent and leachate concentrations for the Rockbox Residue.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS ROCKBOX RESIDUE [2]

Constituents	Total constituent analyses (mg/kg)	Leachate analyses (mg/l)
Acetone	<0.02	<0.1
Bromodichloromethane	0.007	<0.02
Bromoform	0.022	0.02
Bromomethane	<0.01	<0.05
Chlorodibromomethane	0.027	<0.02
Chloroform	0.008	<0.02
Dichloromethane	<0.005	0.11
Ethylbenzene	<0.005	0.04
2,3,7,8-TCDD Equivalent	0.000321	0.00000000531
Barium	1.5	0.666
Chromium	<1.0	0.13
Copper	1.1	<0.25
Lead	<1.0	<0.07

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS ROCKBOX RESIDUE [2]—Continued

Constituents	Total constituent analyses (mg/kg)	Leachate analyses (mg/l)
Selenium	<1.0	0.11
Tin	2	<0.10
Vanadium	1.3	<0.50
Zinc	23	<0.4
Reactive Sulfide	<50	
Reactive Cyanide	<10	
pH	3.19	

< Denotes that the constituent was not detected at the detection limit specified in the table.
[2] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

Tables 3 and 4 present the maximum total constituent and leachate concentrations for the Limestone Sludge. Table 5 presents the maximum total constituent and leachate concentrations for the Caustic Neutralized Wastewater.

TABLE 3.—MAXIMUM TOTAL ORGANIC CONSTITUENT AND LEACHATE CONCENTRATIONS LIMESTONE SLUDGE [3]

Constituent	Total constituent analyses (mg/kg)	Leachate analyses (mg/l)
Acetone	0.034	0.27
Bromoform	0.031	<0.02
Chlorodibromomethane	0.012	<0.02
Dichloromethane	<0.005	0.54
Ethylbenzene	<0.005	0.03
1,1,1-Trichloroethane	0.011	<0.1
Toluene	<0.005	1.8
Trichlorofluoromethane	0.011	<0.02
Xylene	<0.020	0.11
Diethylphthalate	<0.00001	<0.04
2,3,7,8-TCDD Equivalent	0.00135	0.00000000018
Reactive Sulfide	<50	.....
Reactive Cyanide	<10	.....
pH	9.55	.....

< Denotes that the constituent was not detected at the detection limit specified in the table.
[3] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

TABLE 4.—MAXIMUM TOTAL INORGANIC CONSTITUENT AND LEACHATE CONCENTRATIONS LIMESTONE SLUDGE [4]

Constituent	Total constituent analyses (mg/kg)	Leachate analyses (mg/l)
Antimony	2.6	<0.6
Arsenic	18.4	<0.1
Barium	15.2	0.14
Beryllium	0.5	<0.1
Chromium	25.2	<0.1
Cobalt	2.4	<0.1
Copper	41.2	<0.1
Lead	13	<0.1
Nickel	64.4	0.47
Selenium	<0.001	0.1
Silver	1.1	<0.1
Vanadium	138	<0.1
Zinc	58	0.11

< Denotes that the constituent was not detected at the detection limit specified in the table.
[4] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

TABLE 5.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS CAUSTIC NEUTRALIZED WASTEWATER [5]

Constituent	Total constituent analyses
Acetone	0.01
Bromoform	0.054
Chlorodibromomethane	0.015

TABLE 5.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS CAUSTIC NEUTRALIZED WASTEWATER [5]—Continued

Constituent	Total constituent analyses
2,3,7,8-TCDD Equivalent	0.0000000006
Arsenic	0.01
Barium	0.18
Lead	0.1
Silver	0.08
Vanadium	0.007
Zinc	0.49
Reactive Sulfide	<50
Reactive Cyanide	<10
pH	11.8

<Denotes that the constituent was not detected at the detection limit specified in the table.
[5] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

Occidental Chemical used SW–846 Methods 8260A and 8270B to quantify the total constituent concentrations of 54 volatile and 117 semivolatile organic compounds, respectively in the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater. This suite of constituents included all of the nonpesticide organic constituents listed in § 261.24. Also, Occidental Chemical used SW–846 Methods 8260A and 8270B to quantify the leachable concentrations of 54 volatile and 117 semivolatile organic compounds, respectively, in the Rockbox Residue, Limestone Sludge, and the Caustic Neutralized Wastewater, following extraction by SW–846 Method 1311 (TCLP). This suite of constituents included all of the organic constituents listed in § 261.24 (except the pesticides). In addition, the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater were analyzed for TCLP metals.

Occidental Chemical submitted a signed certification stating that, based on projected annual waste generation, the maximum annual generation rate will be 128 cubic yards of Rockbox Residue, 148,284 cubic yards of Caustic Neutralized Wastewater, and 1,114 cubic yards of Limestone Sludge. The EPA reviews a petitioner's estimates and, on occasion, has requested a petitioner to reevaluate the estimated waste volume. The EPA accepted Occidental Chemical's certified estimates. The EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The EPA, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting an exclusion.

D. EPA Evaluation

The EPA considered the appropriateness of alternative waste management scenarios for Occidental Chemical's Rockbox Residue, Caustic Neutralized Wastewater, and Limestone Sludge. The EPA decided, based on the information provided in the petition, that disposal of the Rockbox Residue and Limestone Sludge in a municipal solid waste landfill is the most reasonable, worst-case scenario for the Rockbox Residue and the Limestone Sludge. The disposal of the Caustic Neutralized Wastewater in a surface impoundment would be the most reasonable worst case scenario. Under a landfill/surface impoundment disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The EPA, therefore, evaluated Occidental Chemical's petitioned wastes using the modified EPA Composite Model for Landfills/Surface Impoundments (EPACML) which predicts the potential for ground water contamination from wastes that are landfilled/placed in a surface impoundment. See 56 FR 32993 (July 18, 1991), 56 FR 67197 (December 30, 1991) and the RCRA public docket for these notices for a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting. This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worse-case contaminant levels in ground water at a compliance point (i.e., a receptor well serving as a drinking-water supply). Specifically, the model estimated the dilution/attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from ground water recharge for a specific volume of waste. The EPA requests comments on the use of the EPACML as applied to the evaluation of Occidental Chemical's petitioned wastes (Rockbox Residue, Caustic Neutralized Wastewater, and Limestone Sludge).

For the evaluation of Occidental Chemical's petitioned wastes, the EPA used the EPACML to evaluate the mobility of the hazardous constituents detected in the extract of samples of Occidental Chemical's Rockbox Residue and the Limestone Sludge. The total analysis was utilized for the Caustic Neutralized Wastewater. Typically, the EPA uses the maximum annual waste volume to derive a petition-specific DAF. The DAFs are currently calculated assuming an ongoing process generates wastes for 20 years.

The DAF for the waste volume of Rockbox Residue is 128 cubic yards/year assuming 20 years of generation is 100. The DAF for the waste volume of Caustic Neutralized Wastewater is 148,284 cubic yards/year assuming 20 years of generation is 7. The DAF for the waste volume of Limestone Sludge is 1,114 cubic yards/year assuming 20 years of generation is 100.

The EPA's evaluation of the Rockbox Residue using a DAF of 100, a maximum waste volume estimate of 128 cubic yards, and the maximum reported TCLP concentrations (see Table 2), yielded compliance point concentrations (see Table 5) that are below the current health based levels.

The EPA's evaluation of the Limestone Sludge using a DAF of 100, for the Limestone Sludge a maximum waste volume estimate of 1,114 cubic yards, and the maximum reported TCLP concentrations (see Tables 3 and 4), yielded compliance point concentrations (See Table 7) that are below the current health based levels.

The EPA's evaluation of the Caustic Neutralized Wastewater using a DAF of

7, a maximum waste volume estimate of 148,284, cubic yards, and the maximum reported TCLP concentrations (see Table 5), yielded compliance point concentrations (See Table 8) that are below the current health based levels.

TABLE 6.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS ROCKBOX RESIDUE

Constituents	Compliance point concentrations (mg/l) [6]	Levels of concern (mg/l) [7]
Acetone	0.00106	4.0
Bromdichloromethane	0.0002	0.0014
Bromoform	0.0002	0.01
Bromomethane	0.0005	0.05
Chlorodibromomethane	0.0002	0.001
Chloroform	0.0002	0.01
Dichloromethane	0.0011	0.01
Ethylbenzene	0.0004	0.7
2,3,7,8-TCDD Equivalent	0.0000000000531	0.0000000006
Barium	0.0066	2.0
Chromium	0.0013	0.1
Copper	0.0025	1.3
Lead	0.0005	0.015
Selenium	0.0011	0.05
Tin	0.0010	2.1
Vanadium	0.005	0.3
Zinc	0.004	10.0

[6] Using the maximum TCLP leachate concentration, based on a DAF of 100 for a maximum annual volume of 128 cubic yards.
[7] See ''Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions,'' May 1996 located in the RCRA Public Docket for today's notice.

TABLE 7.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATION LIMESTONE SLUDGE

Constituents	Compliance point concentrations (mg/l) [8]	Levels of concern (mg/l) [9]
Acetone	0.0027	4.0
Bromoform	0.0002	0.01
Chlorodibromomethane	0.0002	0.001
Dichloromethane	0.0054	0.01
Ethylbenzene	0.0003	0.7
1,1,1-Trichloroethane	0.0002	0.2
Toluene	0.02	7.0
Trichlorofluoromethane	0.0002	10.0
Xylene	0.0011	20.0
Diethyl phthalate	0.0001	30.0
2,3,7,8-TCDD Equivalent	0.00000000000183	0.0000000006
Antimony	0.06	0.006
Arsenic	0.0005	0.05
Barium	0.0014	2.0
Beryllium	0.0005	0.004
Chromium	0.0005	0.1
Cobalt	0.005	2.1
Copper	0.0025	1.3
Lead	0.0005	0.015
Nickel	0.0047	0.7
Selenium	0.001	0.05
Silver	0.00025	0.02
Vanadium	0.005	0.3
Zinc	0.0011	10.0

[8] Using the maximum TCLP leachate concentration, based on a DAF of 100 for a maximum annual of 1,114 cubic yards.
[9] See Table 6.

TABLE 8.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS CAUSTIC NEUTRALIZED WASTEWATER

Constituents	Compliance point concentrations (mg/l) [10]	Levels of concern (mg/l) [11]
Acetone	0.00143	4.0
Bromoform	0.01	0.01
Chlorodibromomethane	0.001	0.001
2,3,7,8-TCDD Equivalent	0.00000000012	0.0000000006
Arsenic	0.00143	0.05
Barium	0.03	2.0

TABLE 8.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS CAUSTIC NEUTRALIZED WASTEWATER—Continued

Constituents	Compliance point concentrations (mg/l) [10]	Levels of concern (mg/l) [11]
Lead	0.01	0.015
Silver	0.01	0.02
Vanadium	0.001	0.3
Zinc	0.07	10.0

[10] Using the maximum total concentration, based on a DAF of 7 for a maximum annual volume of 148,248 cubic yards.
[11] See Table 6.

The maximum reported or calculated leachate concentrations of bromoform, chlorodibromomethane, dichloromethane, ethylbenzene, 2,3,7,8-TCDD Equivalent, barium, chromium, and selenium in the Rockbox Residue yielded compliance point concentrations well below the health based levels used in the delisting decision-making. The EPA did not evaluate the mobility of the remaining constituents (e.g., acetone, bromodichloromethane, copper, lead) from Occidental Chemical's waste because they were not detected in the leachate using the appropriate analytical test methods (see Table 2). The EPA does not evaluate nondetectable concentrations of a constituent of concern in its modeling efforts if the nondetectable value was obtained using the appropriate analytical method; the EPA then assumes that the constituent is not present and therefore does not present a threat to human health or the environment.

The maximum reported or calculated leachate concentrations of acetone, bromoform, chlorodibromomethane, 2,3,7,8-TCDD Equivalent, arsenic, barium, lead, silver, vanadium, and zinc in the Caustic Neutralized Wastewater yielded compliance point concentrations well below the health based levels used in the delisting decision-making.

The maximum reported or calculated leachate concentrations of acetone, dichloromethane, ethylbenzene, toluene, xylene, 2,3,7,8-TCDD Equivalent, barium, nickel, selenium, and zinc in the Limestone Sludge yielded compliance point concentrations well below the health based levels used in the delisting decision-making. The EPA did not evaluate the mobility of the remaining constituents (e.g., bromoform, beryllium, chromium, cobalt, copper, lead) from Occidental Chemical's waste because they were not detected in the leachate using the appropriate analytical test methods (see Table 3). As explained above, the EPA does not evaluate nondetectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method.

The EPA concluded, after reviewing Occidental Chemical's processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by products in Occidental Chemical's wastes. In addition, on the basis of explanations and analytical data provided by Occidental Chemical, pursuant to § 260.22, the EPA concludes that the petitioned wastes do not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

During the evaluation of Occidental Chemical's petition, the EPA also considered the potential impact of the petitioned wastes via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, the EPA believes that exposure to airborne contaminants from Occidental Chemical's petitioned wastes is unlikely. Therefore, no appreciable air releases are likely from Occidental's wastes under any likely disposal conditions. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Occidental Chemical's wastes in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from Occidental Chemical's Rockbox Residue, Caustic Neutralized Wastewater, or the Limestone Sludge. A description of the EPA's assessment of the potential impact of Occidental Chemical's wastes, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for today's proposed rule.

The EPA also considered the potential impact of the petitioned wastes via a surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations (See 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the run-off will tend to be lower than the levels in the TCLP leachate analyses reported in today's notice due to the aggressive acidic medium used for extraction in the TCLP. The EPA believes that, in general, leachate derived from the wastes is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as ground water.

Based on the reasons discussed above, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, the EPA evaluated the potential impacts on surface water if Occidental Chemical's waste were released from a municipal solid waste landfill through runoff and erosion. See, the RCRA public docket for today's proposed rule. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below the EPA chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that Occidental Chemical's Rockbox Residue, the Caustic Neutralized Wastewater, and the Limestone Sludge wastes are not a present or potential substantial hazard to human health and the environment via the surface water exposure pathway.

E. Conclusion

The EPA believes that the descriptions of the Occidental Chemical hazardous waste process and analytical characterization, in conjunction with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis to grant Occidental Chemical's petition for an exclusion of the Rockbox Residue, Limestone Sludge, and Caustic Neutralized Wastewater. The EPA believes the data submitted in support of the petition show Occidental Chemical's process can render the Rockbox Residue, Limestone Sludge, and Caustic Neutralized Wastewater non-hazardous. The EPA has reviewed the sampling procedures used by Occidental Chemical and has determined they satisfy EPA criteria for collecting representative samples of the variations in constituent concentrations in the Rockbox Residue, Limestone Sludge, and Caustic Neutralized Wastewater. The data submitted in support of the petition show that constituents in Occidental Chemical's waste are presently below health-based levels used in the delisting decision-making. The EPA believes that Occidental Chemical has successfully demonstrated that the Rockbox Residue, Limestone Sludge, and Caustic Neutralized Wastewater is non-hazardous.

The EPA's decision to exclude this waste is based on descriptions of the incineration and the wastewater treatment activities associated with the petitioned waste and characterization of the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater. If the proposed rule is finalized, the petitioned wastes will no longer be subject to regulation under parts 262 through 268 and the permitting standards of part 270. The EPA therefore, proposes to grant an exclusion to the Occidental Chemical Corporation, located in Ingleside, Texas, for the Rockbox Residue, Limestone Sludge, and Caustic Neutralized Wastewater described in its petition.

F. Verification Testing Conditions

(1) *Delisting Levels:* All concentrations for the following constituents must not exceed the following levels (ppm). For the Rockbox Residue and the Limestone Sludge, constituents must be measured in the waste leachate by the method specified in 40 CFR § 261.24. The constituents for the Caustic Neutralized Wastewater must be measured in total constituents.

(A) Caustic Neutralized Wastewater
(i) Inorganic Constituents
Arsenic—0.35; Barium—14; Lead—0.11; Silver—0.14; Vanadium—2.1; Zinc—70
(ii) Organic Constituents
Acetone—28; Bromoform—0.07; Chlorodibromomethane—0.01; 2,3,7,8-TCDD Equivalent—0.00000004
(B) Rockbox Residue
(i) Inorganic Constituents
Barium—100; Chromium—5; Copper—130; Lead—1.5; Selenium—1; Tin—210; Vanadium—30; Zinc—1000
(ii) Organic Constituents
Acetone—400; Bromodichloromethane—0.14; Bromoform—1.0; Chlorodibromethane—0.1; Chloroform—1.0; Dichloromethane—1.0; Ethylbenzene—70; 2,3,7,8-TCDD Equivalent—0.000000531
(C) Limestone Sludge
(i) Inorganic Constituents
Antimony—0.6; Arsenic—5; Barium—100; Beryllium—0.4; Chromium—10; Cobalt—210; Copper—130; Lead—1.5; Nickel—70; Selenium—1; Silver—2.0; Vanadium—30; Zinc—1000
(ii) Organic Constituents
Acetone—400; Bromoform—1, Chlorodibromomethane—0.10; Dichloromethane—1.0; Ethylbenzene—70; 1,1,1—Trichloroethane—20; Toluene—700; Trichlorofluoromethane—1000; Xylene—2000; Diethyl phthalate—3000; 2,3,7,8—TCDD Equivalent—0.0000006

This paragraph provides the levels of constituents for which Occidental Chemical must test the leachate from the Rockbox Residue, and the Limestone Sludge, and the water in the Caustic Neutralized Wastewater, below which these wastes would be considered non-hazardous. The exclusion is effective when it is signed, but the disposal can not be implemented until the verification sampling is completed. If these constituent levels are exceeded then that waste is considered to be hazardous and must be managed as hazardous waste. If the annual testing of the waste does not meet the delisting requirements described in Paragraph 1, the facility must notify the Agency according to the Paragraph 6. The exclusion will be suspended until a decision is reached by the Agency. The facility shall provide sampling results which support the rationale that the delisting exclusion should not be withdrawn. The EPA selected the set of inorganic and organic constituents specified after reviewing information about the composition of the waste, descriptions of Occidental Chemical's treatment process, previous test data provided for the three waste and the respective health-based levels used in delisting decision-making. The EPA established the proposed delisting levels for this paragraph by back-calculating the Maximum Allowable Leachate (MALs) concentrations from the health-based levels for the constituents of concern using the EPACML chemical-specific DAFs of 100, 100, and 7 (See, previous discussions in Section D—*Agency Evaluation*) i.e., MAL = HBL × DAF). These delisting levels correspond to the allowable levels measured in the TCLP extract of the waste.

(2) *Waste Holding and Handling:* Occidental Chemical must store in accordance with its RCRA permit, or continue to dispose of as hazardous all Rockbox Residue and the Limestone Sludge generated, and continue to discharge the Caustic Neutralized Wastewater generated in compliance with Occidental Chemical's NPDES permit until the verification testing described in Condition (3)(A) and (B), as appropriate, is completed and valid analyses demonstrate that condition (3) is satisfied. If the levels of constituents measured in the samples of the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. Occidental Chemical must continue to treat and discharge the Caustic Neutralized Wastewater as provided by the terms of its NPDES permit. If constituent levels in a sample exceed any of the delisting levels set in Condition (1), the waste generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA and Occidental Chemical's NPDES permit.

The purpose of this paragraph is to ensure that any Rockbox Residue and Limestone Sludge which might contain hazardous levels of inorganic and organic constituents are managed and disposed of in accordance with Subtitle C of RCRA. Holding the Rockbox Residue and Limestone Sludge until characterization is complete will protect against improper handling of hazardous material. Further, inasmuch as Occidental Chemical has a permit to discharge under the NPDES program, it must continue to fully meet those permit requirements and may, according to this exception, only dispose of the Caustic Neutralized Wastewater as provided by that permit. If the EPA determines that the data collected under this condition do not support the data provided for the petition or Occidental Chemical is no longer meeting the terms of its NPDES permit, the exclusion will not cover the three wastes.

(3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies. If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing, Occidental Chemical may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Occidental Chemical must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing

in Condition (3)(A) may be replaced by Condition (3)(B).

(A) *Initial Verification Testing:* (i) During the first 40 operating days of the Incinerator Offgas Treatment System after the final exclusion is granted, Occidental Chemical must collect and analyze composites of the Limestone Sludge, and the Caustic Neutralized Wastewater. Daily composites must be composed of representative grab samples collected every 6 hours during each unit operating cycle. The two wastes must be analyzed, prior to disposal, for all of the constituents listed in Paragraph 1. Occidental Chemical must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 90 days after the generation of the two wastes.

(ii) When the Rockbox unit is decommissioned for cleanout after the final exclusion is granted, Occidental Chemical must collect and analyze composites of the Rockbox Residue. The waste must be sampled after each decommissioning. Two composites must be composed of representative grab samples collected from the Rockbox unit. The waste must be analyzed, prior to disposal, for all of the constituents listed in Paragraph 1. No later than 90 days after the Rockbox is decommissioned for cleanout the first two times after this exclusion becomes final, Occidental Chemical must report the operational and analytical test data, including quality control information.

If the EPA determines that the data from the initial verification period demonstrates the treatment process is effective, Occidental Chemical may request that EPA allow it to perform verification testing on a quarterly basis for the Limestone Sludge and the Caustic Neutralized Wastewater. The Rockbox Residue will be sampled during periodic maintenance. If approved in writing by EPA, then Occidental Chemical may begin verification testing quarterly of the Limestone Sludge and the Caustic Neutralized Wastewater.

The EPA believes that an initial period of 40 days is sufficient for a facility to collect sufficient data to verify the data provided for the Limestone Sludge and the Caustic Neutralized Wastewater in the 1997 petition is representative of the waste to be delisted. If the EPA determines that the data collected under this condition do not support the data provided for the petition, the exclusion will not cover the generated wastes. If the EPA determines that the data from the initial verification period reflected in (3)(A)(i) demonstrates that the treatment process is effective, EPA will notify Occidental Chemical in writing that the testing conditions in (3)(A)(i) may be replaced with the testing conditions in (3)(B). EPA also believes it is sufficient for Occidental Chemical to collect verification data for the Rockbox Residue when the Rockbox unit is decommissioned for cleanout.

(B) *Subsequent Verification Testing:* Following written notification by EPA, Occidental Chemical may substitute the testing conditions in (3)(B) for (3)(A)(i). Occidental Chemical must continue to monitor operating conditions, and analyze samples representative of each quarter of operation during the first year of waste generation. The samples must represent the waste generated over one quarter. (This provision does not apply to the Rockbox Residue.)

The EPA believes that the concentrations of the constituents of concern in the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater may vary somewhat over time. As a result, in order to ensure that Occidental Chemical's treatment process can effectively handle any variation in constituent concentrations in the three wastes, the EPA is proposing a subsequent verification testing condition. The proposed subsequent testing would verify that the incinerator offgas system is operated in a manner similar to its operation during the initial verification testing and that the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater, do not exhibit unacceptable levels of toxic constituents. Therefore, the EPA is proposing to require Occidental Chemical to analyze representative samples of the Limestone Sludge, and the Caustic Neutralized Wastewater on a quarterly basis during the first year of waste generation (commencing on the anniversary date of the final exclusion) as described in Condition (3)(B). The Rockbox Residue will be sampled when the unit is out of commission for routine maintenance.

(C) *Termination of Organic Testing for Limestone Sludge and Caustic Neutralized Wastewater:* Occidental Chemical must continue testing as required under Condition (3)(B) for organic constituents specified in Condition (1)(A)(ii) and (1)(C)(ii) until the analyses submitted under Condition (3)(B) show a minimum of two consecutive quarterly samples below the delisting levels in Conditions (1)(A)(ii) and (1)(C)(ii). Occidental Chemical may then request that quarterly organic testing be terminated. After EPA notifies Occidental Chemical in writing it may terminate quarterly organic testing. Following termination of the quarterly testing, Occidental Chemical must continue to test a representative composite sample for all constituents listed in Condition (1) on an annual basis (no later than twelve months after final exclusion). If the waste exceeds the delisting levels then the waste will not be delisted.

The EPA is proposing to terminate the subsequent testing conditions for organics as allowed in Condition (1)(A)ii and (1)(C)(ii) after Occidental Chemical has demonstrated the delisting levels for the waste are consistently met. If the annual testing of the wastes does not meet the delisting requirements described in Paragraph 1, the facility must notify the Agency according to the requirements in Paragraph 6. The exclusion will be suspended until a decision is reached by the Agency. The facility shall provide sampling results which support the rationale that the delisting exclusion should not be withdrawn. In order to confirm that the characteristics of the wastes do not change significantly over time, Occidental Chemical must continue to analyze a representative sample of the wastes for organic constituents on an annual basis (no later than twelve months after the final exclusion). If Occidental Chemical changes operating conditions as described in Condition (4), then Occidental Chemical must reinstate all testing in Condition (3)(A), pending a new demonstration under this condition for termination. Occidental Chemical must continue Organic Testing of the Rockbox Residue for that waste to be excluded.

(4) *Changes in Operating Conditions*: If Occidental Chemical significantly changes the process described in its petition or implements any processes which generate(s) the waste(s) and which may or could affect the composition or type waste(s) generated as established under Condition (1) (by illustration, but not limitation, change in equipment or operating conditions of the treatment process), or its NPDES permit is changed, revoked or not reissued, or if it intends to manage the Caustic Neutralized Wastewater other than by discharge under its NPDES permit, Occidental Chemical must notify the EPA in writing and may no longer handle the wastes generated from the new process, or no longer discharge as nonhazardous until the wastes meet the delisting levels set in Condition (1) and it has received written approval to do so from EPA.

Condition (4) would allow Occidental Chemical the flexibility of modifying its processes (e.g., changes in equipment or change in operating conditions) to improve its treatment process. However, Occidental Chemical must demonstrate that the change would not affect the composition or type of waste and request approval from the EPA. Wastes generated during the new process demonstration must be managed as a hazardous waste until written approval has been obtained and Condition (1) is satisfied. If Occidental Chemical changes operating conditions as described in Condition (5), then Occidental Chemical must reinstate all testing in Condition (3) pending a new

demonstration under this condition for termination.

(5) *Data Submittals*: The data obtained through Condition 3 must be submitted to Mr. William Gallagher, Chief, Region 6 Delisting Program, EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD-O) within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.

To provide appropriate documentation that Occidental Chemical's facility is properly treating the waste, all analytical data obtained through Condition (3), including quality control information, must be compiled, summarized, and maintained on site for a minimum of five years. Condition (5) requires that these data be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Texas.

If made final, the proposed exclusion will apply only to 128 cubic yards of Rockbox Residue, 1,114 cubic yards of Limestone Sludge, and 148,284 cubic yards of Caustic Neutralized Wastewater generated annually at the wastewater system at the Occidental Chemical facility after successful verification testing. Except as described in Condition (4), the facility would be required to submit a new petition if the treatment process specified for the Incinerator Offgas Treatment System is significantly altered. Occidental Chemical would be required to file a new delisting petition for any new manufacturing or production process(es), or significant changes from the current process(es) described in its petition which generates the three wastes or which may or could affect the composition or type of waste generated. Additionally if there is any change to Occidental Chemical's NPDES permit or if it wishes to manage the Caustic Neutralized Wastewater other than by discharge under its NPDES permit, except as provided in Condition (4), Occidental would also be required to file a new delisting petition. The facility must manage any of the waste in excess of 128 cubic yards of Rockbox Residue, 1,114 cubic yards of Limestone Sludge, and 148,284 cubic yards of Caustic Neutralized Wastewater generated from a changed process as hazardous until a new exclusion is granted.

Although management of the wastes covered by this petition would not be subject to Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

(6) *Reopener.*

(a) If Occidental Chemical discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then Occidental Chemical must report any information relevant to that condition, in writing, to the Regional Administrator or his delegate within 10 days of discovering that condition.

(b) Upon receiving information described in paragraph (a) regardless of its source, the Regional Administrator or his delegate will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment.

The purpose of paragraph 6 is to require Occidental Chemical to disclose new or different information related to a condition at the facility or disposal of the waste if it had or has bearing on the delisting. This will allow EPA to reevaluate the exclusion if new or additional information is provided to the Agency by Occidental Chemical which indicates that information on which EPA's decision was based was incorrect or circumstances have changed such that information is no longer correct or would cause EPA to deny the petition if then presented. Further, although this provision expressly requires Occidental Chemical to report differing site conditions or assumptions used in the petition within 10 days of discovery, if EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions located at § 268.6.

EPA has recognized that current delisting regulations contain no express procedure for reopening a decision if additional information is received and although it believes that it has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978), *et seq.* (APA), to take this action, EPA believes that a clear statement of its authority in the context of delistings is merited in light of Agency experience. (*See, e.g.*, Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the delisted waste did not leach in the actual disposal site as it had been modeled thus leading the Agency to repeal the delisting.) Until such time as EPA codifies an express reopener provision in the exclusion regulations, EPA will include language similar to that expressed above in delistings. EPA is considering the inclusion of a more specific regulatory process both defining when a delisting should be reopened and the result of reopening a granted exclusion and is soliciting comments on this process. Since each delisting is waste-specific and facility-specific or process-specific, EPA is currently reluctant to adopt a rule which might inadvertently, for example, cause an immediate repeal where specific circumstances would not merit so precipitous a result. In the meantime, in the event that an immediate threat to human health or the environment presents itself, EPA will continue to rely on its authority under the APA to make a good cause finding to justify an emergency rulemaking suspending notice and comment. APA section 553(b).

(7) *Notification Requirements*: Occidental Chemical must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.

IV. Effective Date

EPA intends that this rule, should become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 USC 553(d).

V. Regulatory Impact

Under Executive Order (EO) 12866, EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions. The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to manage its waste as nonhazardous. There is no additional impact therefore, due to today's proposed rule. Therefore, this proposal would not be a significant regulation and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VI. Children's Health Protection

Under EO 13045, for all significant regulatory actions as defined by EO 12866, EPA must provide an evaluation of the environmental health or safety effect of a proposed rule on children and an explanation of why the proposed rule is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This proposal is not a significant regulatory action and is exempt from EO 13045.

VII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required however if the Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. The EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon State, local, or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Intergovernmental Partnership

Under EO 12875, EPA may not promulgate any regulation which creates an unfunded mandate upon state, local or tribal government. EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon state, local or tribal governments (See Section IX (UMRA) above) and accordingly, this action is exempt from the requirements of EO 12875.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: April 17, 1998.

Robert Hannesschlager,

Acting Director, Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

2. In Tables 1 and 2 of Appendix IX of part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1. WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	* *	* * * *
Occidental Chemical,	Ingleside, Texas	Limestone sludge, (at a maximum generation of 1,114 cubic yards per calendar year) Rockbox Residue, (at a maximum generation of 128 cubic yards per calendar year) and Caustic Neutralized Wastewater, (at a maximum generation of 148,282 cubic yards per calendar year) generated by Occidental Chemical using the wastewater treatment process to treat the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater (EPA Hazardous Waste No. F025, F001, F003, and F005) generated at Occidental Chemical. Occidental Chemical must implement a testing program that meets the following conditions for the exclusion to be valid: (1) *Delisting Levels:* All concentrations for the following constituents must not exceed the levels (ppm). For the Rockbox Residue and the Limestone Sludge, constituents must be measured in the waste leachate by the method specified in 40 CFR Part 261.24. The constituents for the Caustic Neutralized Wastewater must be measured in total constituents. (A) Caustic Neutralized Wastewater. (i) Inorganic Constituents Arsenic-0.35; Barium-14; Lead-0.11; Silver-0.14; Vanadium-2.1; Zinc-70. (ii) Organic Constituents Acetone-28; Bromoform-0.07; Chlorodibromomethane-0.01; 2,3,7,8-TCDD Equivalent-0.00000004. (B) Rockbox Residue. (i) Inorganic Constituents Barium-200; Chromium-10; Copper-130; Lead-1.5; Selenium-1; Tin-210; Vanadium-30; Zinc-1000. (ii) Organic Constituents Acetone-400; Bromodichloromethane-0.14; Bromoform-1.0; Chlorodibromethane-0.1; Chloroform-1.0; Dichloromethane-1.0; Ethylbenzene-70; 2,3,7,8-TCDD Equivalent-0.000000531. (C) Limestone Sludge. (i) Inorganic Constituents Antimony-0.6; Arsenic-5; Barium-200; Beryllium-0.4; Chromium-10; Cobalt-210; Copper-130; Lead-1.5; Nickel-70; Selenium-1; Silver-2.0; Vanadium-30; Zinc-1000. (ii) Organic Constituents Acetone-400; Bromoform-1, Chlorodibromomethane-0.1; Dichloromethane-1.0; Ethylbenzene-70; 1,1,1-Trichloroethane-20; Toluene-700; Trichlorofluoromethane-1000; Xylene-2000; Diethyl phthalate-3000; 2,3,7,8-TCDD Equivalent-0.0000006. (2) *Waste Holding and Handling:* Occidental Chemical must store in accordance with its RCRA permit, or continue to dispose of as hazardous waste all Rockbox Residue, and the Limestone Sludge generated, and continue to discharge the Caustic Neutralized Wastewater generated in compliance with Occidental Chemical's NPDES permit until the verification testing described in Condition (3)(A) and (3)(B), as appropriate, is completed and valid analyses demonstrate that condition (3) is satisfied. If the levels of constituents measured in the samples of the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. Occidental Chemical must continue to treat and discharge the Caustic Neutralized Wastewater as provided by the terms of its NPDES permit. If constituent levels in a sample exceed any of the delisting levels waste generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA and Occidental Chemical's NPDES permit. (3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies. If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing, Occidental Chemical may replace the testing required in condition (3)(A) with the testing required in Condition (3)(B). Occidental Chemical must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B). (A) *Initial Verification Testing:* (i) During the first 40 operating days of the Incinerator Offgas Treatment System after the final exclusion is granted, Occidental Chemical must collect and analyze composites of the Limestone Sludge, and the Caustic Neutralized Wastewater. Daily composites must be composed of representative grab samples collected every 6 hours during each unit operating cycle. The two wastes must be analyzed, prior to disposal, for all of the constituents listed in Paragraph 1. Occidental Chemical must report the operational and analytical test data, including quality control information, obtained during this initial period no later 90 days after the generation of the two wastes.

TABLE 1. WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(ii) When the Rockbox unit is decommissioned for cleanout, after the final exclusion is granted, Occidental Chemical must collect and analyze composites of the Rockbox Residue. Two composites must be composed of representative grab samples collected from the Rockbox unit. The waste must be analyzed, prior to disposal, for all of the constituents listed in Paragraph 1. No later than 90 days after the Rockbox is decommissioned for cleanout the first two times after this exclusion becomes final, Occidental Chemical must report the operational and analytical test data, including quality control information. (B) *Subsequent Verification Testing:* Following written notification by EPA, Occidental Chemical may substitute the testing conditions in (3)(B) for (3)(A)(i). Occidental Chemical must continue to monitor operating conditions, analyze samples representative of each quarter of operation during the first year of waste generation. The samples must represent the waste generated over one quarter. (This provision does not apply to the Rockbox Residue.) (C) *Termination of Organic Testing for the Limestone Sludge and the Caustic Neutralized Wastewater:* Occidental Chemical must continue testing as required under Condition (3)(B) for organic constituents specified in Condition (1)(A)(ii) and (1)(C)(ii) until the analyses submitted under Condition (3)(B) show a minimum of two consecutive quarterly samples below the delisting levels in Condition (1)(A)(ii) and (1)(C)(ii), Occidental Chemical may then request that quarterly organic testing be terminated. After EPA notifies Occidental Chemical in writing it may terminate quarterly organic testing. Following termination of the quarterly testing, Occidental Chemical must continue to test a representative composite sample for all constituents listed in Condition (1) on an annual basis (no later than twelve months after the final exclusion). (4) *Changes in Operating Conditions:* If Occidental Chemical significantly changes the process which generate(s) the waste(s) and which may or could affect the composition or type waste(s) generated as established under Condition (1) (by illustration, but not limitation, change in equipment or operating conditions of the treatment process), or its NPDES permit is changed, revoked or not reissued, or if it intends to manage the Caustic Neutralized Wastewater other than by discharge under its NPDES permit, Occidental Chemical must notify the EPA in writing and may no longer handle the wastes generated from the new process or no longer discharges as nonhazardous until the wastes meet the delisting levels set in Condition (1) and it has received written approval to do so from EPA. (5) *Data Submittals:* The data obtained through Condition 3 must be submitted to Mr. William Gallagher, Chief, Region 6 Delisting Program, U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD-O) within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 USC § 1001 and 42 USC § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) *Reopener.* (a) If Occidental Chemical discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then Occidental Chemical must report any information relevant to that condition, in writing, to the Director of the Multimedia Planning and Permitting Division or his delegate within 10 days of discovering that condition. (b)Upon receiving information described in paragraph (a) from any source, the Director or his delegate will determine whether the reported condition requires further action. Further action may include revoking the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment.

TABLE 1. WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(7) *Notification Requirements:* Occidental Chemical must provide a one-time written notification to any State Regulatory Agency to which or through which the debited waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.
*	*	* * * * *

TABLE 2. WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Occidental Chemical	Ingleside, Texas	Limestone sludge, (at a maximum generation of 1,114 cubic yards per calendar year) Rockbox Residue, (at a maximum generation of 128 cubic yards per calendar year) and Caustic Neutralized Wastewater, (at a maximum generation of 148,282 cubic yards per calendar year) generated by Occidental Chemical using the wastewater treatment process to treat the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater (EPA Hazardous Waste No. K019, K020. Occidental Chemical must implement a testing program that meets conditions found in Table 1. Wastes Excluded From Non-Specific Sources for the petition to be valid.
*	*	* * * * *

[FR Doc. 98–12427 Filed 5–8–98; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR 61

[IB Docket No. 98–60; FCC 98–78]

Policies and Rules for Alternative Incentive Based Regulation of Comsat Corporation

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has issued a notice of proposed rulemaking to consider replacing traditional rate of return regulation with an alternative incentive based regulation plan for Comsat Corporation (''Comsat'') with respect to Comsat's provision of INTELSAT switched voice, private line and occasional-use video services to those markets where the Commission finds it dominant. The Commission believes that its current rate of return regulation that would be applicable to Comsat's dominant markets may no longer be an efficient or effective means of regulating Comsat's rates and may not create adequate efficiency incentives for Comsat. Therefore, the Commission invites interested parties to file comments in response to the Commission's tentative conclusions set forth in the notice of proposed rulemaking regarding alternative incentive based regulation for Comsat's dominant markets.

DATES: Interested parties may file comments by May 26, 1998 and reply comments by June 5, 1998.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Daniel Connors, International Bureau, Satellite Policy Branch, (202) 418–0755; or Kathleen Campbell, International Bureau, Satellite Policy Branch (202) 418–0753.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in IB Docket No. 98–60 that is contained in the Commission's Order and Notice of Proposed Rulemaking; FCC 98–78, adopted April 24, 1998, and released April 28, 1998. The complete text of the Order and Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW. Washington, D.C., and from the Commission's world-wide-web page on the Internet (http://www.fcc.gov), and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037. Because this Notice of Proposed Rulemaking contains information collections that affect less than 10 persons and, therefore, is not subject to the Paperwork Reduction Act of 1995, Public Law 104–13. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Certification certifying that the proposed rule will not impact small entities.

1. The Initial Regulatory Flexibility Certification necessary to comply with the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, is set forth below.

2. The Paperwork Reduction Act does not apply to the rules adopted herein because such rules apply to less than 10 persons.

Initial Regulatory Flexibility Certification

3. The Regulatory Flexibility Act (''RFA'') requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' U.S.C. § 605(b). The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' *Id.* § 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. *Id.* § 601(3). A small business concern is one which: (a) is

independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the Small Business Administration (''SBA''). *See* 15 U.S.C. § 632.

4. The Order and Notice of Proposed Rulemaking is an order reclassifying Comsat as a non-dominant common carrier in certain INTELSAT markets. The Order and Notice of Proposed Rulemaking contains a notice of proposed rulemaking (''*Notice*'') proposing rules that will apply to Comsat. The *Notice* indicates that the Commission will consider replacing the current rate of return regulations applicable to Comsat's INTELSAT switched voice, private line and occasional-use video services in the markets, where Comsat continues to be subject to dominant common carrier regulation, with an alternative form of incentive based regulation similar to a price cap. The *Notice* tentatively concludes: (a) that any alternative incentive based regulation plan that the Commission adopts for Comsat with respect to its services in dominant markets remain in effect for an indefinite period of time, rather than expiring after three years; and (b) that any alternative incentive based regulation plan that the Commission adopts for Comsat with respect to its services in dominant markets allow all users of Comsat's service in dominant markets to benefit from a competitive or ''transaction'' rate rather than the non-discounted tariffed rate that would result from Comsat's uniform pricing commitment. The *Notice* invites Comsat and other interested parties to comment on these tentative conclusions. If commenters believe that the proposed rules discussed in the in *Notice* require additional RFA analysis, they should include a discussion of this in their comments.

5. The Commission has not developed a definition of small entities applicable to satellite service licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services ''Not Elsewhere Classified.'' This definition provides that a small entity is one with $11 million or less in annual receipts. 13 CFR § 121.201. The proposed rules will apply only to Comsat's INTELSAT services in markets where the Commission finds Comsat dominant. Comsat's 1996 INTELSAT revenues were in excess of $11 million. Thus, Comsat does not qualify as a small entity under the SBA's definition. We therefore certify that the proposed rules in this *Notice* will not apply to any small entities.

6. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this *Notice*, including this certification, to the Chief Counsel for Advocacy of the SBA.

List of Subjects in 47 CFR 61

Satellites.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–12406 Filed 5–8–98; 8:45 am]

BILLING CODE 6712–01–F

Notices

Federal Register
Vol. 63, No. 90
Monday, May 11, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–031–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations to protect endangered species of terrestrial plants.

DATES: Comments on this notice must be received by July 10, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 98–031–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket No. 98–031–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information regarding the importation or exportation of endangered species of terrestrial plants, contact Mr. Michael Lidsky, CITES Program Coordinator, Operational Support, PPQ, APHIS, 4700 River Road Unit 146, Riverdale, MD 20737–1236, (301) 734–5762. For copies of more detailed information on the information collection, contact Ms. Cheryl Groves, APHIS' Information Collection Coordinator, at (301) 734–5086.

SUPPLEMENTARY INFORMATION:

Title: Endangered Species Regulation and Forfeiture Procedures.

OMB Number: 0579–0076.

Expiration Date of Approval: August 31, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the United States Department of Agriculture (USDA) is responsible for protecting endangered species of terrestrial plants by regulating the individuals or entities who are engaged in the business of importing, exporting, or reexporting these plants.

To carry out this mission, the Animal and Plant Health Inspection Service (APHIS), USDA, administers regulations at 7 CFR part 355. In accordance with these regulations, any individual, nursery, or other entity wishing to engage in the business of importing, exporting, or reexporting terrestrial plants listed in the Convention on International Trade in Endangered Species of wild fauna and flora (CITES) regulations at 50 CFR 17.12 or 23.23 must obtain a general permit (PPQ Form 622). This includes importers, exporters, or reexporters who sell, barter, collect, or otherwise exchange or acquire terrestrial plants as a livelihood or enterprise engaged in for gain or profit. This does not include persons engaged in business merely as carriers or customhouse brokers.

To obtain a general permit, these individuals or entities must complete an application (PPQ 621) and submit it to APHIS for approval. When a permit has been issued, the plants covered by the permit may be imported into the United States provided they are accompanied by documentation required by the regulations and provided all other conditions of the regulations are met.

Effectively regulating entities who are engaged in the business of importing, exporting, or reexporting endangered species requires the use of this application process, as well as the use of other information collection activities, such as notifying APHIS of the arrival or impending exportation of endangered species, marking containers used for the importation and exportation of plants, and creating and maintaining records of importation, exportation, and reexportation.

The information provided by these information gathering activities is critical to our ability to carry out the responsibilities assigned to us by The Endangered Species Act. These responsibilities include the careful monitoring of importation, exportation, and reexportation activities involving endangered species of plants, as well as investigating possible violations of the Endangered Species Act.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) 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;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .1977 hours per response.

Respondents: U.S. importers and exporters of endangered species.

Estimated annual number of respondents: 1,400.

Estimated annual number of responses per respondent: 11.51.

Estimated annual number of responses: 16,115.

Estimated total annual burden on respondents: 3,186 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

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.

Done in Washington, DC, this 5th day of May 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–12397 Filed 5–8–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension for and revision to a currently approved information collection in support of the CCC Supplier Credit Guarantee Program (SCGP), a variant of the Export Credit Guarantee Program (GSM–102), based on reestimates.

DATES: Comments on this notice must be received by July 10, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact L. T. McElvain, Director, Commodity Credit Corporation Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgBox 1035, Washington, DC 20250–1035, telephone (202) 720–6211.

SUPPLEMENTARY INFORMATION:

Title: CCC/Supplier Credit Guarantee Program (SCGP).

OMB Number: 0551–0037.

Expiration Date of Approval: September 30, 1998.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The primary objective of the SCGP is to expand U.S. agricultural exports by making available export credit guarantees to encourage U.S. private sector financing of foreign purchases of U.S. agricultural commodities on credit terms. Furthermore, the SCGP is designed to assist exporters of U.S. agricultural commodities who wish to provide relatively short term (up to 180 days) credits to their importers evidenced by promissory notes executed by such importers. The CCC currently offers the SCGP for exports to at least 8 countries and 6 country regions, with more than 1,000 exporters currently eligible to participate. Under 7 CFR Part 1493, exporters are required to submit the following: (1) Information about the exporter for program participation, (2) export sales information in connection with applying for a payment guarantee, (3) information regarding the actual export of the commodity, (evidence of export report), (4) notice of default and claims for loss, and (5) other documents, if applicable, including notice assignment of the right to receive proceeds under the export credit guarantee. In addition, each exporter and exporter's assignee (U.S. financial institution) must maintain records on all information submitted to CCC and in connection with sales made under the SCGP. The information collected is used by CCC to manage, plan, evaluate and account for Government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: The public reporting burden for these collections is estimated to average 3.37 hours per response.

Respondents: U.S. Exporters of U.S. agricultural commodities, U.S. banks or other financial institutions, producer associations, U.S. export trade associations, and U.S. Government agencies.

Estimated Number of Respondents: 50 annum.

Estimated Number of Responses per Respondent: 25 per annum.

Estimated Total Annual Burden of Respondents: 674 hours.

Copies of this information collection can be obtained from Valerie Countiss, the Agency Information Collection Coordinator, at (202) 720–6713.

Requests for comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to L.T. McElvain, Director, Commodity Credit Corporation Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgBox 1035, Washington, DC 20250–1035.

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.

Signed at Washington, DC. April 30, 1998.

Lon Hatamiya,

Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 98–12414 Filed 5–8–98; 8:45 am]

BILLING CODE 3410–05–M

COMMODITY CREDIT CORPORATION

Sunshine Act Meeting

TIME AND DATE: 2:00p.m., May 11, 1998.

PLACE: Room 104–A, Jamie Whitten Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the Special Open Meeting of November 3, 1997.
2. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.
3. Memorandum re: Commodity Credit Corporation's (CCC's) Financial Condition Report.
4. Resolution re: Termination of Obsolete CCC Board Dockets.
5. Docket CZ–157, Revision 6, re: Policy and Procedure Governing the Submission of Dockets to the Board of Directors, CCC, and the Handling of Dockets Considered by the Board.
6. Docket A–POL–98–007, re: Commodity Credit Corporation Claims Policy.
7. Settlement Actions Report.
8. Docket P–COM–98–004, re: Delegation of Responsibility for Commodity Credit Corporation's Domestic Commodity Programs.
9. Docket P–COM–98–005, re: Delegation of Responsibility for the Commodity Credit Corporation's Export Credit Guarantee Programs, Export Credit Sales Programs, Export Bonus Programs and Other Similar Programs Commodity Credit Corporation.
10. Docket P–COM–006, re: Policies Regarding the Management of

Commodity Credit Corporation Commodities, Materials and Delegation of Responsibility.

11. Docket ECZ–244, Revision 2, re: Commodity Credit Corporation Policies With Respect to Debarment and Suspension of Individuals and Firms

CONTACT PERSON FOR MORE INFORMATION: Juanita B. Daniels, Acting Secretary, Commodity Credit Corporation, Stop 0571, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, D.C. 20250–0571.

Dated: May 4, 1998.

Juanita B. Daniels,

Acting Secretary, Commodity Credit Corporation.

[FR Doc. 98–12462 Filed 5–6–98; 4:36 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service in Florida

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Florida

AGENCY: Natural Resources Conservation Service (NRCS) in Florida, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Florida for review and comment.

SUMMARY: It is the intention of NRCS in Florida to issue the following revised conservation practice standards for Florida: Agrochemical Mixing Station, Portable, (Code 703); Bedding (Code 310), Cross Wind Stripcropping, (Code 589B), Row Arrangement, (Code 648) in Section IV of the FOTG.

DATES: Comments will be received until June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to T. Niles Glasgow, State Conservationist, Natural Resources Conservation Service (NRCS), P.O. Box 141510, Gainesville, Florida 32614–1510. Copies of the practice standards will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS in Florida will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS in Florida regarding disposition of those comments and a final determination of change will be made.

Dated: April 23, 1998.

T. Niles Glasgow,

State Conservationist, Natural Resources Conservation Service, Gainesville, Florida.

[FR Doc. 98–12093 Filed 5–8–98; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Collection; Comment Request

TITLE: Survey of International Air Travelers (In-Flight Survey).

SUMMARY: The Department of Commerce, 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 the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 10, 1998.

ADDRESSES: Direct all written comment to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th & Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Ron Erdmann, ITA's Tourism Industries, Room 1860, 1401 Constitution Ave, NW, Washington, DC 20230; phone: (202) 482–4554, and fax: (202) 482–2887.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration, Tourism Industries' ''Survey of International Air Travelers'' is the only source for estimating international travel and passenger fare exports and imports for this country. This program also supports the U.S. Department of Commerce, Bureau of Economic Analysis mandate to collect and report this type of information which is used to calculate Gross Domestic Products for the United States. In addition, this project serves as the core data source for Tourism Industries. Numerous reports and analyses are developed to assist businesses in increasing U.S. exports in international travel. An economic impact of international travel on state economies, visitation estimates, traveler profiles, presentations and reports are generated by Tourism Industries to help the federal government agencies and the travel industry better understand the international market. It is also a service that the U.S. Department of Commerce provides to travel industry businesses seeking to increase international travel and passenger fare exports for the country. It provides the only comparable estimates of nonresident visitation to the states and cities within the U.S., as well as U.S. resident travel abroad. Traveler characteristics data are also collected to help travel related businesses better understand the international travelers to and from the U.S. so they can develop targeted marketing and other planning related materials.

II. Method of Data Collection

The collection is on U.S. and foreign flag airlines who voluntarily agree to allow us to survey their departing flights from the U.S. Additional survey are also collected at U.S. departure airports and selected U.S. sites as cooperation is obtained from the travel industry.

III. Data

OMB Number: 0625–0227.

Form Number: Not applicable.

Type of Review: Extension-regular submission.

Affected Public: International travelers departing the United States 18 years or older which includes U.S. and non-U.S. residents.

Estimated Number of Respondents: 165,600.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 24,840 hours.

Estimated Total Annual Cost: This is a $2.2 million research program. The government only funds $800,000 of this program. The remaining funds are obtained from inkind contributions of the airlines, airports and other travel industry partners as well as the sale of this data to the public. Respondents will not need to purchase equipment or materials to respond to this collection.

IV. Requested for 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

(including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 5, 1998.

Linda Englemeier,

Department Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–12417 Filed 5–8–98; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Collection; Comment Request

TITLE: Export Trading Companies Contact Facilitation Service.

SUMMARY: The Department of Commerce, 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 the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c) (2) (A)).

DATES: Written comments must be submitted on or before July 10, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Mary Michael, Office of Export Trading Company Affairs, Service Industries and Finance, Room 1800, 14th and Constitution Avenue, NW, Washington, DC 20230; phone: (202) 482–5131, and fax: (202) 482–1790.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Contact Facilitation Service (CFS) is designed to put producers together with exporters. Many U.S. firms have never exported because of a fear of the risks involved in exporting and a lack of knowledge of the international marketplace. New-to-export firms need the assistance of firms offering export trade services. One of the purposes of the Export Trading Company (ETC) Act of 1982 is to increase United States exports of goods and services by encouraging more efficient provision of export trade services to U.S. producers and suppliers. Section 104 of the Act directs Commerce to provide a service to facilitate contact between producers of exportable goods and services and firms offering export trade services.

The International Trade Administration (ITA) maintains a database for U.S. manufacturers, export trading and management companies, wholesalers/distributors, and international service firms. The CFS is designed to help promote exports and enable U.S. producers to locate ETCs and export services providers. Companies registered in the database are also listed in annual editions of The Export Yellow Pages which are distributed throughout the United States and worldwide. Without the information collected by the form, the CFS and The Export Yellow Pages would be unreliable and ineffective, because users of this kind of information need the current information about the listed companies.

II. Method of Collection

Form ITA–4094P is sent by request to U.S. firms.

III. Data

OMB Number: 0625–0120.

Form Number: ITA–4094P.

Type of Review: Revision-Regular Submission.

Affected Public: Business or other for-profit; not-for-profit institutions and State, local or Tribal Government.

Estimated Number of Respondents: 9,500.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 4,750.

Estimated Total Annual Costs: $198,184 ($112,684 government and $85,500 respondents).

IV. Request for 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 (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 5, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–12418 Filed 5–8–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Collection; Comment Request

TITLE: Application for an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce, 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 the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c) (2) (A)).

DATES: Written comments must be submitted on or before July 10, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Mary Michael, Office of Export Trading Company Affairs, Service Industries and Finance, Room 1800, 14th and Constitution Ave, NW, Washington, DC 20230; phone: (202) 482–5131, and fax: (202) 482–1790.

SUPPLEMENTARY INFORMATION:

I. Abstract

Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290, 96 Stat. 1233–1247), requires the Department of Commerce to establish a program to evaluate applications for

Export Trade Certificates of Review, and with the concurrence of the Department of Justice, issue such certificates where the requirements of the Act are satisfied. The Act requires that Commerce, with Justice concurrence, issue regulations governing the evaluation and issuance of certificates before Commerce can accept applications for certification. The collection of information is necessary for the antitrust analysis which is a prerequisite to issuance of a certificate. Without the information there would be no basis upon which a certificate could be issued.

In the Department of Commerce, this economic and legal analysis will be performed by the Office of Export Trading Company Affairs and the Office of the General Counsel. The Department of Justice analysis will be conducted by the Antitrust Division. The purpose of such analysis is to make a determination as to whether or not to approve an application and issue an Export Trade Certificate of Review. If this information is not collected, the antitrust analysis cannot be performed and without that analysis no certificate can be issued. A certificate provides its holder and members named in the certificate (a) immunity from government actions under state and Federal antitrust laws for the export conduct specified in the certificate; (b) some protection from frivolous private suits by limiting their liability in private actions to actual damages when the challenged activities are covered by an Export Certificate of Review. Title III was enacted to reduce uncertainty regarding application of U.S. antitrust laws to export activities—especially those involving actions by domestic competitors.

II. Method of Collection

Form ITA–4093P is sent by request to U.S. firms.

III. Data

OMB Number: 0625–0125.

Form Number: ITA–4093P.

Type of Review: Revision-Regular Submission.

Affected Public: Business or other for-profit; not-for-profit institutions and State, local or Tribal Government.

Estimated Number of Respondents: 30.

Estimated Time Per Response: 32 hours.

Estimated Total Annual Burden Hours: 960.

Estimated Total Annual Costs: The estimated annual cost for this collection is $344,400 ($260,000 government and $134,400 respondents).

IV. Request for 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 (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 5, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–12419 Filed 5–8–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Thane-Coat, Inc, Jerry Vernon Ford and Preston John Engebretson

In the Matters of: Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477, Jerry Vernon Ford, President, Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477, and with an address at, 7707 Augustine Drive, Houston, Texas 77036, and Preston John Engebretson, Vice-President, Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477, and with an address at 8903 Bonhomme Road, Houston, Texas 77074, Respondents.

Decision and Order on Renewal of Temporary Denial Order

On October 31, 1997, Acting Assistant Secretary for Export Enforcement Frank W. Deliberti issued a Decision and Order on Renewal of Temporary Denial Order (hereinafter ''Order'' or ''TDO''), renewing for 180 days a May 5, 1997 Order naming Thane-Coat, Inc.; Jerry Vernon Ford, president Thane-Coat, Inc.; Preston John Engebretson, vice-president, Thane-Coat, Inc.; Export Materials, Inc.; and Thane-Coat, International, Ltd. (Thane-Coat, Inc., Ford, and Engebretson hereinafter referred to collectively as the ''Respondents'' and Export Materials, Inc. and Thane-Coat, International, Ltd., the ''affiliated companies''), as persons temporarily denied all U.S. export privileges 62 FR 60063–60065 (November 6, 1997). The Order will expire on April 29, 1998.

On April 17, 1998, pursuant to Section 766.24 of the Export Administration Regulations (15 C.F.R. Parts 730–774 (1997)) (hereinafter the ''Regulations''), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1998)) (hereinafter the ''Act''),[1] the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter ''BXA''), requested that the Assistant Secretary for Export Enforcement renew the Order against Thane-Coat, Inc., Jerry Vernon Ford, and Preston John Engebretson for 180 days, pursuant to terms agreed to by and between the parties.

In its request, BXA stated that, as a result of an ongoing investigation, it had reason to believe that, during the period from approximately June 1994 through approximately July 1996, Thane-Coat, Inc., through Ford and Engebretson, and using its affiliated companies, Thane-Coat, International, Ltd. and Export Materials, Inc., made approximately 100 shipments of U.S.-origin pipe coating materials, machines, and parts to the Dong Ah Consortium in Benghazi, Libya. These items were for use in coating the internal surface of prestressed concrete cylinder pipe for the Government of Libya's Great Man-Made River Project.[2] Moreover, BXA's investigation gave it reason to believe that the Respondents and the affiliated companies employed a scheme to export U.S.-origin products from the United States, through the United Kingdom, to Libya, a country subject to a comprehensive economic sanctions program, without the authorizations required under U.S. law, including the Regulations. The approximate value of the 100 shipments at issue was $35 million. In addition, the Respondents and the affiliated companies undertook several significant and affirmative

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (62 FR 43629, August 15, 1997), continued the Regulations in effective under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1998)).

[2] BXA understands that the ultimate goal of this project is to bring fresh water from wells drilled in southeast and southwest Libya through prestressed concrete cylinder pipe to the coastal cities of Libya. This multibillion dollar, multiphase engineering endeavor is being performed by the Dong Ah Construction Company of Seoul, South Korea.

actions in connection with the solicitation of business on another phase of the Great Man-Made River Project.

BXA has stated that it believes that the matters under investigation and the information obtained to date in that investigation support renewal of the TDO issued against the Respondents.[3] In that regard, BXA and the Respondents reached an agreement, whereby BXA has sought a renewal of the TDO in a ''non-standard'' format, denying all of the Respondents' U.S. export privileges to the United Kingdom, The Bahamas, Libya, Cuba, Iraq, North Korea, Iran, and any other country or countries that may be made subject in the future to a general trade embargo by proper legal authority. In return, the Respondents agreed that, among other conditions, at least 14 days in advance of any export that any of the Respondents intends to make of any item from the United States to any destination world-wide, the Respondents will provide to BXA's Dallas Field Office (i) notice of the intended export, (ii) copies of all documents reasonably related to the subject transaction, including, but not limited to, the commercial invoice and bill of lading, and (iii) the opportunity, during the 14-day notice period, to inspect physically the item at issue to ensure that the intended shipment is in compliance with the Export Administration Act, the Export Administration Regulations, or any order issued thereunder.

Based on BXA's showing, I find that it is appropriate to renew the order temporarily denying the export privileges of Thane-Coat, Inc., Jerry Vernon Ford, and Preston John Engebretson in a ''non-standard'' format, incorporating the terms agreed to by and between the parties. I find that such renewal is necessary in the public interest to prevent an imminent violation of the Regulations and to give notice to companies in the United States and abroad to cease dealing with these persons in any commodity, software, or technology subject to the Regulations and exported or to be exported to the United Kingdom, the Bahamas, Libya, Cuba, Iraq, North Korea, Iran, and any other country or countries that may be made subject in the future to a general trade embargo by proper legal authority, or in any other activity subject to the Regulations with respect to these specific countries. Moreover, I find such renewal is in the public interest in order to reduce the substantial likelihood that Thane-Coat, Inc., Ford, and Engebretson will engage in activities which are in violation of the Regulations.

Accordingly, *It is therefore ordered:*

First, that Thane-Coat, Inc., and all of its successors or assigns, officers, representatives, agents, and employees when acting on its behalf, Jerry Vernon Ford, and all of his successors, or assigns, representatives, agents and employees when acting on his behalf; and Preston John Engebretson, and all of his successors, or assigns, representatives, agents, and employees when acting on his behalf (all of the foregoing parties hereinafter collectively referred to as the ''denied persons''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') subject to the Export Administration regulations (hereinafter the ''Regulations'') and exported or to be exported from the United States to the United Kingdom, the Bahamas, Libya, Cuba, Iraq, North Korea, or Iran, or to any other country or countries that may be made subject in the future to a general trade embargo pursuant to proper legal authority (hereinafter the ''Covered Countries''), or in any other activity subject to the Regulations with respect to the Covered Countries, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item that is subject to the Regulations and that is exported or to be exported from the United States to any of the Covered Countries, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States to any of the Covered Countries that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of any of the denied persons any item subject to the Regulations to any of the Covered Countries;

B. Take any action that facilitates the acquisition, or attempted acquisition by any of the denied persons of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States to any of the Covered Countries, including financing or other support activities related to a transaction whereby any of the denied persons acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from any of the denied persons of any item subject to the Regulations that has been exported from the United States to any of the Covered Countries;

D. Obtain from any of the denied persons in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States to any of the Covered Countries; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States to any of the Covered Countries, and which is owned, possessed or controlled by any of the denied persons, or service any item, of whatever origin, that is owned, possessed or controlled by any of the denied persons if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States to any of the Covered Countries. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, at least 14 days in advance of any export that any of the denied persons intends to make of any item from the United States to any destination world-wide, the denied person will provide to BXA's Dallas Field Office (i) notice of the intended export, (ii) copies of all documents reasonably related to the subject transaction, including, but not limited to, the commercial invoice and bill of lading, and (iii) the opportunity, during the 14-day notice period, to inspect physically the item at issue to ensure that the intended shipment is in compliance with the Export Administration Act, the Export Administration Regulations, or any order issued thereunder.

Fourth, that, after notice and opportunity for comment, as provided in section 766.23 of the Regulations, any person, firm, corporation, or business organization related to any of the denied persons by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services, may also be made subject to the provisions of this Order.

[3] On April 9, 1998, BXA requested that the Assistant Secretary for Export Enforcement renew the October 31, 1997 TDO against Thane-Coat, International, Ltd. and Export Materials, Inc.

Fifth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

This Order is effective immediately and shall remain in effect for 180 days.

A copy of this Order shall be served on each Respondent and shall be published in the **Federal Register.**

Entered this 29th day of April, 1998.

F. Amanda DeBusk,

Assistant Secretary for Export Enforcement.

Certificate of Service

I hereby certify that, on April 30, 1998, I caused the foregoing Decision and Order on Renewal of Temporary Denial Order to be mailed first-class, postage prepaid to:

Thane-Coat, Inc. 12725 Royal Drive Stafford, Texas 77477,

Jerry Vernon Ford President Thane-Coat, Inc. 12725 Royal Drive Stafford, Texas 77477,

and

Preston John Engebretson Vice-President Thane-Coat, Inc. 12725 Royal Drive Stafford, Texas 77477.

Lucinda G. Maruca,

Secretary, Office of the Assistant Secretary for Export Enforcement.

[FR Doc. 98–12421 Filed 5–8–98; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 976]

Expansion of Foreign-Trade Zone 98, Birmingham, AL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the City of Birmingham, Alabama, grantee of Foreign-Trade Zone 98, for authority to expand FTZ 98 to include five additional sites in Birmingham, Alabama, within the Birmingham Customs port of entry area, was filed by the Board on April 29, 1997 (FTZ Docket 39–97, 62 FR 26772, 5/15/97; amended, 2/16/98, withdrawing a sixth proposed site for the Pizitz/McRae Warehouse);

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 98, as amended, is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 28th day of April 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–12332 Filed 5–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

FOREIGN-TRADE ZONES BOARD

[Order No. 978]

Expansion of Foreign-Trade Zone 205, Ventura County, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Board of Harbor Commissioners, Oxnard Harbor District, grantee of Foreign-Trade Zone 205, for authority to expand FTZ 205-Site 1 and Site 2, located in Port Hueneme and Oxnard, California, within the Port Hueneme Customs port of entry area, was filed by the Board on June 4, 1997 (FTZ Docket 47–97, 62 FR 33829, 6/23/97);

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 205 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 28th day of April 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–12329 Filed 5–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 974]

Grant of Authority for Subzone Status; Chevron Products Company (Oil Refinery), Richmond, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the San Francisco Port Commission, grantee of Foreign-Trade Zone 3, for authority to establish special-purpose subzone status at the oil refinery complex of Chevron Products Company, located in Richmond, California, was filed by the Board on June 12, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 49–97, 62 FR 33828, 6/23/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 3B) at the oil refinery complex of Chevron Products Company, located in Richmond, California, at the

location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000—# 2710.00.1050, # 2710.00.2500, and # 2710.00.45 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiners report, Appendix C);
—products for export; and,
—products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 28th day of Apil 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–12330 Filed 5–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 977]

Grant of Authority for Subzone Status Massachusetts Heavy Industries, Inc., (Shipbuilding), Quincy, MA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the FTZ Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Massachusetts Port Authority, grantee of FTZ 27, for authority to establish special-purpose subzone status for the Massachusetts Heavy Industries, Inc., shipyard in Quincy, Massachusetts, was filed by the Board on September 4, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 70–97, 62 FR 47625, 9–10–97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were given subject to the standard shipyard restriction on foreign steel mill products;

Now, therefore, the Board hereby grants authority for subzone status at the Massachusetts Heavy Industries, Inc., shipyard in Quincy, Massachusetts (Subzone 27B), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following special conditions:

1. Any foreign steel mill products admitted to the subzone, including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to Customs duties in accordance with applicable law, if the same item is then being produced by a domestic steel mill; and,

2. In addition to the annual report, Massachusetts Heavy Industries, Inc., shall advise the Board's Executive Secretary (§ 400.28(a)(3)) as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

Signed at Washington, DC, this 28th day of April 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–12333 Filed 5–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[DOCKETS 11–98 and 12–98]

Foreign-Trade Zone 147—Reading, PA and Foreign-Trade Zone 125—South Bend, IN; Applications for Subzone Status Bayer Corporation Plants (Aspirin Products); Extension of Public Comment Period

The comment periods for the above cases, requesting special-purpose subzone status for the aspirin products manufacturing facilities of Bayer Corporation, in Myerstown, Pennsylvania (63 FR 12440, 3/13/98), and Elkhart, Indiana (63 FR 12439, 3/13/98), are extended to June 12, 1998, to allow interested parties additional time in which to comment on the proposals.

Comments in writing are invited during this period. Submissions should include 3 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: May 4, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–12328 Filed 5–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 975]

Grant of Authority for Subzone Status; Equistar Chemicals LP (Petrochemical Complex), Harris County, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of

the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port of Houston Authority, grantee of Foreign-Trade Zone 84, for authority to establish special-purpose subzone status at the petrochemical complex of Equistar Chemicals LP, located in Harris County, Texas, was filed by the Board on June 16, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 50–97, 62 FR 355152, 6/30/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 84Q) at the petrochemical complex of Equistar Chemicals LP, located in Harris County, Texas, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2710.00.0505–#2710.00.2500, and #2710.00.45 which are used in the production of:

—petrochemical feedstocks (examiners report, Appendix C);

—products for export; and,

—products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 28th day of April 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–12331 Filed 5–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Postponement of Preliminary Results of Antidumping Duty New Shipper Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results in antidumping duty new shipper administrative review of brake rotors from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty new shipper administrative reviews of brake rotors from the People's Republic of China (PRC). This review covers the period April 1, 1997, through September 30, 1997.

EFFECTIVE DATE: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Sunkyu Kim, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–2613, respectively.

Postponement of Preliminary Results of Review

On November 28, 1997, the Department initiated this new shipper review of the antidumping duty order on brake rotors from the PRC (62 FR 64206, December 4, 1997). The current deadline for the preliminary results is May 27, 1998. We determine that it is not practicable to complete this review within the original time frame because of the large number of respondents.[1] In accordance with Section 751(a)(2)(B)(iv) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994 (19 U.S.C. 1675(a)(3)(A)), the Department finds this new shipper review extraordinarily complicated and is extending the time limit for completion of the preliminary results until September 24, 1998, which is 300 days after the date on which the new shipper review was initiated.

Dated: April 30, 1998.

Maria Harris Tildon,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 98–12334 Filed 5–8–98; 8:45 am]

BILLING CODE 3510–DS–P

[1] The six new shippers are China National Industrial Machinery Import & Export Company, Lai Zhou Auto Brake Equipments Factory, Longkou Haimeng Machinery Co., Ltd., Qingdao Gren Co., Yantai Winhere Auto-Part Manufacturing Co., Ltd., and Zibo Luzhou Automobile Parts Co., Ltd.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–701]

Brass Sheet and Strip From the Netherlands: Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by respondent Outokumpu Copper Strip B.V. (OBV) and its United States affiliate Outokumpu Copper (USA), Inc. (OCUSA), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on brass sheet and strip (BSS) from the Netherlands (A–421–701). This review covers one producer/manufacturer/exporter of the subject merchandise to the United States during the period August 1, 1996 through July 31, 1997.

We preliminarily determine that sales of BSS from the Netherlands have not been made below Normal Value (NV). If the preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service not to assess antidumping duties on entries of the subject merchandise made during period of review.

Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with the argument: (1) A statement of the issues; and (2) a brief summary of the argument.

EFFECTIVE DATE: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Karla Whalen at 202/482–1386 or

Lisette Lach at 202/482–0190, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations last codified at 19 FR Part 351 (May 19, 1997).

Background

On August 12, 1988, the Department published in the **Federal Register** the antidumping duty order on BSS from the Netherlands (53 FR 30455). On August 4, 1997, the Department published in the **Federal Register** a notice announcing the opportunity to request an administrative review of the antidumping duty order on BSS from the Netherlands for the period August 1, 1996, through July 31, 1997 (62 FR 41925). On August 29, 1997, in accordance with 19 CFR 353.213 (b), OBV filed a letter requesting an administrative review of its sales in this period of review. On September 25, 1997, we published in the **Federal Register** a notice of initiation of this administrative review (62 FR 50292). On October 23, 1997, petitioners in this proceeding [1] entered a notice of appearance in this administrative review.

Scope of the Review

Imports covered by this review are brass sheet and strip, other than leaded and tin brass sheet and strip, from the Netherlands. The chemical composition of the products under review is currently defined in the Copper Development Association (CDA) 200 Series or the Unified Numbering System (UNS) C20000 series. This review does not cover products the chemical compositions of which are defined by other CDA or UNS series. The physical dimensions of the products covered by this review are brass sheet and strip of solid rectangular cross section over 0.006 inch (0.15 millimeter) through 0.188 inch (4.8 millimeters) in gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise under investigation is currently classifiable under item 7409.21.00 and 7409.29.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all BSS, covered by the descriptions in the ''Scope of the Review'' section of this notice, *supra*, and sold in the home market during the POR, to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales of BSS. 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 next most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's October 24, 1997 antidumping questionnaire. In making the product comparisons, we matched foreign like products based on the following hierarchy of physical characteristics: (1) Type (alloy); (2) gauge (thickness); (3) width; (4) temper; (5) coating; and (6) packed form.

For purposes of the preliminary results, we have used differences in merchandise adjustments based on the difference in the variable cost of manufacturing between each U.S. model and its most similar home market model.

Date of Sale

On December 11, 1997, petitioners submitted a letter, objecting to OBV's use of the invoice date as the date of sale for the period of review. Citing a questionnaire response dated November 8, 1991, wherein OBV stated that sales in the United States were based primarily on long-term contracts generally negotiated on an annual basis and that all material terms of sale were established in these long-term contracts, petitioners urged the Department to use the frame agreement date, rather than the invoice date, as the date of sale.

On December 22, 1997, OBV responded to petitioners' date of sale comment. Citing 19 CFR 351.401(i), respondent asserted that petitioners' objection to the use of the invoice date as the date of sale ignores recent Department practice. OBV further argued that using the frame agreement date as the date of sale would be incorrect because frame agreements do not firmly establish the material terms of sale. Rather, they contain an estimate by the customer of the type and approximate quantity of the merchandise the customer expects to order over the period of time covered by the frame agreements. OBV asserted that although frame agreements do contain a fabrication price, they do not contain a metal price; [2] therefore, OBV contended that such agreements do not establish the total price to be paid by the customer. Furthermore, respondent stated that frame agreements are non-binding since the quantity will vary from the quantity stated in the frame agreement. Finally, OBV stated that since the Department determined the use of the invoice date as the date of sale in the immediately preceding review, it should continue to find that the invoice date constitutes the date of sale.

In the immediately preceding review, the Department used the invoice date as the date of sale because we found that it was the first date on which all terms of sale (*i.e.*, quantity, metal price and fabrication price) were established. The record in this review supports the same conclusion. Therefore, in accordance with 19 CFR 351.401(i) and Department practice, we have preliminarily determined that the invoice date is the appropriate date of sale for OBV.

Differences in Level of Trade

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 (LOT) as the EP or constructed export price (CEP) transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative expenses (SG&A) expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.

[1] Hussey Copper, Ltd.; The Miller Company; Olin Corporation; Revere Copper Products, Inc.; International Association of Machinists and Aerospace Workers; International Union; Allied Industrial Workers of America (AFL–CIO); Mechanics Educational Society of America (Local 56) and United Steelworkers of America (AFL–CIO/CLC).

[2] A ''fabrication price'' is the price charged by companies such as OBV to transform raw materials into finished BSS. A ''metal price'' is the price OBV charges for the necessary raw materials.

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 a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, 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 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).

OBV did not request an adjustment for LOT for this POR. To ensure that no such adjustment was necessary, we examined OBV's questionnaire responses with regard to its distribution system, including selling functions, class of customer and selling expenses. We noted that OBV had the same type of channel of distribution and class of customer for all sales in both markets. We also noted that its selling expenses for the POR were the same for all customers. In addition, we examined information concerning OBV's different payment terms (including discounts) and any possible selling agents with which OBV works. Based on the available information on the record, it appears OBV did not have a formal or official policy for providing payment terms, including discounts, to different customers, nor did OBV have selling agents. Finally, employees of OBV or a sister company, OAB (Outokumpu Copper Radiator Strip A.B.), appear to have handled all sales of the foreign like product. Accordingly, we preliminarily find that all sales in the home market and the U.S. market were made at the same level of trade. Therefore, all price comparisons are at the same level of trade and an adjustment pursuant to section 773(a)(7)(A) of the Act is unwarranted.

Fair Value Comparisons

To determine whether OBV's sales of BSS to the United States were made at less than fair value, we compared EP to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 771A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price

We calculated the price of U.S. sales based on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold to an unaffiliated U.S. purchaser prior to the date of importation.

We calculated EP based on the packed, delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2) of the Tariff Act, where appropriate, we deducted from the starting price post-sale warehousing expense, international freight expense, inland and marine insurance, U.S. brokerage and handling expenses and U.S. Customs duties.

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i)of the Tariff Act, we based NV on the price at which the foreign like products were first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade.

Where appropriate, we deducted discounts, post-sale warehousing expense, inland freight expense, marine and inland insurance and packing expense. We made adjustments, where appropriate, for differences in credit expenses.

We increased NV by U.S. packing expenses in accordance with section 773(a)(6)(A) of the Act. To the extent there were comparisons of U.S. merchandise to home market merchandise which were not identical but similar, we made adjustments to NV for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act.

Cost-of-Production Analysis

Because we disregarded sales below the cost of production in the most recently completed review, we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for determining NV in this review may have been at prices below the cost of production (COP), as provided in section 773(b)(2)(A)(ii) of the Tariff Act. See Brass Sheet and Strip From the Netherlands; Final Results of Antidumping Duty Administrative Reviews, 62 FR 51449 (October 1, 1997). Therefore, pursuant to section 773(b)(1) of the Tariff Act, we initiated a COP investigation of sales by OBV.

A. Calculation of COP

In accordance with section 773(b)(3) of the Tariff Act, we calculated COP based on the sum of the respondent's cost of materials and fabrication employed in producing the foreign like product, plus the costs for selling, general, and administrative expenses (SG&A), interest expense and packing costs. We relied on the home market sales and COP information OBV provided in its questionnaire responses.

B. Test of Home Market Prices

After calculating COP, we tested whether home market sales of subject BSS were made at prices below COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COP to the reported home market prices less any applicable movement charges and discounts, where appropriate.

C. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than 20 percent of OBV's home market sales for a model were at prices less than the COP, we did not disregard any below-cost sales of that model because we determined that the below cost sales were not made within an extended period of time in ''substantial quantities.'' Where 20 percent or more of OBV's home market sales of a given product were at prices less than the COP, we determined that such sales were made within an extended period of time in substantial quantities in accordance with section 773(b)(2)(C) of the Tariff Act. To determine whether such sales were at prices which would not permit the full recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act, we compared home market prices to the weighted-average COP for the POR. When we found that below-cost sales had been made in ''substantial quantities'' and were not at prices which would permit recovery of all costs within a reasonable period of time, we disregarded the below-cost sales in accordance with section 773(b)(1) of the Act.

On January 8, 1998, the U.S. Court of Appeals for the Federal Circuit issued a decision in *Cemex* v. *United States,* WL 3626 (Fed. Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value when the Department finds

foreign market sales to be outside ''the ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. See section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of the Review'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. 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, based on the information provided by OBV in response to our antidumping questionnaire. We have implemented the Court's decision in this case to the extent that the data on the record permitted. Since there were sufficient sales above cost, it was unnecessary to calculate CV in this case.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' There were no significant fluctuations during the POR.

Preliminary Results of Review

As a result of our comparison of EP to NV, we preliminarily determine that the weighted-average dumping margin for OBV for this administrative review period is as follows:

BRASS SHEET AND STRIP FROM THE NETHERLANDS

Producer/manufacturer/exporter	Weighted-average margin (percent)
Outokumpu Copper Strip B.V. (OBV)	0.00

Parties to this proceeding may request disclosure within five days of the date of publication of this notice and any interested party may request a hearing within ten days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first business day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be submitted no later than 37 days after the date of publication of this notice. The Department will publish a notice of the final results of the administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 120 days after the date of publication of this notice.

Cash Deposit

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of BSS from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for OBV will be the rate established in the final results of this administrative review (no deposit will be required for a zero or *de minimis* margin, *i.e.*, margin lower than 0.5 percent); (2) For merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of the proceeding, the cash deposit rate will be the company-specific rate published for the most recent segment; (3) If the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value 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 the ''all others'' rate of 16.99 percent established in the less-than-fair-value investigation. See Antidumping Duty Order of Sales at Less-Than-Fair Value; Brass Sheet and Strip From the Netherlands, 53 FR 30455 (August 12, 1988). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

All U.S. sales by the respondent OBV will be subject to one deposit rate according to the proceeding. The cash deposit rate has been determined on the basis of the selling price to the first unrelated customer in the United States. For appraisement purposes, where information is available, we will use the entered value of the subject merchandise to determine the appraisement rate.

This notice serves as preliminary reminder to importers of their responsibility 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties. This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)).

Dated: May 4, 1988.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–12316 Filed 5–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Forged Stainless Steel Flanges From India: Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty new shipper review.

SUMMARY: On February 3, 1998, the Department of Commerce (the Department) published the preliminary results of its new shipper review of the antidumping duty order on certain stainless steel flanges (SSF) from India (63 FR 5501). This review covers exports of this merchandise to the United States by one manufacturer/exporter, Panchmahal Steel Ltd.

(Panchmahal), during the period February 1, 1996 through January 31, 1997.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. There was no dumping margin for Panchmahal for this review period.

EFFECTIVE DATE: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or John Kugelman, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2704 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

The antidumping duty order on SSF from India was published February 9, 1994 (59 FR 5994). On February 3, 1998, the Department published in the **Federal Register** the preliminary results of this new shipper review of the antidumping duty order on SSF from India (63 FR 5501). The Department has now completed this new shipper review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this order are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order remains dispositive.

The review covers one Indian manufacturer/exporter, Panchmahal, and the period February 1, 1996 through January 31, 1997.

Comments From Interested Parties

We gave interested parties an opportunity to comment on our preliminary results. We received no comments.

Final Results of Review

As a result of our analysis, which is unchanged from the preliminary results of review, we have determined that the following weighted-average dumping margin exists for Panchmahal:

Manufacturer/Exporter	Period	Margin (percent)
Panchmahal	2/1/96–1/31/97	0.00

The Department shall instruct the Customs Service to liquidate all appropriate entries, and to assess no antidumping duties on Panchmahal's entries.

Furthermore, the following deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Act:

(1) The rate for the reviewed firm will be as listed above;

(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 original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be that rate established for the manufacturer of the merchandise in the earlier review or the original investigation, whichever is the most recent; or

(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 162.14 percent, the ''all others'' rate established in the LTFV investigation.

These deposit requirements will remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the 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 notice also serves as a reminder to parties subject to administrative protective order (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). 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.

This administrative review and this notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(h).

Dated: May 1, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–12335 Filed 5–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703]

Granular Polytetrafluoroethylene Resin From Italy; Preliminary Results of Antidumping Duty Administration Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce is conducting an administrative review of the antidumping duty order on gramdular polytetrafluoroethylene resin from Italy. This review covers Ausimont SpA. The period of review is August 1, 1996, through July 31, 1997.

We have preliminary determined that sales of polytetrafluoroethylene resin from Italy have been at less then normal value. We invite interested parties to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with each argument: (1) A statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATES: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Kris Campbell, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4162 or (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations provided in 19 CFR Part 351, as published in the **Federal Register** on May 19, 1997 (62 FR 27296).

Background

On August 30, 1988, the Department published in the **Federal Register** the antidumping duty order on granular polytetrafluoroethylene resin (PTFE) from Italy (53 FR 33163). On August 4, 1997, the Department of published a notice of ''Opportunity to Request Administrative Review'' of this antidumping duty order for the period of August 1, 1996, through July 31, 1997 (62 FR 41925). On August 28, 1997, we received a timely request for review from E.I. DuPont de Nemours & Company (the petitioner). The review request named one respondent, Ausimont SpA and Ausimont USA Inc. (collectively, Ausimont). On September 25, 1997, we published the notice of initiation of this review (62 FR 50292).

We issued a questionnaire to Ausimont on September 24, 1997, followed by a supplemental questionnaire on February 23, 1998. On December 19, 1997, the petitioner submitted a timely request for verification of Ausimont's response.

Verification

In accordance with section 782(i)(3) of the Act, we conducted a verification of Ausimont's response from April 6 through April 14, 1998, in Bollate, Italy, and in Thorofare, New Jersey (*see* Verification of the Responses of Ausimont SpA and Ausimont U.S.A. in the 1996/97 Administrative Review of Polytetrafluoroethylene (PTFE) Resin from Italy, May 4, 1998).

Scope of the Review

The product covered by this review is granular PTFE resin, filled or unfilled. This order also covers PTFE wet raw polymer exported from Italy to the United States. *See* Granular Polytetrafluoroethylene Resin from Italy; Final Determination of Circumvention of Antidumping Duty Order, 58 FR 26100 (April 30, 1993). This order excludes PTFE dispersions in water and fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.00 of the Harmonized Tariff Schedule of the United States (HTS). We are providing this HTS number for convenience and Customs purposes only. The written description of the scope remains dispositive.

Fair Value Comparisons

We compared the constructed export price (CEP) to the normal value (NV), as described in the *Constructed Export Price* and *Normal Value* sections of this notice. Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual transactions to contemporaneous monthly weighted-average prices of sales of the foreign like product.

We first attempted to compare contemporaneous sales of products sold in the U.S. and the comparison market that were identical with respect to the following characteristics: type, filler, percentage of filler, and grade. Where we were unable to compare sales of identical merchandise, we compared U.S. sales with comparison market sales of the most similar merchandise based on the characteristics listed above, in that order of priority. With respect to U.S. sales of imported wet raw polymer that further manufactured into finished PTFE resin (see Constructed Export Price, below), we limited our price-based comparisons to comparison market sales of wet raw polymer.

Where there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV), in accordance with section 773(a)(4) of the Act.

Constructed Export Price

For all sales to the United States, we calculated constructed export price (CEP) as defined in section 772(b) of the Act because all sales to unaffiliated parties were made after importation of the subject merchandise into the United States through Ausimont U.S.A., respondent's affiliate. We based CEP on the packed, delivered prices to unaffiliated purchasers in the United States (the starting price). We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, including international freight marine insurance, brokerage and handling, U.S. inland freight, other transportation expenses, and U.S. customs duties.

In accordance with section 772(d)(1) of the Act, we deducted selling expenses incurred by the affiliated seller in connection with economic activity in the United States. These expenses include credit, warranty, technical service, inventory carrying costs, and indirect expenses incurred by Ausimont USA.

With respect to sales involving imported wet raw polymer that was further manufactured into finished PTFE resin in the United States, we deducted the cost of such further manufacturing in accordance with section 772(d)(2) of the Act. We determined that the special rule for merchandise with value added after importation under section 772(e) of the Act did not apply to such sales because the value added in the United States by the affiliated person did not exceed substantially the value of the subject merchandise.

Finally, we made an adjustment for the profit allocated to the above-referenced selling and further manufacturing expenses, in accordance with section 772(d)(3) of the Act.

No other adjustments were claimed or allowed.

Normal Value

In order to determine whether there was a sufficient volume of sales of granular PTFE resin in the home market to serve as a viable basis for calculating normal value (NV), we compared Ausimont's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Because the aggregate volume of home market sales of the foreign like product was greater than five percent of the respective aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like product was first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade.

We determined home prices net of price adjustments (early payment discounts and rebates). Where applicable, we made adjustments for packing and movement expenses, in accordance with sections 773(a)(6) (A) and (B) of the Act. In order to adjust for differences in packing between the two markets, we deducted home market packing costs from NV and added U.S. packing costs. 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, and for other differences in the circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act. We made a COS adjustment for home market credit expense.

As noted above, we determined normal value based on CV where there were no appropriate home market sales for comparison with the U.S. sale. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, selling, general and administrative (SG&A) expenses, 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 Ausimont in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Italy. For selling expenses, we used the weighted-average home market selling expenses. We included U.S. packing pursuant to section 773(e)(3) of the Act. Where appropriate, we made adjustments to CV, in accordance with section 773(a)(8) of the Act, for differences in the COS. Specifically, we made a COS adjustment by deducting home market credit. We also made a CEP-offset adjustment to NV for indirect selling expenses pursuant to section 773(a)(7)(B) of the Act as discussed below.

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales at the same level of trade in the comparison market as the level of trade of the U.S. sales. The NV level of trade is that of the starting-price sales in the comparison market. For CEP sales, such as those made by Ausimont in this review, the U.S. level of trade is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than that of the U.S. sales, 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. Finally, 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 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 implementing these principles in this review, we obtained information from Ausimont about the marketing stage involved in the reported U.S. sales and the home market sales, including a description of the selling activities performed by Ausimont for each channel of distribution. In identifying levels of trade for CEP and for home market sales, we considered the selling functions reflected in the CEP, after the deduction of expenses and profit under section 772(d) of the Act, and those reflected in the home market starting price before making any adjustments. We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

The record evidence before us in this review indicates that the home market and the CEP levels of trade have not changed from the 1995–96 review.[1] As in prior segments of the proceeding, we determined that for Ausimont there was one home market level of trade and one U.S. level of trade (*i.e.*, the CEP level of trade). In the home market, Ausimont sold directly to fabricators. These sales primarily entailed selling activities such as inventory maintenance, technical services, strategic and economic planning, market research, computer assistance and business system development assistance, personnel training, engineering services, and delivery services.

In determining the level of trade for the U.S. sales, we only considered the selling activities reflected in the price after making the appropriate adjustments under section 772(d) of the Act. (See, e.g. Certain Stainless Wire Rods From France: Final Results of Antidumping Administrative Review, 61 FR 47874, 47879–80 (Sept. 11, 1996). The CEP level of trade involves minimal selling functions (*e.g.*, invoicing). Based on a comparison of the home market level of trade and this CEP level of trade, we find the home market sales to be at a different level of trade from, and more remote from the factory than, the CEP sales.

As noted above, all of the Ausimont's home market sales were at a single level of trade which is different from the CEP level of trade. Section 773(a)(7)(A) of the Act directs us to make an adjustment for difference in levels of trade where such differences affect price comparability. However, we were unable to quantify such price differences from information on the record. Because we have determined that the home-market level of trade is more remote from the factory than the CEP level of trade but the data necessary to calculate a level-of-trade adjustment are unavailable, we made a CEP-offset adjustment to NV pursuant to section 773(a)(7)(B) of the Act.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign

[1] See 62 FR 48592, September 16, 1997 (final results) and 62 FR 26283, May 13, 1997 (preliminary results).

currencies into U.S. dollars, unless the daily rate involves a fluctuation. In accordance with our practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation exists, we substitute the benchmark for the daily rate. See Policy Bulletin 96–1 Currency Conversions, 61 FR 9434 (March 8, 1996).

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/exporter	Period	Margin (percent)
Ausimont S.p.A	08/01/96–07/31/97	40.90

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. The Department will issue the final results of the administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days of issuance of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Because the inability to link sales with specific entries prevents calculation of duties on an entry-by-entry basis, we have calculated an importer-specific ad valorem duty assessment rate for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate these duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between NV and CEP, by the total CEP value of the sales compared, and adjusting the result by the average difference between CEP and customs value for all merchandise examined during the POR.) Individual differences between CEP and NV may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping dumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of PTFE resin from Italy 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 Ausimont will be the rate established in the final results of administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less than fair value (LTFV) investigations or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, a previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 46.46 percent, the ''all others'' rate established in the LTFV investigation (50 FR 26019, June 24, 1985).

This notice also serves as a preliminary reminder to importers of their responsibility 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 the 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 in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 CFR 353.22(1996).

Dated: May 4, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–12318 Filed 5–8–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–009]

Industrial Nitrocellulose from France: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, Hercules Incorporated, the Department of Commerce is conducting an administrative review of the antidumping duty order on industrial nitrocellulose from France. The review covers Bergerac, N.C. (formerly identified by the name of its parent company, Societe Nationale des Poudres et Explosifs), and its affiliates for the period August 1, 1996, through July 31, 1997.

We have preliminarily determined that sales for Bergerac, N.C., have been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with each argument (1) a statement of the

issue and (2) a brief summary of the argument.

EFFECTIVE DATE: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Bill Zapf, Lyn Johnson, or David Dirstine, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (62 FR 27295).

Background

On August 10, 1983, the Department of Commerce (the Department) published in the **Federal Register** (48 FR 36303) the antidumping duty order on industrial nitrocellulose (INC) from France. On September 25, 1997, in accordance with 19 CFR 353.22(c), we published a notice of initiation of administrative review of this order for the period August 1, 1996, through July 31, 1997 (the POR) (62 FR 50292). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The product covered by this review is INC containing between 10.8 and 12.2 percent nitrogen. INC is a dry, white, amorphous synthetic chemical produced by the action of nitric acid on cellulose. The product comes in several viscosities and is used to form films in lacquers, coatings, furniture finishes and printing inks. Imports of this product are classified under the HTS subheadings 3912.20.00 and 3912.90.00. The HTS item numbers are provided for convenience and customs purposes. The written descriptions of the scope of this proceeding remain dispositive.

Export Price and Constructed Export Price

For the price to the United States, we used export price (EP) or constructed export price (CEP) as defined in sections 772(a) and (b) of the Act, as appropriate. We calculated EP and CEP based on the packed f.o.b., c.i.f., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for rebates. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the Statement of Administrative Action (SAA) (at 823–824) to the URAA, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, including commissions, direct selling expenses, and indirect selling expenses in the United States. For sales without payment dates, we calculated credit expenses using the date of the supplemental response. Finally, we made an adjustment to CEP for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers, we determined that the special rule for merchandise with value added after importation under section 772(e) of the Act applied. Section 772(e) of the Act provides that, where the subject merchandise is imported by a person affiliated with the producer or exporter and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated person. Based on this analysis, we determined that the estimated value added in the United States accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. Therefore, we determined that the value added is likely to exceed substantially the value of the subject merchandise. Also, we determined that there was a sufficient quantity of sales remaining to provide a reasonable basis for comparison and that the use of such sales is appropriate. Accordingly, for purposes of determining dumping margins for these sales, we have used the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons. No other adjustments to EP or CEP were claimed or allowed.

Normal Value

In calculating normal value (NV), we determined that the quantity of foreign like product sold by the respondent in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a)(1) of the Act because the quantity of sales in the home market was greater than five percent of the sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like products were first sold for consumption in the exporting country.

We used sales to affiliated customers only where we determined such sales were made at arm's-length prices, *i.e.*, at prices comparable to prices at which the firm sold identical merchandise to unrelated customers.

We calculated monthly, weighted-average NVs. Where possible, we compared U.S. sales to sales of identical merchandise in France. When identical merchandise was not sold during the relevant contemporaneous period, we compared U.S. sales to sales of the most similar foreign like product in accordance with sections 771(16)(B) and (C) of the Act.

(See the Matching Methodology section of our analysis memorandum to the file, dated April 17, 1998.)

Home-market prices were based on the packed, ex-factory or delivered prices to the affiliated and unaffiliated purchasers in the home market. We made deductions, where appropriate, for discounts, rebates, price adjustments and home market movement charges. Where applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56. For comparison to EP, we made COS adjustments by deducting home-market direct selling expenses from and adding U.S. direct selling expenses to NV. For comparisons to CEP, we made COS adjustments by deducting home-

market direct selling expenses from NV. We also made adjustments, where applicable, for home-market indirect selling expenses to offset U.S. commissions in CEP calculations.

Level of Trade

To the extent practicable, we determine NV for sales at the same level of trade as the U.S. sales (either EP or CEP). When there are no sales at the same level of trade, we compare U.S. sales to home-market sales at a different level of trade. The NV level of trade is that of the starting-price sales in the home market.

To determine whether home-market sales were at a different level of trade than U.S. sales for this review, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Based on the record evidence, we found that there were significant differences between the selling activities associated with the home-market level of trade and those associated with both EP and CEP. Therefore, we determined that EP and CEP sales are at a different level of trade than the home-market sales. Consequently, we could not match U.S. sales to sales at the same level of trade in the home market. Moreover, data necessary to determine a level-of-trade adjustment was not available. Therefore, when we matched EP sales to sales in the home market, we made no level-of-trade adjustment. However, because home-market sales were made at a more advanced stage of distribution than that of the CEP level, we made a CEP-offset adjustment when comparing CEP and home-market sales, in accordance with section 773(a)(7)(B) of the Act. For a more detailed description of our analysis, see the Level-of-Trade section of our analysis memorandum dated April 17, 1998.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period August 1, 1996, through July 31, 1997 to be as follows:

Company	Margin (percent)
Bergerac, N.C.	9.24

Any interested party may request a hearing within 30 days of the date of publication of this notice. A hearing, if requested, will be held 2 days after submission of rebuttal briefs at the main Commerce Department building.

Issues raised in the hearing will be limited to those raised in briefs and rebuttal briefs. Briefs from interested parties may be filed no later than 30 days after the date of publication. Rebuttal briefs, limited to the issues raised in case briefs, may be filed no later than five days after the deadline for filing case briefs.

Parties who submit 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.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Because the inability to link sales with specific entries prevents calculation of duties on an entry-by-entry basis, we have calculated importer-specific *ad valorem* duty-assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between statutory NV and statutory EP or CEP, by the total statutory EP or CEP value of the sales compared and adjusting the result by the average difference between EP or CEP and customs value for all merchandise examined during the POR.) Bergerac, N.C., could not identify the importer of record for certain sales to unaffiliated customers. Therefore, we have calculated a single, per-unit duty assessment rate by dividing the total dumping margins by the total quantity sold for these importers.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise 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 Bergerac, N.C., will be the rate established in the final results of this review (except that no deposit will be required if the firm has a zero or *de minimis* margin, *i.e.*, a margin 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, a prior review, or the original less-than-fair-value investigation (LTFV), 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) the cash-deposit rate for all other manufacturers or exporters will be 1.38. This is the ''all others'' rate from the LTFV investigation which we are reinstating in accordance with the decisions by the Court of International Trade in *Floral Trade Council* v. *United States*, Slip Op. 93–79 (May 25, 1993), and *Federal-Mogul Corporation and The Torrington Company* v. *United States*, Slip Op. 93–83 (May 25, 1993). These cash-deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary 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 double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: May 4, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–12315 Filed 5–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–602]

Industrial Phosphoric Acid From Belgium; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review of industrial phosphoric acid from Belgium.

SUMMARY: In response to requests from one respondent, petitioner and one

domestic producer, the Department of Commerce is conducting an administrative review of the antidumping duty order on industrial phosphoric acid from Belgium. The period of review is August 1, 1996 through July 31, 1997. This review covers imports of industrial phosphoric acid from one producer, Societe Chimique Prayon-Rupel S.A. (''Prayon'').

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 the Customs Service to assess antidumping duties based on the difference between the export price and normal value.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Blankenbaker or Thomas Futtner, AD/CVD Enforcement Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0989, and 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR Part 351, 62 FR 27296 (May 19, 1997).

Background

On August 20, 1987, the Department published in the **Federal Register** (52 FR 31439) the antidumping duty order on industrial phosphoric acid (''IPA'') from Belgium. On August 4, 1997, the Department published in the **Federal Register** (62 FR 41925) a notice of opportunity to request an administrative review of this antidumping duty order. On August 29, 1997, in accordance with 19 CFR 351.213(b), Prayon, the petitioner FMC Corporation (''FMC''), and Albright & Wilson Americas Inc. (''Wilson''), a domestic producer of the subject merchandise, requested that the Department conduct an administrative review of Prayon's exports of subject merchandise to the United States. We published the notice of initiation of this review on September 25, 1997 (62 FR 50292).

Scope of the Review

The products covered by this review include shipments of IPA from Belgium. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 2809.2000 and 4163.0000. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Product Comparisons

We calculated monthly, weighted-average, normal values (NVs). The industrial phosphoric acid exported by Prayon to the United States is PRAYPHOS P5, a refined industrial phosphoric acid, and is the identical merchandise sold by Prayon in its home market in Belgium. Therefore, we have compared U.S. sales to contemporaneous sales of identical merchandise in Belgium.

Export Price

Prayon sells to end-users in the United States through its affiliated sales agent. For these sales, we used export price (EP). In accordance with sections 772 (a) and (c) of the Act, we calculated and EP because Prayon sold the merchandise directly to the first unaffiliated purchaser in the United States prior to importation. Additional factors used to determine EP include: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. affiliate was limited to that of a processor of sales-related documentation and a communications link with the unrelated buyer. Where the facts indicate that the activities of the U.S. affiliate were ancillary to the sale (*e.g.*, arranging transportation or customs clearance, invoicing), we treat the transactions as EP sales. *See e.g.*, Certain Corrosion Resistant Steel Flat Products From Canada: Final Results of Antidumping Duty Administrative Review, 63 FR 12725, 12738 (March 16, 1998). The record in this case indicates that Prayon has correctly classified its U.S. sales as EP sales. Prayon's affiliated sales agent in the United States, Quadra Corporation (USA) (''Quadra''), served as a processor of sales-related documentation.

EP sales were based on the delivered price to unaffiliated purchasers in, or for exportation to, the United States. As appropriate, we made deductions for discounts and rebates, including early payment discounts. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. customs brokerage fees, merchandise processing fees, and U.S. inland freight expenses.

Normal Value

We compared the aggregate quantity of home market and U.S. sales and determined that the quantity of the company's sales in its home market was more than five percent of the quantity of its sales to the U.S. market. Consequently, in accordance with section 773(a)(1)(B) of the Act, we based NV on home market sales.

We also excluded from our NV analysis sales to affiliated home market customers where the weighted-average sales prices to the affiliated parties were less than 99.5 percent of the weighted-average sales prices to unaffiliated parties. See *Usinor Sacilor* v. *United States*, 872 F. Supp. 1000, 1004 (CIT 1994).

We also made adjustments, consistent with section 773(a)(6)(B) of the Act, for inland freight. 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.

In calculating credit expense, Prayon reported the discount on accounts receivable sold to its affiliated coordination center. Since the reported credit expense is greater than the credit expense calculated using the standard credit calculation (*i.e.*, (date of payment less date of shipment/ 365)* monthly home market short-term interest rates* gross price), we have determined that the discount transaction between Prayon and its affiliated coordination center is not conducted at arm's-length. Accordingly, we have used the standard credit calculation when calculating the amount of credit to deduct from normal value. We used the monthly home market short-term borrowing rates provided by Prayon in calculating inventory carrying costs as the basis for the monthly home market short-term interest rates used in the credit calculation.

No other adjustments were claimed or allowed.

Level of Trade

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 (LOT) as the export price (EP) or the (constructed export price (CEP) transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value, that of the sales from which we derive selling, general and administrative expenses 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.

To determine whether NV sales are at a different LOT than EP or 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 sale 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 a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, 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 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).

Prayon did not claim a LOT adjustment; however, we requested information concerning Prayon's distribution system, including selling functions, to determine whether such an adjustment was necessary. Prayon reported that all sales during the period of review (POR), in both the comparison market (the home market in this case) and the United States, were to end-users and distributors. In the U.S. market, Prayon sells to end-users through its affiliated sales agent. The subject merchandise is shipped from tankage in a storage facility in Canada directly to the customer. In the home market, Prayon sells through several channels of distribution. The first channel includes direct sales made to end-users. For the other channels, Prayon sells to either end-users or distributors through its affiliated sales agent. For all home market customers, Prayon ships the subject merchandise via independent carriers directly to the customer from its storage facilities at the plant. We have examined information provided by Prayon concerning these sales and determined that the selling functions are the same in the home market and U.S. market. Prayon negotiates all final prices and quantities, and bears the cost of storage and handling, surveys and delivery to customer. Prayon does not maintain inventories for its customers, provide after-sales service, or offer advertising or other sales support activities to its customers in either market. Therefore, we preliminarily determine that sales in the home market and sales in the United States are at the same LOT and that no adjustment is warranted.

Commissions

The Department operates under the assumption that commission payments to affiliated parties (in either the United States or home market) are not at arm's length. The Court of International Trade has held that this is a reasonable assumption. See Outokumpu Copper Rolled Products AB v. *United States*, 850 F. Supp. 16,22 (1994).

Accordingly, the Department has established guidelines to determine whether affiliated party commissions are paid on an arm's-length basis such that an adjustment for such commissions can be made. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan, 61 FR 57,629 (November 7, 1996). First, we compare the commissions paid to affiliated and unaffiliated sales agents in the same market. If there are no commissions paid to unaffiliated parties, we then compare the commissions earned by the affiliated selling agent on sales of merchandise produced by the respondent to commissions earned on sales of merchandise produced by unaffiliated sellers or manufacturers. If there is no benchmark which can be used to determine whether the affiliated party commission is an arm's-length value (*i.e.*, the producer does not use an unaffiliated selling agent and the affiliated selling agent does not sell subject merchandise for an unaffiliated producer), the Department assumes that the affiliated party commissions are not paid on an arm's-length basis.

In this case, Prayon used an affiliated sales agent in the home market and a different affiliated sales agent in the United States. Prayon did not use unaffiliated agents during the POR and did not place on the record information that its affiliated home market and U.S. selling agents acted as agents for unaffiliated producers of the subject merchandise. As a result, we were unable to establish a benchmark for use in determining whether commission payments Prayon made to affiliated selling agents were at arm's length. Accordingly, we preliminarily determine not to make a circumstance of sale adjustment for commissions in either market.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on rates certified by the Federal Reserve Bank in effect on the dates of U.S. sales. See Change in Policy Regarding Currency Conversions, 61 FR 9434 (March 8, 1996).

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margin exists for the period August 1, 1996 through July 31, 1997:

Manufacturer/exporter	Margin (percent)
Prayon	3.96

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Interested parties may also request a hearing within ten days of publication. If requested, a hearing will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first work day thereafter. Interested parties may submit case briefs not later than 30 days after 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 37 days after the date of publication of this notice. The Department will issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such briefs, within 120 days from the publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with the methodology in 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, October 27, 1997), we calculated exporter/importer-specific assessment

values by dividing the total dumping duties due for each importer by the number of tons used to determine the duties due. We will direct Customs to assess the resulting per-ton dollar amount against each ton of the merchandise entered by these importers during the review period.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of industrial phosphoric acid from Belgium 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 company will be the rate established in the final results of this administrative review (except no cash deposit will be required where the 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 (LTFV) investigation or a previous review, the cash deposit 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, a 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 or the original investigation, the cash deposit rate will be 14.67 percent, the ''all others'' rate established in the LTFV investigation.

This notice serves as a preliminary reminder to importers of their responsibility 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 in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 4, 1998.

Robert S. LaRussa,

Assistant Secretary, Import Administration.

[FR Doc. 98–12317 Filed 5–8–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 94–2A007.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Florida Citrus Exports, L.C. (''FCE'') on February 23, 1995. Notice of issuance of the original Certificate was published in the **Federal Register** on March 8, 1995 (60 FR 12735).

DATE: Effective February 4, 1998.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1998).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 94–2A007, was originally issued to Florida Citrus Exports, L.C. on February 23, 1995 (60 FR 12735, March 8, 1995) and previously amended on January 16, 1996 (61 FR 4255, February 5, 1996).

FCE's Export Trade Certificate of Review has been amended to:

1. Add the following entities as new ''Members'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 C.F.R. 325.2(1)): Dole Citrus, Vero Beach, FL (controlling entity: Dole Food Company, Inc., Westlake Village, CA); Hogan & Sons, Inc., Vero Beach, FL; and The Packers of Indian River, Ltd., Ft. Pierce, FL.

2. Delete Ocean Spray Cranberries Inc., Vero Beach, FL as a ''Member'' of the Certificate.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: May 5, 1998.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 98–12377 Filed 5–8–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Evaluation of Coastal Zone Management Program and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Pennsylvania, Delaware and Alaska Coastal Zone Management Programs.

These evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of states with respect to coastal program implementation. Evaluation of Coastal Zone Management Programs requires findings concerning the extent to which a state has met the national objectives enumerated in the CZMA, adhered to its coastal program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits.

The Delaware Coastal Management Program site visit will be from June 1–5, 1998. One public meeting will be held during the week. This meeting is scheduled for Tuesday, June 2, 1998, at 7:00 P.M., at the Department of Natural Resources and Environmental Control Auditorium, Richardson and Robins Building, 89 Kings Highway, Dover, Delaware.

The Pennsylvania Coastal Management Program site visit will be

from June 8–12, 1998. One public meeting will be held during the week. This public meeting will be on Tuesday, June 9 at 7:00 P.M. in the Admiral Room, Raymond M. Blasco M.D. Memorial Library, 160 East Front Street, Erie, Pennsylvania 16507.

The Alaska Coastal Management Program site visit will be from June 9–18, 1998. One public meeting will be held during the week. The public meeting will be on Thursday, June 11, 1998, at 7:00 P.M. at the Anchorage Legislative Information Office, 716 W. 4th Avenue, Suite 200. Teleconference connections will be provided between Anchorage and the coastal communities of Ketchikan, Sitka, Juneau, Cordova, Valdez, Kenai, Kodiak, Dillingham, Bethel, Nome, Kotzebue, and Barrow.

Each State will issue notice of the public meeting in a local newspaper at least 45 days prior to the public meeting, and will issue other timely notices as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Vickie A. Allin, Chief, Policy Coordination Division (PCD), Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, (301) 713–3090, ext. 126.

Federal Domestic Assistance Catalog 11,419 Coastal Zone, Management Program Administration.

Dated: May 1, 1998.

Nancy Foster,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 98–12424 Filed 5–8–98; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050598B]

Marine Mammals

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Mr. Fred Sharpe, Behavioral Ecology Research Group, Simon Fraser University, Burnaby, British Columbia, V5A 1S6, Canada, has applied in due form for a permit to take North Pacific humpback whales (*Megaptera novaeangliae*) and killer whales (*Orcinus orca*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before June 10, 1998.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99801 (907/586–7221).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Ms. Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

The purpose of the proposed research is to: examine the behavior, social structure and foraging ecology of North Pacific humpback whales through passive observation (photo-identification, hydrophone recordings, video recording), side-scan sonar, playbacks of humpback whale sounds, and suction cup tagging with ''critter cam'' dive tags; and obtain opportunistic photo-identification images and recordings of killer whales. Up to 390 humpback whales may be harassed annually during these activities (only 18 of this number may be suction cup tagged annually). Up to 300 killer whales may be harassed annually during photo-identification studies. Research activities will be conducted over a five-year period in southeast Alaska waters.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 6, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–12416 Filed 5–8–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Registration for Scientific and Technical Information Services; DD Form 1540; OMB Number 0704–0264.

Type of Request: Extension.

Number of Respondents: 500.

Responses Per Respondent: 1.

Annual Responses: 500.

Average Burden Per Response: 25 minutes.

Annual Burden Hours: 208.

Needs and Uses: The Department of Defense Scientific and Technical Information Program (STIP) requires the exchange of scientific and technical information within and among Federal Government agencies and their contractors. The data that the Defense Technical Information Center (DTIC) handles is controlled, either because of distribution limitations or security classification. For this reason, all potential users are required to register for service. The registration procedure is mandated by DoD Directive 5200.21, Dissemination of DoD Technical Information. Federal Government agencies and their contractors are required to complete the DoD Form 1540, Registration for Scientific and Technical Information Services. The contractor community completes a separate DD Form 1540 for each contract or grant and registration is valid until the contract expires. All collected information is verified by DTIC's Registration Branch.

Affected Public: Business or other for-profit; not-for-profit institutions; State, Local, or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 5, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–12319 Filed 5–8–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Request for Approval of Foreign Government Employment of Air Force Members; OMB Number 0701–0134.

Type of Request: Reinstatement.

Number of Respondents: 148.

Responses Per Respondent: 1.

Annual Responses: 148.

Average Burden Per Response: 1 hour.

Annual Burden Hours: 148.

Needs and Uses: The information collection requirement is to obtain the information needed by the Secretary of the Air Force and the Secretary of State on which to base a decision to approve or disapprove a request to work for a foreign government. This approval is specified by Title 37, United States Code Section 908. This statute delegates such approval authority of Congress to the respective service secretaries and to the Secretary of State. Respondents are Air Force retired members who have gained jobs with a foreign government and who must obtain approval of the Secretary of the Air Force and the Secretary of State to do so. Information, in the form of a letter, includes a detailed description of duty, name of employer, Social Security Number, and statements specifying whether or not the employee will be compensated; declaring if employee will be required or plans to obtain foreign citizenship; declaring that the member will not be required to execute an oath of allegiance of the foreign government; verifying that the member understands that retired pay equivalent to the amount received from the foreign government may be withheld if he or she accepts employment with a foreign government before receiving approval. Reserve members only must include a request to be reassigned to Inactive Status List Reserve Section (Reserve Section Code RB). After verifying the status of the individual, the letter is forwarded to the Air Force Review Board for processing. If the signed letter is not included in the file, individuals reviewing the file cannot furnish the necessary information to the Secretary of the Air Force and the Secretary of State on which a decision can be made. Requested information is necessary to maintain the integrity of the Request for Approval of Foreign Government Employment Program.

Affected Public: Individuals or households; business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 5, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–12320 Filed 5–8–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial

AGENCY: Joint Service Committee on Military Justice (JSC).

ACTION: Notice of proposed amendments.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, (1995 ed.) [MCM]. The proposed changes are the 1998 draft annual review required by the MCM and DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 8, 1996. The proposed changes concern the preamble, the rules of procedure and evidence applicable in trials by courts-martial and the punitive articles describing offenses. The proposed changes to one offense are contingent upon the passage of legislation amending that offense. More specifically, the proposed changes would: (1) Clarify the method of identifying amendments to and editions of the MCM should more than one executive order be signed in a given year; (2) set forth the rules for issuing protective orders preventing the parties and witnesses from making out of court statements when there is a substantial likelihood of material prejudice to a fair trial; (3) clarify which ''convictions'' are admissible on sentencing; (4) incorporate numerous references into the existing rules, discussion, and punitive articles to confinement with or

without eligibility for parole (authorized punishments, other penalties for capital cases, voting procedures, number of votes required for reconsideration of sentence, maximum punishments, mandatory minimums, proposals of sentences, and action on the sentence); (5) update all of the sample specifications by removing the reference to the 20th century from the date of the offense; (6) reject the automatic change to M.R.E. 407 based on the December 1, 1997 change to F.R.E. 407; (7) delete M.R.E. 415 (Evidence of Similar Acts in Civil Cases concerning Sexual Assault or Child Molestation); and (8) implement changes to paragraph 35 of the punitive articles (Article 111 Drunken or reckless operation of a vehicle, aircraft, or vessel) contingent upon the passage of legislation amending Article 111 of the UCMJ to provide a blood/alcohol blood/breath concentration of 0.08 or more as a per se standard of illegal intoxication.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, ''Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon,'' May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 8, 1996. This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

ADDRESSES: Comments on the proposed changes should be sent to LtCol Thomas C. Jaster, U.S. Air Force, Air Force Legal Services Agency, 112 Luke Avenue, Room 343, Bolling Air Force Base, Washington, DC 20332–8000.

DATES: Comments on the proposed changes must be received no later than July 27, 1998, for consideration by the JSC.

FOR FURTHER INFORMATION CONTACT: LtCol Thomas C. Jaster, U.S. Air Force, Air Force Legal Services Agency, 112 Luke Avenue, Room 343, Bolling Air Force Base, Washington, DC 20332–8000, (202) 767–1539; FAX (202) 404–8755.

The full text of the affected sections follows:

The last subparagraph of paragraph 4 of the Preamble is amended to read as follows:

''The Manual shall be identified as ''Manual for Courts-Martial, United States (XXXX edition).'' Any amendments to the Manual made by Executive Order shall be identified as ''XXXX Amendments to the Manual for Courts-Martial, United States''; ''XXXX'' being the year the Executive order was signed. If two or more Executive Orders amending the Manual are signed during the same year, then the second and any subsequent Executive Orders will be identified by placing a small case letter of the alphabet after the last digit of the year beginning with ''a'' for the second Executive Order and continuing in alphabetic order for subsequent Executive Orders.''

The Discussion following the Preamble is amended by adding the following at the end of the Discussion:

''The 1999 amendment to paragraph 4 of the Preamble is intended to address the possibility of more frequent amendments to the Manual and the arrival of the 21st century. In the event that multiple editions of the Manual are published in the same year, the numbering and lettering of the edition should match that of the most recent Executive Order included in the publication.''

R.C.M. 806 is amended by adding the following new subparagraph (d) as follows:

''(d) Protective orders. The military judge may, upon request of any party or *sua sponte,* issue an appropriate protective order, in writing, to prevent parties and witnesses from making extrajudicial statements that present a substantial likelihood of material prejudice to a fair trial by impartial members. For purposes of this subsection, ''military judge'' does not include the president of a special court-martial without a military judge.''

The following Discussion is added after R.C.M. 806(d):

''A protective order may proscribe extrajudicial statements by counsel, parties, and witnesses that might divulge prejudicial matter not of public record in the case. Other appropriate matters may also be addressed by such a protective order. Before issuing a protective order, the military judge must consider whether other available remedies would effectively mitigate the adverse effects that any publicity might create, and consider such an order's likely effectiveness in ensuring an impartial court-martial panel. A military judge should not issue a protective order without first providing notice to the parties and an opportunity to be heard. The military judge must state on the record the reasons for issuing the protective order. If the reasons for issuing the order change, the military judge may reconsider the continued necessity for a protective order.''

The Analysis accompanying R.C.M. 806(d) is created as follows:

''*1999 Amendment:* Section (d) was added to codify the military judge's power to issue orders limiting trial participants' extrajudicial statements in appropriate cases. *See United States* v. *Garwood,* 16 M.J. 863, 868 (N.M.C.M.R. 1983) (finding military judge was justified in issuing restrictive order prohibiting extrajudicial statements by trial participants), aff'd on other grounds, 20 M.J. 148 (C.M.A. 1985); *United States* v. *Clark,* 31 M.J. 721, 724 (A.F.C.M.R. 1990) (suggesting, but not deciding, that the military judge properly limited trial participants' extrajudicial statements).

The public has a legitimate interest in the conduct of military justice proceedings. Informing the public about the operations of the criminal justice system is one of the ''core purposes'' of the First Amendment. In the appropriate case where the military judge is considering issuing a protective order, absent exigent circumstances, the military judge must conduct a hearing prior to issuing such an order. Prior to such a hearing the parties will have been provided notice. At the hearing, all parties will be provided an opportunity to be heard. The opportunity to be heard may be extended to representatives of the media in the appropriate case.

Section (d) is based on the first Recommendation Relating to the Conduct of Judicial Proceedings in Criminal Cases, included in the Revised Report of the Judicial Conference Committee on the Operation of the Jury System on the ''Free Press-Fair Trial'' Issue, 87 F.R.D. 519, 529 (1980), which was approved by the Judicial Conference of the United States on September 25, 1980. The requirement that the protective order be issued in writing is based on Rule for Courts-Martial 405(g)(6). Section (d) adopts a ''substantial likelihood of material prejudice'' standard in place of the Judicial Conference recommendation's ''likely to interfere'' standard. The Judicial Conference's recommendation was issued before the Supreme Court's decision in *Gentile* v. *State Bar of Nev.,* 501 U.S. 1030 (1991). *Gentile,* which dealt with a Rule of Professional Conduct governing extrajudicial statements, indicates that a lawyer may be disciplined for making statements that present a substantial likelihood of material prejudice to an accused's right

to a fair trial. While the use of protective orders is distinguishable from limitations imposed by a bar's ethics rule, the *Gentile* decision expressly recognized that the ''speech of lawyers representing clients in pending cases may be regulated under a less demanding standard than that established for regulation of the press in *Nebraska Press Ass'n* v. *Stuart,* 427 U.S. 539 (1976), and the cases which preceded it.'' 501 U.S. at 1074. The Court concluded that ''the 'substantial likelihood of material prejudice' standard constitutes a constitutionally permissible balance between the First Amendment rights of attorneys in pending cases and the State's interest in fair trials.'' *Id.* at 1075. *Gentile* also supports the constitutionality of restricting communications of non-lawyer participants in a court case. *Id.* at 1072–73 (citing *Seattle Times Co.* v. *Rhinehart,* 467 U.S. 20 (1984)). Accordingly, a protective order issued under the ''substantial likelihood of material prejudice'' standard is constitutionally permissible.

The first sentence of the discussion is based on the committee comment to the Recommendations Relating to the Conduct of Judicial Proceedings in Criminal Cases. 87 F.R.D. at 530. For a definition of ''party,'' see R.C.M. 103(16). The second sentence of the discussion is based on the first of the Judicial Conference's recommendations concerning special orders. *Id.* at 529. The third sentence of the discussion is based on the second of the Judicial Conference's recommendations, *id.* at 532, and on *United States* v. *Salameh,* 992 F.2d 445, 447 (2d Cir. 1993) (per curiam), and *In re Application of Dow Jones & Co.,* 842 F.2d 603, 611, 612 n.1 (2d Cir.), *cert. denied,* 488 U.S. 946 (1988). The fourth sentence is based on *Salameh,* 992 F.2d at 447. The fifth sentence is based on *In re Halkin,* 598 F.2d 176, 196–97 (D.C. Cir. 1979), and Rule for Courts-Martial 905(d).''

R.C.M. 1001(b)(3)(A) is amended to read as follows:

''(A) In general. The trial counsel may introduce evidence of military or civilian convictions of the accused. For purposes of this rule, there is a ''conviction'' in a court-martial case when a sentence has been adjudged. In a civilian case, a ''conviction'' includes any disposition following an initial judicial determination or assumption of guilt, such as when guilt has been established by guilty plea, trial, or plea of *nolo contendere,* regardless of the subsequent disposition, sentencing procedure, or final judgment. However, a ''civilian conviction'' does not include a diversion from the judicial process without a finding or admission of guilt; expunged convictions; juvenile adjudications; minor traffic violations; foreign convictions; tribal court convictions; or convictions reversed, vacated, invalidated or pardoned because of errors of law or because of subsequently discovered evidence exonerating the accused.''

The Discussion following R.C.M. 1001(b)(3)(A) is amended by adding the following at the end of the Discussion:

''Whether a civilian conviction is admissible is left to the discretion of the military judge. As stated in the rule, a civilian ''conviction'' includes any disposition following an initial judicial determination or assumption of guilt regardless of the sentencing procedure and the final judgment following probation or other sentence. Therefore, convictions may be admissible regardless of whether a court ultimately suspended judgment upon discharge of the accused following probation, permitted withdrawal of the guilty plea, or applied some other form of alternative sentencing. Additionally the term ''conviction'' need not be taken to mean a final judgment of conviction and sentence.''

The Analysis accompanying R.C.M. 1001(b)(3)(A) is amended by inserting the following at the end thereof:

''1999 Amendment: As previously written, R.C.M. 1001(b)(3)(A) offered little guidance about what it meant by ''civilian convictions.'' *See, e.g., United States* v. *White,* 47 M.J. 139 (CAAF 1997); *United States* v. *Barnes,* 33 M.J. 468 (CMA 1992); *United States* v. *Slovacek,* 24 M.J. 140 (CMA), *cert. denied,* 484 U.S. 855, 108 S.Ct. 161, 98 L.Ed.2d 115 (1987). The present rule addresses this void and intends to give the sentencing authority as much information as the military judge determines is relevant in order to craft an appropriate sentence for the accused.

Unlike most civilian courts, this rule does not allow admission of more extensive criminal history information, such as arrests. Use of such additional information is not appropriate in the military setting where court-martial members, not a military judge, often decide the sentence. Such information risks unnecessarily confusing the members.

The present rule clarifies the term ''conviction'' in light of the complex and varying ways civilian jurisdictions treat the subject. The military judge may admit relevant evidence of civilian convictions without necessarily being bound by the action, procedure, or nomenclature of civilian jurisdictions. Examples of judicial determinations admissible as convictions under this rule include accepted pleas of *nolo contendere,* pleas accepted under *North Carolina* v. *Alford,* 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970), or deferred sentences. If relevant, evidence of forfeiture of bail that results in a judicial determination of guilt is also admissible, as recognized in *United States* v. *Eady,* 35 M.J. 15 (CMA 1992). While no time limit is placed upon the admissibility of prior convictions, the military judge should conduct a balancing test to determine whether convictions older that ten years should be admitted or excluded on the basis of relevance and fundamental fairness.

The two central factors in this rule are (1) judicial determination of guilt and (2) assumption of guilt. So long as either factor is present, the ''conviction'' is admissible, if relevant. Consequently, this rule departs from the holding in *United States* v. *Hughes,* 25 M.J. 119 (CMA 1988), where the accused pleaded guilty in a Texas court, but the judge did not enter a finding of guilty under state law allowing ''deferred adjudications.'' Under the present rule, the ''conviction'' would be admissible because the accused pleaded guilty in a judicial proceeding, notwithstanding the fact that the state judge did not enter a finding of guilty.

In contrast, ''deferred prosecutions,'' where there is neither an admission of guilt in a judicial proceeding nor a finding of guilty, would be excluded. The rule also excludes expunged convictions, juvenile adjudications, minor traffic violations, foreign convictions, and tribal court convictions as matters inappropriate for or unnecessarily confusing to courts-martial members. What constitutes a ''minor traffic violation'' within the meaning of this rule is to be decided with reference only to principles of federal law, and not to the laws of individual states.

Additionally, because of the lack of clarity in the previous rule, courts sometimes turned to M.R.E. 609 for guidance. *See, e.g., United States* v. *Slovacek,* 24 M.J. 140 (CMA), *cert. denied,* 484 U.S. 855, 108 S.Ct. 161, 98 L.Ed.2d 115 (1987). We note that because the policies behind M.R.E. 609 and the present rule differ greatly, a conviction that may not be appropriate for impeachment purposes under M.R.E. 609, may nevertheless be admissible under the present rule.

The Federal Sentencing Guidelines were consulted when drafting the present rule. Although informed by those guidelines, the present rule departs from them in many respects because of the wide differences between

the courts-martial process and practice in federal district court.''

R.C.M. 1003(b)(8) is amended to read as follows:

''(8) Confinement. The place of confinement shall not be designated by the court-martial. When confinement for life is authorized, it may be with or without eligibility for parole. A court-martial shall not adjudge a sentence to solitary confinement or to confinement without hard labor;''

The Discussion following R.C.M. 1003(b)(8) is amended by adding the following at the end of the Discussion:

''See Article 56a.''

The Analysis accompanying R.C.M. 1003(b)(8) is amended by inserting the following at the end thereof:

''1999 Amendment: This change resulted from the enactment of Article 56a, UCMJ, in section 581 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105–85, 111 Stat. 1629, 1759 (1997).''

R.C.M. 1004(e) is amended to read as follows:

''(e) Other penalties. Except for a violation of Article 106, when death is an authorized punishment for an offense, all other punishments authorized under R.C.M. 1003 are also authorized for that offense, including confinement for life with or without eligibility for parole, and may be adjudged in lieu of the death penalty, subject to limitations specifically prescribed in the Manual. A sentence of death includes a dishonorable discharge or dismissal as appropriate. Confinement is a necessary incident of a sentence of death, but not part of it.''

The Analysis accompanying R.C.M. 1004(e) is amended by inserting the following at the end thereof:

''1999 Amendment: This change resulted from the enactment of Article 56a, UCMJ, in section 581 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105–85, 111 Stat. 1629, 1759 (1997).''

The Discussion following R.C.M. 1006(c) is amended to read as follows:

''A proposal should state completely each kind and, when appropriate, amount of authorized punishment proposed by that member. For example, a proposal of confinement for life would state whether it is with or without eligibility for parole. See R.C.M. 1003(b).''

The Analysis accompanying R.C.M. 1006(c) is amended by inserting the following at the end thereof:

''1999 Amendment: This change to the discussion resulted from the enactment of Article 56a, UCMJ, in section 581 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105–85, 111 Stat. 1629, 1759 (1997).''

R.C.M. 1006(d)(4)(B) is amended to read as follows:

''(B) Confinement for life with or without eligibility for parole or more than 10 years. A sentence which includes confinement for life with or without eligibility for parole or more than 10 years may be adjudged only if at least three-fourths of the members present vote for that sentence.''

The Analysis accompanying R.C.M. 1006(d)(4)(B) is amended by inserting the following at the end thereof:

''1999 Amendment: This change resulted from the enactment of Article 56a, UCMJ, in section 581 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105–85, 111 Stat. 1629, 1759 (1997).''

R.C.M. 1009(e)(3)(B)(ii) is amended to read as follows:

''(ii) In the case of a sentence which includes confinement for life, with or without eligibility for parole, or more than 10 years, more than one-fourth of the members vote to reconsider; or''

The Analysis accompanying R.C.M. 1009(e)(3)(B)(ii) is amended by inserting the following at the end thereof:

''1999 Amendment: This change resulted from the enactment of Article 56a, UCMJ, in section 581 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105–85, 111 Stat. 1629, 1759 (1997).''

The second paragraph of the Discussion following R.C.M. 1107(d) is amended to read as follows:

''When mitigating forfeitures, the duration and amounts of forfeiture may be changed as long as the total amount forfeited is not increased and neither the amount nor duration of the forfeitures exceeds the jurisdiction of the court-martial. When mitigating confinement or hard labor without confinement, the convening authority should use the equivalencies at R.C.M. 1003(b)(6) and (7), as appropriate. One form of punishment may be changed to a less severe punishment of a different nature, as long as the changed punishment is one that the court-martial could have adjudged. For example, a sentence of death may be changed to confinement for life with or without eligibility for parole and a sentence of confinement for life without eligibility for parole may be changed to confinement for life with eligibility for parole or to confinement for a term of years. Also a bad-conduct discharge adjudged by a special court-martial may be changed to confinement for 6 months (but not vice versa). A pretrial agreement may also affect what punishments may be changed by the convening authority.''

The Analysis accompanying R.C.M. 1107(d) is amended by inserting the following at the end thereof:

''1999 Amendment: This change to the discussion resulted from the enactment of Article 56a, UCMJ, in section 581 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105–85, 111 Stat. 1629, 1759 (1997).''

M.R.E. 407 retains its wording as it existed on December 1, 1997.

The Analysis accompanying M.R.E. 407 is amended as follows:

''1999 Amendment: The amendment to Federal Rule of Evidence 407, effective December 1, 1997 does not apply. The Committee agrees with the Federal Advisory Committee that the rule applies only to changes made after the event that gave rise to the specification and that measures taken prior to the event do not fall within the exclusionary scope of Rule 407. However, the Committee believes the rule's current language is more appropriate for a criminal rule of evidence.''

M.R.E. 415 is deleted by amending the Rule to read as follows:

''Rule 415. Evidence of similar acts in civil cases concerning sexual assault or child molestation (Does not apply).''

The Analysis accompanying M.R.E. 415 is created as follows:

''1999 Amendment: The Rule was deleted because of its inapplicability to courts-martial.''

All ''Sample specification(s)'' subparagraphs in the Punitive Articles (Part IV, MCM) are amended as follows:

''_____ 19 _____'' is deleted and replaced by ''_____ _____''

Paragraph 43a(4) is amended to read as follows:

''(4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, robbery, or aggravated arson; is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life with or without eligibility for parole as a court-martial may direct.''

Paragraph 43e(1), is amended to read as follows:

''(1) Article 118(1) or (4)—death. Mandatory minimum—imprisonment for life with eligibility for parole.''

Paragraph 45e(3) is amended to read as follows:

''(3) Carnal knowledge with a child under the age of 12 years at the time of the offense. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life without eligibility for parole.''

Paragraph 51e(1) is amended to read as follows:

''(1) By force and without consent. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life without eligibility for parole.''

Paragraph 51e(3) is amended to read as follows:

''(3) With a child under the age of 12 years at the time of the offense. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life without eligibility for parole.''

Paragraph 92e is amended to read as follows:

''e. Maximum punishment. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life without eligibility for parole.''

Paragraph 35a(2) is amended (contingent on the prior passage of implementing legislation) to read as follows:

''(2) operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more of alcohol per 210 liters of breath, as shown by chemical analysis, shall be punished as a court-martial may direct.''

Paragraph 35b(2)(c) is amended (contingent on the prior passage of implementing legislation) to read as follows:

''(c) the alcohol concentration in the accused's blood or breath was 0.08 grams of alcohol per 100 milliliters of blood or 0.08 grams of alcohol per 210 liters of breath, or greater, as shown by chemical analysis.

[**Note:** If injury resulted add the following element]''

Paragraph 35f is amended (contingent on the prior passage of implementing legislation) to read as follows:

''f. Sample specification.

In that **XXXX** (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ _____, (in the motor pool area) (near the Officer's Club) (at the intersection of _____ and _____) (while in the Gulf of Mexico) (while in flight over North America) physically control [a vehicle, to wit: (a truck) (a passenger car) (_____)] [an aircraft, to wit: (an AH–64 helicopter) (an F–18 fighter) (a KC–135 tanker) (_____)] [a vessel, to wit: (the aircraft carrier USS _____) (the Coast Guard Cutter _____) (_____)], [while drunk] [while impaired by _____] [while the alcohol concentration in his/her (blood was 0.08 grams of alcohol per 100 milliliters of blood or greater) (breath was 0.08 grams of alcohol per 210 liters of breath or greater) as shown by chemical analysis] [in a (reckless) (wanton) manner by (attempting to pass another vehicle on a sharp curve) (by ordering that the aircraft be flown below the authorized altitude)] and did thereby cause said (vehicle) (aircraft) (vessel) to (strike and) (injure _____)].''

The following paragraph is added (contingent on the prior passage of implementing legislation) at the end of the existing Analysis to Article 111, Appendix 23, MCM:

''1999a Amendment: Subparagraphs a, b, and f were amended to implement the amendment to 10 U.S.C. 911 (Article 111, UCMJ) contained in section XXX of the National Defense Authorization Act of Fiscal Year 199X, Public Law XXX, XXX Stat. XXX, XXX (199X). The amendment provides a blood/alcohol blood/breath concentration of 0.08 or more as a per se standard of illegal intoxication. The change will not, however, preclude prosecution where no chemical test is taken or even where the results of the chemical tests are below the statutory limits, where other evidence of intoxication is available.''

Dated: May 5, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–12337 Filed 5–8–98; 8:45 am]

BILLING CODE 5000–04–U

DEPARTMENT OF DEFENSE

Office of Secretary

Meeting of the Defense Environment Response Task Force (DERTF)

AGENCY: Office of the Deputy Under Secretary of Defense (Environmental Security).

ACTION: Notice of business meeting and hearing.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a business meeting and hearing of the Defense Environmental Response Task Force (DERTF). The DERTF is charged with studying and providing findings and recommendations on environmental response actions at military installations being closed or realigned. This meeting is a follow-up to the January 27–29, 1998, meeting. The DERTF will discuss issues related to BRAC funding and the progress of BRAC cleanup, environmental actions at BRAC installations beyond remedy in place, institutional controls, information management, other matters related to cleanup at closing military installations, and the Task Force's FY98 Report to Congress. The DERTF will also be briefed on the cleanup program at Glenview Naval Air Station, Illinois. The business meeting and hearing will be open to the public. Public witnesses desiring to speak before the DERTF should contact Shah Choudhury, Executive Secretary, and prepare a written statement that can be summarized orally before the DERTF at the time to be fixed for public witnesses. Written statements must be received by the close of business June 22, 1998, at the Office of the Under Secretary of Defense (Environmental Security).

DATES: July 21, 1998, 9:30 a.m. to 8:30 p.m.; July 22, 1998, 8:00 a.m. to 8:00 p.m.; July 23, 1998, 9:00 a.m. to 5:00 p.m.

PUBLIC COMMENT PERIOD: July 22, 1998, 7:00 p.m. to 8:00 p.m.

ADDRESSES: Northshore Doubletree Hotel, 9599 Skokie Blvd., Skokie, Illinois 60077.

FOR FURTHER INFORMATION CONTACT: Mr. Shah Choudhury, Executive Secretary, Office of the Deputy Under Secretary of Defense (Environmental Security), 3400 Defense Pentagon, Washington, DC 20301–3400; telephone (703) 697–7475; e-mail choudhsa@acq.osd.mil.

Dated: May 5, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–12324 Filed 5–8–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Presidential Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the next meeting of the Presidential Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet. The meeting will be open to the public. Notice of this meeting is required under the Federal Advisory Committee Act, (Pub. L. 92–463).

DATES: May 19, 1998.

ADDRESSES: NSF Board Room (Room 1235), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

PROPOSED SCHEDULE AND AGENDA: The Presidential Advisory Committee will meet in open session from approximately 8:30 a.m. to 11:30 a.m. and 1:00 p.m. to 4:00 p.m. on May 19, 1998. This meeting will include discussions on High Performance Computing in Asia and the status of the Presidential Advisory Committee draft interim report to the President on information technology. Time will also be allocated during the meeting for public comments by individuals and organizations.

FOR FURTHER INFORMATION: The National Coordination Office for Computing, Information, and Communications provides information about this Committee on its web site at: http://www.ccic.gov; it can also be reached at (703) 306–4722. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: May 5, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–12339 Filed 5–8–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

OASD(HA) TRICARE Management Activity (TMA), Information Management, Technology and Reengineering (IMT&R); Meeting of the Military Health System Health Data Administration Program

AGENCY: Department of Defense, OASD(HA), TRICARE Management Activity.

ACTION: Notice.

SUMMARY: Notice is hereby given of the Military Health System Data Administration Conference. The purpose of the conference is to bring Military Health System representatives together with Federal health agencies and industry leaders to discuss data standardization and data and information sharing. Specific objectives include sharing of the DoD/MHS data administration goals, products and status with industry and providing opportunity to partner with industry to improve the sharing of health data and information. In addition, this conference will provide the opportunity to exchange current data sharing initiatives and identify opportunities to use and influence industry standards. This conference will be open to the public and advance registration is required.

DATES: May 20–21, 1998.

ADDRESSES: Uniformed Services University of the Health Sciences, Bethesda, MD unless otherwise published.

FOR FURTHER INFORMATION CONTACT: Mr. Marco Johnson, Chief Data Administration, TRICARE Management Activity, Information Management Technology & Reengineering, Six Skyline Place, Suite 817, 5109 Leesburg Pike, Falls Church, VA 22041–3206; telephone (703) 681–5611.

SUPPLEMENTARY INFORMATION: Business sessions are scheduled between 8:00 am and 4:30 pm, on Wednesday, May 20, 1998 and 8:00 am and 4:30 pm on Thursday, May 21, 1998. All Conference and registration information can be found on the World Wide Web at *http://www.ha.osd.mil* under ''Conferences'' and then, ''MHS Data Administration Conference.'' If you have additional questions concerning registration, the agenda, or directions and maps, please contact Elaine L. Powell, CMP, in the MHS Data Administration Conference Support Office at (703) 575–5024.

Dated: May 1, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–12336 Filed 5–8–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board Action: Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: June 17, 1998 from 0830 to 1730 and June 18, 1998 from 0800 to 1530.

Place: Holiday Inn Arlington at Ballston, 4610 North Fairfax Drive, Arlington, VA.

Matters to be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

For Further Information Contact: Ms. Amy Levine, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2124.

Dated: May 5, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–12338 Filed 5–8–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend Systems of Records.

SUMMARY: The Department of the Army is amending three systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed actions will be effective without further notice on June 19, 1998, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 5, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AMENDMENTS
A0210–7a CFSC

SYSTEM NAME:

Vendor Misconduct/Fraud/Mismanagement Information Exchange Program *(February 22, 1993, 58 FR 10002).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0210–7a TAPC'.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0474. Segments exist at Army activities and nonappropriated fund instrumentalities. Addresses of which may be obtained from the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0474.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete from entry '(e.g. Army Regulation 15-6)' and 'issued pursuant to Defense Acquisition Regulation 1-608'.

* * * * *

A0210–7a TAPC

SYSTEM NAME:

Vendor Misconduct/Fraud/Mismanagement Information Exchange Program.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0474. Segments exist at Army activities and nonappropriated fund instrumentalities. Addresses of which may be obtained from the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0474.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are identified in reports of vendor misconduct, fraud, or mismanagement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of individuals; companies represented; reports of misconduct, fraud or mismanagement in procurement efforts concerning military installations/activities; similar relevant documents and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and 10 U.S.C. 3013, Secretary of the Army.

PURPOSE(S):

To provide management officials of nonappropriated fund activities and commissaries with timely and useful information regarding incidents of vendor misconduct, fraud, and/or mismanagement and of individuals involved in such incidents through the collection, exchange and dissemination of relevant information to DoD components so as to permit informed responsible procurement decisions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name of individual, vendor, or company.

SAFEGUARDS:

Records are maintained in combination lock file safes when not under personal supervision of responsible officials.

RETENTION AND DISPOSAL:

Destroyed two years after final determination is rendered on case.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0474.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0474.

Individual should provide full name, name of company, current address and telephone number, sufficient detail concerning incident or event to facilitate locating the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0474.

Individual should provide full name, name of company, current address and telephone number, sufficient detail concerning incident or event to facilitate locating the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Copies of reports of audits, inspections, administrative investigations; summaries of criminal reports received from Army Staff agencies, major Army commands, or the Army and Air Force Exchange Service, and/or Department of Defense agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0210–7b CFSC

SYSTEM NAME:

Commercial Solicitation Ban Lists *(February 22, 1993, 58 FR 10002).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0210–7b TAPC'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0474.

* * * * *

A0210–7b TAPC

SYSTEM NAME:

Commercial Solicitation Ban Lists.

SYSTEM LOCATION:

Centralized list of commercial solicitors banned from Army installations is maintained at the U.S. Total Army Personnel Command. Segments exist at Army installations where commanders have banned agents. Listing of those so banned is furnished to Major Army Commands; addresses may be obtained from the U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0474

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual whose on-base commercial solicitation privileges have been withdrawn.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, name of company represented, approval/disapproval of business solicitation action on Army posts, camps, and stations; requests for

and authorization of accreditation and removal of accreditation of companies, agents, vendors, salesmen, and solicitors; related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and 10 U.S.C. 3013, Secretary of the Army.

PURPOSE(S):

To maintain listing of agents/companies whose business solicitation privileges have been banned or suspended from military bases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By agent's/company's name.

SAFEGUARDS:

Records are maintained in secured areas accessible only to designated officials who have a need in the performance of their official duties.

RETENTION AND DISPOSAL:

Records supporting the denial or suspension of solicitation privileges are retained for 10 years and then destroyed by shredding. Auxiliary and/or non-adverse action records are retained until no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0474.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0474 or to the installation commander who banned their solicitation privileges.

Individual should provide full name, name of company represented, current address and telephone number, sufficient details to permit locating the records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0474.

Individual should provide full name, name of company represented, current address and telephone number, sufficient details to permit locating the records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Agent's/company's name, circumstances leading to banning action, investigatory reports, other Army records and reports, similar relevant documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0680–31a TAPC

SYSTEM NAME:

Officer Personnel Management Information System (OPMIS) *(February 22, 1993, 58 FR 10172).*

CHANGES:

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals projected for entrance into the Active officer corps, active duty commissioned and warrant officers, officers in a separated or retired status, activated/mobilized U.S. Army Reserve and National Guard officers, and DoD civilians and military officers who serve as rating officials on the Officer Evaluation Reports (OERs) of Army officers.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'The Total Army Personnel Data Base - Active Officer (TAPDB-AO) is the active officer component data base of Total Army Personnel Data Base. It is comprised of approximately 100 data tables containing the official automated personnel records for active component Army officers. Data maintained in the Total Army Personnel Data Base - Active Officer includes Social Security Number, name, grade, personal and family information, service, security clearance, assignment history, strength management data, civilian and military education, awards, training, branch and occupational specialties/areas of concentration, mailing addresses, physical location, languages, career pattern, performance, command and promotion history, retirement/separation information and service agreement information. TAPDB-AO is updated in both on-line and batch mode from various source data bases and applications including the Standard Installation Division Personnel System (SIDPERS), the Total Officer Personnel Management Information System (TOPMIS), the Officer Evaluation Reporting System (OERS) and Accessions Management Information Systems (AMIS).

Accessions Management Information Systems (AMIS) contains selected officer personnel data from the Total Army Personnel Data Base - Active Officer, the date of entry on active duty, selected information regarding current location/school for pre-accessed officers, demographic data and assignment information on new officer accessions. It includes individual and mass record processing, erroneous record processing, report generation, Regular Army integration processing, Accessions Management Information Systems (AMIS) active record data, Officer Record Brief (ORB) information and strength data. Accessions Management Information Systems (AMIS) is used to manage Reserve Officer Training Corps (ROTC), U.S. Military Academy (USMA), Officer Candidate School (OCS), Judge Advocate General Corps (JAG) Recalls, Chaplains Corps, Warrant Officer and Surgeon General Reserve officers accessions. Accessions Management Information Systems (AMIS) data is stored on the Total Army Personnel Data Base - Active Officer. Some users enter new accession data directly to the Total Army Personnel Data Base - Active Officer via Accessions Management Information Systems (AMIS). For Reserve Officer Training Corps (ROTC), and U.S. Military Academy (USMA) new accessions, data extracts are batch loaded to the Total Army Personnel Data Base - Active Officer annually.

Assignments and Training Selection for Reserve Officer Training Corps (ROTC) graduates contains selected information from the Total Army Personnel Data Base - Active Officer (TAPDB-AO), the cadet's preference statement for specialty (branch), duty and initial training; Reserve Forces duty

or delay selection, Regular Army selection and branch selection.

The Officer Evaluation Reporting System (OERS) contains selected information from the Total Army Personnel Data Base - Active Officer (TAPDB-AO); selection board status; OER suspense indicator for action being taken to obtain missing or erroneous OERs; selected information for each OER; and the name, Social Security Number, and rating history of each individual, military and civilian, who has served as the senior rating official for an active duty Army officer.

Total Officer Personnel Management Information System (TOPMIS) provides the display and update of selected data on Total Army Personnel Data Base - Active Officer (TAPDB-AO) and comprises an extensive variety of automated officer personnel management functions. These functions include, officer personnel record display and update, requisition validation and processing, active officer strength management, Officer Distribution Plan (ODP) goaling management, officer asset reports, centralized command slate development, assignment stabilization break processing, electronic mail, Officer Record Brief (ORB) display and interactive telephonic/voice response retrieval of selected information from Total Army Personnel Data Base - Active Officer (TAPDB-AO).

Reserve Officer Training Corps (ROTC) Instructor File contains selected information from the Total Army Personnel Data Base - Active Officer (TAPDB-AO) and the following information pertaining to ROTC instructors; ROTC detachment, duty station, date assigned to ROTC detachment, date projected to be reassigned. This information is maintained in a local data base by the Cadet Command Distribution Account Manager in Officer Distribution Division, OPMD, TAPC-OPD-O.

Advanced Civil Schools Management Information System (ACSMIS) contains selected information from the Total Army Personnel Data Base - Active Officer and the following information concerning commissioned and warrant officer personnel currently participating, or who have previously participated, in one of the following: Army sponsored college degree completion program, Training With Industry (TWI) program, special fellowship/scholarship programs, or the fully funded degree program. Data maintained also includes schooling start/stop dates, degree level, educational discipline and Army duty positions.

Army Education Requirements System (AERS) contains selected information from the Total Army Personnel Data Base - Active Officer (TAPDB-AO) for officer and warrant officer personnel who are serving or are projected to serve in an AERS approved position requiring graduate level education.

U.S. Army Military Academy (USMA) Potential Instructor File contains selected information from the OMF and the following information pertaining to previous, current, and potential instructors for the USMA teaching staff; academic department and projected availability for USMA instructor duty. This information is maintained in a local data base by the USMA Distribution Account Manager in Officer Distribution Division, OPMD, TAPC-OPD-O.'

* * * * *

A0680–31a TAPC

SYSTEM NAME:

Officer Personnel Management Information System (OPMIS).

SYSTEM LOCATION:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals projected for entrance into the Active officer corps, active duty commissioned and warrant officers, officers in a separated or retired status, activated/mobilized U.S. Army Reserve and National Guard officers, and DoD civilians and military officers who serve as rating officials on the Officer Evaluation Reports (OERs) of Army officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Total Army Personnel Data Base - Active Officer (TAPDB-AO) is the active officer component data base of Total Army Personnel Data Base. It is comprised of approximately 100 data tables containing the official automated personnel records for active component Army officers. Data maintained in the Total Army Personnel Data Base - Active Officer includes Social Security Number, name, grade, personal and family information, service, security clearance, assignment history, strength management data, civilian and military education, awards, training, branch and occupational specialties/areas of concentration, mailing addresses, physical location, languages, career pattern, performance, command and promotion history, retirement/separation information and service agreement information. TAPDB-AO is updated in both on-line and batch mode from various source data bases and applications including the Standard Installation Division Personnel System (SIDPERS), the Total Officer Personnel Management Information System (TOPMIS), the Officer Evaluation Reporting System (OERS) and Accessions Management Information Systems (AMIS).

Accessions Management Information Systems (AMIS) contains selected officer personnel data from the Total Army Personnel Data Base - Active Officer, the date of entry on active duty, selected information regarding current location/school for pre-accessed officers, demographic data and assignment information on new officer accessions. It includes individual and mass record processing, erroneous record processing, report generation, Regular Army integration processing, Accessions Management Information Systems (AMIS) active record data, Officer Record Brief (ORB) information and strength data. Accessions Management Information Systems (AMIS) is used to manage Reserve Officer Training Corps (ROTC), U.S. Military Academy (USMA), Officer Candidate School (OCS), Judge Advocate General Corps (JAG) Recalls, Chaplains Corps, Warrant Officer and Surgeon General Reserve officers accessions. Accessions Management Information Systems (AMIS) data is stored on the Total Army Personnel Data Base - Active Officer. Some users enter new accession data directly to the Total Army Personnel Data Base - Active Officer via Accessions Management Information Systems (AMIS). For Reserve Officer Training Corps (ROTC), and U.S. Military Academy (USMA) new accessions, data extracts are batch loaded to the Total Army Personnel Data Base - Active Officer annually.

Assignments and Training Selection for Reserve Officer Training Corps (ROTC) graduates contains selected information from the Total Army Personnel Data Base - Active Officer (TAPDB-AO), the cadet's preference statement for specialty (branch), duty and initial training; Reserve Forces duty or delay selection, Regular Army selection and branch selection.

The Officer Evaluation Reporting System (OERS) contains selected information from the Total Army Personnel Data Base - Active Officer (TAPDB-AO); selection board status; OER suspense indicator for action being taken to obtain missing or erroneous OERs; selected information for each OER; and the name, Social Security

Number, and rating history of each individual, military and civilian, who has served as the senior rating official for an active duty Army officer.

Total Officer Personnel Management Information System (TOPMIS) provides the display and update of selected data on Total Army Personnel Data Base - Active Officer (TAPDB-AO) and comprises an extensive variety of automated officer personnel management functions. These functions include, officer personnel record display and update, requisition validation and processing, active officer strength management, Officer Distribution Plan (ODP) goaling management, officer asset reports, centralized command slate development, assignment stabilization break processing, electronic mail, Officer Record Brief (ORB) display and interactive telephonic/voice response retrieval of selected information from Total Army Personnel Data Base - Active Officer (TAPDB-AO).

Reserve Officer Training Corps (ROTC) Instructor File contains selected information from the Total Army Personnel Data Base - Active Officer (TAPDB-AO) and the following information pertaining to ROTC instructors; ROTC detachment, duty station, date assigned to ROTC detachment, date projected to be reassigned. This information is maintained in a local data base by the Cadet Command Distribution Account Manager in Officer Distribution Division, OPMD, TAPC-OPD-O.

Advanced Civil Schools Management Information System (ACSMIS) contains selected information from the Total Army Personnel Data Base - Active Officer and the following information concerning commissioned and warrant officer personnel currently participating, or who have previously participated, in one of the following: Army sponsored college degree completion program, Training With Industry (TWI) program, special fellowship/scholarship programs, or the fully funded degree program. Data maintained also includes schooling start/stop dates, degree level, educational discipline and Army duty positions.

Army Education Requirements System (AERS) contains selected information from the Total Army Personnel Data Base - Active Officer (TAPDB-AO) for officer and warrant officer personnel who are serving or are projected to serve in an AERS approved position requiring graduate level education.

U.S. Army Military Academy (USMA) Potential Instructor File contains selected information from the OMF and the following information pertaining to previous, current, and potential instructors for the USMA teaching staff; academic department and projected availability for USMA instructor duty. This information is maintained in a local data base by the USMA Distribution Account Manager in Officer Distribution Division, OPMD, TAPC-OPD-O.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used for personnel management strength accounting, manpower management, accessioning and determining basic entry specialty (branch) and initial duty assignments; tracking Officer Evaluation Reports, the rating history of senior rating official's rating history on individual OERs producing reports on active duty officers who have served as senior rating officials; managing instructor population at ROTC detachments and USMA; tracking information relating to the Army Degree Completion Civil School Program; transmitting necessary assignment instructions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Social Security Administration to verify Social Security Numbers.

To the Smithsonian Institution (The National Museum of American History): Copy of the U.S. Army Active Duty Register, for historical research purposes (not authorized for public display).

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronically on computer magnetic tapes and disc.

RETRIEVABILITY:

By Social Security Number, name, or other individual identifying characteristics.

SAFEGUARDS:

Physical security devices, guards, computer hardware and software features, and personnel clearances. Automated media and information are protected by authorized user ids, passwords for the system, a tiered system of security for access to officer data provided via Interactive Voice Response Systems based on the sensitivity of the data items provided, encryption of data transmitted via networks, controlled access to operator rooms and controlled output distribution.

RETENTION AND DISPOSAL:

Records are retained on the active TAPDB-AO files for 4 months after separation. Historical TAPDB-AO records are retained dating back to FY 1970. Accessions in AMIS are retained on active file until effective date of accession and are then placed on a history file for a period of 6 months. Records in the ROTC Graduate Assignment and Training Selection File are retained for approximately 400 days after the file is created (approximately December each year). Historic files for the OER system are kept for the life of the system. All other records are retained for active duty only until the individual is released from active duty and then destroyed. There are still hard copies in their Official Military Personnel Files (OMPFs).

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, current address, and identify the specific category of record involved, whether awaiting active duty, active retired, or separated and give return address.

Blanket requests for information from this consolidated system will not be accepted. If awaiting active duty, specify the date thereof; if separated, individual must state date of separation.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, current address, and identify the specific category of record involved, whether awaiting active duty, active retired, or separated and give return address.

Blanket requests for information from this consolidated system will not be accepted. If awaiting active duty, specify the date thereof; if separated, individual must state date of separation.

Selected data from the Total Army Personnel Data Base - Active Officer is also accessible to records subjects through an Interactive Voice Response Systems (IVRS). Access to the data made available through the IVRS is controlled by a tiered security system which is based on the sensitivity of the data being accessed.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, other Federal agencies and departments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 98–12323 Filed 5–8–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Laboratory Operations Board

Date and Time: Wednesday, May 20, 1998, 8:30 A.M.–4:30 P.M.

Place: Brookhaven National Laboratory, Medical Building 490, Large Conference Room, Upton, Long Island, New York.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709.

SUPPLEMENTARY INFORMATION: The purpose of the Laboratory Operations Board is to provide advice to the Secretary of Energy Advisory Board regarding the strategic direction of the Department's laboratories, the coordination of budget and policy issues affecting laboratory operations, and the reduction of unnecessary and counterproductive management burdens on the laboratories. The Laboratory Operations Board's goal is to facilitate the productive and cost-effective utilization of the Department's laboratory system and the application of best business practices.

Tentative Agenda

Wednesday, May 20, 1998

8:30–8:45 A.M.—Opening Remarks—Co-Chairs: Dr. John McTague and Under Secretary Dr. Ernest Moniz
8:45–9:15 A.M.—Status Report on Secretarial Commitments—Dr. Martha Krebs, Director of the Office of Energy Research and Vice Chair of the DOE R&D Council
9:15–10:00 A.M.—Presentation of the Small Laboratory Study—Dr. John McTague, Co-Chair
10:00–10:30 A.M.—Laboratory Director's Presentation & Discussion—Dr. John Marburger, Director, Brookhaven National Laboratory
10:30–12:30 P.M.—Site Tour (LOB Members only)
12:30–1:30 P.M.—Lunch
1:30–2:15 P.M.—Presentation of the Peer Review Study—Dr. Paul Gilman
2:15–3:30 P.M.—Discussion of Laboratory Operations Board Tasks
3:30–4:00 P.M.—DOE's Science & Technology Direction—Dr. Ernest Moniz, Co-Chair
4:00–4:30 P.M.—Public Comment Period
4:30 P.M.—Adjourn

This tentative agenda is subject to change. A final agenda will be available at the meeting.

Public Participation: The Chairman of the Laboratory Operations Board is empowered to conduct the meeting in a way which will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Upton, Long Island, New York, the Laboratory Operations Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Laboratory Operations Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Information on the Laboratory Operations Board may also be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on May 6, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–12412 Filed 5–8–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–199–000]

Discovery Gas Transmission LLC; Notice of Proposed Changes in FERC Gas Tariff

May 5, 1998.

Take notice that on April 30, 1998, Discovery Gas Transmission LLC (Discovery) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective June 1, 1998:

First Revised Sheet No. 41
First Revised Sheet No. 42
First Revised Sheet No. 43

Discovery states that the revised tariff sheets eliminate the current requirement that a producer must have committed production to Discovery prior to January 1, 1997, in order to qualify for service under Discovery's FT–2 Rate Schedule. Discovery proposes to make FT–2 service available to any potential shipper that commits production to Discovery, to the extent that firm capacity is available in the pipeline system. Shippers that enter into FT–2 Service Agreements with Discovery must provide a good faith estimate of their production and provide documentation to support the production within eighteen (18) months after committing the production. Discovery's proposal is in response to requests from potential shippers that wish to receive FT–2 service.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission,

888 First Street, N.E. Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12365 Filed 5–8–98; 8:45 am]

BILLING CODE 6717–01–M]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–204–000]

Eastern Shore Natural Gas Company; Notice of Filing

May 5, 1998.

Take notice that on May 1, 1998 Eastern Shore Natural Gas Company (Eastern Shore) tendered a filing to terminate its Account No. 191—Unrecovered Purchased Gas Costs as of October 31, 1997, and to refund the balance in such account to its customers. Eastern Shore states that such termination is the result of Eastern Shore's conversion to a Part 284 open access transportation pipeline and the implementation of its new open access FERC Gas Tariff on November 1, 1997, (see 81 FERC ¶ 61,013).

Eastern Shore states that Section 38—Transition Cost Recovery Mechanism, of the General Terms and Conditions (GT&C) of its FERC Gas Tariff, Second Revised Volume No. 1, effective November 1, 1997, provides for the recovery of costs incurred as a result of implementing, in connection with implementing, or attributable to the requirements of the Commission's Order No. 636, such costs being referred to as ''transition costs''. The Commission identified four specific types of transition costs: (1) Account No. 191 costs; (2) Gas Supply Realignment Costs; (3) Stranded Costs; and (4) certain new facilities. This filing, however, pertains only to the first category described above, Account No. 191 costs.

Eastern Shore further states that Section 38(A) of the GT&C permits Eastern Shore to direct bill a customer, in the case of a positive (debit) Account No. 191 balance, or refund a customer, in the case of a negative (credit) Account No. 191 balance, that customer's share of the total unrecovered costs contained in Eastern Shore's Account No. 191. The portion of unrecovered costs that relate to demand shall be allocated on the basis of each particular customer's contract demand quantity under Eastern Shore's former CD–1 or CD–E rate schedule in effect on October 31, 1997, the day prior to the implementation of open access on Eastern Shore's system. The portion of unrecovered costs that relate to commodity shall be allocated on the basis of each particular customer's commodity purchases under Eastern Shore's former CD–1 or CD–E rate schedules for the period November 1, 1996 through October 31, 1997, the twelve months immediately preceding the implementation of open access on Eastern Shore's system.

Finally, Eastern Shore states that it is its intention to distribute refunds on July 1, 1998, and in anticipation of this date, has calculated the appropriate carrying charges through such date. Such refund date is intended to provide the Commission staff with sufficient time to review the information submitted in its filing.

Eastern Shore states that copies of the filing have been served upon its affected customers and interested state commissions.

Any person desiring to be heard or to protest this 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 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as on or before May 12, 1998. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12358 Filed 5–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11181–002 Oregon]

Energy Storage Partners; Errata Notice; Notice of Intent To Conduct Public Scoping Meetings and Site Visit

May 5, 1998.

The Notice of Intent to Conduct Public Scoping Meetings and Site Visit issued on April 27, 1998 (63 FR 24166, May 2, 1998), states that the times and locations of the scoping meetings are as follows:

''Agency Scoping Meeting

When: Thursday, May 28, 1998, From 9:00 a.m. until 12:00 p.m.
Where: Klamath County Museum, 1451 Main Street, Klamath Falls, OR 97601.

Public Scoping Meeting

When: Thursday, May 28, 1998, From 7:00 p.m. until 10:00 p.m.
Where: Klamath County Museum, 1451 Main Street, Klamath Falls, OR 97601''

The location for the 7:00 p.m. meeting has been changed to the Klamath County Library, 126 S. 3rd, Klamath Falls, Oregon.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12364 Filed 5–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–205–000]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 5, 1998.

Take notice that on May 1, 1998, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the original and revised tariff sheets listed below proposing changes in rates for effectiveness on June 1, 1998:

Thirteenth Revised Sheet No. 21
Fourteenth Revised Sheet No. 22
Eleventh Revised Sheet No. 23
Original Sheet Nos. 336, 337 and 338

According to Granite State, the foregoing tariff sheets established a special surcharge on its existing Base tariff rates for firm and interruptible transportation services to recover the costs that Granite State will incur during the third extension its lease of

the pipeline owned by Portland Pipe Line Corporation (PPLC).

Granite State further states that it has leased a former oil pipeline from PPLC since 1986, converted it to natural gas transportation and has operated it pursuant to limited-term certificates issued by the Commission. It is said that the leased pipeline provides a link between Granite State's system at Portland, Maine, and the U.S.-Canadian border and provides transportation capacity used by Granite State's firm customers, Bay State Gas Company and Northern Utilities, Inc. to purchase and receive deliveries of Canadian gas.

According to Granite State, both Bay State Gas Company and Northern Utilities have subscribed for capacity on the Portland Natural Gas Transmission System (PNGTS) for transportation capacity that will replace their entitlements to capacity on the leased pipeline. It is further said that PNGTS has proposed an in-service date of November 1, 1998 but that there have been delays in the construction schedule, raising concerns that the project will not be available for service at the beginning of the heating season. Granite State further states that its transportation customers, particularly Northern Utilities, must have access to the transportation capacity on the leased pipeline or on PNGTS at the beginning of the 1998–99 heating season.

According to Granite State, it has negotiated an arrangement with PPLC pursuant to which the leased line can be activated again for natural gas transportation service on November 1, 1998, and continuing thereafter until April 30, 1999.

Granite State further states that, under the extended lease, it will incur costs for rental payments, costs for reconversion of the leased line for oil transportation service, a share of certain joint costs for the maintenance of PPLC's right-of-way and for property taxes, costs for purging gas from the leased line and for Letters of Credit in favor of PPLC. Granite State states that it is obligated to make a rental payment of $1.5 million to PPLC in one installment on October 25, 1998 and a payment of $5.5 million in reconversion costs. If the line is activated for gas transportation service on November 1, 1998, Granite State will be charged $301,000 in fixed monthly rent for the use of the leased pipeline, plus $0.078 per MMBtu of gas throughput. Granite State's total cost exposure, if it uses the leased line for the full period of the lease extension until April 30, 1999, is approximately $10.1 million.

Granite State proposes to recover the lease related costs over a 12-month period through the special surcharge on its Base Tariff rates which will be derived pursuant to the methodology described in a new provision, Section 34, added to the General Terms and Conditions of its FERC Gas Tariff.

According to Granite State, copies of its filing have been served on its firm and interruptible customers and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest this 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 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12374 Filed 5–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–201–000]

Gulf States Transmission Corporation; Notice of Compliance Filing

May 5, 1998.

Take notice that on May 1, 1998, Gulf States Transmission Corporation (Gulf States), tendered for filing the original and revised tariff sheets listed in Appendix A to the filing. Gulf States proposes that the foregoing tariff sheets be made effective on June 1, 1998.

Gulf States states that this filing is in compliance with the Federal Energy Regulatory Commission's Order on Requests for Waiver, issued in Docket No. RP97–174–001, on April 30, 1997. Gulf States Transmission Corporation, et al., 79 FERC ¶ 61,102 (1997). Gulf States further states that the tariff sheets implement the standards for Electronic Data Interchange/Electronic Data Mechanism and capacity release promulgated by the Gas Industry Standards Board and adopted by the Federal Energy Regulatory Commission in Order Nos. 587, et al.

Any person desiring to be heard or to protest this 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 and 384.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12367 Filed 5–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–200–000]

KO Transmission Company; Notice of Petition for Waiver

May 5, 1998.

Take notice that on April 30, 1998, KO Transmission Company (KO Transmission) tendered for filing a petition for waiver of the electronic communications and Internet transaction requirements of the Commission's Order Nos. 587–B, 587–C and 587–G.

KO Transmission states that copies of this petition has been served on each of KO Transmission's customers.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before May 12, 1998. 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. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12366 Filed 5–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–9–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

May 5, 1998.

Take notice that on April 30, 1998, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Tenth Revised Sheet No. 9, with a proposed effective date of May 1, 1998.

National states that under Article II, Section 2, of the approved settlement at Docket Nos. RP94–367–000, et al., National is required to recalculate the maximum Interruptible Gathering (IG) rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG Rate of 10 cents per dth.

National further states that, as required by Article II, Section 4, National is filing a revised tariff sheet within 30 days of the effective date for the revised IG rate.

Any person desiring to be heard or to protest this 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 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12376 Filed 5–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–202–000]]

Natural Gas Pipeline Company of America; Notice of Proposed Change in FERC Gas Tariff

May 5, 1998.

Take notice that on May 1, 1998, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Tenth Revised Sheet No. 22, to be effective June 1, 1998.

Natural states that the filing if submitted pursuant to Section 21 of the General Terms and Conditions of Natural's FERC Gas Tariff, Sixth Revised Volume No. 1 (Section 21), as the tenth semiannual limited rate filing under Section 4 of the Natural Gas Act and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder. The rate adjustments filed for are designed to recover Account No. 858 stranded costs incurred by Natural under contracts for transportation capacity on other pipelines. Costs for any Account No. 858 contracts specifically excluded under Section 21 are not reflected in this filing.

Natural requested specific waivers of Section 21 and the Commission's Regulations, including the requirements of Section 154.63, to the extent necessary to permit the tendered tariff sheet to become effective June 1, 1998.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest this 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 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12371 Filed 5–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–203–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 5, 1998.

Take notice that on May 1, 1998, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, revised tariff sheets set forth in Appendix A to the filing to effectuate changes in the rates and terms applicable to Northern's jurisdictional service. The effect of the rate case is an overall increase in revenues of approximately $35 million above the Base Period revenues. Northern also is submitting several proposals to enhance service flexibility and operational and economic efficiency on the Northern system.

Norther states that the changes reflected in the Revised Tariff Sheets to be effective June 1, 1998, are required to effectuate the rate increase and to make certain changes to Northern's tariff based on Northern's operating experience. Northern also proposes an effective date of November 1, 1998, for certain of the Revised Tariff Sheets which require additional business process and system changes for all parties prior to implementation. Finally, Northern proposes Pro Forma Tariff Sheets which reflect further changes to become effective on a prospective basis following a omission order on the merits or a settlement of this proceeding.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12373 Filed 5–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–59–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 5, 1998.

Take notice that on May 1, 1998, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff the following tariff sheets proposed to become effective on June 1, 1998:

Fifth Revised Volume No. 1

Eighth Revised Sheet No. 54
Seventh Revised Sheet No. 61
Seventh Revised Sheet No. 62
Seventh Revised Sheet No. 63
Seventh Revised Sheet No. 64

Northern states that the revised tariff sheets are being filed in accordance with the methodology set forth in Section 53 of Northern's General Terms and Conditions, Tariff Sheet Nos. 300–301 (as filed on April 29, 1997), which requires Northern to adjust its fuel percentages each June 1. Northern has also filed to adjust its Unaccounted for (UAF) gas in accordance with the PRA mechanism. Therefore, Northern has filed Eighth Revised Sheet No. 54 and Seventh Revised Sheet Nos. 61, 62, 63 and 64 to be effective June 1, 1998.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest this 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 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12375 Filed 5–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–396–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

May 5, 1998.

Take notice that on April 28, 1998, Northwest Pipeline Corporation (Applicant), 295 Chipeta Way, Salt Lake City, Utah, 84108, filed in Docket No. CP98–396–000 a request pursuant to §§ 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (187 CFR 157.205, 157.211, and 157.216) for approval to abandon an obsolete meter which has failed at the Georgetown Meter Station in Bear Lake County, Idaho, and to construct and operate a smaller replacement meter at this station to maintain the ability to accommodate existing firm deliveries for Intermountain Gas Company's affiliate, IGI Resources, under Applicant's blanket certificate issued in Docket No. CP82–433–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to modify the Georgetown Meter Station by removing the three-inch positive displacement meter and appurtenances and installing a new two-inch rotary meter and appurtenances. Applicant asserts that as a result of this modification, the maximum design capacity of the meter station will decrease from 3,033 Dth per day to approximately 2,000 Dth per day at 150 psig. It is further asserted that the modified station will be adequate to accommodate historically experienced flow rates as well as the existing maximum daily delivery obligations at this delivery point. Applicant states that the total cost of the proposed facility replacement at the Georgetown meter Station is estimated to be $15,750. Applicant indicates that because this expenditure is necessary to replace a failed and obsolete meter, Applicant will not require reimbursement by Intermountain.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission 's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12360 Filed 5–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98–10–000]

Venice Gathering System, L.L.C.; Notice of Filing

May 5, 1998.

Take notice that on April 29, 1998, Venice Gathering System, L.L.C. (Venice) filed standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 556 *et seq.*[2]

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C *order extending sunset date,* 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* FERC Stats & Regs. 1991–1996 ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FREC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997

Continued

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before May 20, 1998. 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. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12361 Filed 5–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6375–006]

H.E.E.D. Co., Inc.; Notice of Availability of Environmental Assessment

May 5, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Commission's Office of Hydropower Licensing has reviewed the revocation the exemption for the Slaughterhouse Gulch Project, No. 6375–006. The Slaughterhouse Gulch Project is located on Slaughterhouse Gulch Creek in Twin Falls County, Idaho. The exemption is being revoked for failure to operate the project or to respond to requests to surrender the exemption. A Draft Environmental Assessment (DEA) was prepared, and the DEA finds that revoking the exemption would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C. 20426.

Please submit any comments within 30 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix Project No. 6375–006 to all comments. For further information, please contact Ms. Hillary Berlin, at (202) 219–0038.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12363 Filed 5–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–315–000]

Columbia Gas Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed 1998 Line KA Replacement Project and Request for Comments on Environmental Issues

May 5, 1998

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of facilities proposed in the 1998 Line KA Replacement Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

Summary of the Proposed Project

Columbia Gas Transmission Corporation (Columbia) proposes to abandon and replace about 5.5 miles of 20-inch-diameter pipeline in Pike County, Kentucky. About 4.9 miles of the existing pipeline would be abandoned by removal and replaced within Columbia's existing right-of-way. The remaining 0.6 mile of pipeline would be abandoned in place and replaced on newly acquired right-of-way to avoid steep slopes.

The project location is shown in appendix 2.

Land Requirements for Construction

Columbia would use a 75-foot-wide construction right-of-way for the entire project. Where the pipeline would be replaced on existing right-of-way, 50 feet of Columbia's existing right-of-way and 25 feet of temporary right-of-way would be used for construction. Where the pipeline would be replaced on newly acquired right-of-way. Columbia would obtain a permanent 50-foot-wide easement and a 25-foot-wide temporary right-of-way. The new permanent right-of-way would be about 3.6 acres. Additional work areas would be required for road and stream crossings, access roads, staging areas, and pipeyards. The area of disturbance for the entire project would total about 77.4 acres.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage

(June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707 (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[1] Columbia Gas Transmission Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

them to comment on their areas of concern.

To ensure your comments are considered, please carefully follow the instructions in the public participation section on pages 3 and 4 of this Notice.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Endangered and threatened species.
- Water resources and wetlands.
- Vegetation and wildlife.
- Land use.
- Cultural resources.
- Geology and soils.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Columbia. These issues may be changed based on your comments and our analysis.

- Eight residences are located within 50 feet of the construction right-of-way.
- One prehistoric site that is potentially eligible for the National Register of Historic Places lies within the project's area of potential effect.
- Most of the project area is underlain by deep coal mines.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded;

- Send two copies of your letter to: David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP98–315–000; and
- Mail your comments so that they will be received in Washington, DC on or before June 5, 1998.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filing by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding has passed having ended on April 29, 1998. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee in the Commission's Office of External Affairs at (202) 208–1088.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12359 Filed 5–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 77–110]

Pacific Gas and Electric Company; Notice of Site Visit and Scoping Meetings Pursuant to the National Environmental Policy Act of 1969

May 5, 1998.

On April 17, 1998, the Federal Energy Regulatory Commission (Commission) issued notice of an application for amendment of the license for the Potter Valley Project (FERC No. 77–110) and of our intent to prepare an Environmental Impact Statement (EIS) in support of the Commission's decision in this matter. The proposed amendment involves changes in the minimum flow requirements at the project, located on the Eel and East Fork Russian River, in Lake and Mendocino Counties, California.

The purpose of this notice is to: (1) Advise all parties of upcoming site visits to the project area; (2) announce the dates, times, and locations of public and agency meetings to be held to assist staff in determining the appropriate scope of staff's environmental analysis; (3) seek additional information pertinent to this analysis; and (4) advise all parties of their opportunity for comment.

Project Site Visits

The licensee and the Commission staff will conduct site visits of the Potter Valley Project and other relevant areas on June 1–2, 1998. On June 1, downstream areas of the East Fork Russian River will be visited. On June 2, the Potter Valley Project and downstream areas of the Eel River will be visited. Times and meeting places are as follows.

Date: June 1, 1998.
Time: 1:00 p.m.–5:00 p.m.
Place: Sonoma County Water Agency, 2150 West College Avenue, Santa Rosa, CA 95401.
Date: June 2, 1998.
Time: 9:00 a.m.–5:00 p.m.
Place: Hoppers Corner, Main Street and Eel River Road, Potter Valley, CA 95469.

All interested individuals, nongovernmental organizations (NGO's), and agencies are invited to attend. All participants are responsible for their own transportation. For more details, interested parties should contact the Project Manager identified at the end of this notice prior to May 28, 1998.

Scoping Process

The purpose of the scoping process is to identify significant issues related to the proposed action and to determine what issues should be addressed in the environmental document to be prepared pursuant to the National Environmental Policy Act of 1969 (NEPA). A document entitled ''Scoping Document'' (SD) will be circulated shortly to enable appropriate federal, state, and local resource agencies, developers, Indian tribes, NGO's and other interested parties to effectively participate in and contribute to the scoping process. The SD provides a brief description of the proposed action, project alternatives, the geographic and temporal scope of the analysis, and a list of preliminary issues identified by staff.

Scoping Meetings

The Commission staff will hold scoping meetings on June 3 and June 4, 1998, to facilitate its preparation of an EIS for the proposed amendment. The scoping meetings will be held in two locations in the general vicinity of the Potter Valley Project. On each date there will be two scoping meetings: One afternoon meeting and one evening meeting. The afternoon meetings will focus on resource agency concerns, whereas the evening meeting will focus on receiving input from the public. However, we invite all interested agencies, NGOs, and individuals to attend one or both of the meetings, and to assist staff in identifying the scope of environmental issues that should be analyzed in the EIS. The times and locations of these meetings are shown below.

Ukiah Scoping Meetings:

Date: June 3, 1998.
Time: 1:00–3:00 p.m.; 7:00–9:00 p.m.
Place: Ukiah Valley Conference Center, 200 S. School Street, Ukiah, CA 95482, (707) 686–4571.

Eureka Scoping Meetings:

Date: June 4, 1998.
Time: 1:00–3:00 p.m.; 7:00–9:00 p.m.
Place: Doubletree Inn Eureka, 1929 Fourth Street, Eureka, CA 95501, (707) 445–0844.

As mentioned previously a scoping document will be distributed to the parties on the Commission's mailing list. The SD should help focus discussions, by outlining the issues to be addressed at the meetings. Copies of the SD can also be obtained by contacting the Project Manager identified at the end of this notice.

Meeting 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 on environmental issues that should be analyzed in the EIS, including opinions in favor of, or in opposition to, the staff's preliminary list of issues; (4) determine the depth of analysis for issues addressed in the EIS; and (5) identify resource issues that will not require detailed analysis in the EIS.

The scoping meetings will be recorded by a court reporter, and all statements (oral and written) will become part of the Commission's public record for this proceeding. Before each meeting starts, all individuals who attend, especially those individuals that intend to make statements during the meeting, will be asked to sign in and clearly identify themselves for the record prior to speaking. Time allotted for presentations will be determined by staff based on the length of the meetings and the number of people wanting to speak. All individuals wishing to speak will be provided at least five minutes to present their views.

Interested parties who choose not to speak, or are unable to attend the scoping meetings, may provide written comments and information to the Commission until June 15, 1998. Written comments and information should be submitted to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The first page of all filings should indicate ''Potter Valley Project, FERC No. 77–110'' at the top of the page. All filings sent to the Secretary of the Commission should contain an original and eight copies. Failure to file an original and eight copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. Furthermore, participants in this proceeding are reminded that if they file comments with the Commission, they must serve a copy of their filing to the parties on the Commission's service list.

For further information, please contact the Project Manager, Dr. John M. Mudre at (202) 219–1208.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12362 Filed 5–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Public Outreach Meeting; Portland, OR

May 5, 1998

The Office of Hydropower Licensing will hold a public Outreach Meeting in Portland, OR, on Tuesday, May 19, 1998. The Outreach Meeting is scheduled to start at 9:00 am and finish at 5:00 p.m.

The purpose of the Outreach program is to familiarize federal, state, and other government agencies, Indian tribes, nongovernmental organizations, licensees, and other interested parties with the Commission's hydropower licensing program. The topics for the Outreach Meeting are pre-licensing, licensing, and post-licensing procedures for hydrolectric projects in Oregon whose licenses expire between calender years 2000 and 2010.

Staff from the Commission's Office of Hydropower Licensing will preside over the meetings.

The location of the Outreach Meeting is: Doubletree Hotel, 909 North Hayden Island Drive, Portland, OR 97217, (503) 283–4466.

Directions to Hotel: Take I–5 North to Exit #308/Jantzen Beach Center, You will drive by a large Safeway store to a stop light, Right on Hayden Island Dr., Hotel will be directly in front.

If you plan to attend, notify John Blair, Western Outreach Coordinator, fax: 202–219–2152; telephone: 202–219–2845 or Theresa Gibson (202) 219–2793.

David P. Boergers

Acting Secretary.

[FR Doc. 98–12356 Filed 5–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Public Outreach Meeting; Tacoma, Washington

May 5, 1998

The Office of Hydropower Licensing will hold a public Outreach Meeting in Tacoma, Washington, on Thursday, May 21, 1998. The Outreach Meeting is scheduled to start at 9:00 am and finish at 5:00 pm.

The purpose of the Outreach program is to familiarize federal, state, and other government agencies, Indian tribes, nongovernmental organizations, licensees, and other interested parties

with the Commission's hydropower licensing program. The topics for the Outreach Meeting are pre-licensing, licensing, and post-licensing procedures for hydroelectric projects in Washington whose licenses expire between calender years 2000 and 2010.

Staff from the Commission's Office of Hydropower Licensing will preside over the meetings.

The location of the Outreach Meeting is: Sheraton Hotel, 1320 Broadway Plaza, Tacoma, WA 98402, (253) 591–4137.

Directions to Hotel: Take Interstate 5 to exit #133 City Center, Take Highway 705, following ''City Center'' signs toward the downtown area, Take the ''A'' street exit, Follow ''A'' street to 11th street, Turn left on 11th street, Go uphill to the second stoplight, Broadway, Turn left on Broadway, Go two blocks to 1320 Broadway and you will be in front of the hotel.

If you plan to attend, notify John Blair, Western Outreach Coordinator, fax: 202–219–2152; telephone: 202–219–2845 or Theresa Gibson (202) 219–2793.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12357 Filed 5–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

May 6, 1998.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: May 13, 1998, 10:00 a.m.

PLACE: Room 2C 888 First Street, N.E., Washington, D.C. 20426

STATUS: Open

MATTERS TO BE CONSIDERED: Agenda

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Acting Secretary, telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro 698th Meeting—May 13, 1998 Regular Meeting (10:00 A.M.)

CAH–1.
DOCKET# P–7481, 094, NYSD LIMITED PARTNERSHIP
CAH–2.
DOCKET# P–233, 023, PACIFIC GAS AND ELECTRIC COMPANY
CAH–3.
DOCKET# P–1862, 017, CITY OF TACOMA, WASHINGTON
CAH–4.
DOCKET# P–2584, 004, ROCHESTER GAS AND ELECTRIC CORPORATION
CAH–5.
OMITTED
CAH–6.
DOCKET# P–2496, 024, EUGENE WATER AND ELECTRIC BOARD
OTHER#S P–2496, 028, EUGENE WATER AND ELECTRIC BOARD
P–2496, 029, EUGENE WATER AND ELECTRIC BOARD

Consent Agenda—Electric

CAE–1.
DOCKET# ER98–2279, 000, COMMONWEALTH EDISON COMPANY AND COMMONWEALTH EDISON COMPANY OF INDIANA, INC.
CAE–2.
DOCKET# ER98–2267, 000, DELMARVA POWER & LIGHT COMPANY
CAE–3.
DOCKET# ER98–2329, 000, CENTRAL VERMONT PUBLIC SERVICE CORPORATION
CAE–4.
DOCKET# ER98–2322, 000, SOUTHERN CALIFORNIA EDISON COMPANY
OTHER#S ER97–2355, 002, SOUTHERN CALIFORNIA EDISON COMPANY
ER97–2364, 000, SAN DIEGO GAS & ELECTRIC COMPANY
ER97–2364, 002, SAN DIEGO GAS & ELECTRIC COMPANY
ER98–2371, 000, SAN DIEGO GAS & ELECTRIC COMPANY
ER98–2375, 000, SAN DIEGO GAS & ELECTRIC COMPANY
CAE–5.
DOCKET# ER98–2259, 000, LSP ENERGY LIMITED PARTNERSHIP
CAE–6.
DOCKET# ER98–2305, 000, EDGAR ELECTRIC COOPERATIVE ASSOCIATION D/B/A ENERSTAR POWER CORP.
CAE–7.
DOCKET# ER98–2297, 000, PG&E ENERGY SERVICES
CAE–8.
DOCKET# ER90–390, 000, NORTHEAST UTILITIES SERVICE COMPANY
OTHER#S EL90–39, 000, CONNECTICUT LIGHT & POWER COMPANY AND WESTERN MASSACHUSETTS ELECTRIC COMPANY
ER90–373, 000, NORTHEAST UTILITIES SERVICE COMPANY
CAE–9.
DOCKET# OA96–75, 000, BLACK HILLS POWER AND LIGHT COMPANY
CAE–10.
DOCKET# EC98–17, 000, J. MAKOWSKI COMPANY, INC. AND TRANSCANADA OSP HOLDINGS LTD.
OTHER#S EC98–18, 000, USGEN NEW ENGLAND, INC., TRANSCANADA OSP HOLDINGS LTD. AND TRANSCANADA POWER MARKETING LTD.
CAE–11.
DOCKET# ER97–3189, 001, ATLANTIC CITY ELECTRIC COMPANY
OTHER#S ER97–3189, 002, BALTIMORE GAS AND ELECTRIC COMPANY
ER97–3189, 003, DELMARVA POWER & LIGHT COMPANYNY
ER97–3189, 004, JERSEY CENTRAL POWER & LIGHT COMPANY, METROPOLITAN EDISON COMPANY AND PENNSYLVANIA ELECTRIC COMPANY
ER97–3189, 005, PECO ENERGY COMPANY
ER97–3189, 006, POTOMAC ELECTRIC POWER COMPANY
ER97–3189, 007, PP&L, INC.
ER97–3189, 008, PUBLIC SERVICE ELECTRIC AND GAS COMPANY
CAE–12.
DOCKET# ER98–1232, 000, NEW ENGLAND POWER COMPANY
CAE–13.
DOCKET# ER98–1568, 000, POTOMAC ELECTRIC POWER COMPANY
OTHER#S ER97–3189, 013 JERSEY CENTRAL POWER & LIGHT COMPANY, METROPOLITAN EDISON COMPANY AND PENNSYLVANIA ELECTRIC COMPANY
ER98–1569, 000, PP&L, INC.
ER98–1570, 000, JERSEY CENTRAL POWER & LIGHT COMPANY, METROPOLITAN EDISON COMPANY AND PENNSYLVANIA ELECTRIC COMPANY
ER98–1608, 000, DELMARVA POWER & LIGHT COMPANY
ER98–1609, 000, ATLANTIC CITY ELECTRIC COMPANY
ER98–1621, 000, PUBLIC SERVICE ELECTRIC AND GAS COMPANY
ER98–2011, 000, PECO ENERGY COMPANY
CAE–14.
DOCKET# ER98–2095, 000, CALIFORNIA POWER EXCHANGE CORPORATION
CAE–15.
DOCKET# ER97–2524, 001, HOUSTON LIGHTING & POWER COMPANY
OTHER#S ER97–3113, 001, TEXAS UTILITIES ELECTRIC COMPANY
CAE–16.
DOCKET# EL94–45, 002, LG&E-WESTMORELAND SOUTHAMPTON
OTHER#S ER97–656, 000, LG&E-WESTMORELAND SOUTHAMPTON
QF88–84, 007, LG&E-WESTMORELAND SOUTHAMPTON
CAE–17.
DOCKET# ER93–465, 019 FLORIDA POWER & LIGHT COMPANY
OTHER#S ER93–922, 011 FLORIDA POWER & LIGHT COMPANY
CAE–18.
DOCKET# EL96–65, 000, PENNSYLVANIA POWER & LIGHT COMPANY V. SCHUYLKILL ENERGY RESOURCES, INC.

OTHER#S QF85–720, 004, SCHUYLKILL ENERGY RESOURCES, INC.
CAE–19.
DOCKET# EL97–56, 000, BRAZOS ELECTRIC POWER COOPERATIVE V. TENASKA IV TEXAS PARTNERS, LTD.
OTHER#S QF94–84, 003, TENASKA IV TEXAS PARTNERS, LTD.
CAE–20.
OMITTED
CAE–21.
DOCKET# NJ98–2, 000, UNITED STATES DEPARTMENT OF ENERGY, SOUTHWESTERN POWER ADMINISTRATION
CAE–22.
OMITTED
CAE–23.
DOCKET# RM95–9, 003, OPEN ACCESS SAME-TIME INFORMATION SYSTEM AND STANDARDS OF CONDUCT
CAE–24.
DOCKET# RM98–3, 000, OPEN ACCESS SAME-TIME INFORMATION SYSTEM

Consent Agenda—Gas and Oil

CAG–1.
DOCKET# PR98–6, 000, ARKANSAS OKLAHOMA GAS CORPORATION
CAG–2.
DOCKET# RP98–187, 000, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
CAG–3.
DOCKET# GT98–35, 000, EL PASO NATURAL GAS COMPANY
CAG–4.
DOCKET# RP92–132, 056 TENNESSEE GAS PIPELINE COMPANY
OTHER#S RP92–132, 057 TENNESSEE GAS PIPELINE COMPANY
CAG–5.
DOCKET# RP97–248, 004, NORTHERN NATURAL GAS COMPANY
CAG–6.
DOCKET# RP97–469, 002, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–7.
DOCKET# SA98–9, 000, MERLEYN A. CALVIN
CAG–8.
DOCKET# RP97–406, 014 CNG TRANSMISSION CORPORATION
CAG–9.
DOCKET# RP97–367, 001, ANR PIPELINE COMPANY
OTHER#S RP97–307, 003, ANR PIPELINE COMPANY
RP97–367, 000, ANR PIPELINE COMPANY
CAG–10.
OMITTED
CAG–11.
DOCKET# IS98–2, 000, AMOCO PIPELINE COMPANY
CAG–12.
DOCKET# OR96–1, 000, EXXON PIPELINE COMPANY, MOBIL ALASKA PIPELINE COMPANY, PHILLIPS ALASKA PIPELINE CORPORATION AND UNOCAL PIPELINE COMPANY
OTHER#S IS96–1, 000, AMERADA HESS PIPELINE CORPORATION
IS96–2, 000, ARCO TRANSPORTATION ALASKA, INC.
IS96–3, 000, BP PIPELINES (ALASKA) INC.
IS96–4, 000, EXXON PIPELINE COMPANY
IS96–5, 000, MOBIL ALASKA PIPELINE COMPANY
IS96–6, 000, PHILLIPS ALASKA PIPELINE CORPORATION
IS98–3, 000, AMERADA HESS PIPELINE CORPORATION
IS98–4, 000, ARCO TRANSPORTATION ALASKA, INC.
IS98–5, 000, BP PIPELINES (ALASKA) INC.
IS98–6, 000, EXXON PIPELINE COMPANY
IS98–7, 000, MOBIL ALASKA PIPELINE COMPANY
IS98–8, 000, PHILLIPS ALASKA PIPELINE CORPORATION
IS98–9, 000, UNOCAL PIPELINE COMPANY
OR96–3, 000, STATE OF ALASKA V. AMERADA HESS PIPELINE CORPORATION
OR96–4, 000, STATE OF ALASKA V. ARCO TRANSPORTATION ALASKA, INC.
OR96–5, 000, STATE OF ALASKA V. BP PIPELINES (ALASKA) INC.
OR96–6, 000, STATE OF ALASKA V. EXXON PIPELINE COMPANY
OR96–7, 000, STATE OF ALASKA V. MOBIL ALASKA PIPELINE COMPANY
OR96–8, 000, STATE OF ALASKA V. PHILLIPS ALASKA PIPE-LINE CORPORATION
OR96–9, 000, STATE OF ALASKA V. UNOCAL PIPELINE COMPANY
OR97–11, 000, PHILLIPS ALASKA PIPELINE CORPORATION
OR98–4, 000, STATE OF ALASKA V. AMERADA HESS PIPELINE CORPORATION
OR98–5, 000, STATE OF ALASKA V. ARCO TRANSPORTATION ALASKA, INC.
OR98–6, 000, STATE OF ALASKA V. BP PIPELINES (ALASKA) INC.
OR98–7, 000, STATE OF ALASKA V. EXXON PIPELINE COMPANY
OR98–8, 000, STATE OF ALASKA V. MOBIL ALASKA PIPELINE COMPANY
OR98–9, 000, STATE OF ALASKA V. PHILLIPS ALASKA PIPE-LINE CORPORATION
OR98–10, 000, STATE OF ALASKA V. UNOCAL PIPELINE COMPANY
CAG–13.
DOCKET# OR97–13, 000, KANEB PIPE LINE OPERATING PARTNERSHIP, L.P.
CAG–14.
DOCKET# RM98–7, 000, REPORTING INTERSTATE NATURAL GAS PIPELINE MARKETING AFFILIATES ON THE INTERNET
CAG–15.
DOCKET# CP97–341, 000, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
CAG–16.
DOCKET# CP97–765, 000, ANR PIPELINE COMPANY
CAG–17.
DOCKET# CP98–196, 000, NORTH SHORE GAS COMPANY
CAG–18.
DOCKET# CP98–189, 000, NORTHERN BORDER PIPELINE COMPANY
CAG–19.
DOCKET# CP98–143, 000, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
CAG–20.
DOCKET# CP98–215, 000, QUESTAR PIPELINE COMPANY
CAG–21.
DOCKET# CP98–254, 000, RICHFIELD GAS STORAGE SYSTEM
OTHER#S CP98–252, 000, DUKE ENERGY FIELD SERVICES, INC.
CAG–22.
DOCKET# CP94–196, 007, WILLIAMS NATURAL GAS COMPANY
OTHER#S CP94–197, 007, WILLIAMS GAS PROCESSING—MID-CONTINENT REGION COMPANY
RP96–236, 002, WILLIAMS NATURAL GAS COMPANY
CAG–23.
OMITTED
CAG–24.
DOCKET# RP98–81, 000, ANR PIPELINE COMPANY
CAG–25.
DOCKET# CP96–249, 008, PORTLAND NATURAL GAS TRANSMISSION SYSTEM
CAG–26.
DOCKET# RP97–275, 014, NORTHERN NATURAL GAS COMPANY
OTHER#S TM97–2–59, 010, NORTHERN NATURAL GAS COMPANY

Hydro Agenda

H–1.
OMITTED

Electric Agenda

E–1.
RESERVED

Regular Agenda—Miscellaneous

M–1.
DOCKET# PL98–1,000, Public access to information and electronic filing: Notice soliciting comments on how the commission should implement electronic filing of documents.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
RESERVED

II. Pipeline Certificate Matters

PC–1.
OMITTED

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12544 Filed 5–7–98; 10:55 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6012–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Audit Policy Customer Satisfaction Survey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Agency Information Collection Activities: Proposed Collection; Comment Request; Audit Policy Customer Satisfaction Survey, EPA ICR Number 1859.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 10, 1998.

ADDRESSES: U.S. E.P.A., Office of Enforcement and Compliance Assurance, 401 M Street, SW. (2201A), Audit Policy Survey, Washington, DC 20460. Interested parties may obtain a copy of the ICR by contacting the Audit Policy Docket, 202–564–2614.

FOR FURTHER INFORMATION CONTACT: Brian Riedel, 202–564–4187 phone, 202–501-0701 fax.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which submitted disclosures under EPA's ''Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations'' Policy (60 FR 66806, December 22, 1995 (Audit Policy)).

Title: Agency Information Collection Activities: Proposed Collection; Comment Request; Audit Policy Customer Satisfaction Survey, EPA ICR No. 1859.01.

Abstract: This information collection is proposed to implement the public commitment in EPA's Audit Policy to conduct a ''study of the effectiveness of the policy * * *'' by January 1999. (60 FR 66706, 60 FR 66712, part H(1) on Public Accountability). The proposed information collection is the Customer Satisfaction Survey set forth below.

EPA's Audit Policy, effective in January of 1996, encourages self-policing by eliminating gravity-based penalties for federal environmental violations that are voluntarily discovered, disclosed, corrected and prevented under the terms of the Policy. Nor will EPA recommend criminal prosecution of regulated entities in these circumstances, although individuals remain liable for their own criminal conduct. The Policy includes safeguards to protect the public and the environment, such as excluding violations that may result in serious harm or risk, reflect repeated noncompliance or allow a company to realize an economic gain from its noncompliance. The Audit Policy is on the High Priority List of the President's Reinventing Environmental Regulations program. At the time of this document, approximately 273 regulated entities have disclosed violations at over 922 facilities, and EPA has settled cases/matters with 102 of these entities at 449 facilities. This ICR proposes to survey the entities that have disclosed violations under the Audit Policy.

The survey, set forth below, generally consists of the ''customer satisfaction'' questions relating to the ''effectiveness'' of the Audit Policy in encouraging voluntary discovery, disclosure, correction and prevention of violations, and questions on how the Audit Policy and its application can be improved. OECA will use this information to evaluate and, where appropriate, revise the Audit Policy to better serve its goals in protecting health and the environment. Participation by the regulated entities in the brief survey is voluntary and anonymous. EPA will not possess the name of the respondent in connection with any answers provided. Any information claimed to be Confidential Business Information will be treated in accordance with EPA regulations at 40 CFR part 2.

Generally, the Customer Satisfaction Survey will assist EPA in addressing the following issue areas cited in the Audit Policy (60 FR 66712):

''H. Public Accountability

(1) Within 3 years of the effective date of this policy, EPA will complete a study of the effectiveness of the policy in encouraging:

(a) Changes in compliance behavior within the regulated community, including improved compliance rates;

(b) Prompt disclosure and correction of violations, including timely and accurate compliance with reporting requirements;

(c) Corporate compliance programs that are successful in preventing violations, improving environmental performance and promoting public disclosure;

(d) Consistency among state programs that provide incentives for voluntary compliance.

EPA will make the study available to the public.''

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.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The total estimated average burden is estimated to be twenty to thirty minutes at a cost of $29 to $43. 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. It is estimated that approximately 60% to 70% or 164 to 191 of the 273 entities will respond to the survey request.

Dated: May 5, 1998.

Nancy K. Stoner,

Director, Office of Planning and Policy Analysis, Office of Enforcement and Compliance Assurance.

Audit Policy Customer Satisfaction Survey

EPA invites you to participate in this anonymous survey of companies that have disclosed environmental violations under the EPA Audit Policy. The Audit Policy, entitled ''Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations,'' appeared in the **Federal Register** on December 22, 1995 at 60 FR 66705. The intent of the Audit Policy is to encourage regulated entities to voluntarily discover, disclose, correct and prevent violations of federal environmental law. This survey will help EPA serve you better and will help EPA improve the Audit Policy. Average time to fill out the survey is estimated to be 20 to 30 minutes. Please return the completed survey in the enclosed envelope addressed to [a third party contractor] by _____. EPA will not possess the name of the respondent in connection with any answers provided. Please do not submit your name in the survey responses. Your participation is very much appreciated. Your response matters!

If you have not yet received final determination under the Audit Policy, i.e. signed order or EPA letter indicating closure of case/matter, please answer Questions 1–5 only. If you disclosed more than one type of violation, please generalize for all of your experiences.

1. How did you learn of EPA's Audit Policy?

__Trade association
__Seminar or conference
__Federal Register
__In-house or outside counsel
__Other (please indicate)

_____

_____

2. Would you have disclosed the violation to EPA in the absence of an Audit Policy?

__Yes
__No
__Don't know

Please explain why or why not.

_____

_____

3. Did you have an environmental compliance auditing program before you heard of the Audit Policy?

__Yes
__No
__Don't know

Please very briefly describe the scope and frequency of your auditing activities before you heard of the Audit Policy:

_____

_____

4. In what ways, if any, did the Audit Policy encourage improvements in the extent of your auditing or due diligence activities?

__Number of audits per facility
__Number of facilities audited
__Scope of environmental statutes or media covered
__Scope of processes covered
__Number of people involved
__Other

_____

__Did not encourage

5. In what ways, if any, did the Audit Policy encourage improvements in the quality of your auditing or due diligence activities?

__Qualifications of people involved
__''Thoroughness'' of audit
__Other

_____

__Did not encourage

6. How did you systematically discover the violation(s) disclosed?

__Environmental audit
__Not applicable
__Due diligence efforts
__Both

If you checked ''Both,'' and characterized the discovery as through environmental auditing in you disclosure letter, please explain why:

_____

_____

_____

7. Why did you decide to disclose the violation(s) under the Audit Policy?

Please check reason(s) and circle most important reason

__To take proactive measures to find and address compliance problems
__To limit liability
__To avail yourself of the incentives under the Policy-penalty mitigation and/or non-recommendation of matter for criminal prosecution
__To obtain certainty by relying on predictable enforcement response under Audit Policy
__To obtain assurance from EPA that violation is being properly corrected / damage is properly remediated
__To conduct and publicize disclosures as evidence of good corporate citizenry and awareness of need to protect public health and the environment
__Other

_____

_____

__Don't know

8. Hypothetically, if you had violations that you did not disclose under Audit Policy, why would you refrain from doing so?

Please check reason(s) and circle most important reason

__Unable to meet 10-day written disclosure condition
__Uncertainty of enforcement response under Audit Policy
__Definition of ''imminent and substantial endangerment'' is too vague
__Belief that penalty representing the economic benefit gained from non-compliance will be too high
__Belief that agency is not likely to discover the violation if it is corrected but not disclosed
__Transactional costs of disclosing are too high
__Desire to avoid disclosure to public of violations
__Other reason

_____

_____

__Don't know

9. If you circled the ''Uncertainty of enforcement response'' reason in the previous question, please check the sub-reason(s) and circle the most important sub-reason:

__Process for calculating economic benefit component of penalty is not precise enough
__Definition of ''repeat violations'' is unclear
__Unclear whether entity would meet 10-day disclosure condition
__Uncertain whether the audit would meet the standard for environmental audits
__Uncertain whether compliance management system would meet due diligence standard
__Other reason

_____

10. What relief did you receive under the Audit Policy?

__All penalties eliminated
__All gravity-based penalties eliminated with economic benefit penalty assessment
__75% of gravity-based penalties eliminated with no economic benefit penalty assessment
__75% of gravity-based penalties eliminated with economic benefit penalty assessment
__Penalties reduced under another authority because the disclosure did not meet the Audit Policy criteria
__Penalties not reduced because the disclosure did not meet the criteria of any authority

11. How do you view EPA's response to your company's correction of the disclosed violation?

__It was reasonable
__It was too stringent

Other _____

Please explain _____

_____

__Don't know

12. How do you view EPA's response to your company's efforts to prevent recurrence of the disclosed violation?

__It was reasonable
__It was too stringent

Other _____

Please explain _____

_____

__Don't know

13. Were you satisfied with the outcome of your company's self-disclosure?

__Yes
__No
__Somewhat
__Don't know

Please explain _____

_____

_____

14.What compliance or environmental improvements, if any, were made possible by the incentives offered under the Audit Policy?

_____
_____
_____

15. What should EPA do to increase the regulated community's awareness of the Audit Policy?

_____
_____

16. How can EPA promote the regulated community's use of the Audit Policy?

_____
_____
_____

17. Would you use the Audit Policy again?

__Yes, if applicable
__No
__Don't know

18. Would you recommend the Policy to clients/counterparts?

__Yes
__No
__Don't know

19. Would you like to see any changes made to the terms of the Audit Policy?

__Yes
__No
__Don't know

Please provide any suggested changes here.

_____
_____
_____

20. What is your opinion about the amount of time it took EPA to respond to your self-disclosure?

_____

21. What is your opinion about the amount of time it took EPA to resolve your case?

_____

22. Do you have any other comments or suggestions about your experience with the Audit Policy?

_____
_____
_____

23. Are you aware of EPA's ''Final Policy on Compliance Incentives for Small Businesses,'' 61 FR 27984, June 3, 1996?

__Yes
__No

The Small Business Policy is intended to promote environmental compliance among businesses with 100 or fewer employees through incentives to participate in compliance assistance programs or conduct environmental audits and to subsequently correct any violations discovered.

24. Would you consider using the Small Business Policy?

__Yes
__No
__Not applicable because have >100 employees
__Don't know

Please explain why or why not.

_____
_____

Thank you for your participation.

Customer Satisfaction Survey on EPA's Audit Policy

EPA invites you to participate in this anonymous survey of companies that have disclosed environmental violations under the EPA Audit Policy. The Audit Policy, entitled ''Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations,'' appeared in the **Federal Register** on December 22, 1995 at 60 FR 66705. The intent of the Audit Policy is to encourage regulated entities to voluntarily discover, disclose, correct and prevent violations of federal environmental law. This survey will help EPA serve you better and will help EPA improve the Audit Policy. Average time to fill out the survey is estimated to be 20 to 30 minutes. Please return the completed survey in the enclosed envelope addressed to [a third party contractor] by _____. Please do not submit your name in the survey responses. Your participation is very much appreciated. Your response matters!

If you have not yet received final determination under the Audit Policy, i.e. signed order or EPA letter indicating closure of case/matter, please answer Questions 1–5 only. If you disclosed more than one type of violation, please generalize for all of your experiences.

1. How did you learn of EPA's Audit Policy?

__ Trade association
_____Federal Register
____ Seminar or conference
_____ In-house or outside counsel
_____ Other (please indicate)

_____
_____

2. Would you have disclosed the violation to EPA in the absence of an Audit Policy?

__ Yes
__ No
__ Don't know

Please explain why or why not.

_____
_____

3. Did you have an environmental compliance auditing program before you heard of the Audit Policy?

__Yes __ No
__ Don't know

Please very briefly describe the scope and frequency of your auditing activities before you heard of the Audit Policy:

_____
_____

4. In what ways, if any, did the Audit Policy encourage improvements in the extent of your auditing or due diligence activities?

_____ Number of audits per facility
_____ Number of facilities audited
_____ Scope of environmental statutes or media covered
_____ Scope of processes covered
_____ Number of people involved
_____ Other

_____
_____ Did not encourage

5. In what ways, if any, did the Audit Policy encourage improvements in the quality of your auditing or due diligence activities?

_____ Qualifications of people involved
_____ ''Thoroughness'' of audit
_____ Other

_____
_____ Did not encourage

(If you have not yet received final determination under the Audit Policy, please stop here.)

_____

6. How did you systematically discover the violation(s) disclosed?

_____ Environmental audit
_____ Due diligence efforts
_____ Both
_____ Not applicable

If you checked ''Both,'' and characterized the discovery as through environmental auditing in your disclosure letter, please explain why:

_____
_____
_____

7. Why did you decide to disclose the violation(s) under the Audit Policy?

Please check reason(s) and circle the most important reason

_____ To take proactive measures to find and address compliance problems
_____ To limit liability
_____ To avail yourself of the incentives under the Policy—penalty mitigation and/or non-recommendation of matter for criminal prosecution
_____ To obtain certainty by relying on predictable enforcement response under Audit Policy
_____ To obtain assurance from EPA that violation is being properly corrected/ damage is properly remediated
_____ To conduct and publicize disclosures as evidence of good corporate citizenry and awareness of need to protect public health and the environment
_____ Other

_____
_____
_____ Don't know

8. Hypothetically, if you had violations that you did not disclose under Audit Policy, why would you refrain from doing so?

Please check reason(s) and circle the most important reason

__Unable to meet 10-day written disclosure condition
__ Uncertainty of enforcement response under Audit Policy
__ Definition of ''imminent and substantial endangerment'' is too vague
__ Belief that penalty representing the economic benefit gained from non-compliance will be too high
__ Belief that agency is not likely to discover the violation if it is corrected but not disclosed
_____ Transactional costs of disclosing are too high

_____ Desire to avoid disclosure to public of violations
_____ Other reason

_____ Don't know

9. If you circled the ''Uncertainty of enforcement response'' reason in the previous question, please check the sub-reason(s) and circle the most important sub-reason:

_____ Process for calculating economic benefit component of penalty is not precise enough
_____Definition of ''repeat violations'' is unclear
_____ Unclear whether entity would meet 10-day disclosure condition
_____ Uncertain whether the audit would meet the standard for environmental audits
_____ Uncertain whether compliance management system would meet due diligence standard
_____Other reason

10. What relief did you receive under the Audit Policy?

_____All penalties eliminated
_____ All gravity-based penalties eliminated with economic benefit penalty assessment
_____ 75% of gravity-based penalties eliminated with no economic benefit penalty assessment
_____ 75% of gravity-based penalties eliminated with economic benefit penalty assessment
_____ Penalties reduced under another authority because the disclosure did not meet the Audit Policy criteria
_____ Penalties not reduced because the disclosure did not meet the criteria of any authority

11. How do you view EPA's response to your company's correction of the disclosed violation?

_____ It was reasonable
_____ It was too stringent

Please explain above or other response:

_____ Don't know

12. How do you view EPA's response to your company's efforts to prevent recurrence of the disclosed violation?

_____ It was reasonable
_____ It was too stringent
Please explain above or other response:

_____ Don't know

13. Were you satisfied with the outcome of your company's self-disclosure?

_____ Yes
_____ No
_____ Somewhat
_____ Don't know

Please explain:

14. What compliance or environmental improvements, if any, were made possible by the incentives offered under the Audit Policy?

15. What, if anything, should EPA do to increase the regulated community's awareness of the Audit Policy?

16. How can EPA promote the regulated community's use of the Audit Policy?

17. Would you use the Audit Policy again?

_____ Yes, if applicable
_____ No
_____ Don't know

18. Would you recommend the Policy to clients/counterparts?

_____ Yes
_____ No
_____ Don't know

19. Would you like to see any changes made to the terms of the Audit Policy?

_____ Yes
_____ No
_____ Don't know
Please provide any suggested changes here.

20. Do you have any other comments or suggestions about your experience with the Audit Policy?

21. Are you aware of EPA's ''Final Policy on Compliance Incentives for Small Businesses,'' 61 FR 27984, June 3, 1996?

_____ Yes
_____ No

The Small Business Policy is intended to promote environmental compliance among businesses with 100 or fewer employees through incentives to participate in compliance assistance programs or conduct environmental audits and to subsequently correct any violations discovered.

22. Would you consider using the Small Business Policy?

_____ Yes
_____ No
_____ Not applicable because have >100 employees _____ Don't know

Please explain why or why not.

Thank you for your participation.

[FR Doc. 98–12428 Filed 5–8–98; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, May 19, 1998 at 2:00 p.m. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, N.W., Washington, D.C. 20507.

STATUS: Part of the meeting will be open to the public and part of the meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and
2. Mid-year Operational Reports by the Office of General Counsel and Office of Field Programs.

Closed Session

Litigation Authorization: General Counsel Recommendations

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTD) at any time for information on these meetings. Contact Person for More Information: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: May 6, 1998.

This Notice Issued May 6, 1998.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 98–12548 Filed 5–7–98; 11:19 am]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 1, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing

effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 10, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0600.

Title: Application to Participate in an FCC Auction, Supplemental Continuation Form.

Form Number: FCC 175, FCC 175–S.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions; state, local or tribal government.

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden:

	Number of respondents	Estimated average hours per response	Estimated annual burden hours
FCC 175	10,000	.75	7,500
FCC 175–S	2,400	.25	600

Estimated Cost Per Respondent:

FCC 175—27,000 hours×$200/hour=$5,400,000

FCC 175–S 600 hours×$200/hour=$120,000

Needs and Uses: The FCC Form 175 is used by entities wishing to participate in Commission spectrum auctions. It contains information that will be used by the Commission to determine whether the applicant is legally, technically and financially qualified to participate in the auction as required by Section 309(j) of the Communications Act, 47 U.S.C. 309(j). FCC Form 175–S is a continuation form used to identify additional licenses or markets for which the FCC Form 175 applicant wishes to bid.

Without such information the Commission could not determine whether to issue the licenses to the applicants that provide telecommunications services to the public and therefore fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended. The rules and requirements are also designed to ensure that the competitive bidding process is limited to serious, qualified applicants and to deter possible abuses of the bidding and licensing processes.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–12407 Filed 5–8–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

May 4, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 10, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0804.

Title: Universal Service - Health Care Providers Universal Service Program.

Form No.: FCC Forms 465, 466, 467, and 468.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 18,400 respondents; 52,000 responses.

Estimated Time Per Response: 2.5 hours (avg.).

Frequency of Response: On occasion and annual reporting requirement.

Cost to Respondents: N/A.

Total Annual Burden: 121,500 hours.

Needs and Uses: On May 8, 1997, the Commission adopted rules providing support for all telecommunications services, limited distance charges, and Internet access for all eligible health care providers. The Commission made minor changes/corrections to several forms. Specifically, the list provided in item 13a of FCC Form 465 has been updated. All forms have been revised to include a telephone number to call for assistance and the appropriate address to send completed forms.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–12404 Filed 5–8–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

April 29, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 10, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0595.

Title: N/A.

Form No.: FCC Form 1210 Updating Maximum Permitted Rates for Regulated Services and Equipment.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; State, local and tribal governments.

Number of Respondents: 6,000 (4,000 filings and 2,000 LFA reviews).

Estimated Time Per Response: 2–15 hours.

Frequency of Response: On occasion.

Total Annual Burden to Respondents: 54,000 hours, calculated as follows: We estimate that approximately 4,000 FCC Form 1210s will be filed in the next year, approximately 50% with the Commission and 50% with LFAs. The average burden for cable operators to complete FCC Form 1210 is estimated to be 15 hours. The average burden for local franchise authorities to review Form 1210 filings is estimated to be 10 hours per filing. Cable operators are estimated to use in-house staff to complete approximately 50% of the filings. When using outside assistance to complete the other 50%, we estimate operators undergo a burden of 2 hours per filing to coordinate information with the outside assistance.

2,000 (50% of 4,000) filings completed with in-house staff x 15 hours per filing = 30,000 hours. 2,000 (50% of 4,000) filings coordinated with outside assistance x 2 hours per filing = 4,000 hours. 2,000 filings reviewed by LFAs at an average burden of 10 hours per filing = 2,000 x 10 hours per filing = 20,000 hours.

Total Annual Cost to all Respondents: $3,008,000 calculated as follows: Printing, photocopying and postage costs incurred by respondents are estimated to be $2 per filing. 4,000 annual filings x $2 per filing = $8,000. We estimate that cable operators that use outside legal and accounting contractors will pay for these services at an average rate of $100/hour. 2,000 filings x 15 hours per filing x $100/hour = $3,000,000.

Needs and Uses: FCC Form 1210 is used by cable operators to file for adjustments in maximum permitted rates for regulated services to reflect external costs. Regulated cable operators submit this form to local franchising authorities or the Commission (in situations where the FCC has assumed jurisdiction). It is also filed with the Commission when responding to a complaint filed with the Commission concerning cable programming service rates and associated equipment. The filings are used by the Commission and local franchising authorities (''LFAs'') to adjudicate permitted rates for regulated cable services and equipment, for the addition of new programming tiers and to account for the addition and deletion of channels, and for the allowance for pass throughs of external costs and costs due to inflation.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–12408 Filed 5–8–98; 8:45 am]

BILLING CODE 3510–22–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

April 29, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 10, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0501.

Title: Section 76.206, Candidate Rates.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10,750.

Estimated Time Per Response: 2–10 hours.

Frequency of Response: On occasion.

Total Annual Burden to Respondents: 139,750 hours, calculated as follows: There are approximately 10,750 cable systems in the nation. We estimate that in any given year, candidates for public office will be interested in seeking origination cablecast time from approximately half of these systems (5,375). We estimate that these cable systems will be required to make the various advertising rate disclosures set forth in Section 76.206 to an average of 4 candidates. The average burden on systems to disclose this information is estimated to be .5 hours per candidate, meaning 2 hours per cable system. 5,375 systems x 2 hours = 10,750 hours. We estimate that each cable system will calculate its lowest unit charge semi-annually with an average burden of 10 hours per system. 5,375 systems x 2 calculations x 10 hours = 107,500 hours. Systems are also required to periodically review their advertising records throughout the election period to determine whether compliance with Section 76.206 requires that candidates receive rebates or credits. We estimate that cable systems will review their records an average of 2 times throughout the election period, undergoing a burden of 2 hours per review. 5,375 systems x 2 reviews x 2 hours = 21,500 hours.

Total Annual Cost to Respondents: Postage and stationery costs associated with the various requirements contained in Section 76.206 are estimated to be $5 per system. 5,375 systems x $5 = $26,875.

Needs and Uses: On December 12, 1991, the Commission adopted Report and Order, FCC 91–403, MM Docket No. 91–168, in the matter of codification of the Commission's political programming policies. The Report and Order adopted affirmative disclosure requirements obliging cable television systems to disclose and make available to candidates all discount privileges available to commercial advertisers, including the lowest unit charge for the different classes of time sold. The Report and Order added Section 76.206 to the Commission's rules. Section 76.206 requires cable television systems to disclose any system practices offered to commercial advertisers that enhance the value of advertising spots and different classes of time (immediately preemptible, preemptible with notice, fixed, fire sale, and make good). It also requires cable systems to calculate the lowest unit charge. The disclosure requirements contained in Section 76.206 serve to ensure that cable system licensees provide timely, accurate and complete information on rates and sales practices to legally qualified candidates for public office who are interested in origination cablecasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–12409 Filed 5–8–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 98–852]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On May 5, 1998, the Commission released a public notice announcing the May 27, 1998, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its Agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes, Paralegal Specialist assisting the NANC, at (202) 418–2313 or via the Internet at jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20554. The fax number is: (202) 418–7314. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: May 5, 1998.

The next meeting of the North American Numbering Council (NANC) will be held on Wednesday, May 27, 1998, from 8:30 a.m., until 5:00 p.m., at the Federal Communications Commission, 1919 M Street, NW, Room 856, Washington, D.C.

This meeting will be open to members of the general public. The FCC will attempt to accommodate as many people as possible. Admittance, however will be limited to the seating available. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before each meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

Proposed Agenda

The planned agenda for the May 27, 1998, meeting is as follows:

1. Approval of meeting minutes.

2. Steering Group Report.

3. N11 Ad Hoc Working Group Report and Recommendation. Responsibilities under *First Report and Order and Further Notice of Proposed Rulemaking,* In the Matter of Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket 92–105, FCC 97–51.

4. Numbering Resource Optimization Working Group Report.

5. Industry Numbering Committee Report.

6. Cost Recovery Working Group Report. Update on first NECA NBANC board meeting.

7. Local Number Portability Administration (LNPA) Working Group Report. LNP Implementation Phase II and III update. Wireline Wireless Integration Task Force Report.

8. North American Numbering Plan Administration (NANPA) Report. CO Code Transition Task Force Update. Report of the NANPA.

9. Other Business.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 98–12405 Filed 5–8–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2273]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

May 4, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800. Oppositions to these petitions must be filed May 26, 1998. See § 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service (MM Docket No. 87–268, FCC 98–24).

Number of Petitions Filed: 32.

Federal Communications Commission.

Magalie Roman Sales,

Secretary.

[FR Doc. 98–12410 Filed 4–8–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby give notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of a currently approved collection.

Title: Extension of Credit to Executive Officers—Unsafe and Unsound Practices.

OMB Number: 3064–0108.

Annual burden:

Estimated annual number of respondents: 8,000.

Estimated time per response: 1 hour.

Average annual burden hours 8,000 hours.

Expiration Date of OMB Clearance: May 31, 1998.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4022, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before June 10, 1998 in the **Federal Register** to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Executive officers of insured nonmember banks must file a report with their bank's Board of Directors within 10 days of incurring any indebtedness to any other bank in an amount in excess of the amount the insured nonmember bank could lend to the officer.

Dated: May 6, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–12437 Filed 5–8–98; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunhine Act Meeting

AGENCY: Federal Election Commission.

* * * * *

FEDERAL REGISTER NUMBER: 98–12244.

PREVIOUSLY ANNOUNCED DATE & TIME: Tuesday, May 12, 1998, 10:00 A.M., Meeting Closed to the Public.

This meeting has been cancelled.

* * * * *

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, May 14, 1998, 10:00 A.M. Meeting Open to the Public.

This meeting has been cancelled.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Administrative Assistant.

[FR Doc. 98–12464 Filed 5–6–98; 4:37 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 26, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Manuel V. Fernandez, Arlington, Virginia; to acquire additional voting shares of United Financial Banking Companies, Inc., Vienna, Virginia, and thereby indirectly acquire additional voting shares of The Business Bank, Vienna, Virginia.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. William and Marla Lastovica, Yutan, Nebraska; to acquire voting shares of Yutan Bancorp., Inc., Yutan, Nebraska, and thereby indirectly acquire voting shares of Bank of Yutan, Yutan, Nebraska.

Board of Governors of the Federal Reserve System, May 5, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–12325 Filed 5–8–98; 8:45 am]

BILLING CODE 6210–01–F

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. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 4, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Ploetz Investments Limited Partnership, Prairie du Sac, Wisconsin; to become a bank holding company by acquiring 48.16 percent of the voting shares of Bank of Prairie du Sac, Prairie du Sac, Wisconsin.

Board of Governors of the Federal Reserve System, May 5, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–12326 Filed 5–8–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC): Meeting

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 meetings.

Name: Workgroup on Genetic Testing, Clinical Laboratory Improvement Advisory Committee.

Times and Dates: 8:30 a.m.–5 p.m., May 27, 1998; 8 a.m.–10 a.m., May 28, 1998.

Place: CDC, Auditorium B, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The room will accommodate approximately 150 people.

Purpose: This Workgroup advises CLIAC on issues related to Genetic Testing.

Matters To Be Discussed: The Workgroup will review and discuss the Clinical Laboratory Improvement Amendments (CLIA) regulations and general or specific CLIA requirements that apply to pre-analytic, analytic, and post-analytic components of genetic testing.

Agenda items are subject to change as priorities dictate.

Name: Clinical Laboratory Improvement Advisory Committee.

Times and Dates: 10:30 a.m.–5 p.m., May 28, 1998; 8:30 a.m.–5 p.m., May 29, 1998.

Place: CDC, Auditorium B, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 150 people.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards Page 3 under which clinical laboratories are regulated; the impact of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters To Be Discussed: The agenda will include an update on CLIA implementation; general or specific CLIA requirements that apply to pre-analytic, analytic, and post-analytic components of genetic testing; and the applicability of CLIA to laboratory testing performed for assisted reproductive technology (ART).

The Committee solicits oral and written testimony on the application of CLIA regulations and ART. Requests to make an oral presentation should be submitted in writing to the contact person listed below by close of business, May 22, 1998. All requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter. Written comments should not exceed five single-spaced, typed pages in length and should be received by the contact person listed below by close of business, May 22, 1998.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: John C. Ridderhof, Dr.P.H., Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE, Mailstop G–25, Atlanta, Georgia 30341–3724, telephone 770/488–8076, FAX 770/488–1129.

Dated: April 30, 1998.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 98–12235 Filed 5–8–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Idaho National Engineering and Environmental Laboratory (INEEL) Health Effects Subcommittee.

Times and Dates: 8:30 a.m.–5:15 p.m., June 2, 1998; 7:30 a.m.–5 p.m., June 3, 1998.

Place: Best Western Templin's Hotel, 414 East First Avenue, Post Falls, Idaho 83854, telephone 208/773–1611, FAX 208/773–4192.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992

between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site.

Matters To Be Discussed: Agenda items include updates from the National Institute for Occupational Safety and Health on the progress of current studies; an update on the status of chemical screening and radionuclide screening and a presentation on document search from the Radiological Assessments Corporation; and subcommittee deliberations.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Arthur J. Robinson, Jr., or Sharona Woodley, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: May 4, 1998.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 98–12354 Filed 5–8–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food And Drug Administration

[Docket No. 98F–0292]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals Corp., has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of 2-methyl-4,6-bis-[(octylthio)methyl]phenol as a stabilizer for rubber-modified polystyrene intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4594) has been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY 10591–9005. The petition proposes to amend the food additive regulations to provide for the expanded safe use of 2-methyl-4,6-bis-[(octylthio)methyl]phenol as a stabilizer for rubber-modified polystyrene complying with § 177.1640 *Polystyrene and rubber-modified polystyrene* (21 CFR 177.1640) intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the 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.

Dated: April 24, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–12314 Filed 5–8–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0289]

UBE Industries, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that UBE Industries, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of Nylon 6/12 copolymer resins manufactured using at least 80 weight percent epsilon-caprolactam and no more than 20 weight percent omega-aminododecanoic acid as a component of articles intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by June 10, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3084.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4569) has been filed by UBE Industries, Ltd., c/o Center for Regulatory Services, 2347 Paddock Lane, Reston, VA 20191. The petition proposes to amend the food additive regulations in § 177.1500 *Nylon resins* (21 CFR 177.1500) to provide for the safe use of Nylon 6/12 copolymer resins manufactured using at least 80 weight percent epsilon-caprolactam and no more than 20 weight percent omega-aminododecanoic acid as a component of articles intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before June 10, 1998, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the

Federal Register in accordance with 21 CFR 25.40(c).

Dated: April 24, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–12313 Filed 5–8–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0362]

The New 510(k) Paradigm; Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''The New 510(k) Paradigm-Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications.'' The New 510(k) Paradigm presents two alternative methods, in addition to the traditional method, of demonstrating substantial equivalence in premarket notifications and is intended to conserve FDA's review resources while facilitating the introduction of safe and effective devices into interstate commerce. The New 510(k) Paradigm addresses the type of information needed in premarket notification submissions, by the Center for Devices and Radiological Health (CDRH), to render substantial equivalence determinations.

DATES: May 11, 1998.

ADDRESSES: Submit written requests for single copies on a 3.5'' diskette of ''The New 510(k) Paradigm-Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications,'' to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Philip J. Phillips, Center for Devices and Radiological Health (HFZ–400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2022.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)), a person who intends to introduce a device into commercial distribution is required to submit a premarket notification, or 510(k), to FDA at least 90 days before commercial distribution is to begin. Section 513(i) of the act (21 U.S.C. 360c(i)) states that FDA may issue an order of substantial equivalence, only upon making a determination that the device to be introduced into commercial distribution is as safe and effective as a legally marketed device. Under 21 CFR 807.87, FDA has codified the content requirements for premarket notifications to be submitted by device manufacturers in support of a substantial equivalence decision. FDA has, however, discretion in the type of information it deems necessary to meet those content requirements.

While the Paradigm maintains the traditional method of demonstrating substantial equivalence under section 510(k) of the act, it also presents two alternatives. The first alternative, the ''Special 510(k): Device Modification,'' utilizes certain aspects of the Quality System regulation, while the second alternative, the ''Abbreviated 510(k),'' relies on the use of FDA guidance documents, special controls and FDA recognized consensus standards to facilitate 510(k) review.

In the **Federal Register** of September 19, 1997 (62 FR 49247), FDA published a notice of availability of a draft of this guidance document on the Paradigm. FDA received 13 comments on the draft. FDA reviewed these comments and has made revisions to the guidance as appropriate.

This guidance document represents the agency's current thinking on the 510(k) Paradigm. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

II. Electronic Access

In order to receive ''A New 510(k) Paradigm-Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications,'' via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number 905 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes: Device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1:FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS Topics Page, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

III. Comments

Interested persons may, at any time, submit to the contact person named above written comments regarding this guidance document. Comments will be considered in determining whether to revise or revoke the guidance.

Dated: May 1, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–12311 Filed 5–8–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–842309

Applicant: Mark F. O'Brien, University of Michigan, Museum of Zoology, Ann Arbor, Michigan.

The applicant requests a permit to take (capture and release, collect voucher specimens, collect larval exuviae, and salvage dead specimens) Hine's (=Ohio) emerald dragonfly (*Somatochlora hineana*) in the state of Michigan. Activities are proposed to document presence or absence of the species for the purpose of survival and enhancement of the species in the wild.

PRT–842310

Applicant: QST Environmental, St. Louis, Missouri.

The applicant requests a permit to take (capture, handle, and release) Curtis' pearlymussel [*Epioblasma* (=*Dysnomia*) *florentina curtisi*], fat pocketbook [*Potamilus* (=*Proptera*) *capax*], Higgins' eye pearlymussel (*Lampsilis higginsi*), and pink mucket pearlymussel [*Lampsilis abrupta* (=*orbiculata*)] in the states of Illinois and Missouri. Activities are proposed to document presence or absence of the species for the purpose of survival and enhancement of the species in the wild.

PRT–842312

Applicant: Mark D. McGimsey, Columbia, Missouri.

The applicant requests a permit to take (capture and release) gray bat (*Myotis grisescens*) and Indiana bat (*Myotis sodalis*) throughout the ranges of the species. Activities are proposed to document presence or absence of the species for the purpose of survival and enhancement of the species in the wild.

PRT–842313

Applicant: Illinois Department of Natural Resources, Illinois State Museum Research and Collections Center, Springfield, Illinois.

The applicant requests a permit to take (capture and release, collect) Hine's (=Ohio) emerald dragonfly (*Somatochlora hineana*) in the states of Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Activities are proposed to document presence or absence of the species and for the purpose of scientific research aimed at enhancement and survival of the species in the wild.

PRT–842314

Applicant: Mark A. Sellers, Kentwood, Michigan.

The applicant requests a permit to take (harass through survey; capture, and release) copperbelly water snake (*Nerodia erythrogaster neglecta*) in the state of Michigan. Activities are proposed to document presence or absence of the species for the purpose of survival and enhancement of the species in the wild.

PRT–842392

Applicant: Richard ffrench-Constant, University of Wisconsin-Madison, Department of Entomology, Madison, Wisconsin.

The applicant requests a permit to take (collect) Karner blue butterfly (*Lycaeides melissa samuelis*) in the states of Indiana and New York. Activities are proposed for the purpose of scientific research aimed at enhancement and survival of the species in the wild.

PRT–842503

Applicant: Robert Mies and Kimberly Williams, Organization for Bat Conservation, Williamston, Michigan.

The applicants request a permit to take (capture and release) Indiana bats (*Myotis sodalis*) in the state of Michigan. Activities are proposed to document presence or absence of the species for the purpose of survival and enhancement of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5332); FAX: (612/713–5292).

Dated: May 4, 1998.

Matthias A. Kerschbaum,

Acting Assistant Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.

[FR Doc. 98–12352 Filed 5–8–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. 835549

Applicant: Charles Black, San Diego, California.

The applicant requests a permit to take (harass by survey, capture and release) the San Diego fairy shrimp (*Brachinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottoni*), and remove and reduce to possession the San Diego mesa mint (*Pogogyne abramsii*) and the San Diego button celery (*Eryngium aristulatum* ssp. *pavishii*) for the purpose of enhancing their survival, in conjunction with research in vernal pools throughout the state of California.

Permit No. 830995

Applicant: Lisa B. Chaddock, San Diego, California.

The applicant requests a permit amendment to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys and ecological research throughout the species' range, for the purpose of enhancing its survival.

Permit No. 838741

Applicant: Larry Munsey, Tustin, California.

The applicant requests a permit amendment to take (harass by survey) the Delhi sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with presence or absence surveys in San Bernardino and

Riverside counties, for the purpose of enhancing its survival.

Permit No. 842199

Applicant: Kieth Greer, San Diego, California.

The applicant requests a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys and ecological research throughout the species' range, for the purpose of enhancing its survival.

Permit No. 800291

Applicant: Ibis Environmental Services, Tiburon, California.

The applicant requests an amendment to her permit to take (harass by survey; locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in San Diego, San Bernardino, Riverside, Kern, and Orange Counties, California and to take (capture and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*) in Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties, California, in conjunction with surveys and population monitoring, for the purpose of enhancing their survival.

Permit No. 829250

Applicant: Hawaii Wildlife Fund, Laie, Hawaii.

The applicant requests an amendment to his permit to take (relocate eggs) of the hawksbill sea turtle (*Eretmochelys imbricata*) in conjunction with scientific research on the island of Maui, for the purpose of enhancing their survival.

Permit No. 839483

Applicant: University of Nevada, Reno, Nevada

The applicant requests a permit to take (capture, release, collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*) and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with the collection of water and soil samples in Yolo, Solano, Sacramento, Yuba, and Merced Counties, California, for the purpose of enhancing their survival.

Permit No. 842267

Applicant: Steve Foreman, Fairfield, California

The applicant requests a permit to: take (capture, mark, and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*) throughout its range in California; take (capture and release) the California freshwater shrimp (*Syncaris pacifica*) in Marin, Napa, and Sonoma Counties, California; and take (harass by survey, capture and release, collect and sacrifice voucher specimens) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (L*epidurus packardi*), the San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*) throughout the species range, in conjunction with surveys and population studies, for the purpose of enhancing their survival. Please note: the applicant is currently authorized to conduct these activities under Permit No. 677215.

DATES: Written comments on these permit applications must be received by June 10, 1998.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: May 4, 1998.

Don Weathers,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–12384 Filed 5–8–98; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–395]

Certain EPROM, EEPROM, Flash Memory, and Flash Microcontroller Semiconductor Devices, and Products Containing Same; Notice of Commission Decision to Review Portions of an Initial Determination and Schedule for the Filing of Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review certain portions of the initial determination (ID) issued by the presiding administrative law judge (ALJ) on March 19, 1998, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: John A. Wasleff, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3094.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 18, 1997, based on a complaint filed by Atmel Corporation. 62 FR 13706. The complaint named five respondents: Sanyo Electric Co., Ltd., Winbond Electronics Corporation and Winbond Electronics North America Corporation (collectively ''Winbond''), Macronix International Co., Ltd. and Macronix America, Inc. (collectively ''Macronix''). Silicon Storage Technology, Inc. (''SST'') was permitted to intervene.

In its complaint, Atmel alleged that respondents violated section 337 by importing into the United States, selling for importation, and/or selling in the United States after importation electronic products and/or components that infringe one or more of claim 1 of U.S. Letters Patent 4,511,811, claim 1 of U.S. Letters Patent 4,673,829, claim 1 of U.S. Letters Patent 4,974,565 (''the '565 patent'') and claims 1–9 of U.S. Letters Patent 4,451,903. The '565 patent was subsequently removed from the case. The presiding ALJ held an evidentiary hearing from December 8 to December 19, 1997.

On March 19, 1998, the ALJ issued his final ID finding that there was no violation of section 337. He found that neither claim 1 of U.S. Letters Patent 4,511,811 (''the '811 patent''), nor claim 1 of U.S. Letters Patent 4,673,829 (''the '829 patent''), nor claim 1 or claim 9 of

U.S. Letters Patent 4,451,903 (''the '903 patent'') was infringed by any product of the respondents or intervenor. He further found that the '903 patent was unenforceable because of waiver and implied license by legal estoppel, and that claims 2 through 8 of this patent are invalid for indefiniteness. He found that respondents and the intervenor had not demonstrated that any other claim at issue was invalid in view of any prior art before him, or that the '903 patent is void for failure to name a co-inventor. He found that complainant had not demonstrated that the '811 patent was entitled to an earlier date of invention than that appearing on the face of the patent. Finally, the ALJ found that there was a domestic industry with respect to all patents at issue.

On March 31, 1998, complainant Atmel filed a petition for review of the ALJ's final ID. On April 1, 1998, respondent Winbond filed a petition for review of the ALJ's ID. The other respondents and intervenor SST filed contingent petitions for review, raising issues to be considered in the event that the Commission determined to review certain of the ALJ's findings.

Having examined the record in this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined not to review the issue of the validity of claims 2–8 of the '903 patent. The Commission has determined to review the remainder of the ID.

On review, the Commission is particularly interested in receiving answers to the following questions:

(1) What effect, if any, does the decision in *Atmel Corp.* v. *Information Storage Devices, Inc.*, No. C 95-1987 FMS, slip op. (N.D. Cal. April 14, 1998), have on the Commission's consideration of the '811 and '829 patents? In view of *Lannom Mfg. Co., Inc.* v. *USITC*, 799 F.2d 1572 (Fed. Cir. 1986), can the Commission consider the theory of invalidity relied upon by the court in Information Storage Devices with respect to the '811 and/or '829 patents?

(2) Under the ALJ's construction of claim 1 of the '811 and '829 patents:

(a) What evidence of record bears on the issue of whether the insertion of a source follower between the conductive line that receives increments of charge in the accused cpl2 circuit and the relevant long conductive line (word line or source line) is a substantial change?

(b) What evidence of record bears on the issue of whether the substitution of a two stage charge pump for a single stage charge pump is a substantial change?

(3) Discuss whether the following is an appropriate construction of the disputed terms of claim 1 of the '811 and '829 patents:

(a) *Conductive lines having inherent distributed capacitance* means every conductive line on a semiconductor chip positioned over the insulating layer. In discussing this term, please comment on the significance of the following testimony: Hearing Tr. at 1593 (12/13/98)

(b) *Means * * * for selecting one or more of said conductive lines* means that some circuitry must select one or more conductive lines (as defined in part (a)), one of which receives the increments of charge from the charge pump.

(c) *Transfer means responsive to said selection means and connected to said voltage node for transferring increments of charge* means any circuitry connected at some point to the voltage node receiving the capacitively coupled voltage pulses, and delivering increments of charge to the conductive line to be charged. Further assume that the transfer means must respond to the selection means at some point in the charging operation, and increments of charge refers simply to a periodic increase in the charge, without necessarily returning to zero.

(d) *Said transfer means including switching means * * * for blocking substantially all of the flow of current* means any circuit device that prevents current from flowing from the high voltage supply to unselected lines.

(4) Assuming that the disputed claim terms are interpreted as set forth in question 3, would the accused devices of respondents and intervenor contain circuit means that perform the identical specified functions? Each respondent and intervenor is requested to answer this part of the question with regard to its own accused devices.

(5) If the disputed claim terms are interpreted as set forth in question 3, what evidence of record bears on the question of whether the circuit means for each element of the '811 and '829 patents is the equivalent for purposes of 35 U.S.C. 112¶6 of the putative circuit means employed in the accused devices? If you conclude that the circuit means are not 112¶6 equivalents, what evidence of record bears on the question of whether the distinguishing differences are substantial changes?

(6) What evidence of record bears on the question of whether the Amrany patent is prior art to the '811 and '829 patents? More specifically:

(a) What evidence of record corroborates the inventor's testimony that conception of the invention disclosed in the '811 and '829 patents occurred in May or June 1981?

(b) What evidence of record bears on the issue of when the invention disclosed in the '811 and '829 patents was reduced to practice?

(c) What evidence of record bears on the issue of due diligence from June 1981 until January 15, 1982?

(7) If the disputed claim terms are interpreted as set forth in question 3, are claim 1 of the '811 patent and claim 1 of the '829 patent valid in view of the prior art of record, including the Amrany reference?

(8) If the disputed claim terms are interpreted as set forth in question 3, do the Atmel AT45 and AT49 parts and the SEEQ parts practice the '811 and '829 patents?

(9) In what way would any agreement between SEEQ and JEDEC redound to the benefit of intervenor and respondents? Is there any evidence of record that intervenor or any of the respondents are third party beneficiaries?

(10) Assuming that the interaction of SEEQ with JEDEC resulted in a standing offer to every company in the industry to negotiate a royalty free license to the technology embodied in the '903 patent, is there any evidence of record that intervenor or any of the respondents accepted this offer before the filing of the complaint in this investigation?

(11) What evidence of record might establish an implied license by equitable estoppel with respect to the intervenor or any of the respondents?

(12) Given the facts of this case, can Mr. Jordan be the sole inventor of a patent with claim elements drafted in means plus function form?

(13) Discuss whether the following is an appropriate construction of the disputed terms of claim 1 of the '903 patent:

(a) *Primary circuit* means all circuitry that would be present on a semiconductor chip before the addition of circuitry needed to implement the invention disclosed in the '903 patent.

(b) *Product information array disposed on the semiconductor chip adjacent said primary circuit* means that the memory devices necessary to contain the claimed product information are fabricated on the same integrated circuit chip as the primary circuit, as defined in part (a) above, but not interspersed with the primary circuit.

(c) *Access means for receiving first and second signals and for selecting said primary circuit . . . [and] selecting said product information array* means the circuitry needed to make the logic decision whether the normal output of the primary circuit or the information in the product information array is being

requested by the user. Further assume that zero volts or the absence of any input are included in the universe of inputs that may be first and second signals.

(d) *Output means for providing output signals representative of the information stored* means the circuitry needed to translate internal logic signal(s) representative of the stored information into a signal suitable to drive devices external to the chip, according to the output drive specifications of the chip in question.

(14) If the disputed claim terms are interpreted as assumed in question 13, do the accused devices of respondents and intervenor infringe this claim? Each respondent and intervenor is requested to answer this part of the question with regard to its own accused devices.

(15) If the disputed claim terms are interpreted as set forth in question 13, is claim 1 of the '903 patent valid in view of the prior art of record?

(16) If the disputed claim terms are interpreted as set forth in question 13, do the Atmel AT27, AT29, and AT49 parts practice the '903 patent?

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry that either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions

The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the March 19, 1998 recommended determination of the ALJ. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on May 20, 1998. Reply submissions must be filed no later than May 28, 1998. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.42–.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.45).

Copies of the public version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: May 6, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–12587 Filed 5–8–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–408]

In the Matter of Certain Recombinantly Produced Hepatitis B Vaccines 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 April 3, 1998, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Chiron Corporation, 4560 Horton Street Emeryville, California 94608. A supplementary letter and an amended complaint were filed on April 20, 1998. A second supplement was filed on April 27, 1998. The complaint, as amended and 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 recombinantly produced Hepatitis B vaccines, and products containing same, made by processes that infringe claims 4, 5, 7, and 8 of U.S. Letters Patent Re. 35,749. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained herein, is 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 also be obtained by accessing its internet server (http://www.usitc.gov).

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2579.

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 (1997).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on May 5, 1998, *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 recombinantly produced Hepatitis B vaccines, or products containing same, made by a process that infringes claims 4, 5, 7, or 8 of U.S. Letters Patent Re. 35,749, and whether there exists an industry in the United States 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 complainant is—Chiron Corporation, 4560 Horton Street, Emeryville, CA 94608–2917.

(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: SmithKline Beecham Biologicals, S.A., Rue de l'Institut, 69, 1330 Rixensart, R.C. Nivelles 65945, Belgium, SmithKline Beecham Corporation, One Franklin Plaza, Philadelphia, PA 19102.

(c) Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–L, Washington, DC 20436, who shall be the Commission Investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

(4) Pursuant to section 210.50(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.50(b)(1), the Commission delegates to the presiding administrative law judge the authority to compel discovery, take evidence, and hear augment with respect to the public interest, as appropriate, and directs the administrative law judge to include findings of fact and conclusions of law on public interest issues in any recommended determination filed with the Commission under section 210.42(a)(1)(ii), 19 CFR 210.42()(1)(ii).

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 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 notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefore 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 this notice, and to authorize the administrative law judge and the Commission, without further notice to the 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 direct4ed against such respondent.

Issued: May 5, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–12423 Filed 5–8–98; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS 1926–98]

Fiscal Year 1998 Numerical Limitation Reached for H–1B Nonimmigrants

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Immigration Act of 1990 (IMMACT), provided that beginning with fiscal year 1992, the total number of aliens who may be issued visas under the H–1B category during any fiscal year could not exceed 65,000. Based on all available data, the 65,000 limit has been reached for fiscal year 1998. This notice describes the procedures the Service will use for processing H–1B petitions for new or initial employment in the remainder of fiscal year 1998.

DATES: This notice is effective May 11, 1998.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–3240.

SUPPLEMENTARY INFORMATION:

Background

Section 205 of the Immigration Act of 1990 (IMMACT), Public Law 101–649, dated November 29, 1990, imposed a 65,000 numerical limitation beginning in fiscal year 1992 on the number of aliens who could be accorded H–1B nonimmigrant status in a fiscal year.

The regulation at 8 CFR 214.2(h)(8)(ii)(E) provides that ''If the total numbers available in a fiscal year are used, new petitions and the accompanying fee shall be rejected and returned with a notice that numbers are unavailable for the particular nonimmigrant classification until the beginning of the next fiscal year.''

Which H–1B Petitions Will Be Affected by This Notice?

H–1B petitions filed for new or initial employment for the remainder of fiscal year 1998 will be affected by this notice as well as petitions pending with the Service on the date of this notice.

Which H–1B Petitions Will Not Be Affected by This Notice?

Petitions filed for sequential H–1B employment, concurrent H–1B employment, extension of H–1B stay, and amended H–1B petitions are not affected by this notice.

Sequential employment is where an alien assumes one H–1B position after another. For example, an H–1B chemist completes his or her assignment with ''Company A'' and then assumes a new position the very next day as an H–1B chemist with ''Company B''.

Concurrent employment is where an alien holds two H–1B positions at the same time. For example, an H–1B computer system analyst works for ''Company A'' full-time during the week and works for ''Company B'' part-time on the weekends.

An *extension of stay* is where the alien's current employer submits a petition to extend the alien's temporary stay.

An *amended petition* is where there has been a change in the conditions of the alien's employment, but the alien remains employed by the same petitioner.

How Will H–1B Petitions Submitted For New or Initial Employment for Fiscal Year 1998 be Processed?

Based on 8 CFR 214.2(h)(8)(ii)(E), the Service will return, with fee, any H–1B petition filed with the Service on or after the date of this notice for new or initial employment in fiscal year 1998. The petitioner will be advised in a notice to either resubmit the petition when numbers are available on October 1, 1998, or to resubmit the petition and request employment commencing on or after October 1, 1998.

In the case of those petitions pending with the Service on the date of this notice, the Service will contact the petitioner or the attorney of record and advise him or her that the 65,000 limit has been reached. The petitioner will then be given the option of either withdrawing the petition or requesting that the Service change the date of the beneficiary's intended employment to on or after October 1, 1998, the beginning of fiscal year 1999, when H–1B numbers will again become available.

How Will H–1B Petitions Submitted For New or Initial Employment Beginning in Fiscal Year 1999 be Processed?

H–1B petitions filed for employment commencing on or after October 1, 1998, which is the beginning of fiscal year 1999, are not affected by the procedures described in this notice and those petitions will be adjudicated when received by the Service.

What Will Happen if the Numerical Limitation is Raised by Congress?

The Congress is currently considering whether to raise the numerical limit for fiscal year 1998. The procedures described in this notice will be modified if the limit is raised through legislation enacted by the Congress and signed by the President.

Dated: May 6, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–12448 Filed 5–8–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Susan Harwood Training Grant Program

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of availability of funds and request for grant applications.

SUMMARY: The Occupational Safety and Health Administration (OSHA) awards funds to nonprofit organizations to conduct safety and health training and education in the workplace. This notice announces grant availability for training in safety and health programs for construction, silica in general industry, food processing, shipyards, logging, and outreach to workers. The notice describes the scope of the grant program and provides information about how to get detailed grant application instructions. Applications should not be submitted without the applicant first obtaining the detailed grant application instructions mentioned later in the notice.

Authority for this program may be found in section 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670).

DATES: Applications must be received by June 26, 1998.

ADDRESSES: Grant applications are to be submitted to the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Ronald Mouw, Chief, Division of Training and Educational Programs, or Helen Beall, Training Specialist, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, Illinois 60018, telephone (847) 297–4810, e-mail helen.beall@oti.osha.gov.

SUPPLEMENTARY INFORMATION:

What is the Purpose of the Program?

Susan Harwood Training Grants provide funds to train workers and employers to recognize, avoid, and prevent safety and health hazards in their workplaces. The program emphasizes three areas.

- Educating workers and employers in small businesses. A small business has 250 or fewer workers.
- Training workers and employers about new OSHA standards.
- Training workers and employers about high risk activities or hazards identified by OSHA through the priority planning process or otherwise, or as part of an OSHA special emphasis program.

Grantees are expected to develop training and/or educational programs that address one of the topics named by OSHA (see below), recruit workers and employers for the training, and conduct the training. Grantees will also be expected to follow-up with people who have been trained to find out what, if any, changes were made to reduce hazards in their workplaces as a result of the training.

What Are the Training Topics This Year?

The purpose of this notice is to announce that funds are available for grants. Each grant application must address one of the following topic areas.

1. Construction. Applicants may address one of the following topics.

- Recognition and avoidance of lead and silica hazards in bridge repair and renovation.
- Safety and health hazards in highway construction with emphasis on preventing fatalities, particularly those caused by being struck by vehicles and equipment.
- Recognition and avoidance of electrical hazards in construction, particularly contact with overhead power lines. Projects will emphasize developing systems and procedures that will provide ongoing training programs for new employees after the grant has ended.

2. Silica in general industry. Recognition and avoidance of silica hazards in industries where sandblasting is a process, such as metal finishing, or where silica is part of the manufacturing process, such as cement.

3. Food processing. Safety and health hazards in red meat and/or poultry processing.

4. Shipyards. Safety and health hazards in shipbuilding, shipbreaking, or ship repair.

5. Logging. Logging safety focusing on the OSHA standard and safe work practices. Projects must include a statewide group involved in the logging industry, such as a state forestry association.

6. Outreach to workers. Training workers about their rights under the OSH Act, how these rights can be exercised and what protections workers have. Training is to include sections 8(f) and 11(c) of the OSH Act, employee discrimination complaints under 29 CFR Part 24 (environmental laws), and complaints under the Surface Transportation Assistance Act of 1982 (29 CFR 1978). Projects will reach out to workers to inform them of their rights. Preference will be given to those that develop programs which will continue disseminating information after the grant ends.

Who is Eligible To Apply for a Grant?

Any nonprofit organization that is not an agency of a State or local government is eligible to apply. However, State or local government supported institutions of higher education are eligible to apply in accordance with 29 CFR 97.4(a)(1).

Applicants other than State or local government supported institutions of higher education will be required to submit evidence of nonprofit status, preferably from the IRS.

What Can Grant Funds Be Spent On?

Grant funds can be spent on the following.

- Conducting training
- Conducting other activities that reach and inform workers and employers about occupational safety and health hazards and hazard abatement
- Developing educational materials for use in the training

Are There Restrictions on How Grant Funds Can Be Spent?

OSHA will not provide funding for the following activities.

1. Any activity that is inconsistent with the goals and objectives of the Occupational Safety and Health Act of 1970.

2. Training involving workplaces that are not covered by the Occupational Safety and Health Act. Examples include state and local government workers in non-State Plan States and workers covered by section 4(b)(1) of the Act.

3. Production, publication, reproduction or use of training and educational materials, including newsletters and instructional programs, that have not been reviewed by OSHA for technical accuracy.

4. Activities that address issues other than recognition, avoidance, and prevention of unsafe or unhealthy working conditions. Examples include workers' compensation, first aid, and publication of materials prejudicial to labor or management.

5. Activities that provide assistance to workers in arbitration cases or other actions against employers, or that provide assistance to employers and/or workers in the prosecution of claims against Federal, State or local governments.

6. Activities that directly duplicate services offered by OSHA, a State under an OSHA-approved State Plan, or consultation programs provided by State designated agencies under section 7(c)(1) of the Occupational Safety and Health Act.

7. Activities intended to generate membership in the grantee's organization. This includes activities to acquaint nonmembers with the benefits of membership, inclusion of membership appeals in materials produced with grant funds, and membership drives.

What Other Grant Requirements Are There?

1. OSHA review of educational materials. Educational materials produced by the grantee will be reviewed by OSHA for technical accuracy during development and before final publication. OSHA will also review curriculums and purchased training materials for accuracy before they are used.

When grant recipients produce training materials, they will provide copies of completed materials to OSHA before the end of the grant period. OSHA has a lending program that circulates grant-produced audiovisual materials. Grant recipients' audiovisual materials will be included in this lending program. In addition, all materials produced by grantees may be placed on the Internet by OSHA.

2. OMB and regulatory requirements. Grantees will be required to comply with the following documents.

- 29 CFR part 95, which covers grant requirements for nonprofit organizations, including universities and hospitals. These are the Department of Labor regulations implementing OMB Circular A–110.
- OMB Circular A–21, which describes allowable and unallowable costs for educational institutions.
- OMB Circular A–122, which describes allowable and unallowable costs for other nonprofit organizations.
- OMB Circular A–133, which provides information about audit requirements.

3. Certifications. All applicants will be required to certify to a drug-free workplace in accordance with 29 CFR part 98, to comply with the New Restrictions on Lobbying published at 29 CFR part 93, to make a certification regarding the debarment rules at 29 CFR part 98, and to complete a special lobbying certification.

4. Matching share. The program requires the grantee to provide a matching share. Grant recipients are to provide a minimum of 20% of the total grant budget. This match may be in-kind, rather than a cash contribution. For example, if the Federal share of the grant is $80,000 (80% of the grant), then the matching share will be $20,000 (20% of the grant), for a total grant of $100,000. The matching share may exceed 20%.

How Are Applications Reviewed and Rated?

Grant applications will be reviewed by OSHA staff and the review results presented to the Assistant Secretary who will make the selection of organizations to be awarded grants.

Preference will be given to applications that plan to conduct train-the-trainer programs. Applicants are encouraged to include managers and/or supervisors in their training. In general, applications that propose to serve a single employer will not be selected, since OSHA is interested in reaching multiple employers with each grant awarded.

The following factors will be considered in evaluating grant applications.

1. Program Design

a. The proposed training and education program addresses one of the following topics.

i. Construction.
ii. Silica in general industry.
iii. Food processing.
iv. Shipyards.
v. Logging.
vi. Outreach to workers.

b. The proposal plans to train workers and/or employers and clearly estimates the numbers to be trained.

c. The proposal contains a train-the-trainer program, and the numbers to be trained by these trainers are clearly estimated.

d. The planned activities are appropriate for the workers and/or employers to be trained.

e. There is a plan to recruit trainees for the program.

f. If the proposal includes developing educational materials, there is a plan for OSHA to review the materials during development.

g. There is a plan to evaluate the program's effectiveness and this includes plans to follow-up with trainees to see if the training resulted in workplace change.

h. The planned work can be accomplished in one year.

2. Program Experience

a. The organization applying for the grant demonstrates experience with occupational safety and health.

b. The organization applying for the grant demonstrates experience training adults in work-related subjects.

c. The staff to be assigned to the project have experience in (1) occupational safety and health, (2) the specific topic chosen, and (3) training adults.

d. The organization applying for the grant demonstrates experience in recruiting and training the population it proposes to serve under the grant.

3. Administrative Capability

a. The applicant organization demonstrates experience managing a variety of programs.

b. The applicant organization has administered, or will work with an organization that has administered, a number of different Federal and/or State grants over the past five years.

c. The application is complete, including forms, budget detail, narrative and workplan, and required attachments.

4. Budget

a. The budgeted costs are reasonable.

b. The proposed non-Federal share is at least 20% of the total budget.

c. The budget complies with Federal cost principles (which can be found in applicable OMB Circulars) and with OSHA budget requirements contained in the grant application instructions.

d. The cost per trainee is less than $500 and the cost per training hour is reasonable.

In addition to the factors listed above, the Assistant Secretary will take other items into consideration, such as the geographical distribution of the grant programs and the coverage of populations at risk.

How Much Money Is Available for Grants?

There is approximately $2,000,000 available for this program. The average Federal award will be $100,000.

How Long Are Grants Awarded For?

Grants are awarded for twelve-month periods. Grants may be renewed for additional twelve-month periods depending on whether there are funds available, there is still a need for the training, and the grantee has performed satisfactorily.

How Do I Get a Grant Application Package?

Grant application instructions may be obtained from the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018. The application instructions are also available at *http://www.osha-slc.gov/Training/sharwood/sharwood.html.*

When and Where are Applications To Be Sent?

The application deadline is 4:30 p.m. Central Time, June 26, 1998.

Applications are to be mailed to the Division of Training and Educational Programs, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, IL 60018. Applications will not be accepted by fax.

How Will I be Told if My Application Was Selected?

Organizations selected as grant recipients will be notified by a representative of the Assistant Secretary, usually from an OSHA Regional Office. An applicant whose proposal is not selected will be notified in writing.

Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, OSHA will 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 Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC, this 5th day of May 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–12372 Filed 5–8–98; 8:45 am]

BILLING CODE 4510–26–U

NATIONAL INSTITUTE FOR LITERACY

(CFDA No. 84.257F)

NIFL Regional Technology HUB Project; Notice Inviting Applications for New Awards for Fiscal Year 1998

AGENCY: The National Institute for Literacy (NIFL).

ACTION: Notice.

PURPOSE: The purpose of these grants is to establish a second generation of regional hubs to extend the Literacy Information and Communication System (LINCS) infrastructure throughout the literacy community in each region. Each hub will form a consortium with all states in the region—''member states''—and, in cooperation with member states, a network of targeted local literacy programs. Each regional hub will be expected to build on the achievements of the region's previous hub and to build strong partnerships with other technology efforts in the region. In the process of enhancing the technological capacity of states and local programs, regional hubs will—

- Increase the literacy field's electronic knowledge base by collecting and exchanging new literacy information resources, especially locally developed materials, and creating in-depth collections on important literacy topics.
- Encourage the widespread use of the NIFL's systematic procedures and uniform standards for information collection and exchange.
- Provide innovative delivery of high quality, easy-to-access information resources to the adult education and literacy community through the use of variety of tools, including multi-media.
- Enable member states and local programs to be self-sufficient in their efforts to enhance the LINCS database and communication tools.
- Enhance communication and community-building by connecting increasingly larger numbers of literacy stakeholders of all kinds—researchers, practitioners, administrators, students, and policymakers—and closing the gap between information ''haves'' and ''have nots.''
- Integrate the use of technology into every aspect of learning and teaching in the adult education and literacy field.

Deadline for Transmittal of Applications: June 26, 1998.

Eligible Applicants: State, regional, and national organizations, or consortia of such organizations, in OVAE Region I.

Available Funds: This announcement envisions a two-year cooperative

agreement. In the first year a total of $150,000 is available for the grant. Year 2 fundi ng is subject to program authorization and availability of appropriations, and contingent upon satisfactory completion of the first year play of action.

Estimated Number of Awards: One award in the OVAE Region I.

Estimated Award Amount: $150,000.

Project Period: Two years.

Applicable Regulations: The National Institute for Literacy has adopted the following regulations included in the Education Department Grants Administrative Regulations (EDGAR): 34 CFR Part 74; 34 CFR Part 75, §§ 75.50, 75.51, 75.102, 75.117, 75.109–75.192, 75.200, 75.201, 75.215; 34 CFR Parts 77, 80, 82, 85.

Note: The selection criteria used for this competition are set out in this Notice. While the criteria are patterned on those used generally by the U.S. Department of Education, they have been adapted by the NIFL to meet the needs of this program. While the NIFL is associated with the Departments of Education, Labor, and Health and Human Services, the policies and procedures regarding rulemaking and administration of grants are not adopted by the NIFL except as expressly stated in this Notice.

FOR FURTHER INFORMATION CONTACT:

Jaleh Behroozi Soroui, National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006. Telephone: 202–632–1506. FAX: 202–632–1512. E-mail: jaleh@literacy.nifl.gov

Information about NIFL's funding opportunities, including the Application Notices, Newsletters, Policy Updates, etc., can be viewed on the LINCS WWW server (under Current Events, under grants). LINCS URL: http://novel.nifl.gov

SUPPLEMENTARY INFORMATION:

Definitions: For purposes of this announcement the following definitions apply:

Literacy An individual's ability to read, write, and speak in English, and compute and solve problems at levels of proficiency necessary to function on the job and in society, to achieve one's goals and develop one's knowledge and potential (as stated in the National Literacy Act of 1991).

Adult Education and Literacy Community The aggregate of individuals and groups at all levels nationwide that are actively involved with adult education and literacy instruction, including individuals such as researchers, practitioners, policymakers, adult learners, and administrators, and groups such as state and local departments of education, human services, and labor; libraries; community-based organizations; businesses and labor unions; and volunteer and civic groups.

State Literacy Resource Centers (SLRCs) State or regional organizations supported through federal, state, or private funds for the purpose of coordinating the delivery and improvement of literacy services across agencies and organizations in the state or region, enhancing the capability of state and local organizations to provide literacy services, building a database of literacy-related information, and working closely with the NIFL and other national literacy organizations to enhance the national literacy infrastructure.

NIFL Standards NIFL's guidelines and standards for organizing materials in a uniform format for posting on the Internet. These standards are found in NIFL's ''Starting Point'' manual and Adult Literacy Thesaurus (ALT).

OVAE Regions The four regions of the United States designated by the U.S. Department of Education's Office of Vocational and Adult Education (OVAE):

Region I: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands.

Region II: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia.

Region III: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin.

Region IV: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Federal States of Micronesia, Guam, Marshall Islands, No. Mariana Islands.

Regional Hub or *Regional Technology Hub* An Internet-based electronic information retrieval and communication site that serves states in a particular OVAE region by acting as the focal point for LINCS activity, including training and technical assistance.

Background

The National Institute For Literacy (NIFL), as authorized by the National Literacy Act of 1991, has the legislative mandate to develop a national literacy database. The intent of this mandate is to assure the consolidation and accessibility of scattered and hard-to-access information resources for literacy.

As a first step in carrying out this charge, the NIFL conducted a study in 1992 of the literacy community's information needs by type of users and quality and format of existing literacy databases. In 1993, following up on the results of this survey, the NIFL formed eight work groups of representatives from the literacy community to develop a vision and work plan for establishing an information and communication system, which is called LINCS. The work groups used a consensus-building process to produce a framework, standards, and guidelines for LINCS, which are presented in the NIFL's ''Starting Point'' manual.

In order to implement the work groups' vision and plans, NIFL developed a LINCS on-line prototype to examine and demonstrate the potential and capabilities of an Internet-based national literacy information and communication network. The LINCS prototype was developed as a World Wide Web system on the Internet, accessible by multi-media tools (such as Mosaic or Netscape) and text-based tools (such as Lynx). LINCS was designed to access literacy data available in multiple locations and to feature searchable literacy holdings and other literacy resources.

In 1995, the NIFL initiated the funding of regional hubs in all OVAE regions in order to build a nationwide infrastructure for extending LINCS services throughout the adult education and literacy community. Grants were made to state agencies in all four regions, and grantees—called lead states—had the task of creating regional networks for LINCS by helping all states and territories in their regions acquire the technological capability and expertise to establish their own LINCS home pages, populate their site with locally produced materials, and extend LINCS services to local programs and users. To date, 38 states have established LINCS home pages on the Internet, and 130 local programs have received training and technical assistance in accessing LINCS.

LINCS currently permits simultaneous search across the home pages of all existing regional hubs and member states, as well as many major national and international organizations and databases. In addition, LINCS provides the literacy community with important up-to-the-minute information on adult education and literacy policies, an event calendar, funding announcements, and information on other literacy initiatives. LINCS also provides members of the literacy

community with opportunities for sharing expertise and resources on major literacy-related issues through several moderated forums/listservs.

Plans for the Future

Over the past five years, the NIFL has provided the leadership and tools to prepare the adult literacy community for the 21st century through major system-building initiatives, including the creation of LINCS and its regional hubs. The NIFL intends to sustain the momentum of building systems that help professionalize the adult literacy community by continuing its initiatives in technology. During the next three years, the NIFL plans to expand LINCS use as widely as possible throughout the literacy community, to enhance LINCS resources and features, and to offer a range of services through LINCS that will increase the qualitative and quantitative technological capabilities of the field. The success of these plans will depend on—

- Increased collaboration among the NIFL, regional hubs, member states, and all other major technology initiatives nationwide.
- Maintaining compatibility and consistency of LINCS efforts among the NIFL and regional hubs.
- Continuous enhancement of LINCS based on the state-of-the art technology.

Overview of Regional Technology Hubs

The NIFL will award one grant to public and private organizations, or consortia of organizations, for the support of a regional technology hub in OVAE Region I. No more than one grant will be made in Region I.

Selection Criteria: (a)(1) In evaluating applications for a grant under this competition, the Director uses the following selection criteria.

(2) The maximum score for all the criteria in this section is 100 points.

(3) The maximum score for each criterion is indicated in parentheses with the criterion.

(b) The Criteria—(1) Mission and Strategy (5 points). The Director reviews each application to determine the appropriateness of the applicant's stated mission and strategy for the proposed regional hub, including consideration of:

(i) The degree to which the stated mission and strategy for operating a regional hubreflect an understanding of the NIFL's goals and purposes for LINCS;

(ii) The degree to which the application demonstrates an understanding of the previous regional hub's strengths and weaknesses; and

(iii) The quality and coherence of proposed strategies for providing leadership to member states and targeted local programs.

(2) Institutional Capability (20 points). The Director reviews each application to determine the capabilities of the organization to sustain a long-term, high quality, and coherent program, including consideration of:

(i) The applicant's experience in establishing and carrying out collaborative working relationships with other states, other state agencies, local programs, and other public and private groups;

(ii) The applicant's experience in the use of technology to enhance accessibility of information and ease of communication;

(iii) The capabilities of staff who will oversee project implementation;

(iv) The applicant's capacity to provide resources—including hardware, software, and training—to member states and local programs; and

(v) The applicant's willingness and ability to continue the project at the end of the two-year grant period.

(3) Plan of Operation (30 points). The Director reviews each application to determine the quality of the plan of operation, including consideration of:

(i) The quality of the design of the project;

(ii) How well the objectives of the project relate to the intended purposes of the regional technology hubs, as outlined in this request for applications;

(iii) The quality of the applicant's plan to use its resources and personnel to achieve each project objective;

(iv) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(v) The quality of the plan to establish effective working relationships with other organizations in the region as required for effective development of the project;

(vi) The quality of the plan for leveraging additional resources for the project at the regional level and in each member state; and

(vii) The extent to which the applicant's plan includes sound methods for achieving measurable goals.

(4) Technical Soundness (15 points). The Director reviews each application to determine the technical soundness of the proposed project, including consideration of:

(i) The extent to which the applicant demonstrates knowledge of current Internet technologies, databases, telecommunications practices, equipment configurations, and maintenance;

(ii) The extent to which the applicant demonstrates a thorough knowledge of literacy data collections, dissemination, and NIFL standards;

(iii) The extent to which the applicant demonstrates a commitment to provide technical support, training, and equipment to member states;

(iv) The extent to which the applicant will consider the perspectives of a variety of service providers in carrying out the work of the regional hub;

(v) The extent to which the proposed training content is comprehensive and at appropriate levels; and

(vi) The extent to which training methods, mechanisms, and structure are likely to be effective.

(5) Budget and Cost Effectiveness (10 points). The Director reviews each application to determined the extent to which:

(i) The budget is adequate to support project activities;

(ii) Costs are reasonable in relation to the objectives of the project;

(iii) The budgets for any subcontracts are detailed and appropriate; and

(iv) The budget details resources, cash and in-kind, that the applicant and others, especially member states, will provide to the project in addition to grant funds.

(6) Evaluation Plan (10 points). The Director reviews each application to determine the quality of the evaluation plan for the project, including consideration of:

(i) The quality of methods and mechanisms to be used to document and evaluate progress in relation to the project's mission and goals;

(ii) The strength of the applicant's statement of measurable outcomes for all project goals; and

(iii) The quality of methods that will be used to document and evaluate the impact of the project's program on target audiences.

(7) Quality of Key Personnel (10 points). The Director reviews each application to determine the quality of key personnel for all project activities, including consideration of:

((i) The qualifications of the project director;

(ii) The qualifications of other key personnel;

(iii) The experience and training of key personnel in leading a consortium of states and working in fields related to project objectives; and

(iv) the applicant's policy, as part of its nondiscriminatory employment practices, to ensure that its personnel are selected for employment without regard to race, color, national origin, religion, gender, age, or disability.

Application Requirements

Project Narrative

The project narrative is critical and must thoroughly reflect the capacity of the applicant to lead the regional technology effort and build on the achievements of the previous regional hub. The narrative must clearly describe the applicant's plan for attaining measurable goals as identified in each of the sections listed below.

The narrative should not exceed twenty (20) single-spaced pages, or forty (40) double-spaced pages. The narrative may be amplified by material in attachments and appendices, (not exceeding 20 pages), but the body should stand alone to give a complete picture of the project. Proposals that exceed 20 single-spaced pages or 40 double-spaced pages will not be reviewed.

The narrative must encompass the full two years of project activities, with detailed plans for Year 1 and milestones for Year 2. The applicant must address the following areas, which correspond to the funding criteria:

1. Mission and Strategy

The applicant must state goals, objectives, and overall expected project achievements for the two-year grant period, including:

a. How the applicant's goals and objectives relate to NIFL's purposes for LINCS and the regional hubs, as outlined under Plans for the Future and Overview of the Regional Technology Hubs in this notice.

b. How the project will build on the work of the previous regional hub in enhancing the technological capacity of the region's adult education and literacy community.

c. What services will be provided to all member states and targeted local programs in the region.

d. How the project will serve the entire adult education and literacy community, including the full range of public and private program (including libraries, local education agencies, community colleges, volunteer and community-based organizations, etc.).

2. Institutional Capabilities

The applicant must describe its qualifications to act as the lead site of a regional consortium of all member states in carrying out the proposed project, including evidence of the following:

a. The organizational capacity to lead member states in achieving project goals and objectives.

b. A successful leadership track record for working closely with other agencies in the region in implementing a coordinated regional plan.

c. The ability to secure the support and involvement of member states, including their involvement in the development of the application.

d. The capacity to maintain and continuously enhance a sizable literacy collection on the Internet.

e. The availability of sufficient hardware, software, and technical expertise to maintain a home page and provide the necessary support to member states.

f. A secure funding basis for the duration of the project.

g. The ability to leverage other funding and resources to sustain the project beyond the grant.

3. Plan of Operation

The applicant must develop a two-year plan of operation that is both ambitious and realistic. While aiming high, the applicant must demonstrate an awareness of the constraints inherent in each particular situation. In addition to being reasonable and achievable, the plan must address both the immediate needs and the future vision and direction of the project. The plan must clearly identify the measurable outcomes that will result from project implementation. The description of the plan must address the following:

a. *Creating the regional hub:* How the applicant will establish and maintain a regional hub on the Internet that—

(1) Reflects knowledge of the previous hub's strengths and weaknesses, and builds on its achievements.

(2) Provides a seamless and uninterrupted transition of services and resources from the previous hub.

(3) Mirrors the LINCS information structure and the system architecture, and is consistent with the NIFL vision for building a technology infrastructure, including hardware, software, and networking system compatibilities.

b. *Supporting member states:* How the applicant will help member states become technologically self-sufficient and develop the management capabilities to use and contribute to LINCS, including states' ability to:

(1) Maintain a strong home page with a seamless interface with the applicant's and LINCS home pages.

(2) Provide technical assistance, training, and high quality, updated resources to local adult education and literacy programs.

c. *Enhancing the knowledge base:* How the applicant will work with member states to gather information that broadens and deepens the literacy field's knowledge base and enhances LINCS content, including—

(1) A measurable plan for the region and all member states that describes how the applicant will:

(a) Assess the information available in each member state and how it can be collected for use on LINCS.

(b) Provide for the collection of information that responds to end users' educational and training needs.

(c) Focus on the collection of high quality resources, instructional materials, and tools, including information on exemplary projects.

(d) make provisions for including print and non-print materials, such as audio and video materials, in their entirety.

(e) Be organized according to the NIFL standards.

(2) A plan for developing a special in-depth collection of information that represents the region's particular strengths in terms of resources and expertise.

(3) The resources to be made available to help member states achieve their measurable goals for information collection.

(4) How the applicant and member states will collect and update local program data according to NIFL standards.

(5) How the applicant will exercise quality control of the hub's home page.

d. *Extending LINCS use to local programs:* How the applicant will work with member states to extend LINCS use to target local programs, including:

(1) Determining how to enhance the technical capacity of local programs and end users.

(2) Selecting a specified number of local programs to target.

(3) The support to be provided to each member state for serving local programs, including—

(a) The kind of resources to be provided.

(b) The kind of hardware and software to be used.

(c) The training and technical assistance to be provided.

(4) Leveraging other resources for working with local programs.

(5) Evaluating the success of the project at the local level.

(6) The specific outcomes expected in year 1.

e. *Delivering resources:* How innovative technologies will be used to provide easy and efficient methods of delivering resources to the adult education and literacy community, including—

(1) What tools will be used.

(2) What hardware, software, and technical assistance will be provided for using these tools.

(3) How multi-media resources will be incorporated into project activities.

(4) How these tools will enable literacy practitioners to access *LINCS*' variety of resources in all available formats.

(5) How these tools will help learners with low skill levels and learners with special needs use *LINCS* resources.

f. *Enhancing communication and community-building:* How the applicant will enhance communication throughout the adult education and literacy community across and within member states through the use of telecommunication tools (such as listservs, forums, audio/video conferencing and networking, and virtual workspace programs), including—

(1) The kind of tools to be used.

(2) The specific content to be offered.

(3) How these tools will be used to link up literacy researchers, practitioners, administrators, students, and policymakers.

(4) How these tools will provide a medium for professional development within and among the member states and targeted local programs.

g. *Integrating technology into teaching learning:* How the applicant, in partnership with member states and local programs, will develop a two-year implementation plan for integrating technology into the daily teaching and learning routine of the adult education and literacy system, including—

(1) How the applicant will assess the existing level of integration in every member state.

(2) How the applicant will identify and use information about other national, state, and local efforts to integrate technology into teaching and learning.

(3) What resources will be recruited for the development of the two-year plan.

(4) How the applicant will support member states in developing and implementing plans for technology integration, including the selection of local programs as pilot sites.

(5) What kind of partnership will be developed with other regional and state agencies involved in similar efforts.

(6) How the applicant will evaluate progress in integrating technology.

(7) The minimum outcomes expected in Year 1.

h. *Organization and management:* How the applicant will ensure appropriate project organization and management that will—

1. Empower member states to become technologically independent in implementing project's activities.

2. Use and build on the strength and expertise of member states.

3. Ensure close collaboration and coordination of technology efforts among member states.

4. Ensure close collaboration with NIFL and other regional hubs, including cooperation in implementing new requirements or standards developed by NIFL in concert with regional hubs to assure uniformity across the LINCS network.

The description of plans for organization and management should include—

(1) How the applicant involved member states in developing the application.

(2) How the applicant will involve member states and local programs in overseeing project implementation and evaluating progress.

(3) How the applicant will provide for expanding the roles of member states in carrying out project activities (i.e., by providing states with resources and funds appropriate to their level of need and expertise).

(4) How the applicant will provide for developing a formal agreement with all member states that clearly identifies the rights, roles, and responsibilities of each state with regard to all project activities.

(5) What tools will be used to maintain communication among the applicant and member states.

(6) How the applicant will provide for the management of any other partnership, consultant, or subcontract arrangement.

(7) How the applicant will help member states to—

(a) explore and leverage other sources of financial support and market their achievements.

(b) develop active state-level partnerships, especially with state education agencies.

(8) How the applicant will identify agencies within each state (including at a minimum the state literacy resource center and state office of adult education) to be involved in regional hub activities.

I. *Broad-based collaboration:* How the applicant will work with member states to develop collaborative relationships with other agencies, organizations, and projects that will—

1. Widen LINCS usage in the field.

2. Provide global access to all literacy-related resources.

3. Further project objectives.

4. Be a potential source for future project support.

The description should include—

(1) How the applicant will work with member states to secure the active cooperation and partnership of appropriate state agencies, especially those dealing with education, labor, and human services.

(2) How the applicant will identify and develop partnerships with technology-based educational projects, especially those in the areas of telecommunications, on-line services, networking, and multi-media.

(3) How the applicant will pursue partnerships with private entities, including telecommunication and high tech business and industry.

4. Technical Soundness

Describe how the applicant will provide for the provision of hardware, software, and networking system that will—

(1) Address issues of interpretability and scalability,

(2) Support using audit-video, multi-media, and interactive Internet tools, and

(3) Keep pace with high-end technology.

The description should include assurances that the following will be in place—

(1) An electronic system for the regional HUB that mirrors the LINCS structure, which consist of a UNIX-based server capable of providing the following services for the regional HUB and its member states:

(a) World Wide Web (WWW) HTTP services;

(b) Wide Area Information Server (WAIS) database services;

(c) Character-based web browser (LYNX) services,

(d) Internet Electronic Mail (SMTP) services;

(e) File Transfer Protocol (FTP) services;

(f) List (listproc, majordomo) services;

(g) Connectivity to the Internet via a dedicated Internet connection of sufficient capacity that will allow a sustained usage that must not exceed 30% of the total circuit capacity, and the combined circuit and web server must be able to transfer an average web page at a rate of 20 kilobytes in three seconds to a client web browser at NIFL, during peak usage times, and must also be able to deliver quality audio and video products at usable rates to multiple concurrent users;

(h) Maintain information in both HTML documents and WAIS databases;

(i) Serve as the HUB's WWW, WAIS, Audio and Video server; and

(j) Provide dial-in and Internet access to users via a command line Web browser (e.g., Lynx), for those that do not have the ability to run graphical browsers such as Netscape, Internet Explorer, Mosaic, etc. Provide user accounts on the local server for these users, dial-in model access, etc. (Note that all the software developed for the

NIFL homepage by the Logistics Management Institute and UUCOM is freely available for re-use).

(2) Provide assurances that the applicant will create a home page design that is similar to the LINCS home page, so that the same ''look and feel'' can be achieved throughout the network.

(3) Provide assurances that the applicant will, at a minimum, have (a) appropriately scaled Internet connectivity described above (connectivity may vary); (b) a WAIS database server(s) on the Internet [configuration is based on the LINCSearch multiple database search program]; (c) LINCS Locally produced Materials and Organization forms and guidelines on the HUB's server; and (d) the WAIS database(s) with literacy collections and program data, using ''Starting Point'' record structures, standards and Adult Literacy Thesaurus.

(4) Describe how the applicant will provide technical assistance, funding, and other resources to assure that all member states have their own directory of resources on the hub server or their own WAIS server, as well as the technical capacity to update their databases according to NIFL standards.

(5) Provide assurances that the applicant will for each member state, at a minimum, have—

(a) Assessment of the equipment needs.

(b) Inventory of equipment provided to implement project activities.

(c) Plans for purchasing or upgrading equipment, as well as software and networking systems.

(6) Describe how the applicant's measurable training and technical assistance activities will—

(a) Focus on raising awareness and educating practitioners on resources available through *LINCS* (broad-based training).

(b) Build greater knowledge, and skills in using the *LINCS* technology for teaching and learning (targeted training).

(c) Result in establishing a team of trainers at the regional level and for every member state.

(d) Assist member states to become independent in implementing state training plans and maintaining their web site.

(e) Adopt or develop training models (i.e., training trainers, workshops supplemented by peer coaching or modeling, etc.) that can be used to meet the needs of geographically dispersed staff at various levels of knowledge and skills.

(f) Provide methods, mechanisms, structures, and materials for training—both on-line and off-line—that can be replicated, maintained, easily accessible, and updated beyond the life of this project.

(g) Provide technical assistance for member states and local programs that help staff and end users at varying levels of technical sophistication, with special attention to non-technical staff.

(h) Assist member states in selection and installation of hardware and software within the proposed timeline.

5. Budget and Cost-Effectiveness

The applicant must describe plans for managing the project budget and ensuring cost-effectiveness, including—

a. Provisions for ensuring the most efficient and cost-effective use of project funds.

b. Provisions for identifying and securing additional funds to continue and expand the project beyond the end of the grant.

c. A time line for the project, consisting of a table or diagram listing major tasks or milestones and including estimates of funds, time, training schedules, personnel, facilities, and equipment allocated to each program area, as well as the timing of progress and other reports, meetings, and other similar events.

6. Monitoring and Evaluation

The applicant must describe a plan for monitoring and evaluation that is based on the measurable goals of the project. The description of the plan must include how the applicant will—

a. Demonstrate the project's effectiveness in achieving its objectives.

b. Assess the project's impact on member states and the broader literacy community.

c. Evaluate the effectiveness of the lead site's role in working with member states.

d. Use on-line methods (such as web tools) to collect and analyze data on the effectiveness of the resources presented.

e. Evaluate the project's impact on targeted local programs.

f. Confirm and report evaluation results

7. Key Personnel

The applicant must describe how it will ensure the capacity of key personnel to carry out the work of the project, including—

a. A description of the main qualifications of key personnel to carry out project tasks.

b. Identification of key staff members at the regional and member state level, their specific roles, and the number of hours required to carry out their tasks.

Other Application Requirements

The application shall include the following:

Project Summary: The proposal must contain a 200-word summary of the proposed project suitable for publication. It should not be an abstract of the proposal, but rather a self-contained description of the activities that would explain the proposal. The summary should be free of jargon and technical terminology, and should be understandable by a non-specialist reader.

Budget Proposal: ED Form 424A must be completed and submitted with each application. The form consists of Sections A, B, and C. On the back of the form are general instructions for completion of the budget. All applicants must complete Sections A and C. If Section B is completed, include the nature and source of non-federal funds. Attach to Section C a detailed explanation and amplification of each budget category. Included in the explanation should be a complete justification of costs in each category. Additional instructions include:

- Prepare a separate itemization and brief narrative for each of the member states in the region in addition to submitting an itemized budget narrative for the project as a whole.
- Personnel items should include names (titles or position) of key staff, number of hours proposed and applicable hourly rates.
- Include the cost, purpose, and justification for travel, equipment, supplies, contractual and other. Training stipends are not authorized under this program.
- Clearly identify in all instances contributed costs and support from other sources, if any.
- Show budget detail for financial aspects of any cost-sharing, joint or cooperative funding.

Disclosure of Prior NIFL Support: If any consortium member state has received NIFL funding in the past two years, the following information on the prior awards is required:

- NIFL award number, amount and period of support;
- A summary of the results of the completed work; and
- A brief description of available materials and other related research products not described elsewhere.

If the applicant has received a prior award, the reviewers will be asked to comment on the quality of the prior work described in this section of the proposal.

Current and Pending Support: All current project support from whatever

source (such as Federal, State, or local government agencies, private foundations, commercial organizations) must be listed. The list must include the proposed project and all other projects requiring a portion of time of the Project Director and other project personnel, even if they receive no salary support from the project(s). The number of person-months or percentage of effort to be devoted to the projects must be stated, regardless of source of support. Similar information must be provided for all proposals that are being considered by or will be submitted soon to other sponsors.

If the project now being submitted has been funded previously by another source, the information requested in the paragraph above should be furnished for the immediately preceding funding period. If the proposal is being submitted to other possible sponsors, all of them must be listed. Concurrent submission of a proposal to other organizations will not prejudice its review by the NIFL.

Any fee proposed to be paid to a collaborating or ''partner'' for-profit entity should be indicated. (Fees will be negotiated by the Grants Officer.) Any copyright, patent or royalty agreements (proposed or in effect) must be described in detail, so that the rights and responsibilities of each part are made clear.

If any part of the project is to be subcontracted, a budget and work plan prepared and duly signed by the subcontractor must be submitted as part of the overall proposal and addressed in the narrative.

Reporting: In addition to working closely with the Institute, the applicant will be required to submit a final annual report of activities. This report will be presented to the Institute staff, the National Institute Advisory Board and the Interagency Group. Detailed specifications for the report will be provided to the consortium within three months after the award.

For planning purposes, the applicant may assume that the following information will be provided:

- Project(s) Title
- Project Abstract

A concise narrative describing in layman's language the subject purposes, methods, expected outcomes (including products), and significance of the project.

- Significant Products: A list of significant holdings available for access associated with the consortium.
- Significant Accomplishments.

A past-tense abstract that describes the consortium's accomplishments, known uses of the holdings and evidence of positive impact.

The grantee must also submit the following reports:

- Quarterly Performance: A brief 4–5 page report of progress—Due: Within 30 days at the end of each quarter.

Acknowledgment of Support and Disclaimer: An acknowledgment of NIFL support and a disclaimer must appear in publications of any material, whether copyrighted or not, based on or developed under NIFL supported projects:

This material is based upon work supported by NIFL under Grant No. (grantee should enter NIFL grant number).

Except for articles or papers published in professional journals, the following disclaimer should be included:

Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the NIFL.

Instructions for Transmittal of Applications

(a) To apply for a cooperative agreement grant—

(1) Mail the original and seven (7) copies of the application on or before the deadline date of June 26, 1998 to: National Institute for Literacy, 800 Connecticut Avenue, NW., Suite 200, Washington, DC 20006, Attention: Jaleh Behroozi Soroui, (CFDA #84.257F).

(2) Hand deliver the application by 4:30 p.m. (Washington, DC time) on the deadline date to the address above.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(c) If an application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

(2) The NIFL will mail a Grant Applicant Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing, the applicant should call the NIFL at (202) 632–1525 or (202) 632–1500.

(3) The applicant must indicate on the envelope and in Item 10 of the application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms: The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88) and instructions.

Part II: Budget Information-Non-Construction Programs (ED Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials: Estimated Public Reporting Burden.

Assurances-Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbing; Debarment, Suspension, and other responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of recipients and should not be transmitted to the NIFL.

Disclosure of Lobbying Activities (Standard form LLL) (if applicable) and instructions. An applicant may submit information on a Photostat copy of the application and budget forms, the assurances and the certifications. However, the application form, the assurances, and certifications must each have an original signature. No award can be made unless a complete application has been received.

Information about NIFL's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the NIFL homepage—LINCS—on the World Wide Web at: (http://novel.nifl.gov/Grants.html). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Instructions for Estimated Public Reporting Burden: According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

The valid OMB control number for this information is under OMB control number 3430–0004, Expiration date: May, 2000. The time required to complete this information collection is 55 hours per response, including that time for reviewing instructions, searching existing data sources, gathering and disseminating the data needed, and completing and reviewing the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: the National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, D.C. 20006–2712.

Program Authority: 20 U.S.C. 1213C.

Dated: May 6, 1998.

Andrew J. Hartman,

Director, NIFL.

[FR Doc. 98–12422 Filed 5–8–98; 8:45 am]

BILLING CODE 6055–01–M

NUCLEAR REGULATORY COMMISSION

Report to Congress on Abnormal Occurrences Fiscal Year 1997 Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974 (Pub. L. 93–438) identifies an abnormal occurrence (AO) as an unscheduled incident or event that the Nuclear Regulatory Commission (NRC) determines to be significant from the standpoint of public health or safety. The Federal Reports Elimination and Sunset Act of 1995 (Pub. L. 104–66) requires that AOs be reported to Congress on an annual basis. During fiscal-year 1997, six events that occurred at facilities licensed or otherwise regulated by the NRC and the Agreement States were determined to be AOs. These events are discussed below. As required by Section 208, the discussion for each event includes the date and place, the nature and probable consequences, the cause or causes, and the action taken to prevent recurrence. Each event is also being described in NUREG–0090, Vol. 20, ''Report to Congress on Abnormal Occurrences, Fiscal Year 1997.'' This report will be available at NRC's Public Document Room, 2120 L Street N.W. (Lower Level), Washington, D.C., about three weeks after the publication date of this **Federal Register** Notice.

97–1 Loss of Two of Three High Pressure Injection Pumps at Oconee Nuclear Station Unit 3

One of the AO reporting criteria notes that a major deficiency in design, construction, control, or operation having significant safety implications requiring immediate remedial action can be considered an AO.

Date and Place—May 3, 1997; Oconee Unit 3, a pressurized water nuclear reactor plant designed by Babcock and Wilcox Company, operated by the Duke Energy Corporation (formerly known as Duke Power Company), and located about 8 miles north of Clemson, South Carolina.

Nature and Probable Consequences—On May 3, 1997, the Oconee Unit 3 reactor was shut down and the reactor coolant system (RCS) was being cooled down for inspection of the high pressure injection (HPI) discharge piping. The need for the inspection resulted from RCS leakage from a weld crack in the HPI makeup piping on Unit 2. Reactor pressure was approximately 270 psig, RCS temperature was approximately 205° F, one reactor coolant pump (RCP) was running, and the Low Pressure Injection System was being used to cool down the RCS. Makeup water to the RCS to compensate for the temperature decrease was being supplied from the letdown storage tank (LDST) by one of the three HPI pumps. Makeup to the LDST consisted of periodic batch additions as needed. These plant conditions were below the point where the technical specifications required that the HPI system must be operable; that is, required to mitigate a small-break loss-of-coolant accident.

Plant cool-down evolutions appeared to be normal until the ''B'' HPI pump started to cavitate and makeup flow to the reactor coolant system was lost. A RCP seal water (which is also supplied by the HPI pump) low-flow signal automatically started the ''A'' HPI pump. However, it also began to cavitate. (The third HPI pump is not designed to automatically start on this signal and remained in the standby condition.) The operators stopped both pumps and began troubleshooting the problem. A Notification of Unusual Event was declared when it was recognized that the pumps would be inoperable past the shift that was on duty. Unit 3 pressure and temperature were stabilized and there was no immediate concern that conditions would worsen.

Later investigations revealed that the potential for a more serious situation existed if there had been a small break loss-of-coolant accident, which is the design basis for the HPI system, prior to this event. If such an accident had occurred, all three of the HPI pumps would have automatically started and become inoperable very quickly. In addition, the pumps may have become air bound and unavailable when the pump suction was transferred to the Borated Water Storage Tank to inject into the RCS. This would have significantly complicated recovery from the accident, but would have been within the Emergency Operating Procedure guidance and training provided to the operators. It would, however, increase the probability of core damage. The length of time that Unit 3 was in this degraded status could not be accurately determined, but the condition may have existed since start-up in March 1997, when plant conditions required that the HPI system be operable.

Cause or Causes—Loss of the HPI pumps occurred when all of the water was inadvertently pumped from the LDST because of faulty level indication. The erroneous level indication was caused by the loss of approximately one-half of the water in the level detector reference leg because of a slight leak in the instrument fitting. This loss of the reference leg water caused the tank level instrument to indicate a water level higher than the actual level, a condition that may have existed since February 1997, the last time the reference leg was verified to be full. It also caused the loss of the low-level alarm. As a result of these conditions, the operators did not provide makeup water to the tank when it was needed, resulting in the HPI pump continuing to run until the tank was empty. The LDST level detection system consists of two level instruments connected to a common reference leg. Thus, the condition affected both level detectors equally.

In addition, the control room operators did not properly monitor and detect the inaccurate LDST level indications. They did not notice that for a short period of time the indicated level stopped decreasing and continuously showed the tank to be approximately half-full at the same time water was being pumped from the tank.

Actions Taken to Prevent Recurrence

Licensee—Corrective actions included (1) the addition of a second reference leg to the LDST to provide separate level indications, (2) enhanced operator training and procedures, and (3) the performance of an HPI System Reliability Study that is to be completed by December 31, 1997.

NRC—Escalated enforcement, which incorporated this issue, resulted in the determination that a Severity Level II violation existed, and the licensee was assessed a $330,000 civil penalty. Information Notice 97–38, ''Level-Sensing System Initiates Common-Mode Failure of High-Pressure-Injection Pumps,'' was issued on June 24, 1997, to alert other licensees to this event.

This event is closed for the purpose of this report.

* * * * *

Other NRC Licensees—(Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

97–2 Overexposure of a Worker at Mallinckrodt, Inc., in Maryland Heights, Missouri

One of the AO criteria notes that any unintended radiation exposure to an adult (any individual 18 years of age or older) resulting in an annual shallow-dose equivalent to the skin or extremities of 2500 mSv (250 rem) or more will be considered for reporting as an AO.

Date and Place—May 14–15, 1997; Mallinckrodt, Inc.; Maryland Heights, Missouri.

Nature and Probable Consequences—On May 14, 1997, an employee was removing radioactive waste from the hot cell where rhenium-186 (Re-186) was used. The employee was performing this task manually, using gloves, instead of remotely. When he left the area, he attempted to perform a personal contamination survey but the survey meter immediately went off the scale. He assumed that the high count rate was due to background radiation from an adjacent radioactive material transport cart and, subsequently, forgot to resurvey himself in a low background area before he left the facility that evening. Upon arrival at work the next day, he was told that his urine sample, which he had submitted before going home the previous night, indicated iodine-131 (I-131) radiation contamination and that he was restricted from working with radioactive material. At that time, he performed a personal contamination survey and detected significant levels of contamination on his left thumb which subsequently was identified as Re-186. The I-131 contamination level did not exceed the AO criteria for exposure to radiation from licensed material.

The licensee estimates that the individual received a shallow-dose equivalent of 6090 millisievert (609 rem) to an area of about 0.75 square centimeters (0.12 square inches) on the palm side of the thumb of his left hand. Lower levels of contamination were found on the back of his right hand and fingers. On May 15, 1997, the employee had undergone decontamination to the extent that only approximately 4 percent of the activity remained.

The licensee surveyed the offsite locations where the employee had been after leaving work on May 14, 1997. Low levels of Re-186 contamination were found on three locations inside the employee's vehicle and on various items in the bathroom and kitchen of his home. The employee's vehicle and home were decontaminated. The employee was examined by a physician who identified no immediate health effects. However, according to a report from an NRC consultant, a small possibility exists for skin cancer to develop in the exposed area of the thumb.

Cause or Causes—The cause of the event was a procedural deficiency in handling waste from the Re-186 hot cell. Normally, radioactive waste in other hot cells at the facility was handled with remote tools. However, in this case, procedural controls did not require remote handling of the waste. Once the employee completed the work, poor radiation work practices were exhibited as he cross-contaminated his hands when he removed his gloves. In addition, the worker did not investigate the detection of high count rates during his first attempt to perform a contamination survey.

Actions Taken to Prevent Recurrence

Licensee—The staff was instructed on the importance of conducting proper personal contamination surveys and the proper use of protective clothing. The use of Re-186 was suspended until improvements to existing waste disposal procedures could be evaluated and implemented. Plans were made (1) to compile all existing contamination protection procedures into one contamination protection procedure, (2) to evaluate the use of a portal type monitoring system, and (3) to post personal-monitoring reminder signs at all laboratory exits.

NRC—NRC conducted a special safety inspection, proposed a $55,000 civil penalty on December 17, 1997, and the licensee paid the civil penalty on January 20, 1998.

This event is closed for the purpose of this report.

* * * * *

Agreement State Licensees

AS 97–1 Multiple Transuranic Overexposures to a Worker at Isotope Products Laboratories in Burbank, California

One of the AO criteria notes that any unintended radiation exposure to an adult (any individual 18 years of age or older) resulting in an annual total effective dose equivalent (TEDE) of 250 millisievert (mSv) (25 rem) or more; or an annual sum of the deep dose equivalent (DDE) (external dose) and committed dose equivalent (CDE) (intake of radioactive material) to any individual organ or tissue other than the lens of the eye, bone marrow, and the gonads of 2500 mSv (250 rem) or more will be considered for reporting as an AO. In addition, another AO criterion states that a serious deficiency in management or procedural controls in major areas will be considered for reporting as an AO.

Date and Place—Between January 1 and December 31, 1995; Isotope Products Laboratories; Burbank, California.

Nature and Probable Consequences—A radiochemist was assigned to make transuranic and other types of sources. The transuranics utilized included the isotopes of plutonium-238 (Pu-238), Pu-239, Pu-240, americium-241 (Am-241), and curium-244 (Cm-244). During January 1995, while making a Cm-244 source, it was discovered that the exhaust fan of the fume hood where the source was being fabricated was not working. An analysis of room air samples confirmed the loss of Cm-244 into the working area.

Bioassay results disclosed that the fecal and urine samples provided by the radiochemist contained Cm-244 and Am-241. The licensee hired dosimetry and radiation protection consultants as directed by the State Agency. Careful analysis of the bioassay data by these consultants, which included dose summation and retrospective time correction for various intakes, suggested that during 1995 the radiochemist received a TEDE of 383.20 mSv (38.32 rem) and a CDE of 6900 mSv (690 rem) to the bone surfaces. The specific exposures were as follows: (1) committed effective dose equivalent (CEDE) of 271.8 mSv (27.18 rem) from Cm-244, (2) CEDE of 80 mSv (8 rem) from Am-241, (3) CEDE of 4.4 mSv (0.44 rem) from Pu-238, Pu-239, and Pu-240, and (4) DDE of 27.0 mSv (2.70 rem) from external radiation.

The State Agency discovered this incident during a routine inspection on December 5, 1995, and was initially reported to NRC in January 1996. During

a follow-up inspection, the State Agency learned that another Cm-244 incident took place and was significant. The State Agency also learned of other exposure incidents that indicated the licensee had a deficient contamination control program, an inability to conduct internal dose assessments, and inadequate management oversight. The State provided additional information on these events to NRC in 1997.

Cause or Causes—The licensee's radiation protection program was inadequate and lacked important elements needed to ensure the radiation safety of its workers. Some of these inadequacies were the lack of (1) work permits, (2) glove boxes for certain types of work, and (3) radiation procedural controls.

Actions Taken To Prevent Recurrence

Licensee—After the licensee's consultants conducted their review and comprehensive audit of the existing radiation protection program, they made recommendations to ensure future compliance with the license and regulations. The licensee hired a competent radiation safety officer, and the radiochemist was assigned duties that did not involve the handling or processing of radioactive materials.

State Agency—The State Agency completed its investigation and is committed to closely tracking the licensee's radiation protection program to ensure continued compliance.

This event is closed for the purpose of this report.

* * * * *

AS 97–2 Overexposure of a Radiographer and an Untrained Technician at Wolf Creek Mine in Walker County, Alabama

One of the AO criteria notes that any unintended radiation exposure to an adult (any individual 18 years of age or older) resulting in an annual total effective dose equivalent (TEDE) of 250 millisievert (mSv) (25 rem) or more; or an annual sum of the deep dose equivalent (DDE) (external dose) and committed dose equivalent (CDE) (intake of radioactive material) to any individual organ or tissue other than the lens of the eye, bone marrow, and the gonads of 2500 mSv (250 rem) or more will be considered for reporting as an AO. In addition, another AO criterion states that a serious deficiency in management or procedural controls in major areas will be considered for reporting as an AO.

Date and Place—July 1, 1996; Wolf Creek Mine, Walker County, Alabama.

Nature and Probable Consequences—A radiographer, employed by Certified Testing and Inspection of Cottondale, Alabama, and a technician, employed by Ultron, Inc., of Mt. Vernon, Illinois, were performing industrial radiography at the Wolf Creek Mine in Walker County, Alabama, when they became so distracted by problems with excessively exposed film that they forgot they had an exposure in progress and entered the high radiation area without making a survey and changed the film with the source in the unshielded exposed position. The radiographer had received prior radiation safety training, however, the technician, an employee of Ultron, Inc., had not received prior radiation safety training. The radiography film and the device used to support the source and the film during exposures were being supplied to the radiographer by Ultron, Inc.

Consequently, both individuals received unintended radiation exposure. The State Agency estimated that the radiographer received a dose of 530 millisievert (mSv) (53 rem) to his head and 48 mSv (4.8 rem) to the center of his body and the Ultron, Inc., technician received a dose of 110 mSv (11 rem) to his head and 28 mSv (2.8 rem) to the center of his body. Neither individual reported any acute radiation symptoms.

The radiography film supplied by Ultron, Inc., had faster and different exposure characteristics than the film usually used by Certified Testing and thus was being overexposed during processing in the darkroom. The darkroom, which was supplied by Certified Testing, utilized a homemade ''safe light,'' which had been made a safe light by the application of red spray paint. The radiographer did not realize beforehand that the light would not be ''safe'' for the film supplied by Ultron, Inc.

Cause or Causes—The radiographer entered a designated high radiation area with his alarm ratemeter turned off and without following his normal practice of cranking in the source and surveying the guide tube and camera. The radiographer interpreted the silence from the alarm ratemeter as an indication of safe conditions. Unfortunately, when turned off, the alarm ratemeter gives the same indication as it does when indicating safe conditions. In addition, the radiographer did not utilize a collimator to reduce the exposure to himself and the Ultron, Inc., technician.

Actions Taken To Prevent Recurrence

Licensee—The licensee stated that the radiographer did not develop any symptom of acute radiation exposure and that its personnel were reinstructed in the importance of performing surveys and using a collimator. The licensee committed to the State Agency to verify the training of all technicians, including those of the company that hires the licensee to perform radiography.

State Agency—The State Agency cited the Licensee for the following four violations: (1) excessive exposure to a radiation worker, (2) excessive exposure to a member of the public (the Ultron, Inc., technician representative), (3) failure to prevent unauthorized entry into the High Radiation Area, and (4) failure to exercise ALARA by using a collimator. A civil penalty was considered but not imposed. The State Agency recommended that both individuals contact the State and seek medical attention if any symptoms of acute exposure should appear.

This event is closed for the purpose of this report.

* * * * *

AS 97–3 Radiopharmaceutical Misadministration at Mad River Community Hospital in Arcata, California

One of the AO criteria states that a medical misadministration that results in a dose that is equal to or greater than 10 gray (Gy) (1000 rad) to any organ (other than a major portion of the bone marrow, to the lens of the eye, or to the gonads) and represents a dose or dosage that is at least 50 percent greater than that prescribed in a written directive will be considered for reporting as an AO.

Date and Place—February 28, 1996; Mad River Community Hospital; Arcata, California. The State initially reported this event to NRC in December 1996.

Nature and Probable Consequences—A patient was prescribed a dosage of 3.7 megabecquerel (MBq) (0.1 millicurie [mCi]) of iodine-131 (I–131) for a thyroid scan and uptake procedure. However, the patient was administered a dosage of 262.7 MBq (7.1 mCi) of I–131. As a result, the patient's thyroid received a dose of about 9100 centigray (cGy) (9100 rad), instead of the prescribed dose of 130 cGy (130 rad).

The licensee stated that such a dose may induce a hypothyroid state requiring the patient to take thyroid hormone.

Cause or Causes—The wrong dosage was administered on the assumption that the patient was prescribed a whole body thyroid scan for a cancer metastatic disease evaluation.

Actions Taken To Prevent Recurrence

Licensee—Procedures for scheduling a whole body scan for thyroid cancer metastases were revised to include a detailed patient preparation and history.

The revised procedures required that the approving radiologist sign the I–131 administration policy before ordering a radiopharmaceutical. In addition, the nuclear medicine technologist attended a continuing education program at San Francisco General Hospital, which included a segment on the effects of studies involving therapy dosages.

State Agency—The State Agency conducted numerous follow-up inspections to ensure that the licensee's actions taken to prevent recurrence had been implemented.

This event is closed for the purpose of this report.

* * * * *

AS 97–4 Radiopharmaceutical Misadministration at Tuomey Regional Medical Center in Sumter, South Carolina

One of the AO criteria notes that a medical misadministration that results in a dose that is equal to or greater than 10 gray (Gy) (1000 rad) to any organ (other than a major portion of the bone marrow, to the lens of the eye, or to the gonads) and represents a dose or dosage that is at least 50 percent greater than that prescribed in a written directive will be considered for reporting as an AO.

Date and Place—December 11, 1996; Tuomey Regional Medical Center; Sumter, South Carolina.

Nature and Probable Consequences—A patient was prescribed a dosage of 74 megabecquerel (MBq) (2.0 millicurie [mCi]) of iodine-131 (I–131) for a treatment of Graves disease. However, the patient was administered a 388.5 MBq (10.5 mCi) dosage of I–131. As a result, the patient's thyroid received a dose of 40,400 centigray (cGy) (40,400 rad) instead of the prescribed dose of 7700 cGy (7700 rad).

The licensee stated that the administered dose of I–131 to the patient's thyroid is not expected to have major health effects.

Cause or Causes—The wrong dosage was administered to the patient because the written order for the I–131 procedure was misread by the administering technologist.

Actions Taken To Prevent Recurrence

Licensee—The licensee will have the written order on hand before ordering radiopharmaceuticals from the pharmacy and will have a second person verify the dosage before administration to the patient.

State Agency—The State Agency accepted the licensee's report and corrective action as appropriate. No further action was requested.

This event is closed for the purpose of this report.

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Dated at Rockville, Maryland this 5th day of May, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–12390 Filed 5–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387 and 50–388]

Pennsylvania Power and Light Company; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 176 to Facility Operating License No. NPF–14 and Amendment No. 149 to Facility Operating License No. NPF–22 issued to Pennsylvania Power and Light Company (PP&L, the licensee), which revised the Technical Specifications (TSs) for operation of the Susquehanna Steam Electric Station, Units 1 and 2, located in Luzerne County, Pennsylvania. The amendment is effective as of the date of issuance.

The amendment modified the TSs by changing the Rod Block Monitor (RBM) flow biased trip setpoints and also the RBM channel calibration frequency and allowed outage times.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on April 11, 1997 (62 FR 17885). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (63 FR 24197).

For further details with respect to the action see (1) the application for amendment dated November 27, 1996, and supplemented by letter dated February 12, 1997, (2) Amendment No.176 to License No. NPF–14, (3) Amendment No. 149 to License No. NPF–22, (4) the Commission's related Safety Evaluation, and (5) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes Barre, PA 18701.

Dated at Rockville, Maryland, this 4th day of May 1998.

For the Nuclear Regulatory Commission

Victor Nerses,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–12391 Filed 5–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Southern Nuclear Operating Company, Inc., et al.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

[Docket Nos. 50–424 and 50–425]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–68 and NPF–81, issued to Southern Nuclear Operating Company, Inc., *et al.* (the licensee), for operation of the Vogtle Electric Generating Plant (VEGP), Units 1 and 2, located in Burke County, Georgia.

The proposed amendments would revise the VEGP Technical Specifications to authorize the licensee to increase the storage capacity of the VEGP Unit 1 spent fuel pool from the present capacity of 288 fuel assemblies to 1476 fuel assemblies. The change would be accomplished by the installation of high density fuel rack modules. The racks would utilize a neutron absorbing material between cells to assure a subcritical configuration.

The Commission had previously issued a Notice of Consideration of

Issuance of Amendments published in the **Federal Register** on December 31, 1997 (62 FR 68317). That notice contained the Commission's proposed determination that the requested amendments involved no significant hazards considerations, offered an opportunity for comments on the Commission's proposed determination, and offered an opportunity for the applicant to request a hearing on the amendment and for persons whose interest may be affected to petition for leave to intervene.

Due to oversight, the December 31, 1997, Notice of Consideration of Amendments did not provide notice that this application involves a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982. Such notice is required by Commission regulations, 10 CFR 2.1107.

The Commission hereby provides such notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to ''any matter which the Commission determines to be in controversy among the parties.''

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, ''Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors' (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, Subpart G continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

By June 10, 1998, the licensee, if it wishes to invoke the hybrid hearing procedures, may file a request for such hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to invoke the hybrid hearing procedures and to participate as a party in such proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia. If a request for a hearing or petition for leave to intervene seeking to invoke the hybrid hearing procedures in accordance with this notice is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. Requests for hearing or petitions for leave to intervene that do not seek to invoke the hybrid procedures are not authorized by this notice and would be considered untimely.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to

participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene that seeks to invoke the hybrid hearing procedures in accordance with this notice must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia, attorney for the licensee.

Untimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated September 4, 1997, as supplemented by letter dated November 20, 1997, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia.

Dated at Rockville, Maryland, this 5th day of May 1998.

For The Nuclear Regulatory Commission.

David H. Jaffe,

Senior Project Manager, Project Directorate II–2 Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 98–12392 Filed 5–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–280 AND 50–281]

Virginia Electric and Power Company; Surry Power Station Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License No. DPR–32 and Facility Operating License No. DPR–37, issued to Virginia Electric and Power Company (the licensee), for operation of the Surry Power Station located in Surry County, Virginia.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt Virginia Electric and Power Company from the requirements of 10 CFR 70.24(a), which requires, in each area in which special nuclear material is handled, used, or stored, a monitoring system that will energize clear audible alarms if accidental criticality occurs. The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that withdraw to an area of safety upon the sounding of the alarm, to familiarize personnel with the evacuation plan, and to designate responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency.

The proposed action is in accordance with the licensee's application for exemption dated January 14, 1998.

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored on site is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 4.3 weight percent Uranium-235 and because commercial nuclear plant licensees have procedures and features designed to prevent inadvertent criticality, the staff has determined that inadvertent criticality is not likely to occur due to the handling of special nuclear material at a commercial power reactor. The requirements of 10 CFR 70.24(a), therefore, are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the exemption is granted. Inadvertent or accidental criticality will be precluded through compliance with the Surry Power Station Technical Specifications (TS), the design of the fuel storage racks providing geometric spacing of fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures. TS requirements specify reactivity limits for the fuel storage racks and minimum spacing between the fuel assemblies in the storage racks.

Appendix A of 10 CFR Part 50, ''General Design Criteria for Nuclear Power Plants,'' Criterion 62, requires that criticality in the fuel storage and handling system shall be prevented by

physical systems or processes, preferably by use of geometrically safe configurations. This is met at Surry Units 1 and 2, as identified in the TS.

Surry TS Section 5.4, Fuel Storage, states that the new fuel assemblies are stored vertically in an array with a distance of 21 inches between assemblies to assure that the effective neutron multiplication factor, K_{eff}, will remain ≤ 0.95 if fully flooded with unborated water, and to assure K_{eff} ≤ 0.98 under conditions of low-density optimum moderation. The spent fuel assemblies are stored vertically in an array with a distance of 14 inches between assemblies to assure K_{eff} ≤ 0.95 if fully flooded with unborated water.

The proposed exemption would not result in any significant radiological impacts. The proposed exemption would not affect radiological plant effluents nor cause any significant occupational exposures since the TS, design controls, including geometric spacing of fuel assembly storage spaces, and administrative controls preclude inadvertent criticality. The amount of radioactive waste would not be changed by the proposed exemption.

The proposed exemption does not result in any significant nonradiological environmental impacts. The proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed exemption, the staff considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the ''Final Environmental Statement for the Surry Power Station.''

Agencies and Persons Consulted

In accordance with its stated policy the NRC staff consulted with Mr. Foldesi of the Virginia Department of Health on April 22, 1998, regarding the environmental impact of the proposed action.

The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment, Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 14, 1998, which is available for public inspection at the Commission's Public Document Room, which is located at The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Swem Library, College of William and Mary, Williamsburg, Virginia.

Dated at Rockville, Maryland, this 5th day of May 1998.

For The Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Acting Director, Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–12393 Filed 5–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Wednesday, May 13, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Wednesday, May 13

10:30 a.m. Affirmation Session (Public Meeting)

a. Final Rule: Amendments to 10 CFR Parts 30, 40, 50, 70, and 72-Self-Guarantee of Decommissioning Funding by Non-Profit and Non-Bond Issuing Licensee.

b. Final Rule: Revision of 10 CFR 32.14 (D) to Place Timepieces Containing Gaseous Tritium Light Sources on the Same Regulatory Basis as Timepieces Containing Tritium Paint (Contact: Ken Hart, 301–415–1659).

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: May 6, 1998.

William M. Hill, Jr.,

Secretary, Tracking Officer, Office of the Secretary.

[FR Doc. 98–12528 Filed 5–7–98; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–335, 50–389, 50–250, 50–251 License Nos. DPR–67, NPF–16, DPR–31, DPR–41]

Florida Power and Light; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petitions dated February 26 and 27, March 6, 15, 17, 29, and 30, and April 4, 1998, Thomas J. Saporito, Jr. and National Litigation Consultants (Petitioners) have requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to Florida Power and Light's (FPL's) St. Lucie Plant, Units 1 and 2, and Turkey Point Plant, Units 3 and 4.

Petitioners request that the NRC take numerous actions, including certain immediate actions, with regard to the FPL St. Lucie and Turkey Point facilities. These actions include that the NRC: (1) Take escalated enforcement action, including modifying, suspending, or revoking FPL's operating licenses until it demonstrates that there is a work environment which encourages employees to raise safety concerns directly to the NRC, and the issuance of civil penalties for violations of the NRC's requirements; (2) permit Petitioners to intervene in a public hearing regarding whether FPL has violated the NRC's employee protection regulations and require FPL to allow the National Litigation Consultants to assist its employees in understanding and exercising their rights under these regulations; (3) conduct investigations

and require FPL to obtain appraisals and third-party oversight in order to determine whether its work environment encourages employees to freely raise nuclear safety concerns; (4) inform all employees of their rights under the Energy Reorganization Act and NRC's regulations to raise such concerns; and (5) establish a website on the Internet to allow employees to raise concerns to the NRC. As grounds for these requests, Petitioners assert that there is a widespread hostile work environment at FPL's facilities and that certain employees have been subjected to discrimination for raising nuclear safety concerns, and that the NRC's process for handling allegations and responding to concerns of discrimination has been ineffective. In addition, the Petition requests that the NRC immediately investigate concerns that contamination occurred and remains uncorrected because of the flow of water from a radioactive contaminated area at St. Lucie into an unlined pond, that FPL is improperly grouping work orders, thereby reducing the number of work open orders, that an excessive amount of contract labor remains onsite, and that, because NRC inspectors are only assigned to the day shift, many employees do not have access to the NRC onsite and inspectors cannot monitor safety-related work functions outside the day shift. As grounds for these requests, Petitioners assert that the storm drains from FPL's radioactive contaminated area flow into the pond and that FPL is aware of the problem but has failed to identify or correct this and directs its Health Physics personnel to survey the pond by sampling only surface water.

The requests are being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The requests have been referred to the Director of the Office of Nuclear Reactor Regulation. The Petitioners' requests for immediate action were denied by letter dated May 4, 1998. Copies of the Petitions are available for inspection at the Commission's Public Document Room at 2120 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 4th day of May 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission.

[FR Doc. 98–12394 Filed 5–8–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 15a–6
SEC File No. 270–329
OMB Control No. 3235–0371

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 15a–6 [17 C.F.R. 240.15a–6] under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''), which provides, among other things, an exemption from broker-dealer registration for foreign broker-dealers that effect trades with or for U.S. institutional investors through a U.S. registered broker-dealer, provided that the U.S. broker-dealer obtains certain information about, and consents to service of process from, the personnel of the foreign broker-dealer involved in such transactions, and maintains certain records in connection therewith.

These requirements are intended to ensure (a) that the U.S. broker-dealer will receive notice of the identity of, and has reviewed the background of, foreign personnel who will contact U.S. institutional investors, (b) that the foreign broker-dealer and its personnel effectively may be served with process in the event enforcement action is necessary, and (c) that the Securities and Exchange Commission has ready access to information concerning these persons and their U.S. securities activities.

In general, the records to be maintained under Rule 15a–6 must be kept for the applicable time periods as set forth in Rule 17a–4 [17 C.F.R. 240.17a–4] under the Exchange Act or, with respect to the consents to service of process, for a period of not less than six years after the applicable person ceases engaging in U.S. securities activities. Reliance on the exemption set forth in Rule 15a–6 is voluntary, but if a foreign broker-dealer elects to rely such exemption, the collection of information described therein is mandatory. The collection does not involve confidential information. Please note 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 control number.

It is estimated that approximately 2,000 respondents will incur an average burden of three hours per year to comply with this rule, for a total burden of 6,000 hours. The average cost per hour is approximately $100. Therefore, the total cost of compliance for the respondents is $600,000.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to: (i) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549; and (ii) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503. Comments must be submitted within 30 days of this notice.

Dated: April 30, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–12348 Filed 5–8–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23169; 812–10746]

CypressTree Asset Management Corporation, Inc. and North American Funds; Notice of Application

May 4, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the ''Act'') from section 15(a) of the Act and rule 18f–2 under the Act as well as certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants, CypressTree Asset Management Corporation, Inc. (''CAM'') and North American Funds (the ''Fund''), request an order that would (a) permit applicants to hire subadvisers (''Managers'') and materially amend sub-advisory agreements (''Portfolio Management Agreements'') without shareholder approval and (b) grant relief from certain disclosure requirements.

FILING DATES: The application was filed on August 1, 1997 and amended on April 7, 1998. Applicants have agreed to file an additional amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 29, 1998 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, 450 Fifth Street NE., Washington, DC 20549. Applicants, 116 Huntingdon Avenue, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public reference Branch, 450 Fifth Street NW., Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Fund is an open-end management investment company organized as a Massachusetts business trust and registered under the Act. The Fund is currently comprised of fifteen separate series (''Portfolios''), each of which has its own investment objectives and policies. CAM, registered under the Investment Advisers Act of 1940 (the ''Advisers Act''), serves as investment adviser to the Fund. Each Portfolio currently has one Manager, each of which is registered under the Advisers Act.

2. The Fund and its former investment adviser, NASL Financial Services (''NASL''), are parties to an existing order that granted similar relief to that requested in the application (the ''Existing Order'').[1] On October 1, 1997, CAM acquired a portion of the assets of NASL and of its parent, North American Security Life Insurance Company (the ''Transaction''). Upon completion of the Transaction, CAM began serving as investment adviser to the Fund and its Portfolios pursuant to an investment advisory agreement (the ''Investment Advisory Agreement''). Since CAM was not a party to the Existing Order, CAM and the Fund request an order substantially similar to the Existing Order so that the Fund may continue to operate in the manner in which it currently operates.[2] The requested order would supersede the Existing Order as it applies to the Fund.

3. Cam oversees the administration of all aspects of the business and affairs of the Fund, including providing administrative, financial, accounting, bookkeeping, and recordkeeping services. CAM selects, contracts with and compensates Managers that manage the assets of the Portfolios. CAM selects Managers based on a quantitative and qualitative evaluation of their skills and their proven ability to manage assets. Each Manager recommended by CAM is ultimately selected and approved by the Fund's board of trustees (''Board''), including a majority of the Fund's trustees who are not ''interested persons'' of the Fund as defined in section 2(a)(19) of the Act (''Independent Trustees''). CAM monitors each Manager's compliance with each Portfolio's investment objectives and policies, reviews the performance of each Manager, and periodically reports each Manager's performance to the Board.

4. Pursuant to the Portfolio Management Agreements, the specific investment decisions for each Portfolio are, and will continue to be, made by one or Managers, each of whom has discretionary authority to invest all or a portion of the assets of a particular Portfolio subject to general supervision by CAM and the Board. None of the Managers, except Standish, Ayer & Wood, manager of the Tax-sensitive Equity Portfolio, is an affiliate of CAM.

5. As compensated for its services, CAM receives a fee from the Fund computed as an annual percentage of the current value of the net assets of each Portfolio. Managers' fees are paid by CAM out of its fee from the Portfolios at negotiated rates. Fees paid to a Manager of a Portfolio with multiple Managers would depend both on the fee rate negotiated with CAM and on the percentage of the Portfolio's assets allocated to that Manager by CAM.

6. Applicants request an exemption from section 15(a) of the Act and rule 18f-2 under the Act to permit Managers approved by the Board to serve as portfolio managers for the Portfolios without shareholder approval. Shareholder approval will continue to be required for any Manager that is an ''affiliated person'' (as defined in section 2(a)(3) of the Act), other than by reason of serving as a Manager of the Portfolio (an ''Affiliated Manager'').

7. Applicants also request an exemption from the various disclosure provisions described below that may require the Fund to disclose the fees paid by CAM to the Managers. The Fund will disclose for each Portfolio (both as a dollar amount and as a percentage of a Portfolio's net assets): (i) Aggregate fees paid to CAM and Affiliated Managers; and (ii) aggregate fees paid to Managers other than Affiliated Managers (''Limited Fee Disclosure''). For any Portfolio that employs an Affiliated Manager, the Portfolio will provide separate disclosure of any fees paid to the Affiliated Manger.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract which has been approved by the vote of a majority of the outstanding voting securities of such registered investment company. Rule 18f–2 under the Act provides that any investment advisory contract that is submitted to the shareholders of a series investment company under section 15(a) shall be deemed to be effectively acted upon with respect to any class or series of such company if a majority of the outstanding voting securities of such class or series vote for the approval of such matter.

2. Form N–1A is the registration statement used by open-end investment companies. Items 2, 5(b)(iii), and 16(a)(iii) of Form N–1A (and after the effective date of the amendments to Form N–1A, items 3, 6(a)(1)(ii), and 15(a)(3), respectively) require disclosure of the method and amount of the investment adviser's compensation.

[1] *NASL Financial Services, Inc.*, Investment Company Act Release Nos. 22382 (December 9, 1996) (notice) and 22429 (December 31, 1996) (order).

[2] In addition, applicants request that the relief apply to any registered open-end investment companies that in the future are advised by CAM or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with CAM. Applicants also request that the relief apply to any series of the Fund that may be created in the future. All existing investment companies that currently intend to rely on the order have been named as applicants, and any other existing or future investment companies that subsequently rely on the order will comply with the terms and conditions in the application.

3. Form N–14 is the registration form for business combinations involving open-end investment companies. Item 3 of Form N–14 requires the inclusion of a ''table showing the current fees for the registrant and the company being acquired and pro forma fees, if different, for the registrant after giving effect to the transaction.''

4. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (the ''Exchange Act''). Item 22(a)(3)(iv) of Schedule 14A requires a proxy statement for a shareholder meeting at which a new fee will be established or an existing fee increased to include a table of the current and pro forma fees. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9), taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of ''the terms of the contract to be acted upon'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

5. Form N–SAR is the semi-annual report filed with the SEC by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Managers.

6. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the SEC. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

7. Section 6(c) authorizes the SEC to exempt persons or transactions from the provisions of the Act to the extent that an exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

8. Applicants assert that the Fund's investors rely on CAM to select one or more Managers best suited to achieve a Portfolio's investment objectives. Therefore, applicants assert that, from the perspective of the investor, the role of the Managers is comparable to that of individual portfolio managers employed by other investment company advisory firms. Applicants note that the Investment Advisory Agreement will remain subject to shareholder approval.

9. Applicants further assert some Managers use a ''posted'' rate schedule to set their fees, particularly at lower asset levels. Based upon CAM's discussions with prospective Managers and NASL, applicants believe that some organizations may be unwilling to serve as Managers at any fee rate other than their ''posted'' fee rates, unless the rates negotiated for the Portfolios are not publicly disclosed. Applicants believe that requiring disclosure of Managers' fees may deprive CAM of its bargaining power while producing no benefit to shareholders, since the total advisory fee they pay would not be affected.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order of the Commission granting the requested relief:

1. The Fund will disclose in its registration statement the Limited Fee Disclosure.

2. CAM will not enter into a Portfolio Management Agreement with any Affiliated Manager without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio.

3. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

4. Independent counsel knowledgeable about the Act and the duties of Independent Trustees will be engaged to represent the Independent Trustees of the Fund. The selection of such counsel will remain within the discretion of the Independent Trustees.

5. CAM will provide the Board, no less frequently than quarterly, with information about CAM's profitability for each Portfolio relying on the requested relief. The information will reflect the impact on profitability of the hiring or termination of any Manager during the applicable quarter.

6. Whenever a Manager is hired or terminated, CAM will provide the Board information showing the expected impact on CAM's profitability.

7. When a Manager change is proposed for a Portfolio with an Affiliated Manager, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Portfolio and its shareholders and does not involve a conflict of interest from which CAM or the Affiliated Manager derives an inappropriate advantage.

8. Before a Portfolio may rely on the order requested in the application, the operation of the Portfolio in the manner described in the application will be approved by a majority of its outstanding voting securities, as defined in the Act, or, in the case of a new Portfolio whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 11 below, by the sole initial shareholder(s) before offering shares of that Portfolio to the public.

9. CAM will provide general management services to the Fund and its Portfolios, including overall supervisory responsibility for the general management and investment of the Portfolios' securities portfolio, and, subject to review and approval by the Board, will (i) set the Portfolio's overall investment strategies; (ii) select Managers; (iii) when appropriate, allocate and reallocate the Fund's assets among multiple Managers; (iv) monitor and evaluate the performance of Managers; and (v) ensure that the Managers comply with the Portfolio's investment objectives, policies and restrictions.

10. Within 60 days of the hiring of any new Manager, shareholders will be furnished all information about the new Manager or Portfolio Management Agreement that would be included in a proxy statement, except as modified by the order to permit Limited Fee Disclosure. Such information will include Limited Fee Disclosure and any change in such disclosure caused by the addition of a new Manager. CAM will meet this condition by providing shareholders, within 60 days of the hiring of a Manager, with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Exchange Act. The information statement also will meet the requirements of Schedule 14A under the Exchange Act, except as modified by the order to permit Limited Fee Disclosure.

11. The Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Portfolio will hold itself out to the public as employing the ''Manager of Managers'' structure described in the application. The prospectus will prominently disclose that CAM has ultimate responsibility (subject to oversight by the Board) to oversee the Managers and recommend their hiring, termination, and replacement.

12. No trustee or officer of the Fund or director or officer of CAM will own directly or indirectly (other than through a pooled investment vehicle over which such person does not have control) any interest in a Manager except for (i) ownership of interests in CAM or any entity that controls, is controlled by, or is under common control with CAM; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Manager or an entity that controls, is controlled by, or is under common control with a Manager.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–12403 Filed 5–8–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39953; File No. SR–DTC–98–06]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees and Charges

May 4, 1998.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on April 16, 1998, The Depository Trust Company (''DTC'') 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 primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes fees for the matching feature of DTC's Institutional Delivery (ID) system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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 Items IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The matching feature is an enhancement to the current confirmation and affirmation processing in the ID system.[3] The proposed fees are designed to recover DTC's estimated service costs and will be effective for services provided after April 30, 1998. Under the proposed rule change, DTC will charge $0.08 for each matched or unmatched confirmation in addition to the regular confirmation fees. DTC will charge this fee to the following parties: (1) To a clearing broker for each matched or unmatched confirmation to a broker, clearing broker, or interested party; (2) to the clearing agent for each matched or unmatched confirmation to the ID agent or clearing agent; and (3) to the clearing agent or clearing broker for each matched or unmatched confirmation to an institution that either agrees to pay for it or $0.04 when the parties agree to split the fee.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among DTC's participants and other parties that use DTC's ID service.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule change 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)(ii)[5] of the Act and Rule 19b–4(e)(2)[6] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty 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.

IV. Solicitation of Comments

Interested person are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–98–06 and should be submitted by June 1, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–12350 Filed 5–8–98; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] For a description of the matching feature of the ID System, refer to Securities Exchange Act Release No. 39832 (April 6, 1998), 63 FR 18062 [File No. SR–DTC–95–23] (order approving proposed rule change).

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39954; File No. SR–MBSCC–98–2]

Self–Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying MBS Clearing Corporation's Schedule of Charges for the Dealer Account Group

May 4, 1998.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on April 10, 1998, the MBS Clearing Corporation (''MBSCC'') 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 primarily by MBSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies MBSCC's schedule of charges for the dealer account group.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC 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. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change modifies MBSCC's schedule of charges for the dealer account group. Specifically, the proposed rule change reduces account maintenance fees, currently at $350 per month for each account, for participants that use a common investment manager to process trades with MBSCC.

The new account maintenance fee for a participant that uses a common investment manager to process trades with MBSCC is based on the total number of accounts a participant maintains with an investment manager. The new monthly account maintenance fees are $350 for one account, $185 per account for two or three accounts, $150 per account for four to seven accounts, $130 per account for eight to ten accounts, and $120 per month for more than ten accounts.

The reduced account maintenance fees reflect efficiencies obtained by using a common investment manager to process trades with MBSCC such as reduced communications costs, systems overhead, and support services that result in savings to MBSCC. MBSCC will implement these changes commencing with its May 1998 billing cycle.

MBSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among MBSCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will impact or impose a 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 have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

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)(ii)[5] of the Act and pursuant to Rule 19b–4(e)(2)[6] promulgated thereunder in that the proposed rule change establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such proposed 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.

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 MBSCC. All submissions should refer to File No. SR–MBSCC–98–02 and should be submitted by June 1, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–12349 Filed 5–8–98; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] MBSCC has separate fee schedules for brokers and dealers. The dealer account group is the fee schedule for dealers' accounts.

[3] The Commission has modified the text of the summaries prepared by MBSCC.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39945; File No. SR–PCX–98–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc., Relating to Assessment for New Facilities

May 1, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] on February 9, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change SR–PCX–98–08. The proposed rule change is described

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The proposed rule change was originally submitted by the Exchange with a request for Commission action pursuant to Section 19(b)(2) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on March 11, 1998.[4] No comments were received on the proposal.

During the initial comment period for the proposal, on March 19, 1998, the Exchange filed a letter amendment, Amendment No. 1 to the filing,[5] which requested that the Commission act upon the filing pursuant to its authority under Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder.[6] because the filing establishes a due, fee, or other charge of the Exchange, in accordance with Section 19(b)(3)(A) of the Act and subparagraph (3) of Rule 19b–4 thereunder, the proposed rule change became immediately effective upon the Exchange's filing of Amendment No. 1. The Commission is therefore publishing this release to provide public notice of Amendment No. 1 to File No. SR–PCX–98–08 and the immediate effectiveness of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to assess the owners of each of the 552 Exchange memberships in order to provide an equity base for financing land and new facilities for the Exchange. These facilities will include new trading floors, technology facilities, office space and equipment.

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 self-regulatory organization 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 self-regulatory organization 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 is proposing to assess the owners of each of its 552 memberships $36,000, to be paid by each membership owner in monthly installments of $1,000. The installments are payable on a monthly basis and may not be paid in advance. The purpose of the assessment is to provide an equity base to finance land and facilities to house the Exchange's new trading floors, technology facilities, associated office space and equipment. The Exchange intends to treat funds from the assessment as a contribution to capital that will be segregated from PCX operating funds.

The Exchange expects that the cost of the facilities will greatly exceed the amount to be raised by this assessment. In that regard, the Exchange intends to arrange additional financing for its new facilities. The amount raised by the assessment will serve as an equity base that will aid in the process of obtaining additional financing.

The Exchange's new facilities will consolidate the Exchange's San Francisco administrative and operational facilities into a single location, will include a larger options trading floor and an appropriately designed equities trading facility that will better serve the trading of equity securities and option contracts, and will provide office space for members and member organizations, including clearing firms. The need for new facilities is based upon the Exchange's current growth rate and its need to provide effective services to its membership. The move will also allow the Exchange to increase the operational efficiency and improve the services it provides to the investing public.

The Exchange recognizes that the current industry trend towards electronic trading will affect the Exchange's future needs for trading floor space, particularly in the trading of equity securities. But with regard to the trading of options contracts, the Exchange believes that it will still need a significantly larger trading floor because the Exchange anticipates that electronic options trading will operate in tandem with the current open outcry floor market. The Exchange also notes that its need to move to new facilities is due in part to the continuing growth of its options business in recent years. The move will also fulfill the Exchange's need to operate in facilities with enhanced emergency power and business recovery systems. The Exchange notes that it previously imposed an assessment on its membership in 1988 and 1984.[7]

The Exchange is currently studying ways in which it might provide future benefits (such as a rebate of the proposed assessment, if permitted in the future by financial circumstances) to the seat holders who pay some or all of the assessment. The Exchange will also require PCX seat owners and their lessees, if any, to specify in an addendum to their leases whether rent under those leases will be increased to reflect the assessment and whether any potential benefits ultimately returned to seat owners with respect to the assessment will, in turn, be paid of transferred by the seat owner to the lessee.

2. Statutory Basis

The proposal is consistent with Section 6(b)[8] of the Act, in general, and Section 6(b)(4),[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees or other charges among its members.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.[10]

[3] 15 U.S.C. 78s(b).

[4] Securities Exchange Act Release No. 39719 (March 4, 1998), 63 FR 29719 (March 11, 1998).

[5] *See* letter from Michael D. Pierson, Senior Attorney, PCX to Sarrita Cypress, Office of Market Supervision, SEC, dated March 19, 1998.

[6] 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(e)

[7] In 1988, the Exchange imposed an interim monthly assessment on each of its 551 regular memberships, consisting of two parts: a flat fee of $600 per month and supplemental activity charge, applied differently for Equities and Options Members, averaging $600 per month per Member. The assessment was imposed in order for the Exchange to meet its operational, technology, and facilities needs. See Securities Exchange Act Release No. 25617 (April 26, 1988), 53 FR 15761 (May 3, 1988). In 1984, the Exchange imposed a special fee of $6,000 on the 503 memberships outstanding as of December 15, 1983, for an aggregate assessment of approximately $3 million. The purpose of the assessment was to raise financing for contemplated facilities improvements to the Los Angeles and San Francisco Equity Floors and the San Francisco Options Floor. See Securities Exchange Act Release No. 20550 (January 11, 1984), 49 FR 2178 (January 18, 1984) [order approving File No. SR–PSE–83–24, which was submitted pursuant to Section 19(b)(3)(A) of the Exchange Act].

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] The Commission notes that, although the Exchange did not formally request comments on the rule filing from members, it did hold a series of meetings to apprise members of the proposed

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraphs (e) of Rule 19b–4 thereunder.[11] At any time within 60 days of the filing of Amendment No. 1 to the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 20540. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–08 and should be submitted by June 1, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–12351 Filed 5–8–98; 8:45 am]

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project to finance land and facilities to house the Exchange. Subsequent to those meetings, the Exchange received a petition signed by approximately 165 Options Floor Members opposing the proposed new Exchange facilities and assessment plan. A copy of the petition has been filed with the Commission as Exhibit A to the Rule 19b–4 filing for the proposed rule change.

[11] 15 U.S.C. 78s(b)(3)(A) and 17 CFR 19b–4(e).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 20, 1997 [62 FR 224].

DATES: Comments must be submitted on or before June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, SW.; Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Pilot Medical Certification Customer Service Survey.

OMB Control Number: 2120–0624.

Type of Request: Extension of a currently approved collection.

Affected Public: 48,000 Pilots.

Abstract: This information is being conducted to comply with the Executive Order 12862, Setting Customer Service Standards. The information will be used to evaluate agency performance in the area of pilot medical certification. The completion of this form is voluntary and the information collection will be conducted anonymously.

Estimated Annual Burden Hours: 2,400 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 5, 1998.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–12440 Filed 5–8–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending of May 1, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–3793.

Date Filed: April 28, 1998.

Parties: Members of the International Air Transport Association.

Subject:

COMP Telex Mail Vote 937.

(Euro) Conversion Resolution 010h.

Intended effective date: June 1, 1998.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–12369 Filed 5–8–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending May 1, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–3801.

Date Filed: April 30, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: May 28, 1998.

Description: Application of Chileinter Airlines S.A. for a foreign air carrier permit, pursuant to 49 U.S.C. 41302 to allow it to engage in charter foreign air transportation of persons, property, and mail between a point or points in Chile and a point or points in the United States, via intermediate points, as provided by the U.S.-Chile Air Transport Agreement of 1989, as amended, and to operate additional ad hoc charters pursuant to 14 C.F.R. Part 212.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–12370 Filed 5–8–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent to Prepare an Environmental Impact Statement and to Hold an Environmental Scoping Meeting for Cleveland Hopkins International Airport, Cleveland, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice to hold a public scoping meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that environmental documentation, including an Environmental Impact Statement (EIS), will be developed to address environmental and related impacts expected with the proposed expansion of Cleveland Hopkins International Airport, Cleveland, Ohio.

FOR FURTHER INFORMATION CONTACT: Ernest Gubry, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, 734–487–7280.

SUPPLEMENTARY INFORMATION: The FAA will prepare an EIS concurrently with the finalization of a Master Plan for Cleveland Hopkins International Airport. Currently, the City of Cleveland has a proposal for the relocation and extension of Runway 5L/23R and the extension of Runway 5R. Associated with this development would be the relocation of Brook Park Road, development of new air traffic control procedures, and development of methods for providing noise compatibility with the surrounding communities. The EIS will also evaluate the cumulative impacts anticipated to occur as a result of the implementation of foreseeable future improvements at Cleveland Hopkins International Airport.

Comments and suggestions are invited from federal, state, and local agencies, and other interested parties to ensure that the full range of issues related to these proposed projects are addressed and all significant issues are identified. Copies of materials to be evaluated can be obtained by contacting the FAA information contact listed above. Comments and suggestions may be mailed to the same address.

Public Scoping Meeting

To facilitate receipt of comments, two scoping meetings will be held on Wednesday, June 17, 1998. A resource agency meeting will be held from 1:00 p.m. to 3:00 p.m. at the Cleveland Convention Center, 500 Lakeside (Room 212A), Cleveland, Ohio 44114. A public workshop and scoping meeting will be held from 5:00 p.m. to 8:00 p.m. at the Cleveland Convention Center, 500 Lakeside (Room 212B), Cleveland, Ohio 44114, to solicit comments and input from the general public on the environmental analysis process. If you plan on attending the resource agency meeting, please contact Mr. Ernest Gubry. Written comments and recommendations may be sent to Mr. Gubry's office at the above noted address prior to June 30, 1998.

Issued in Des Plaines, Illinois, on May 4, 1998.

Benito De Leon,

Manager, Planning/Programming Branch, FAA, Great Lakes Region.

[FR Doc. 98–12441 Filed 5–8–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3803]

Decision That Nonconforming 1993 Audi 100 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1993 Audi 100 passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1993 Audi 100 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 1993 Audi 100), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective May 11, 1998.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Kingsville, Maryland (''J.K.'') (Registered Importer 90–006) petitioned NHTSA to decide whether 1993 Audi 100 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition under Docket No. NHTSA 98–3453 on February 18, 1998 (63 FR 8252) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from Volkswagen of America, Inc. (''Volkswagen''), the United States representative of Audi AG, the vehicle's

manufacturer. In this comment, Volkswagen disputed J.K.''s claim that the non-U.S. certified 1993 Audi 100 complies with the Bumper Standard found in 49 CFR Part 581. Volkswagen also contended that the vehicle is only equipped with a driver's side air bag, and lacks a knee bolster on the driver's side that is necessary to meet the unbelted test requirements of Standard No. 208, *Occupant Crash Protection*. Volkswagen additionally observed that the vehicle is not equipped with a passenger side air bag or knee bolster, which it asserts are necessary for compliance with Standard No. 208.

Volkswagen also stated that the U.S. certified version of the 1993 Audi 100 has been designated a high theft line vehicle under the Theft Prevention Standard at 49 CFR Part 541. Volkswagen contended that the U.S. certified 1993 Audi 100 received an exemption from the parts marking requirements of the standard on the basis that it is equipped with an anti-theft system which differs from the system found on the non-U.S. certified version of the vehicle. As a consequence, Volkswagen asserted that the non-U.S. certified 1993 Audi 100 would have to be modified prior to importation so that it is equipped with the same anti-theft system as that found on its U.S. certified counterpart.

NHTSA accorded J.K. an opportunity to respond to Volkswagen's comment. In its response, J.K. stated that all vehicles imported under the petition will be inspected to ensure that those manufactured on or after September 1, 1993 are equipped with dual air bags. Additionally, J.K. stated that knee bolsters will be installed on vehicles that lack these components to achieve compliance with Standard No. 208.

With respect to the Theft Prevention Standard compliance issue raised by Volkswagen, J.K. asserted that all cars produced after 1987 that it has imported for use in the United States are marked in the required locations regardless of whether they have been designated as a high theft line or are equipped with an alarm system. J.K. also stated that a U.S. model anti-theft alarm system will be installed, where necessary, prior to the importation of any vehicles to be imported under the petition.

NHTSA believes that J.K.'s response adequately addresses the comments that Volkswagen has made regarding the petition. NHTSA further notes that the modifications described by J.K., which have been performed with relative ease on thousands of motor vehicles imported over the years, would not preclude non-U.S. certified 1993 Audi 100 passenger cars from being found ''capable of being readily altered to comply with applicable motor vehicle safety standards.'' Accordingly, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–244 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1993 Audi 100 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1993 Audi 100 Quattro passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 6, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–12438 Filed 5–8–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3806]

Notice of Receipt of Petition for Decision That Nonconforming 1995 Ferrari 456 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995 Ferrari 456 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1995 Ferrari 456 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is June 10, 1998.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Kingsville, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 1995 Ferrari 456 passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1995 Ferrari 456 that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1995 Ferrari 456 to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1995 Ferrari 456, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1995 Ferrari 456 is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) inscription of the word ''Brake'' on the dash, in place of the international ECE warning symbol; (b) replacement of the speedometer/odometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model taillamp assemblies and rear sidemarker lights; (c) installation of a U.S.-model high-mounted stop light assembly.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a key microswitch and a warning buzzer.

Standard No. 118 *Power Window Systems:* installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a seat belt warning buzzer wired to the seat belt latch; (b) replacement of the seat belts and the driver's and passenger's side air bags, knee bolsters, control unit and sensors with U.S.-model components on vehicles that are not so equipped. The petitioner states that the vehicle is equipped with combination lap and shoulder restraints are automatic, self-tensioning, and that release by means of a single red push button at both front and rear outboard designated seating positions.

Standard No. 214 *Side Impact Protection:* installation of door bars on vehicles that are not so equipped.

With regard to compliance with the Bumper Standard found in 49 CFR Part 581, the petitioner states that the bumpers and the support structure for the bumpers on the non-U.S. certified 1995 Ferrari 456 are identical to those found on the vehicle's U.S. certified counterpart. The petitioner notes, however, that some of these bumpers may have to be replaced if they do not have holes cut into the side to accommodate side marker lights.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 6, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–12439 Filed 5–8–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meetings

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meetings.

SUMMARY: This notice is to advise interested persons that RSPA will conduct public meetings in preparation for and to report the results of the fifteenth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) to be held June 29 through July 10, 1998 in Geneva, Switzerland.

DATES: June 18, 1998, 9:30 AM–1:00 PM; July 16, 1988, 9:30 AM–1:00 PM.

ADDRESSES: Both meetings will be held in room 6244, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frist Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of the first meeting will be to prepare for the fifteenth session of the UNSCOE and to discuss U.S. positions on UNSCOE proposals. The primary purpose of the second meeting will be to provide a briefing on the outcome of the session and to prepare for the Twentieth Session of the Committee of Experts on the Transport of Dangerous Goods which is scheduled for December 7–18, 1998 in Geneva, Switzerland. Topics to be covered during the public meeting include matters related to restructuring the UN Recommendations on the Transport of Dangerous Goods into a model rule including development of packing instructions prescribed the types of packagings for specific materials, international harmonization of classification criteria and labeling, review of intermodal portable tank requirements including requirements for multi-element gas containers, review of the requirements applicable to small quantities of hazardous materials in

transport (limited quantities), classification of individual substances, requirements for toxic-by-inhalation substances and requirements applicable to the classification and transportation of explosives.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the fifteenth session of the UNSCOE meeting may be obtained from the RSPA Dockets Division (202–366–5046) or by downloading them from the United Nations Transport Division's web site at http://www.itu.int/itudoc/un/editrans/dgdb/dgscomm.html. This site may also be accessed through RSPA's Hazardous Materials Safety Homepage at http://hazmat.dot.gov/intstandards.htm.

Issued in Washington, DC, on May 5, 1988.

Robert A. McGuire,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 98–12345 Filed 5–8–98; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Subscription for purchase of Treasury Securities-State and Local Government Series One-Day Certificates of Indebtedness.

DATES: Written comments should be received on or before July 13, 1998, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Subscription for Redemption of U.S. Treasury Securities State and Local Government Series One-Day Certificates of Indebtedness.

OMB Number: 1535–0082.

Form Number: PD F 5237.

Abstract: The information is requested to establish an account for State and Local Government entities wishing to purchase Treasury Securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: State or Local Government.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 39.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98–12398 Filed 5–8–98; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request for Redemption of U.S. Treasury Securities-State and Local Government Series One-Day Certificates of Indebtedness.

DATES: Written comments should be received on or before July 13, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Request for Redemption of U.S. Treasury Securities State and Local Government Series One-Day Certificates of Indebtedness.

OMB Number: 1535–0083.

Form Number: PD F 5238.

Abstract: The information is requested to process redemption for State and Local Government entities.

Current Actions: None.

Type of Review: Extension.

Affected Public: State or Local Government.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 15.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information

technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98–12399 Filed 5–8–98; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the resolution by governing body of an organization authorizing assignment and disposition of securities.

DATES: Written comments should be received on or before July 13, 1998, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Resolution by Governing Body of an Organization Authorizing Assignment and Disposition of Specified Securities Owned in Its Own Right or in a Fiduciary Capacity.

OMB Number: 1535–0117.

Form Number: PD F 1010.

Abstract: The information is requested to establish the official's authority to act on behalf of the organization.

Current Actions: None.

Type of Review: Extension.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 25.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 4.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98–12400 Filed 5–8–98; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the bond of indemnity and waiver request.

DATES: Written comments should be received on or before July 13, 1998, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Bond of Indemnity and Detached Coupon Statement.

OMB Number: 1535–0097.

Form Numbers: PD F 4087, 4087–1, 4087–3, and 5380.

Abstract: The information is requested to support claims for relief on account of lost, stolen, or destroyed securities or coupons.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals, business or other for-profit, or not-for-profit institutions.

Estimated Number of Respondents: 5,500.

Estimated Time Per Respondent: PD F 4087, 4087–1, and 4087–3, 60 minutes; PD F 5380, 10 minutes.

Estimated Total Annual Burden Hours: 1,333.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98–12401 Filed 5–8–98; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Treasury Security Commercial Tender form.

DATES: Written comments should be received on or before July 13, 1998, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Treasury Security Commercial Tender Form

OMB Number: 1535–0112.

Form Number: PD F 5395

Abstract: The information is requested to process the tenders and to ensure compliance with regulations.

Current Actions: None

Type of Review: Extension

Affected Public: Individuals, business or other for profit, or not-for-profit institutions.

Estimated Number of Respondents: 1,500

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 375

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98–12402 Filed 5–8–98; 8:45 am]

BILLING CODE 4810–39–P

federal register

Monday
May 11, 1998

Part II

Environmental Protection Agency

40 CFR Parts 51, 76, and 96

Supplemental Notice for the Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 76, and 96

[FRL–6008–6]

RIN 2060–AH10

Supplemental Notice for the Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental Notice of Proposed Rulemaking (SNPR).

SUMMARY: In accordance with the Clean Air Act (CAA), today's action is a SNPR to EPA's November 7, 1997 notice of proposed rulemaking (NPR). This action augments EPA's proposal to require certain States to submit State implementation plan (SIP) measures to ensure that emissions reductions are achieved as needed to mitigate transport of ozone (smog) pollution and one of its main precursors—emissions of oxides of nitrogen (NO_X)—across State boundaries in the eastern half of the United States.

Ozone has long been recognized, in both clinical and epidemiological research, to affect public health. There is a wide range of ozone-induced health effects, including decreased lung function (primarily in children active outdoors), increased respiratory symptoms (particularly in highly sensitive individuals), increased hospital admissions and emergency room visits for respiratory causes (among children and adults with pre-existing respiratory disease such as asthma), increased inflammation of the lung, and possible long-term damage to the lungs.

Today's action includes proposed rule language for the November 7, 1997 NPR for the 23 jurisdictions, revised statewide emissions budgets and cost analysis, proposed State reporting requirements and SIP approvability criteria, a proposed model cap-and-trade rule, a discussion of the interaction between this proposal and the title IV NO_X rule, and air quality analyses of the proposed statewide emissions budgets.

The EPA intends to finalize today's action and the November 7, 1997 NPR simultaneously in the September 1998 timeframe.

DATES: The EPA is establishing a 45-day comment period, ending on June 25, 1998. Comments must be postmarked by the last day of the comment period and sent directly to the Docket Office listed in **ADDRESSES** (in duplicate form if possible). A public hearing will be held on May 29, 1998, beginning at 9:00 am. Please refer to **SUPPLEMENTARY INFORMATION** for details.

ADDRESSES: Comments may be submitted to the Air and Radiation Docket and Information Center (6101), Attention: Docket No. A–96–56, US Environmental Protection Agency, 401 M Street SW, room M–1500, Washington, DC 20460, telephone (202) 260–7548, between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Comments and data may also be submitted electronically by following the instructions under **SUPPLEMENTARY INFORMATION** of this document. No Confidential Business Information (CBI) should be submitted through e-mail. A courtesy copy of comments to David Cole would be appreciated at Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5565, Fax (919) 541–0824. An electronic copy would also be helpful to cole.david@epa.gov. The address for sending overnight packages is US EPA, Air Quality Strategies and Standards Division, 411 W. Chapel Hill St., Durham, NC 27701. The public hearing will be held at the EPA Auditorium at 401 M Street SW, Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: General questions concerning today's action should be addressed to Kimber Smith Scavo, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–3354. Please refer to **SUPPLEMENTARY INFORMATION** below for a list of contacts for specific subjects described in today's action.

SUPPLEMENTARY INFORMATION:

Reopening of November 7, 1997 NPR Comment Period and Technical Analyses

The Agency will ensure that all comments and technical analyses received on the November 7, 1997 NPR (62 FR 60318) and this SNPR are made publicly available in the docket to this rulemaking. The EPA will accept comments on all issues raised in today's SNPR, as well as comments concerning the implications that any such issues may have for issues raised in the November 7, 1997 NPR. In addition, on April 9, 1998 (63 FR 17349), EPA published a notice in the **Federal Register** that discussed additional items related to the November 7, 1998 NPR for which the Agency is reopening the comment period. Therefore, the comment period for the November 7, 1997 NPR is reopened until June 25, 1998 for the items specified in the April 9, 1998 notice.

Public Hearing

The EPA will conduct a public hearing on today's proposal on May 29, 1998 beginning at 9:00 a.m. The public hearing will be held at the EPA Auditorium at 401 M Street SW., Washington, DC 20460. The metro stop is Waterfront which is on the green line. Persons planning to present oral testimony at the hearing should notify JoAnn Allman, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–1815 no later than May 22, 1998. Oral testimony will be limited to 5 minutes each. Any member of the public may file a written statement before, during, or by the close of the comment period after the hearing. For written statements concerning the proposed amended 40 CFR Part 76, the hearing record will be kept open for 30 days after the hearing date, under section 307(d)(5)(iv) of the CAA to provide an opportunity for submission of rebuttal and supplementary information. Written statements (duplicate copies preferred) should be submitted to the docket at the above address. A hearing schedule including a list of speakers will be posted on EPA's SIP call webpage at http://www.epa.gov/ttn/oarpg/otagsip.html prior to the hearing.

Following the hearing, a verbatim transcript of the hearing and written statements will be made available for copying during normal working hours at the Air and Radiation Docket Information Center at the above address. The Agency does not plan to schedule any additional hearings on the proposed rule.

Electronic Availability

The official record for this rulemaking, as well as the public version, has been established under docket number A–96–56 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document.

Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 6.1 (or 5.1) file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–96–56. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

Availability of Related Information

Documents related to the Ozone Transport Assessment Group (OTAG) are available on the Agency's Office of Air Quality Planning and Standards' (OAQPS) Technology Transfer Network (TTN) via the web at http://www.epa.gov/ttn/. If assistance is needed in accessing the system, call the help desk at (919) 541–5384 in Research Triangle Park, NC. Documents related to OTAG can be downloaded directly from OTAG's webpage at http://www.epa.gov/ttn/otag. The OTAG's technical data are located at http://www.iceis.mcnc.org/OTAGDC. The October 10, 1997 signature version of the proposed SIP call, the November 7, 1997 **Federal Register** version, and associated documents are located at http://epa.gov/ttn/oarpg/otagsip.html. Information related to Section VII, Air Quality Assessment of the Statewide Emissions Budgets can be obtained in electronic form from the following EPA website: http://www.epa.gov/scram001/regmodcenter/t28.htm.

For Additional Information

For technical questions related to the air quality analyses, please contact Norm Possiel; Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division; MD–14, Research Triangle Park, NC 27711, telephone (919) 541–5692. For legal questions, please contact Howard Hoffman, Office of General Counsel, 401 M Street SW, MC–2344, Washington, DC, 20460, telephone (202) 260–5892. For questions concerning the statewide emissions budget revisions, please contact Laurel Schultz; Office of Air Quality Planning and Standards; Emissions, Monitoring, and Analysis Division; MD–14, Research Triangle Park, NC 27711, telephone (919) 541–5511. For questions concerning SIP reporting requirements, please contact Bill Johnson, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5245. For questions concerning the model cap-and-trade rule, please contact Rob Lacount, Office of Atmospheric Programs, Acid Rain Division, MC–6204J, 401 M Street SW, Washington, DC 20460, telephone (202) 564–9122. For questions concerning the regulatory cost analysis of electricity generating sources, please contact Ravi Srivastava, Office of Atmospheric Programs, Acid Rain Division, MC–6204J, 401 M Street SW, Washington DC 20460, telephone (202) 564–9093. For questions concerning the regulatory cost analysis of other stationary sources, please contact Scott Mathias, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5310.

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I. Background

A. Summary of November 7, 1997 NPR

The EPA's November 7, 1997 proposal [1] (hereafter referred to as the ''proposed SIP call'' or ''SIP call'') proposed to find that the transport of ozone and ozone precursors from 22 States and the District of Columbia (23 jurisdictions) significantly contributes to nonattainment of the ozone national ambient air quality standards (NAAQS), or interferes with maintenance of the NAAQS, in downwind States. The proposed SIP call explained the basis for determining significant contribution or interference with maintenance for the 23 jurisdictions. Further, the SIP call proposed the appropriate levels of NO_X emissions that each of the 23 jurisdictions would be required to achieve. The EPA also conducted a regulatory cost analysis which is available in the docket to this rulemaking (docket number II–B–01) as a technical support document (TSD) to the proposed SIP call. A detailed explanation of how EPA established the budgets is also available as a TSD to the proposal (docket number III–B–02). These TSDs have been revised as explained in Section III, Emissions Budgets Analyses.

The SIP call proposed SIP requirements under CAA section 110(a)(1) and section 110(k)(5) in order to meet the requirements of section 110(a)(2)(D), as it pertains to the ozone NAAQS, to prohibit ozone precursor emissions from sources or activities in those States from ''contribut[ing] significantly to nonattainment in, or interfer[ing] with maintenance by,'' a downwind State.

Based on this determination, the EPA proposed to require SIP revisions in order to take steps toward ensuring that the necessary regional reductions are achieved that will enable current ozone nonattainment areas in the eastern half of the United States to prepare attainment demonstrations and that will enable all areas to demonstrate noninterference with maintenance of the ozone standard. This requirement permits each State to choose for itself what measures to adopt to meet the necessary emissions budget. Consistent with OTAG's recommendations to achieve NO_X emissions decreases primarily from large stationary sources in a trading program, EPA encourages States to consider electric utility and large boiler controls under a cap-and-trade program as a cost-effective strategy. The cap-and-trade program is described in more detail in Section V, NO_X Budget Trading Program.

B. Updates With 1994–96 Air Quality Data for the Findings of Significant Contribution

In the proposed SIP call, EPA followed a weight of evidence approach to determine which States cause a significant contribution to nonattainment in downwind States. Part of the information EPA considered in this determination included air quality modeling based on the OTAG 2007 Base Case and OTAG ''zero-out'' subregional UAM–V simulations. The results of the 2007 Base Case modeling were analyzed with 1993–1995 ambient air quality measurements to identify areas which (a) currently violate the NAAQS (based on monitoring) and (b) are expected to continue to violate the NAAQS in the future (based on modeling). The ''zero-out'' subregional modeling data were then used to quantify the ''ppb'' contributions to ozone in these ''nonattainment'' areas. The resulting ''ppb'' contributions were provided in the SIP call Tables II–10 and II–12 for the 1-hour and 8-hour NAAQS, respectively.

The EPA stated in the SIP call that it would review more recent air quality data and, in the event that these data alter the results of the significant contribution assessment in any meaningful way, EPA would make the appropriate adjustments to the findings. Since the SIP call was published, EPA has reviewed 1996 air quality data to determine which counties violate the 1-hour and 8-hour NAAQS based on 1994–1996 measurements. A list of the 1-hour and 8-hour violating counties based on these data is provided in the docket. The EPA recalculated the ''ppb'' contributions to downwind nonattainment using the 1994–1996 1-hour and 8-hour violating counties and the OTAG 2007 Base Case and ''zero-out'' subregional modeling. The resulting updated 1-hour and 8-hour contribution tables are provided in the docket. Based upon a review of the information in these tables, EPA finds no basis for altering its conclusions on significant contribution.

II. Proposed Action for the 23 Jurisdictions

This SNPR includes the proposed rule language for the CFR for the basic elements of the proposed SIP call, including the requirements imposed on the 23 jurisdictions to submit SIP revisions, under both the 1-hour and 8-hour standard, providing for implementation of the applicable statewide NO_X emissions budget, as well as the definition of the NO_X

[1] The EPA signed the November 7, 1997 NPR on October 10, 1997 and made it immediately available to the public on EPA's homepage at http://www.epa.gov/ttn/oarpg/rules.html.

budget. The rule language is located at the end of the preamble.

III. Emissions Budgets Analyses

A. Explanation of Revised Budgets

A number of changes were made to the emissions inventory used to calculate the budget. These changes apply to the electricity generating and non-electricity generating point source sectors only and were made to correct errors found subsequent to publication of the proposed SIP call (NPR). These source sectors are discussed separately below. Detailed information concerning the changes can be found in the revised Budget TSD titled ''Development of Modeling Inventory and Budgets for the Ozone Transport SIP Call'' (revised Budget TSD).

1. Electricity Generating Units

The changes that were made to the electricity generating component of the budgets fall into two general categories: addition of sources and changes in growth factors. Both of these changes increase the budgets.

a. Addition of Sources. The changes that were made in the population of the utility and non-utility owned electricity generating units since the November 7, 1997 notice are summarized in Table III–1. This SNPR includes 1,757 units compared to 1,180 units in the NPR. This reflects an addition of 577 units to the State budget inventories. These units include electricity generating sources 25 megawatts of electrical output (MWe) or smaller and additional units not affected under the Acid Rain Program (40 CFR part 76). Detailed information on the sources of data for these additional units is contained in the revised Budget TSD.

TABLE III–1.—INVENTORY CHANGE FROM NPR

Source	NPR population	SNPR population
Utility	1062	1510
Non-Utility	118	247
Total	1180	1757

b. Growth Factors. The EPA's ''Proposed Ozone Transport Rulemaking Regulatory Analysis'' (September 1997, docket number III–B–01) used a 1995 forecast of future electricity demand prepared by the North American Electric Reliability Council (NERC), with adjustments for EPA's 1996 estimates of the electricity demand reductions that the Climate Change Action Plan (CCAP) was projected to produce from the year 2000 and on. Details on how EPA prepared this electricity demand forecast can be found in EPA's ''Analyzing Electric Power Generation under the Clean Air Act,'' (July 1996, docket number II–A–07). The EPA used this electricity demand forecast in analyses conducted for OTAG and the Clean Air Power Initiative (CAPI). Further, EPA also used this forecast when establishing the State-specific growth factors used in the NPR (referred to as the ''original'' projections).

While EPA is continuing to use the electricity generating industry growth projections described in the NPR when establishing the budget component for that sector, this SNPR is correcting one error in the growth factor calculation of the NPR. The EPA corrected its estimates of State-specific growth rates from 1996 to 2007. The estimates were interpolated from the average annual growth of each State as forecasted by EPA using the Integrated Planning Model (IPM) and EPA's baseline electricity generation forecast. In developing the average annual growth, EPA relied on unit-specific summer energy use from 2000 to 2010 as forecasted by the IPM. The average annual growth was determined using the State-specific growth from 2000 to 2010. However, when calculating the growth for the year 2010, EPA inadvertently omitted information on many of the new combustion turbine and combined-cycle units that IPM forecasts to be built by 2010. Thus new electricity-generating capacity, expected to be built between 2000 and 2010 was not included when estimating the industry growth between 2000 and 2010. This error resulted in an underestimation of the expected average annual growth for each affected State. In the revision of the budget for the electric power industry, this error has been corrected. The change leads to a higher electricity generating component of the NO_X budget for all affected States. The corrected growth factors are shown in Table III–2 (referred to as the ''corrected'' projections).

TABLE III–2.—CORRECTED ELECTRICITY GENERATION GROWTH FACTORS

State	Original 96–07 factor	Corrected 96–07 factor	Percent increase
Alabama	1.03	1.16	12.92
Connecticut	0.92	1.22	32.99
District of Columbia	1.00	1.00	0.00
Delaware	1.68	1.80	6.77
Georgia	1.14	1.21	6.32
Illinois	1.23	1.34	8.63
Indiana	1.27	1.30	2.64
Kentucky	1.20	1.28	6.41
Massachusetts	1.62	1.71	5.62
Maryland	1.14	1.23	7.37
Michigan	1.13	1.18	4.60
Missouri	1.13	1.24	9.28
North Carolina	1.10	1.26	15.04
New Jersey	0.99	1.26	27.37
New York	1.11	1.22	10.16
Ohio	1.10	1.14	3.19
Pennsylvania	1.07	1.15	7.07
Rhode Island	0.43	0.48	11.83
South Carolina	1.32	1.63	23.22
Tennessee	0.92	1.25	35.78
Virginia	1.18	1.43	20.50
Wisconsin	1.07	1.13	6.30
West Virginia	1.02	1.05	3.26

Since the NPR, EPA has also updated its electricity demand forecast to include more up-to-date information. The information was obtained from the same sources used in developing the forecast used in the NPR. The EPA's more recent forecast uses the 1997 forecast of future electricity demand prepared by NERC with adjustments for the Administration's 1997 estimates of electricity demand reductions that the CCAP is projected to produce from 2000 on (referred to as the ''revised'' projections). The EPA found that this revised estimate leads to lower growth rates for the electricity generating industry than the estimate used in the NPR analyses. However, in this SNPR, EPA uses the corrected forecast when calculating State-specific budgets because of the inherent uncertainty in any projection, and EPA's willingness to provide States flexibility in achieving their budgets. Further, when evaluating the cost effectiveness of NO_X controls, EPA considered both the corrected and revised future electricity demand forecasts. However, for all other analyses under this SNPR, EPA is using the corrected future electricity demand forecast. Further, EPA solicits comment on whether to use only the revised future electricity demand forecast for the budget and cost effectiveness calculations.

c. Revised Budget Component. Both the 2007 electricity generating Base Case and the electricity generating Budget component were revised based on the changes described above. These revisions are shown in Tables III–3 and III–4. The difference between the 2007 Base Case and Budget emissions that were proposed and the revised Base Case and Budget emissions is shown in Table III–3. The revised percent reduction from the 2007 Base Case to the Budget is shown in Table III–4.

TABLE III–3.—CHANGES TO PROPOSED BASE CASE AND BUDGET COMPONENTS FOR ELECTRICITY GENERATING UNITS

[tons NO_X/season]

State	Proposed base	Revised base	Percent increase	Proposed budget	Revised budget	Percent increase
Alabama	81,704	85,201	4	26,946	30,644	14
Connecticut	5,715	7,048	23	3,409	5,245	54
Delaware	10,901	10,727	−2	4,390	4,994	14
District of Columbia	385	236	−39	152	152	0
Georgia	92,946	84,890	−9	30,158	32,433	8
Illinois	115,053	119,756	4	31,833	36,570	15
Indiana	177,888	159,917	−10	48,791	51,818	6
Kentucky	128,688	130,919	2	35,820	38,775	8
Maryland	35,332	37,575	6	11,364	12,971	14
Massachusetts	28,284	24,998	−12	12,956	14,651	13
Michigan	82,057	73,585	−10	25,402	29,458	16
Missouri	92,313	81,799	−11	22,932	26,450	15
New Jersey	14,553	17,484	20	5,041	8,191	62
New York	39,639	43,705	10	24,653	31,222	27
North Carolina	83,273	86,872	4	27,543	32,691	19
Ohio	185,757	167,601	−10	46,758	51,493	10
Pennsylvania	125,195	120,979	−3	39,594	45,971	16
Rhode Island	773	1,351	75	905	1,609	78
South Carolina	43,363	57,146	32	15,090	19,842	31
Tennessee	71,994	83,844	16	19,318	26,225	36
Virginia	45,719	51,113	12	16,884	20,990	24
West Virginia	83,719	76,374	−9	23,306	24,045	3
Wisconsin	51,004	45,538	−11	15,755	17,345	10
Total	1,596,255	1,568,655	−2	489,000	563,784	15

TABLE III–4.—REVISED NO_X BUDGET COMPONENTS AND PERCENT REDUCTION FOR ELECTRICITY GENERATING UNITS

[tons/season]

State	Revised base	Revised budget	Percent reduction
Alabama	85,201	30,644	64
Connecticut	7,048	5,245	26
Delaware	10,727	4,994	53
District of Columbia	236	152	36
Georgia	84,890	32,433	62
Illinois	119,756	36,570	69
Indiana	159,917	51,818	68
Kentucky	130,919	38,775	70
Maryland	37,575	12,971	65
Massachusetts	24,998	14,651	41
Michigan	73,585	29,458	60
Missouri	81,799	26,450	68
New Jersey	17,484	8,191	53
New York	43,705	31,222	29
North Carolina	86,872	32,691	62
Ohio	167,601	51,493	69
Pennsylvania	120,979	45,971	62
Rhode Island	1,351	1,609	−19

TABLE III–4.—REVISED NO_X BUDGET COMPONENTS AND PERCENT REDUCTION FOR ELECTRICITY GENERATING UNITS—Continued

[tons/season]

State	Revised base	Revised budget	Percent reduction
South Carolina	57,146	19,842	65
Tennessee	83,844	26,225	69
Virginia	51,113	20,990	59
West Virginia	76,374	24,045	69
Wisconsin	45,538	17,345	62
Total	1,568,655	563,784	64

d. Alternative Approach to Calculating the Component of the Budget for Electricity Generation. In this regulatory action, the component of each State's budget assigned to electricity generation is determined using the State's total heat input, applicable emission rate (0.15 lb/million British thermal units per hour (mmBtu)), and projected growth to 2007. Consequently, for each State this budget component is based on the amount of fossil fuel each State uses to produce electricity.

However, States use other fuel sources to generate electricity, notably nuclear and hydro energy, as well as solar and wind energy. Furthermore, some facilities that rely on fossil fuel sources are more efficient, in terms of lower NO_X emissions, than other facilities. In addition, each State's use of sources to generate electricity may change over time. For example, electricity now produced by the combustion of fossil fuels may, in the future, be produced using alternative sources and vice versa.

Because of the shifts in generation from one fuel source to another, an alternative approach to determining each State's share of the total regionwide budget component based on total heat input may be a consideration of total electricity generation within the State. Under this approach (referred to as ''output-based''), the electricity generation component (i.e., 563,784 tons of NO_X) of the regionwide budget would be apportioned among the States based on total electricity generation, not only fossil-fuel generation. Since the total regionwide budget component would be the same as that proposed in this notice, and assuming a multistate trading program, the environmental effects and cost effectiveness of such an allocation should be similar to the proposed approach.

The data used to apportion the regionwide budget component to each State under the output-based approach would be State-specific generation (in MWh) for the time period May 1 to September 30. One source of such information is the Energy Information Administration's (EIA) Form 759, where electricity generating sources report their monthly generation. To more equitably account for shifts from State-to-State, it may be appropriate to use the higher of summer 1995 or 1996 generation for each State in determining the output-based State budget components, or perhaps the average of the highest two out of three summer periods. The first approach is similar to that used in generating the proposed budget for this sector.

This alternative approach has the effect of rewarding States that have invested in methods of electricity generation that result in no, or fewer, NO_X emissions. At the same time, because most electricity generation relies on fossil-fuel inputs that, in turn, result in NO_X emissions, even under this output-based approach, the State budgets would bear a strong relationship to amount of actual NO_X emissions on a State-by-State basis.

Even so, the resulting budgets for each State would be different, to some degree, from the budgets currently proposed. If a regionwide trading program is ultimately used, it may be assumed that emissions would be reallocated so that each State's budget under the alternative approach would be the same as under the currently proposed approach. Of course, in this case, the cost effectiveness and environmental benefit associated with this alternative approach would be the same as that of the currently proposed approach. It seems plausible to assume that States subject to the NO_X SIP call would opt for regionwide trading due to the cost effectiveness of this approach.

However, in this rulemaking, EPA is not attempting to require regionwide trading, and if the States opt not to employ such a system, the air quality impacts of an output-based approach and its cost effectiveness may be different from the air quality impacts under the proposed budget. If for some States, the budget under the output-based approach is significantly lower than that under the proposed approach, the absence of a regionwide trading system may result in required control levels that are not technically achievable.

Other issues that arise under the output-based approach concern the representativeness and quality of the required data. Specifically, the EIA data used in the output-based approach may not include all electricity generating sources, such as Independent Power Producers (IPPs) and Non-Utility Generators (NUGs). Additionally, some may argue that it is inappropriate to incorporate the non-NO_X-emitting sources in the calculation of each State's electricity generation component of the budget. In addition, the alternative budget fails to consider the fact that nuclear-, hydro-, solar-, or wind-powered facilities generate steam output, as well as electricity. Accordingly, it may be logical to adjust the alternative budgets further to take account of steam output. Further, as discussed in Section V.C.9.b, Output Information, of this preamble, there are a number of issues associated with measuring and using electricity- or steam-related output data. The EPA solicits comments on all issues concerning this alternative approach, including the appropriateness, legality, rationale, and methodology for incorporating the output-based approach when calculating the electricity generation component of each State's budget.

2. Non-Electricity Generating Point Sources

Changes that were made to the non-electricity generating point source component of the budgets fall into two categories: addition of sources and application of controls. Addition of sources increases the budgets, while correction in the application of controls tends to decrease the budgets.

a. Addition of Sources. Based on the matching that was done to identify electricity generating sources, it was determined that a number of sources

that were identified in the OTAG inventory as utilities were, in fact, not utility sources. In the budgets that were proposed on November 7, 1997, these sources were left out of the inventory when the OTAG utility data were replaced by the acid rain data. These sources have since been identified and added back into the budgets. A list of the sources that were moved from the electricity generating to non-electricity generating sector is contained in the revised Budget TSD.

b. Application of Controls. The non-electricity generating point source budget components were calculated based on the OTAG recommendations as follows:

- 70 percent control for large (> 250 mmBtu/hr) sources (measured from uncontrolled 2007 emissions);
- Reasonably Available Control Technology (RACT)-level controls for all other NO_X sources with more than 1.0 tons per day (tpd) of NO_X emissions (medium-sized sources);
- Small source NO_X emissions were estimated using OTAG Base 1c scenario emission values.

For the budgets that were proposed, RACT was erroneously applied only to those sources that were in areas required to adopt RACT. The intent of the proposed approach was to apply RACT to all medium-sized sources, regardless of whether they are located in an area that would otherwise be required to apply RACT. The revised budgets reflect the application of RACT to all medium-sized sources in the affected States. A list of the sources that were treated as large and medium sources is contained in the appendices to the revised Budget TSD.

c. Revised Budget Component. Both the 2007 Base Case and Budget component for non-electricity generating point sources were revised based on the changes described above. These revisions are shown in Tables III–5 and III–6. The difference between the 2007 Base Case and Budget emissions that were proposed and the revised Base Case and Budget emissions for non-electricity generating units is shown in Table III–5. The revised percent reduction from the 2007 Base Case to the Budget is shown in Table III–6.

TABLE III–5.—CHANGES TO PROPOSED BASE CASE AND BUDGET COMPONENTS FOR NON-ELECTRICITY GENERATING UNITS

[tons NO_X/season]

	Proposed base	Revised base	Percent increase	Proposed budget	Revised budget	Percent decrease
Alabama	47,182	48,187	2	25,131	24,416	3
Connecticut	4,732	5,254	11	4,475	3,103	31
Delaware	5,205	5,276	1	3,206	2,271	29
District of Columbia	312	311	0	312	259	17
Georgia	34,012	33,939	0	20,472	14,305	30
Illinois	63,642	65,351	3	39,855	40,719	–2
Indiana	51,432	51,839	1	35,603	29,187	18
Kentucky	18,817	19,019	1	12,258	11,996	2
Maryland	6,729	10,710	59	4,825	5,852	–21
Massachusetts	10,683	9,978	–7	7,590	6,207	18
Michigan	57,190	61,656	8	35,317	35,957	–2
Missouri	12,248	12,320	1	8,174	9,012	–10
New Jersey	32,663	22,228	–32	26,741	12,786	52
New York	19,889	20,853	5	16,930	14,644	14
North Carolina	32,107	34,412	7	21,113	19,267	9
Ohio	50,946	53,329	5	32,799	30,923	6
Pennsylvania	64,224	74,839	17	59,622	41,824	30
Rhode Island	328	327	0	328	327	0
South Carolina	34,791	34,994	1	20,097	18,671	7
Tennessee	65,051	67,774	4	32,138	34,308	–7
Virginia	23,333	25,509	9	15,529	10,919	30
West Virginia	41,510	42,733	3	31,377	21,066	33
Wisconsin	21,209	21,263	0	12,269	11,401	7
Total	698,233	722,101	3	466,158	399,416	14

TABLE III–6.—REVISED NO_X BUDGET COMPONENTS AND PERCENT REDUCTION FOR NON-ELECTRICITY GENERATING UNITS

[tons/season]

	Revised base	Revised budget	Percent reduction
Alabama	48,187	24,416	49
Connecticut	5,254	3,103	41
Delaware	5,276	2,271	57
District of Columbia	311	259	17
Georgia	33,939	14,305	58
Illinois	65,351	40,719	38
Indiana	51,839	29,187	44
Kentucky	19,019	11,996	37
Maryland	10,710	5,852	45
Massachusetts	9,978	6,207	38
Michigan	61,656	35,957	42

TABLE III–6.—REVISED NO_X BUDGET COMPONENTS AND PERCENT REDUCTION FOR NON-ELECTRICITY GENERATING UNITS—Continued

[tons/season]

	Revised base	Revised budget	Percent reduction
Missouri	12,320	9,012	27
New Jersey	22,228	12,786	42
New York	20,853	14,644	30
North Carolina	34,412	19,267	44
Ohio	53,329	30,923	42
Pennsylvania	74,839	41,824	44
Rhode Island	327	327	0
South Carolina	34,994	18,671	47
Tennessee	67,774	34,308	49
Virginia	25,509	10,919	57
West Virginia	42,733	21,066	51
Wisconsin	21,263	11,401	46
Total	722,101	399,416	45

d. Options for Calculating the Budgets. In the November 7, 1997 NPR, EPA proposed budgets and developed cost effectiveness data for non-utility boilers and gas turbines together with other non-utility point sources. The budgets for these sources were based on the applicable OTAG recommendation of 70 percent reduction from uncontrolled levels at large units (greater than 250 mmBtu/hr), RACT at medium units (other sources greater than 1 ton per day) and no controls beyond the baseline for small sources. The revised budgets described in Section III.A.2, Non-Electricity Generating Point Sources, of today's action are based on the same approach. Costs were estimated for these sources using a least cost approach for each State budget which assumed incremental emissions reductions at the most cost-effective sources in each State, including small, medium, and large units. In contrast, electric generation sources were analyzed separately using an emissions rate approach to develop the budgets and the Integrated Planning Model (IPM) was run to estimate costs under an interstate trading program. The November 7, 1997 NPR invited comment on the size cutoffs used in the above analyses and also specifically invited comment on treating large combustion sources, such as industrial boilers greater than 250 mmBtu (this level approximately corresponds to greater than 1 ton per day), at control levels equal to that for large electric generation sources.

In today's action, EPA is proposing to include the non-utility boilers and gas turbines greater than 250 mmBtu/hr together with electric generation sources as the core group of sources in the NO_X Budget Trading Program and analyze both using IPM. As a result, EPA intends to conduct additional analyses as described below.

For the non-utility boilers and gas turbines greater than 250 mmBtu/hr, EPA intends to estimate costs using IPM and assuming a trading program involving these sources and the electric generation sources. The emissions budget would be calculated for these sources the same as it was in the November 7, 1997 NPR. The EPA also solicits comments on whether to calculate budgets for the non-utility boilers and gas turbines through the alternative means of an emission rate basis (e.g., 0.20 lbs/mmBtu), similar to the approach used by EPA for electric generation sources in the November 7, 1997 NPR. The EPA invites comment on these and other approaches for calculating the budget component and costs for the non-utility boilers and gas turbines greater than 250 mmBtu/hr.

Additionally, EPA intends to further analyze the point source categories that are not part of the proposed core group of sources in the NO_X Budget Trading Program (e.g., process heaters, stationary internal combustion engines, and cement manufacturing). These analyses will look at applying (1) various cost-effectiveness ceilings (e.g., maximum of $2000 per ton); (2) percentage reduction floors (e.g., minimum of 50 percent reduction); and (3) combinations (e.g., $2000 per ton maximum and 50 percent reduction minimum). These analyses will cover individual source categories not in the proposed core group of sources of the NO_X Budget Trading Program as well as all such sources in the aggregate. The EPA invites comment on these and other approaches for calculating the budget component and costs for this group of sources.

In the November 7, 1997 NPR, EPA noted that information on emissions and potential control measures was generally lacking for small sources. The EPA believes that there are several medium and large units for which such information is also lacking. In the November 7, 1997 NPR (and in the revised budgets described in Section III.A.2, Non-Electricity Generating Point Sources), these units were assigned a 70 percent reduction target for large and RACT for medium sized units, consistent with the OTAG recommendation. However, since EPA cannot identify specific control measures for these sources due to the lack of available technical information, EPA now proposes to keep them in the statewide budgets at baseline levels, without additional emission reductions.

As the above analyses are completed, EPA intends to place them in the docket.

3. Revised Statewide Budgets

The revised statewide budgets that reflect the changes to the electricity generating and non-electricity generating point source sectors described above are shown in Table III–7.

TABLE III–7.—REVISED STATEWIDE NO_X BUDGETS

[tons/season]

State	Base	Budget	Percent red.
Alabama	241,564	155,617	36
Connecticut	52,014	39,909	23
Delaware	30,568	21,010	31
District of Columbia	7,978	7,000	12
Georgia	246,243	159,013	35
Illinois	350,154	218,679	38
Indiana	340,084	200,345	41
Kentucky	263,855	158,360	40
Maryland	118,065	73,628	38
Massachusetts	103,445	73,575	29
Michigan	283,821	199,238	30
Missouri	185,104	116,246	37
New Jersey	132,032	93,464	29
New York	230,310	185,537	19
North Carolina	234,300	153,106	35
Ohio	391,012	236,443	40
Pennsylvania	328,433	207,250	37
Rhode Island	12,175	10,132	17
South Carolina	169,572	109,267	36
Tennessee	291,225	187,250	36
Virginia	219,835	162,375	26
West Virginia	158,240	81,701	48
Wisconsin	142,759	95,902	33
Total	4,532,790	2,945,046	35

B. Revised Cost Analyses

The EPA has revised the cost estimates presented in the November 7, 1997 notice. As discussed in Section III.A, Explanation of Revised Budgets, additional emissions sources were included in the emissions budgets and several changes to the emissions inventory were made. Also, revised unit control cost estimates for Selective Catalytic Reduction (SCR) and Selective Non Catalytic Reduction (SNCR) were prepared for non-electricity generating point sources. The revised costs are now more consistent with the way estimates were developed for electricity generating sources. Details on the revised cost analysis are presented in ''Supplemental Ozone Transport Rulemaking Regulatory Analysis'' (Supplemental Regulatory Analysis TSD).

1. Electricity Generating Sources

The OTAG recognized the value of market-based approaches to lowering emissions from power plants and large industrial sources. The Agency agrees that a market-based approach with trading is preferable as more cost effective and encourages all States covered by this rulemaking to establish such a program. The Agency's regulatory analysis is based on this view. As in the original proposal analysis, analytical limitations kept EPA from estimating the costs of a single cap-and-trade program for the electric power industry and other large stationary sources. In this SNPR, the analysis of a cap-and-trade program, across all States covered in the rulemaking, is limited to sources in the electric power industry.

The analysis of the electric power industry has been expanded to include additional electricity-generating sources (see Section III.A, Explanation of Revised Budgets). Additionally, EPA also updated many of the assumptions included in the Integrated Planning Model (IPM), including more recent energy demand forecasts and more recent information on future planned new units. These changes are discussed in the Supplemental Regulatory Analysis TSD.

The EPA analyzed the cost of a NO_X cap-and-trade program with a summer NO_X emissions cap of 563,784 tons, assuming reductions are effective by the 2003 ozone season. Annual cost estimates are provided for 2003 and 2007.

2. Non-Electricity Generating Point Sources

The costs for non-electricity generating point sources are estimated using two alternative approaches. The first approach, called the Least Cost Scenario, attempts to identify the mix of sources and control technologies that achieve each State's non-electricity generating budget level for point sources at the lowest possible control cost. The sources controlled under the Least Cost Scenario may not be the same sources that are controlled for the purpose of establishing each State's emissions budget. The results of the Least Cost Scenario are a proxy for State-level emissions trading programs free of transactions costs. If it were possible to consider transactions costs, the Least Cost Scenario would result in higher cost estimates than are presented here. On the other hand, if the Least Cost Scenario had been modeled assuming the States participate collectively in a trading program for non-electricity generating sources (i.e., domain-wide trading as modeled in the electricity generating sector), the resulting cost estimates would likely be lower than presented here.

The second approach, termed the Command-and-Control Scenario, attempts to estimate the cost of controlling just those sources that were used to establish each State's emissions budget. This method does not take into account possible cost savings that can be realized by more efficient regulatory schemes, such as emissions trading, and therefore tends to overstate the cost of meeting the non-electricity generating point source emissions budget.

The EPA has revised the cost of controls associated with non-electricity generating sources based on information previously developed for the revised IPM for electricity generating sources. The new method for estimating SCR and SNCR costs for non-electricity generating sources is now more

consistent with the estimates for electricity generating sources. The annual costs for non-electricity generating sources are estimated based on the 2007 non-electricity generating source emissions projections. Unlike the IPM analysis for electricity generating sources, the cost analysis framework for non-electricity generating sources did not allow distinctions to be made between the estimated annual cost of compliance in 2003 relative to the year 2007. As shown in Section III.B.3, Cost Analysis Results, the electricity generating sector annual cost estimates vary only 5 percent between 2003 and 2007. It is reasonable to believe that non-electricity generating sector annual cost would also not vary significantly between 2003 and 2007.

For NO_X point sources, EPA estimated annual compliance costs for achieving a total summer NO_X emissions budget of 416,619 tons. This budget is slightly higher (4 percent) than the 399,416 ton budget presented in Section III.A.2, Non-Electric Generation Point Sources, because the cost analysis for non-electricity generating point sources was completed before all adjustments to the proposed budgets had been finalized. If the final 399,416 ton budget had been analyzed the cost estimates for non-electricity generating point sources would have been only slightly higher.

3. Cost Analysis Results

Tables III–8 and III–9 show the analysis results based on the changes to the proposed emissions budgets and cost methodology improvements. Table III–8 shows the population of sources covered by each element of the cost analysis and the resulting NO_X emissions levels. Table III–9 shows the estimated annual compliance costs and average cost effectiveness.

TABLE III–8.—POPULATION OF EMISSIONS SOURCES AND NO_X EMISSIONS AFTER COMPLIANCE WITH THE OZONE TRANSPORT RULEMAKING

Budget component	Number of sources*	Ozone season emissions (1,000 NO_X tons)
Electricity generating sources	1,757	564
Non-Electricity generating sources: Least Cost—2007	13,373	409
Non-Electricity generating sources: Command-and-Control-2007	1,774	394

*The number of electricity generating sources reflects the number of sources in 1996 that were used to establish the summer season NO_X budget. The number of non-electricity generating sources reflects sources controlled for the purpose of estimating costs.

TABLE III–9.—INCREMENTAL ANNUAL CONTROL COSTS AND AVERAGE COST EFFECTIVENESS FOR COMPLIANCE WITH THE OZONE TRANSPORT RULEMAKING

Budget component	Annual control cost (million 1990 dollars)	Average ozone season cost effectiveness ($/ton)	Average annual cost effectiveness ($/ton)
Electricity generating sources—2003	1,308	1,455	1,161
Electricity generating sources—2007	1,378	1,469	1,165
Non-Electricity generating sources: Least Cost—2007	456	1,500	640
Non-Electricity generating Sources: Command-and-Control—2007	1,170	3,700	2,600

Based on the Least Cost Scenario for non-electricity generating sources, the incremental annual cost of the proposed SIP call in 2007 for both electricity and non-electricity generating sources is $1.8 billion (1990 dollars).

IV. SIP Criteria and Emissions Inventory Reporting Requirements

A. SIP Criteria

1. Introduction

The November 7, 1997 NPR explained that each State would be required to submit a SIP demonstrating ''that each State will meet the assigned statewide emission budget'' (62 FR 60365). It further explained that each ''SIP revision should include the following general elements related to the regional strategy: (1) Baseline 2007 statewide NO_X emissions inventory (which includes growth and existing control requirements)—this would generally be the emissions inventory that was used to calculate the required statewide budget; (2) a list and description of control measures to meet [the] statewide budget; (3) fully-adopted State rules for the regional transport strategy with compliance dates providing for control between September 2002 and September 2004, depending on the date EPA adopts in its final rulemaking; (4) clearly documented growth factors and control assumptions; and (5) a 2007 projected inventory that demonstrates that the State measures along with national measures will achieve the State budget in 2007.'' Id.

The purpose of this Section is to identify criteria for determining completeness and approvability of a State submittal in response to the final SIP call. The criteria are set forth in proposed regulatory language (40 CFR 51.121). In addition, this section describes the actions the Agency intends to take if a State fails to make a submittal, or the Agency makes a finding of incompleteness or disapproves the SIP.

2. Completeness Determination

Any submittal that is made with respect to the final SIP call first will be determined to be either incomplete or complete. A finding of completeness means that EPA will 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. In order for any submittal to be complete, 40 CFR 51.121 provides that the submittal 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 and so should be familiar to States submitting transport SIPs.

Section 1.2 of Appendix V, in accordance with section 110(k)(1) of the

CAA, requires EPA to notify States within 60 days of EPA's receipt of a submittal, but no later than 6 months after the submittal is due. If a completeness determination is not made within 6 months after submission, the submittal is deemed complete by operation of law. For purposes of rules submitted in response to the SIP call, EPA intends to make completeness determinations expeditiously. In addition, EPA expects to make findings of failure to submit no later than the Agency makes completeness determinations.

A finding of failure to submit or incompleteness triggers an 18-month sanctions clock that can only be stopped by an affirmative EPA finding that the State has made a complete submittal. The findings also trigger the requirement that EPA promulgate a Federal implementation plan (FIP) within 2 years of the date of the finding, if the deficiency has not yet been corrected. The EPA intends to propose FIPs in the fall of 1998 and move quickly to promulgate a FIP where necessary. In addition, sanctions and FIP clocks are triggered if a State submits a complete SIP, but EPA subsequently disapproves it, in whole or in part.[2]

3. Approvability Criteria

In the November 7, 1997 NPR, EPA highlighted several general elements that must be included in ozone transport SIP revisions. Without these general elements, a SIP submission will not be approved. This Section (1) identifies EPA's proposed additional approvability criteria for control strategies that will help States meet their NO_X budgets; and (2) provides guidance to assist States in preparing emissions inventories for purposes of identifying emissions benefits of possible control strategies. The existing guidance documents listed below will help States incorporate existing EPA guidance into their SIPs. Much of the pertinent guidance is available electronically.

Each State must start with a baseline 2007 statewide NO_X emissions inventory, including growth and existing control requirements. The 2007 projected control inventory must demonstrate that the State measures, along with national measures, will achieve the State budget in 2007. The EPA has issued documents to assist States in developing emissions inventories. Specifically, these documents describe how to clearly define the particular control measures and document the methods used to estimate emissions reductions from implementation measures. A State need not define these measures in its SIP to the extent it chooses to achieve the required reductions through the model rule for the NO_X Budget Trading Program, which is being proposed in this notice.

a. Additional Control Strategy Approvability Criteria.

i. Introduction. The approvability criteria for transport SIP submissions appear in proposed 40 CFR 51.121. Most of the criteria are substantially identical to those that already apply to attainment SIPs. 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 preamble focuses on approvability criteria that are being proposed for the first time to ensure States meet their NO_X budgets.

ii. General Recommendations. As discussed in the NPR (62 FR 60365–66), regulatory requirements that employ a maximum mass emissions limitation for a source or group of sources provide the greatest certainty that a specific level of emissions will be attained and maintained. With respect to transport of pollution, a mass emissions limitation also provides the greatest assurance to downwind States that air emissions from upwind States will be effectively managed over time. Regulatory requirements designed and enforced as an emissions rate limitation can achieve a measurable emissions reduction, but the targeted level of emissions may or may not be reached depending on the actual activity level of the affected source(s). Finally, regulatory requirements designed as a specific technology or measure have the greatest uncertainty for achieving a targeted emissions level due to uncertainty in both the activity level of the affected source(s) and uncertainty in the effectiveness of the technology or measure.

Based on the desire to establish regulatory requirements with the greatest likelihood of achieving and maintaining the statewide NO_X emissions budget, EPA recommends that, to the maximum extent practicable, all regulatory requirements be in the form of a maximum level of emissions for a source or group of sources. The EPA recognizes that this option may be difficult for some sources because the available emissions control options may be limited, and the techniques for quantifying mass emissions to ensure compliance with a tonnage budget may not be adequate.

iii. New Proposed Approval Criteria. While mass emissions limitations may be difficult for some sources, EPA believes that, if the State chooses to meet the budget through control requirements for electric generators and large industrial boilers, the State can feasibly require these sources to quantify mass emissions through reasonably available measurement technology. For this reason, as well as others discussed below, EPA proposes the following additional SIP approvability criteria which would apply if the State selected regulatory requirements covering NO_X sources serving electric generators with a nameplate capacity greater than 25 MWe and boilers with a maximum design heat input greater than 250 mmBtu/hr:

- Regulatory requirements to meet the 2007 budget for these sources would need to be expressed in one of three ways: (1) In terms of mass emissions, which would limit total emissions from a source or group of sources; (2) in terms of emissions rates that when multiplied by the affected sources' maximum operating capacity would meet the tonnage component of the emissions budget for this source or for these sources; or (3) an alternative approach for expressing regulatory requirements, provided the State demonstrates to EPA that its alternative provides equivalent or greater assurance than options (1) or (2) that seasonal emissions budgets will be attained and maintained.
- Sources would be required to demonstrate that they have met these applicable emissions control provisions using continuous emissions monitors. Further, EPA is taking comment on whether sources should be required to demonstrate that they met these requirements using the monitoring provisions of the Acid Rain Program for monitoring NO_X mass emissions in 40 CFR part 75.

The EPA believes control approaches and monitoring for this group[3] of sources have advanced to the point that complying with, tracking, and enforcing a maximum mass emissions limitation or tonnage budget is reasonable. A variety of regulatory programs are currently in use or under development that utilize a mass emissions limitation for large combustion devices. These

[2] A more detailed discussion of sanctions and FIPs appeared in the November 7, 1997 NPR at page 60368–69.

[3] NO_X sources serving electric generators with a nameplate capacity greater than 25 MWe and boilers with a maximum design heat input greater than 250 mmBtu/hr.

regulatory systems include the EPA's Acid Rain Program for sulfur dioxide (SO_2) emissions, the South Coast Air Quality Management District's Regional Clean Air Incentives Market for SO_2 and NO_X, and the Ozone Transport Commission's NO_X Budget Program. Experience with these regulatory programs indicates that establishing a tonnage budget for large combustion sources is currently feasible and cost effective. These approaches exist because there is a range of reasonable options available for controlling emissions from these sources. In general, large combustion sources have several effective control options for reducing NO_X emissions, including combustion modifications, post-combustion technologies, and fuel switching. This range of options provides flexibility for these sources or groups of sources to maintain a tonnage budget for emissions.

For measuring emissions, continuous emissions monitors, currently installed at most sources participating in these programs, provide accurate, complete and timely accounting of emissions which enable the administrators of these programs to easily track and enforce emissions on a mass emissions basis. Therefore, EPA proposes that all of the sources in this group must employ continuous emissions monitoring. Further, EPA seeks comment on what specifications, if any, to require for such continuous emissions monitoring systems (CEMS). More specifically, EPA is taking comment on requiring these sources to meet the NO_X mass emissions monitoring and reporting provisions that are contained in a proposed new subpart to the monitoring and reporting provisions of the acid rain regulations in 40 CFR part 75. These revisions are being proposed in a separate notice entitled ''Acid Rain Program; Continuous Emission Monitoring Revisions'' that will be published in the **Federal Register** in the near future. Electric utility units have been meeting the current 40 CFR part 75 requirements since at least 1995. The EPA believes that the proposed 40 CFR part 75 provisions will provide accurate monitoring of NO_X mass emissions and also provide flexibility, particularly for smaller and infrequently operated sources. Additional information on the proposed 40 CFR part 75 requirements can be found in Section V.C.9.a, Requirements for Point Sources. Also, EPA has prepared a memorandum for the docket that compares the proposed provisions of 40 CFR part 75 to other available CEMS requirements.[4]

Another reason that States choosing to control electricity generating sources should use available means to assure that the source's mass emissions stay within the State's projected levels is that recent changes in the utility industry may foster substantial shifts in electricity production from State to State for market reasons. Given the changing market forces in the electricity generating industry today, State measures to limit electricity generating unit emission rates without accounting for potential utilization increases would provide little assurance that mass emissions from these sources would be reduced to the levels necessary to meet the proposed budgets. For this reason, too, EPA believes that regulatory requirements for large combustion sources to meet a State's NO_X budget can and should be expressed and enforced as mass emissions limitations or an alternative providing equivalent assurance that the mass reductions will occur.

Finally, while EPA has not heretofore imposed the proposed approvability criteria on State ozone control measures, EPA believes they are reasonable (as described above) and appropriate in the context of this transport rulemaking. This SIP call addresses the regional problem of emissions transport—i.e., the problem of one State's effect on one or more other States. The EPA believes it is appropriate to take reasonable and feasible steps to minimize the potential ''commons'' phenomenon inherent in this problem. Under the theory of the commons, a State has less interest in controlling pollution that is produced within its borders but primarily affects the health of non-residents, compared to its interest in controlling pollution that has intrastate effects. The additional approvability criteria proposed today offer downwind States the assurance that upwind States, to the extent they elect to control the applicable group of sources, will implement measures that offer transparent certainty of success. Given the availability of reasonable measures to control the applicable group of sources in this way, and the potential for substantial shifts in utilization in the utility sector in coming years, EPA believes it is appropriate for this transport SIP call to propose additional SIP approvability criteria to address the potential commons phenomenon.[5]

To assist States with the development and implementation of an emissions budget for large combustion sources, EPA is proposing the NO_X Budget Trading Program in section V of today's notice. States may voluntarily choose to participate in the NO_X Budget Trading Program by adopting the model rule. This multistate trading program would provide sources the flexibility and cost effectiveness of a market based system, while meeting the additional SIP approvability criteria for States that are proposed in this section.

The EPA intends to approve the portion of any State's SIP submission that adopts the model rule, provided: (1) The State has the legal authority to adopt the model rule and implement its responsibilities under the model rule, and (2) the SIP submission accurately reflects the NO_X reductions to be expected from the State's adoption of the model rule. As noted above, today's action proposes that transport SIP submissions comply with various approval criteria that are substantially identical to existing approval criteria for attainment SIPs. Those criteria include: (1) A demonstration by the State that it has the legal authority to adopt and implement each of the control measures contained in the SIP submission, and (2) a demonstration of the expected emissions reductions to be achieved from each new control measure. Provided a State meets these two criteria with respect to its adoption of the model rule, then EPA intends to approve the model rule portion of the State's SIP submission.

A State or group of States may also choose to develop, adopt, and implement their own cap-and-trade program separate from today's proposed NO_X Budget Trading Program. In developing these alternative programs,

[4] See Memorandum from Kevin Culligan, EPA, Acid Rain Division, to Docket regarding ''Transport SIP Call: Potential Continuous Emissions Monitoring Systems Requirements'' April 8, 1998, Docket Number A–96–56, IV–B–01.

[5] Authority for the proposed additional SIP approval criteria described above resides in sections 110(a) and 301(a) of the Clean Air Act. Specifically, the requirement in section 110(a)(2)(A) that SIPs include enforceable emissions limitations and other control measures ''as may be necessary or appropriate'' to meet the Clean Air Act, together with the requirement in section 110(a)(2)(D) that SIPs include ''adequate provisions'' to mitigate certain transport effects on other States, implicitly authorize EPA to impose the additional SIP approval criteria described above to ensure that affected States adequately mitigate their contribution to ozone transport, given the reasons and circumstances described above. Additionally, section 301(a) grants EPA broad authority to prescribe such regulations as are necessary to carry out its functions under the Clean Air Act. The proposed additional SIP approval criteria are necessary for EPA to meet its obligation to approve only SIPs that contain ''necessary or appropriate'' and ''adequate'' provisions for the applicable State to mitigate its contribution to ozone transport.

States should follow the available guidance in the Economic Incentive Program requirements (see 40 CFR part 51, subpart U) and EPA's Emissions Trading Policy Statement (see 51 FR 43814, December 4, 1986) in addition to the transport SIP approval criteria in proposed 40 CFR 51.121.

Regulatory requirements used to meet the 2007 budget for other sources not identified in the above description may be expressed as (1) a mass emissions limit, (2) an emissions rate, or (3) specific technology or measure. As discussed above, EPA recognizes that it may not be reasonable to require regulatory requirements to be expressed as mass emissions limitations for all of these sources because of limitations with control options and the ability to measure mass emissions. Moreover, EPA believes that the likelihood of substantial shifts in demand (and corresponding changes in emissions compared to historical actuals) is lower for these other sources. Therefore, EPA believes there is substantially less risk with respect to these sources that past representative production rates will prove unreliable predictors of future activity. However, EPA recommends that mass emissions budgets also be used for these sources to the maximum extent practicable.

The EPA solicits comments on the proposed SIP approvability criteria for regulatory requirements that govern emissions from large combustion sources. In addition, EPA solicits comments as to the reasonableness of expressing regulatory requirements as mass emissions limitations for other sources.

b. Emissions Inventory Preparation Guidance and Control Strategies Guidance. This Section presents guidance that States should follow when initiating the planning and development of an emissions inventory. The documents referenced below describe control measures a State may wish to consider for purposes of meeting a statewide NO_X budget. Most of these documents can be obtained directly by computer download from the EPA's Clearinghouse for Inventories and Emission Factors (CHIEF) Web Site (http://www.epa.gov/ttn/chief) or by contacting the InfoCHIEF helpline at (919) 541–5285.

Descriptions of a number of potential data sources that can be consulted for emission estimation methods are provided below. Site-specific source tests are generally expected to provide a better estimate for the tested site than average emission factors (including factors cited in ''Compilation of Air Pollutant Emission Factors (AP–42)'') derived from testing at similar sources. Site-specific tests should be based on a reliable test procedure and should represent typical operating conditions at the site before being assumed to be superior to an average emission factor. The CEMS data for a given site can be considered a superior form of site-specific source test data. Material balances for NO_X sources, and particularly combustion NO_X sources, are not appropriate and should not be used.

If reliable site-specific tests or calculation methods are not available or are not feasible to use for all sources, an emission factor or emission model approach can be used. The EPA's Factor Information Retrieval (FIRE) Data System provides a searchable electronic listing of all criteria, toxic, and greenhouse gas emission factors appearing through the latest printed AP–42 supplement for stationary sources. The FIRE database also contains a number of non-AP–42 factors, but only for sources where no AP–42 factor exists. In addition, FIRE contains a reference indicating if the factor is from AP–42 or another source, and it contains the factor quality rating if one exists. Note that mobile source emission factors do not appear in FIRE. The most recently finished AP–42 stationary source revisions can only be found on the CHIEF web site (http://www.epa.gov/ttn/chief/ap42etc.html).

If an emission factor is not available from one of the above sources, or if the inventory preparer wants to improve the emissions estimates for sources deemed significant, the following data sources may be of use.

- ''Volume I, Introduction to the Emission Inventory Improvement Program (EIIP)'' (EPA–454/R–97–004a)—

http://www.epa.gov/ttn/chief/eiip/techrep.htm#intro

- ''Volume II, Preferred and Alternative Methods for Estimating Air Emissions from Point Sources'' (EPA–454/R–97–004b)—

http://www.epa.gov/ttn/chief/eiip/techrep.htm#pointsrc

- ''Volume III, Preferred and Alternative Methods for Estimating Air Emissions from Area Sources'' (EPA–454/R–97–004c)—

http://www.epa.gov/ttn/chief/eiip/techrep.htm#areasrc

- ''Volume IV, Preferred and Alternative Methods for Estimating Air Emissions from Mobile Sources'' (EPA–454/R–97–004d)—

http://www.epa.gov/ttn/chief/eiip/techrep.htm#mobsrc

- ''Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone, Volume I: General Guidance for Stationary Sources'' (EPA–450/4–91–016)—

This document provides general procedures for estimating emissions from point and area stationary sources; it may still be useful for estimating emissions from area sources that are not yet covered in the EIIP area source guidance document (e.g., small publicly owned treatment works, aircraft refueling, on-site incineration, residential heating (excluding wood fuel), barge and tank drum cleaning). It is not available in electronic form. Paper copies are available from the InfoCHIEF help desk (919) 541–5285.

- ''Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone, Volume II: Emission Inventory Requirements for Photochemical Air Quality Simulation Models'' (Revised) (EPA–450/R–92–026)—

This document offers technical assistance to those engaged in the planning and development of detailed emissions inventories for use in photochemical air quality simulation models. It includes guidance for identifying and incorporating the additional detail required by photochemical air quality simulation models into an existing base year inventory. It is not available in electronic form. Paper copies are available from the InfoCHIEF help desk (919) 541–5285.

- ''Procedures for Emission Inventory Preparation, Vol. IV: Mobile Sources'' (EPA–450/4–81–026d [Revised]) (You can download a zipped WordPerfect file of this document from the ''Emission Inventory Guidance'' Section of the CHIEF Web Site.)

http://www.epa.gov/ttn/chief/ei__guide.html

c. Growth estimates. In order for EPA to approve a SIP for the proposed Ozone Transport Rule, the State must clearly document growth factors and control assumptions used in the budget calculations. To the extent the State uses EPA growth factors and control assumptions, the SIP need only include a statement attesting to this. If a State wants to substitute its own growth factors or control assumptions in the budget analysis, it must provide adequate justification for using the alternative numbers. As stated in the November 7, 1997 NPR (62 FR 60367), EPA believes it is important that consistent emissions growth estimates be used for the State's budget

demonstration and for EPA's calculation of the required statewide emissions budget. The EPA will evaluate any revision to these growth factors or control assumptions that is suggested during the comment period on this rule and may recalculate the required statewide budget to reflect the State's change. Because the revised growth estimates will be included in EPA's budget calculation, lower growth rates could not be considered part of a State's NO_X control strategy to attain that budget unless the change in growth is the result of clearly identified control strategies that can be shown to provide real, permanent, and quantifiable changes in growth. In the November 7, 1997 NPR, EPA encouraged States to request any changes to growth estimates or control assumptions during the comment period for the proposal so that budgets given in the final rulemaking would reflect these changes. Guidance on how to prepare emission growth and projections is listed below.

The EPA is currently considering an optional alternative approach for States to use to meet the major source offset requirements under section 173 of the Act (new source review (NSR) for nonattainment areas).[6] This approach would allow States to create an offset ''pool'' composed of actual emissions reductions that generally will be achieved as a result of NO_X control strategies adopted in response to the SIP call. To create an offset pool, at the time States revise their SIPs to include statewide NO_X control measures, under certain conditions states could set aside a subset of their emissions reductions generated from those measures for the purpose of offsetting anticipated emissions increases of ozone precursors from new and modified major sources that would be subject to nonattainment NSR preconstruction permitting. (The EPA is considering modifying the NSR regulations to consider both NO_X and VOC ozone precursors in all areas. Under such an approach, for offset purposes, VOC emissions increases from new and modified major sources could be offset with NO_X emissions decreases where appropriate.)

The EPA currently anticipates that those States subject to the NO_X SIP call will be able to take advantage of the offset pool idea, as compliance with the SIP call will necessitate emissions reductions that are likely to be creditable as offsets. Specifically, because States' budgets under the SIP call account for a certain increment of new major source growth, states may set aside that increment in an offset pool and still comply with the budgets mandated by the SIP call. Thus, to take full advantage of the offset pool approach, States would need to ensure that they have projected sufficient growth considering major new sources and major modifications to existing major sources that will be locating in existing and new nonattainment areas. In general, EPA believes that sufficient growth assumptions have been built into the budget calculations to allow an adequate margin for new source offsets. Nevertheless, before EPA finalizes the NO_X budgets, States have an opportunity to reevaluate and adjust growth factors and control assumptions to ensure that the final budgets accurately reflect State-specific forecasts of major new source growth. Consequently, EPA recommends that States covered by this rulemaking and interested in using offset pools review their emissions growth assumptions and projections for anticipated new and modified major sources that will become part of their 2007 baseline emissions inventories under this rulemaking to ensure that growth projections accurately reflect the expected new emissions that will be required to be offset under major NSR.

d. Emissions Growth Projection Guidance.

- ''Procedures for Preparing Emissions Projections'' EPA–450/4–91–019, July 1991 (Hard copy only available).
- ''Guidance for Growth factors, Projections, and Control Strategies for the 15 Percent Rate-Of-Progress Plans'' EPA 452/R–93–002, March 1993 (Hard copy only available).

B. Emissions Reporting Requirements for States

As stated in the November 7, 1997 NPR, the EPA believes it is essential that compliance with the regional control strategy be verified. Tracking emissions is the principal mechanism to ensure compliance with the budget and to assure the downwind affected States and EPA that the ozone transport problem is being mitigated. Emissions reporting requirements for States subject to this SIP call are discussed in this Section.

1. Use of Inventory Data

If tracking and periodic reports indicate that a State is not implementing all of its NO_X control measures beginning in September 2002[7] or is off track to meet its statewide budget by 2007, EPA will work with the State to determine the reasons for noncompliance and what course of remedial action is needed. The EPA will expect the State to submit a plan showing what steps it will take to correct the problems. As described more fully in the NPR (62 FR 60364—60369), noncompliance with the NO_X transport SIP may lead EPA to make a finding of failure to implement the SIP and potentially to implement sanctions, if the State does not take corrective action within a specified time period.

The EPA will use 2007 data to assess how each State's SIP actually performed in meeting the statewide NO_X emissions budget. If emissions exceed the required budget in any year after 2006, the control strategies in the SIP will need to be strengthened. The EPA will evaluate the circumstances for the budget failure and may issue a call for States to revise their SIPs, as appropriate.

2. Legal Authority

The legal authority for the proposed State reporting requirements described in this Section resides in sections 110(a) and 301(a) of the Clean Air Act. Specifically, the requirement in section 110(a)(2)(D) that SIPs include ''adequate provisions'' to mitigate certain transport effects on other States implicitly authorizes emissions inventory reporting to EPA, as reporting will be needed and appropriate to verify that a State is in fact meeting its NO_X budget. Section 110(a)(2)(F) provides additional authority for requiring that SIP call submissions include provisions for emissions reporting by sources to a State, correlation of source information by the State, and steps by the State to make the correlated information available to the public. Section 110(a)(2)(K), in turn, requires a State to submit to EPA as requested, data related to modeling the effect of NO_X and other emissions on ambient air quality. The reported emissions inventory data described in this Section will be used by EPA in air quality modeling to assess the effectiveness of the transport rulemaking's regional strategy. Finally, section 301(a) grants EPA broad

[6] The EPA is not now seeking comment on the optional alternative approach of an offset pool. The approach is described here solely for the purpose of informing States of the potential for such an approach and its potential relationship to the growth estimates in the SIP call rulemaking. If EPA pursues this approach, the agency will propose it for comment in a separate **Federal Register** notice and intends to take final action by the end of this year. In particular, to the extent that the offset pool option might elaborate upon or vary from existing Agency policy or guidance, such differences will be addressed in the later notice.

[7] In this discussion of reporting requirements, September 2002 is presumed to be the compliance date for NO_X transport call controls. As discussed earlier, the final rule may adopt a different date for compliance which may, in turn, affect the dates in the final requirements for State reporting.

authority to prescribe such regulations as are necessary to carry out its functions under the CAA. These proposed regulations are necessary for EPA to properly carry out its evaluation of compliance with the SIP call.

3. Background for Reporting Requirements

In the November 7, 1997 NPR, EPA indicated that it intended to work with affected States to determine what reporting procedures are needed to provide adequate assurance that the emissions budgets are being achieved. On January 13, 1998, EPA held a 1-day workshop with the States to discuss tracking issues. The objectives of the workshop were to determine what type and frequency of inventory reporting are feasible for the different source sectors (power generating sources, other point sources, area sources, and mobile sources) to identify key reporting issues related to each sector, and to develop recommendations on reporting requirements to ensure compliance with the SIP call. The goal was to share information and ideas rather than to reach consensus. A summary of the meeting is contained in the docket (docket number V–B–18) for this rulemaking.

The workshop participants generally thought that existing reporting requirements for attainment SIPs should be used whenever possible to minimize any new reporting burden. The States further recommended that the degree of reporting rigor should be directly related to the sectors that the State chooses to control in its NO_X transport strategy. Reporting every 3 years was considered feasible for all source sectors. Reporting on an annual basis was considered both achievable and necessary for all source sectors that a State chooses to regulate specifically for the purpose of meeting the NO_X budgets proposed in the SIP call. This would include all NO_X sources within the State which are subject to measures included by the State in its transport SIP revision in response to this SIP call. In addition, it was noted that sources or source categories that would be participating in a trading program would need to meet the reporting protocols specific to that program. Consideration was also given to establishing uniform monitoring and reporting requirements and a centralized data base for reporting for other sources. Several States indicated support for this concept if there were easy access to the data by all parties. For all source sectors, the States suggested that emissions rather than indicators should be reported.

4. Proposal

After taking into account the suggestions on tracking of the participants in the workshop, EPA today is proposing inventory reporting requirements for States subject to the NO_X SIP call. The regulatory text appears in proposed § 51.122 and is described below.

The EPA is proposing that States report emissions annually starting with data for the year 2003 [8] for any emissions source (point, area, or mobile) to which additional controls are being applied for the purpose of meeting the NO_X budget, with certain exceptions as discussed below, and from any emissions source that will either sell or buy NO_X emission allowances. The EPA is also proposing that States develop and submit comprehensive statewide NO_X inventories, including all NO_X sources, controlled and uncontrolled, every 3 years, starting with data for the year 2002.

The tracking requirements for meeting the NO_X SIP call budget attempt to make use of existing inventory reporting mechanisms as much as possible so that existing requirements are not duplicated. However, the reporting requirements outlined below are more comprehensive than current reporting requirements for attainment SIPs in two respects. This is because EPA proposes that States report emissions from area sources and mobile sources annually if the State adopts new measures to reduce emissions from these sources for purposes of meeting the NO_X budget. Currently, there is no annual reporting requirement for area or mobile sources. In addition, States are not currently required to report on a 3 year cycle emissions from area and mobile sources in attainment areas. States would be required to report Statewide area and mobile source ozone season emissions every third year under the proposed requirements.

Details of reporting for specific source types are set forth below.

5. Annual Reporting

Annual NO_X emissions reporting requirements for point, area and mobile source emissions are to start for the year 2003. The State must submit annual reports for all sources the State chooses to regulate specifically for the purpose of meeting the NO_X budgets proposed in the SIP call. This would include all NO_X sources within the State which are subject to measures included by the State in its transport SIP revision in response to this SIP call. For example, a State would not have to submit an annual report for NO_X emissions for a cement kiln which was controlled prior to 1998 for RACT purposes. However, if the State chose to go beyond RACT requirements for the cement kiln in order to meet its budget, the State would have to report annually the emissions for the source. Emissions inventory reports are to be submitted according to the Reporting Schedule Section below.

a. Point Sources.[9] The EPA proposes that States be required to report NO_X emissions annually for all point sources that are subject to regulations specifically for the purpose of meeting the NO_X budgets proposed in this SIP call. The State must report emissions from such point sources both for the whole year and for the ozone season (May 1 to September 30). The direct reporting from sources to EPA of data used for compliance with the requirements of a trading program meeting the requirements of 40 CFR Part 96 can be used to satisfy this requirement. The EPA is also taking comment on requiring electrical generating units and large industrial boilers to use the monitoring provisions in 40 CFR Part 75 to account for their emissions. This topic is more thoroughly discussed in Section IV.A.3, Approvability Criteria.

b. Area Sources. The EPA proposes that the State determine area source NO_X ozone season emissions for source categories that are controlled beyond otherwise applicable Federal, State or local measures to meet the NO_X budget and report these annually to EPA. A State need not report annually the emissions from an area source sector if the State does not require additional NO_X reductions from that sector in order to meet the transport rule's NO_X budget.

c. Mobile Sources. The EPA proposes that a State determine statewide mobile source NO_X ozone season emissions and report these to EPA annually if the State is requiring additional controls for purposes of meeting the NO_X budget. Reductions from Federal measures are already assumed in the budget. A State need not report annually the emissions from mobile sources if the State does not require additional NO_X reductions from that sector in order to meet the transport rule's NO_X budget.

[8] 2003 would be the year for which the data would be reported. The actual reporting schedule is given in the Reporting Schedule Section.

[9] The EPA is proposing to define point source for this rule as a non-mobile source which emits 100 tons or more per year of NO_X emissions. Non-mobile sources which emit less than 100 tons per year of NO_X would be considered area sources. This definition of point source is consistent with current reporting requirements for NO_X emissions.

6. Reporting Every Third Year (3-Year Cycle or Triennial Reporting)

Consistent with current 3-year reporting requirements, EPA proposes that for every third year, starting in 2002, States would be required to submit to EPA statewide NO_X emissions data from all NO_X sources (point, area, and mobile) within the State.[10] These data would include data from all source categories in the State regardless of whether those sources are being controlled to meet the requirements of the transport rulemaking. For triennial reporting for area and mobile sources, only ozone season emissions must be reported. For triennial reporting for point sources, both ozone season and annual emissions must be reported.

7. 2007 Report

The EPA proposes that in 2007, States submit to EPA statewide NO_X emissions data from all NO_X sources (point, area, and mobile) within the State. This would include data from all source categories in the State regardless of whether those sources are being controlled to meet the requirements of the transport rulemaking. For the 2007 report, only ozone season emissions must be reported for area and mobile sources, while both ozone season and annual emissions must be reported for point sources. The data reporting requirements are identical to the reporting requirements for the 3-year cycle inventories, and this reporting requirement is being proposed to allow evaluation of whether budget requirements are met for 2007. This one-time special inventory is necessary because the ordinary 3-year reporting cycle does not fall in the year 2007. States which must submit the 2007 inventory may project incremental changes in emissions from 2007 to 2008 to allow the 2008 inventory requirement to be more easily met and to reduce the burden on States which must submit full NO_X inventories in consecutive years, i.e., 2007 and 2008.

8. Ozone Season Reporting

The EPA is proposing that the States provide ozone-season inventories for the sources for which the State reports annual, triennial and 2007 emissions. The ozone season emissions may be calculated from annual data by prorating emissions from the ozone season by utilization factors that must be reported and that are further defined in 40 CFR 51.122. For area and mobile sources, only ozone season data must be reported for the annual, triennial, and 2007 inventories. For point sources, the State must report emissions for the whole year, as well as for the ozone season, since States are already required under other existing inventory provisions to submit the data for the whole year. For the annual report, emissions need only be reported for source categories that a State chooses to regulate specifically for the purpose of meeting the NO_X budgets proposed in the SIP call. This would include all NO_X sources within the State which are subject to measures included by the State in its transport SIP revision in response to this SIP call. For the triennial and 2007 reports, ozone season emissions from all NO_X source categories within the State, controlled or uncontrolled, must be reported. The EPA is proposing that each State provide its ozone season calculation method to EPA for approval.

9. Data Reporting Procedures

When submitting a formal NO_X budget emissions report and associated data, the State should formally notify the appropriate EPA Regional Office of its activities. The EPA proposes that States would be required to report emissions data in an electronic format to the location given below. Several options are available for data reporting. The State may choose to continue reporting to the EPA Aerometric Information Retrieval System (AIRS) using the AIRS facility subsystem (AFS) format for point sources. (This option will continue for point sources for some period of time after AIRS is reengineered (before 2002), at which time this choice may be discontinued or modified.) A second option is for the State to convert its emissions data into the Emission Inventory Improvement Program/Electronic Data Interchange (EIIP/EDI) format. This file can then be made available to any requestor, either using E-mail, floppy disk, or value added network, or can be placed on a file transfer protocol (FTP) site. As a third option, the State may submit its emissions data in a proprietary format based on the EIIP data model. For the last two options, the terms ''submitting'' and ''reporting'' data are defined as either providing the data in the EIIP/EDI format or the EIIP based data model proprietary format to EPA, Office of Air Quality Planning and Standards, Emission Factors and Inventory Group, directly or notifying that group that the data are available in the specified format and at a specific electronic location (e.g., FTP site). A fourth option for annual reporting (not for third year reports) is to have sources submit the data directly to EPA. This option will be available to any source in a State that is both participating in a trading program meeting the requirements of 40 CFR part 96 and that has agreed to submit data in this format. The EPA will make both the raw data submitted in this format and summary data available to any State that chooses this option. The EPA also solicits comment on whether this option should be expanded to additional stationary sources.

For the latest information on data reporting procedures, call the EPA Info Chief help desk at (919) 541–5285 or email to info.chief@epamail.epa.gov.

10. Reporting Schedule

The EPA is proposing that States submit the required annual and triennial emissions inventory reports no later than 12 months after the end of the calendar year for which the data are collected. Because downwind nonattainment areas will be relying on the upwind NO_X reductions to assist them in reaching attainment by the required dates, EPA believes it is important that data be submitted as soon as practicable to verify that the necessary emissions reductions are being achieved. Early reports will allow States to more quickly respond to implementation problems detected by the reports. States should formally notify the appropriate EPA Regional Office when making the submittals.

In a related rulemaking effort, EPA is currently developing the consolidated emissions inventory reporting rule. Among other things, the rule will be proposing that all States in the Nation submit statewide inventories of ozone precursors (NO_X, VOC, CO) every 3 years beginning with 1999 data. The third year reporting requirement for the transport rule has been developed to be consistent with that reporting cycle. However, the proposed 2002 start date for the transport rule emissions reports is 3 years later than the start date for the consolidated rule reports. The EPA is considering an 18-month reporting schedule for the latter rule. The EPA expects that, as States gain experience in developing statewide emissions inventories, less time will be needed to gather and quality assure the data. Once States have completed the first cycle of reporting for 1999 under the consolidated rule, they may have sufficient procedures in place to allow for an accelerated reporting schedule. Therefore, because of the importance of the NO_X inventory reports for determining compliance with the NO_X budgets, EPA believes it is appropriate

[10] The actual submittal of data by the State would only be required 12 months after the end of 2002. The data should be submitted according to the schedule in the Reporting Schedule Section.

to require a 12-month reporting schedule for the transport rulemaking.

The EPA recognizes that there are different constraints on data collection for the point, mobile, and area source categories. Therefore, EPA is also soliciting comment on whether different reporting schedules should be established for the different source categories, such that data that can be obtained more readily should be submitted sooner. For example, because point sources are already known to State agencies, and their operating parameters will not change significantly from year to year, the time needed to collect and quality assure data may be shorter than for the other categories. The new data submission procedures discussed above may allow further reductions in the reporting time. The EPA is soliciting comment on whether the State reporting time for point source emissions should be shortened to no later than 6 or 9 months after the end of the calendar year for which the data are collected.

For mobile and area sources, the necessary reporting time frames may be longer than for point sources due to the delay in obtaining activity data from information sources outside the inventory preparing agency. In many cases, surveys to collect new activity data are required by the inventory preparing agency to be able to calculate emissions estimates. As with point sources, the new data submission procedures may allow reductions in the reporting time. The EPA is soliciting comment on whether no later than 6 or 9 months after the end of the applicable calendar year would be a feasible time frame for submitting mobile and area source emissions inventory reports.

If different reporting schedules are established for the different source categories in the final rule, the EPA is proposing that, for the third year complete statewide inventory, States submit a summary report identifying the separate submittals and totaling the statewide NO_X ozone season emissions to demonstrate progress toward, and ultimately compliance with, their NO_X budget.

11. Confidential Data

Emissions data being requested in today's proposal would not be considered confidential by the EPA (See 42 U.S.C. 7414). However, some States may restrict the release of certain types of data, such as process throughput data. Where Federal and State requirements are inconsistent, the EPA Regional Office should be consulted for final reconciliation.

12. Data Elements To Be Reported

In addition to reporting ozone season NO_X emissions, the State should report other critical data necessary to generate and validate these values. This includes data used to identify source categories such as site name, location and (source classification code) SCC codes. It also includes data used to generate the NO_X emissions values such as fuel heat content and activity level. The specific data elements required for each source category are further defined in 40 CFR 51.122.

V. NO_X Budget Trading Program

In the November 7, 1997 proposed rulemaking to reduce the transport of ozone and facilitate attainment of the NAAQS for ozone, EPA offered to develop and administer a multistate NO_X trading program to assist States in the achievement of these goals; today's notice proposes such a program. The trading program being proposed employs a cap on total emissions in order to ensure that emissions reductions under the proposed transport rulemaking are achieved, while providing the flexibility and cost effectiveness of a market-based system. This Section provides background information and a description of the NO_X Budget Trading Program, as well as an explanation of how the trading program would interface with other State and Federal programs. In addition, a model rule for the trading program is proposed. States can voluntarily choose to participate in the NO_X Budget Trading Program by adopting the model rule, which is a fully approvable control strategy for achieving emissions reductions required under the proposed transport rulemaking.

Should the States voluntarily choose to participate in the NO_X Budget Trading Program by adopting the model rule, EPA's authority to cooperate with and assist the States in the implementation of the trading program resides in both State law and the CAA. With respect to State law, any State which elects to adopt the model rule as part of its transport SIP will be authorizing EPA to assist the State in implementing the trading program with respect to the sources in that State. With respect to the CAA, EPA believes that the Agency's assistance to those States that choose to participate in the trading program will facilitate the implementation of the program and minimize any administrative burden on the States. One purpose of title I of the CAA is to offer assistance to States in implementing title I air pollution prevention and control programs (42 U.S.C. 101(b)(3)). In keeping with that purpose, section 103(a) and (b) generally authorize EPA to cooperate with and assist State authorities in developing and implementing pollution control strategies, making specific note of interstate problems and ozone transport. Finally, section 301(a) grants EPA broad authority to prescribe such regulations as are necessary to carry out its functions under the CAA. Taken together, EPA believes that these provisions of the Act authorize EPA to cooperate with and assist the States in implementing the NO_X Budget Trading Program in the ways set forth in the model rule.

A. Program Summary

1. Purpose of the NO_X Budget Trading Program

The OTAG concluded that an emissions trading program could facilitate cost effective emissions reductions from large combustion sources (for more information on OTAG, see Section V.B.1.). When designed and implemented properly, a market-based program offers many advantages over its traditional command-and-control counterpart. The OTAG articulated five principal advantages of market-based systems: (1) Reduced cost of compliance; (2) creation of incentives for early reductions; (3) creation of incentives for emissions reductions beyond those required by regulations; (4) promotion of innovation; and (5) increased flexibility without resorting to waivers, exemptions and other forms of administrative relief (OTAG 1997 Executive Report, pg. 57). These benefits result primarily from the flexibility in compliance options available to sources and the monetary reward associated with avoided emissions in a market-based system. The cost of compliance in a market-based program is reduced because sources have the freedom to pursue various compliance strategies, such as switching fuels, installing pollution control technologies, or buying authorizations to emit from a source that has over-complied. Since an emission rate or emissions level below the level mandated allows the generation of credits or allowances that may be sold on the market, pollution prevention becomes more cost effective, and innovations in less-polluting alternatives and control equipment are encouraged.

A market system that employs a fixed tonnage limitation (or cap) for a source or group of sources provides the greatest certainty that a specific level of emissions will be attained and maintained since a predetermined level

of reductions is ensured. With respect to transport of pollution, an emissions cap also provides the greatest assurance to downwind States that emissions from upwind States will be effectively managed over time. The capping of total emissions of pollutants over a region and through time ensures achievement of the environmental goal while allowing economic growth through the development of new sources or increased use of existing sources. In an uncapped system, (where, for example, sources are required only to demonstrate that they meet a given emission rate), the addition of new sources to the regulated sector or an increase in activity at existing sources can increase total emissions even though the desired emission rate control is in effect.

In the NO_X Budget Trading Program, EPA proposes to implement jointly with participating States, a capped market-based program for certain combustion sources to achieve and maintain an emissions budget consistent with the proposed transport rulemaking. An emissions cap or budget trading program for large combustion sources is a proven and cost-effective method for achieving emissions reductions while allowing regulated sources compliance flexibility.

Although participation in the NO_X Budget Trading Program is discretionary, EPA encourages States to participate in the trading program as a cost-effective way of meeting their emissions reductions obligations under the proposed transport rulemaking. Specifically, today's proposal is designed to assist States in: (1) Achieving, through a program covering certain large stationary combustion sources, emissions reductions required under the proposed transport rulemaking; (2) ensuring flexibility for regulated sources; (3) reducing compliance costs for sources; and (4) reducing administrative costs to States.

Adoption of the NO_X Budget Trading Rule would ensure consistency in certain key operational elements of the program among participating States, while allowing each State flexibility in other important program elements. Uniformity of the key operational elements across the NO_X Budget Trading Program region is necessary to ensure a viable and efficient trading program with low transaction costs and minimum administrative costs for sources, States, and EPA.

The effect of NO_X emissions on air quality in down wind nonattainment areas depends, in part on the distance between sources and receptor areas. Sources that are closer to the nonattainment area tend to have much larger effects on air quality than sources that are far away. In light of this, and as discussed in Section VII, the Agency plans to evaluate alternative approaches in developing the final rule.

The Agency solicits comments on whether a trading program should factor in differential effects of NO_X emissions in an attempt to strike a balance between achieving the cost savings from a broader geographic scope of trading and avoiding the adverse effects on air quality that could result if the geographic domain for trading is inappropriately large or trades across areas are not appropriately adjusted to reflect differential environmental effects. The Agency could consider establishing ''exchange ratios'' for tons traded between areas. The large number of areas in the region violating the standards and the several different weather patterns associated with summertime ozone pollution episodes complicate the development of a stable set of trading ratios. Alternatively, the Agency could consider establishing subregions for trading within the 23-jurisdiction area and apply a discount to or prohibit trades between regions.

The Agency solicits comments on this issue. If after review of alternative approaches (including sub-regional modeling analysis submitted by the States and other commenters), EPA concludes that an alternative approach is appropriate, EPA will issue a SNPR.

2. Emissions Reductions Required by the Proposed Transport Rulemaking

Each of the 22 States and the District of Columbia, determined by EPA in the proposed transport rule to make a significant contribution to nonattainment or interfere with maintenance in another jurisdiction, has been assigned a statewide NO_X emissions budget. Each of these States must submit a SIP revision delineating the controls that will be implemented to meet its specified budget. Each State has complete discretion to develop and adopt a mix of control measures appropriate for meeting its assigned emissions budget. Today's proposal assumes that compliance with the emissions reductions requirements for the transport rulemaking will begin on May 1, 2003, as proposed in the transport rulemaking. If a different compliance deadline is required in the final transport rulemaking, the deadlines in the proposed trading rule will be adjusted accordingly.

In the proposed transport rulemaking, EPA calculated seasonal NO_X emissions budgets for States, assuming activity growth levels through 2007 and the application of reasonable, cost-effective controls that are currently available to achieve NO_X reductions. The statewide budgets were developed by applying appropriate controls to each sector of the total State emissions inventory: large electricity generating devices, point sources other than large electricity generators, nonroad engines, highway vehicles, and area sources. The statewide NO_X budget development process is fully described in Section III.B. of the November 7, 1997 proposal (62 FR 60346).

As outlined in the proposed transport rulemaking, budget levels calculated for nonroad engine, highway vehicle, and area source inventory sectors assume continued application of controls already required for those source sectors in addition to implementation of Federal measures, such as the National Low Emissions Vehicle Program. The statewide seasonal NO_X budgets proposed for the large electricity generating source sector (fossil-fuel burning electricity utility units and nonutility units serving electricity generators greater than 25 MWe) were based on applying a uniform NO_X emission rate of 0.15 lb/mmBtu to projected generating activity levels. Budget estimates for States' nonutility point source sector were developed assuming a 70 percent reduction from future emissions levels of large sources (greater than 250 mmBtu/hour), and application of RACT to medium sized sources (100–250 mmBtu/hour) in this category.

Though States are free to independently determine their control strategies to achieve their statewide budgets, several Federal and/or State programs are already under way or planned for most of the inventory source sectors to assist States in meeting their budgets. For example, meeting individual budget components for highway vehicles and nonroad engines can be achieved through Federal programs without adopting additional new control strategies. In addition, EPA is offering to administer certain aspects of today's proposed regional NO_X Budget Trading Program in order to assist States in developing a regulatory strategy for large stationary combustion sources.

3. Benefits of Participating in the NO_X Budget Trading Program

Participation in the NO_X Budget Trading Program would enable States that have been identified in the proposed transport rulemaking to achieve the required emissions reductions from stationary combustion sources while minimizing the

administrative burden faced by both States and sources. The SIP revision process required by the proposed transport rulemaking would be significantly streamlined for States choosing to include the NO_X Budget Trading Program as a part of the SIP. The EPA proposes that adoption of the model rule will be considered a SIP-approvable control strategy for the proposed transport rulemaking. States electing to participate in the trading program may either adopt the model rule by reference or develop State regulations that are in accordance with the model rule.

The permitting process under the trading program would be significantly streamlined since there will be no need for enforceable compliance plans and few circumstances necessitating permit revisions. Emissions monitoring, a central requirement of the trading program, as well as the availability to the public of emissions data, allowance data, and annual reconciliation information, would ensure that participating States and the public have confidence that the required emissions reductions are being achieved.

Cost savings for sources in States included in the trading program are projected to be substantial. As estimated in the ''Proposed Ozone Transport Rulemaking Regulatory Analysis'' (September 1997 docket # III–B–01), annual incremental costs for a rate-based control approach (at 0.15 lbs/mmBtu) are estimated to be $501 million higher in 2005 than the costs of participating in the NO_X Budget Trading Program (assuming the same emission rate) for the 23 jurisdictions in the proposed transport rulemaking. Moreover, the annual average cost effectiveness of emissions reductions achieved through a regional trading program for the electric power industry is projected to be approximately $1,250 per ton by 2010, while the cost effectiveness of the rate-based approach is projected to be $2,050 per ton by 2010 (pages 2–24 through 2–27).

Sources included in the trading program can also expect increased compliance flexibility, as compared to a rate-based approach that requires each affected source to comply with the 0.15 lbs/mmBtu emission rate and necessitates installation of control equipment for any affected source that cannot meet the limit. Participation in the trading program provides sources the choice of numerous compliance strategies. Moreover, sources can choose to over-comply and generate excess allowances that can be sold on the market or, as discussed below, possibly banked for future use. In addition, sources may change their control approach at any time without regulatory agency approval.

4. EPA's Proposal

Initially, the following sources would be included in the NO_X Budget Trading Program: fossil fuel-fired units (i.e., stationary boilers, combustion turbines, and combined cycle systems) that serve an electrical generator of capacity greater than 25 MWe; and fossil fuel-fired units that do not serve a generator and that have a heat input capacity greater than 250 mmBtu/hr. All such sources located within a State that chooses to join the trading program would be required to participate in the program. Conversely, sources located in States that do not join the trading program would not be eligible to participate. The NO_X budget sources initially included in the trading program represent about 80 percent of the point source portion of the 2007 NO_X baseline emissions inventory and about 65 percent of the point source portion of the 2007 NO_X budget as proposed in the ozone transport rulemaking. Additionally, these sources represent about 90 percent of the emissions reductions required in the proposed ozone transport rulemaking. This core group of sources, therefore, captures the majority of NO_X emissions from the point source sector. States, however, have the option of extending the program to include additional point sources at their discretion, provided these additional point sources can fulfill the requirements set forth for the trading program in this proposal. The EPA is also taking comment on allowing certain new and modified major sources to participate in the trading program at their discretion as a way of potentially meeting the new source offset provisions under section 173 of the CAA, provided the source meets the permitting, monitoring, and accountability requirements of the trading program.[11] The EPA requests comments on broadening the applicability of this trading program to include more types of sources such as process sources, mobile sources, or area sources. Commenters should address each type of source that they recommend be included in the applicability of this program. For each source type, commenters should describe procedures for monitoring emissions and identify responsible parties for the source type. Criteria for monitoring and for responsible parties are outlined below. Additionally, comment is requested on any other types of concerns or issues associated with inclusion of these other source types (e.g., environmental justice; net cost savings likely to accrue from trading; administrative costs for sources, States, and EPA).

Sources in the trading program would be required to monitor and report their emissions in accordance with relevant portions of 40 CFR part 75, which is currently under revision to provide greater flexibility to regulated sources. (40 CFR part 75 revisions will be proposed in a notice entitled ''Acid Rain Program; Continuous Emission Monitoring Revisions'' that will be published in the **Federal Register** in the near future.) The monitoring of emissions is necessary for accountability and to ensure that a ton from one source in one State is equivalent to a ton from another source in the same or another State.

The NO_X allowances—each allowance representing a limited authorization to emit one ton of NO_X—would be the currency used in the trading program. An emissions budget and an allowance-based system ensure achievement of environmental goals within a cost-effective, market-based program and can be implemented through existing infrastructure. A fixed number of NO_X allowances would be allocated to regulated sources in each State for each ozone season in the amount of the NO_X budget set for the trading program in the State. States would have the responsibility for allocating allowances among regulated sources. The proposed NO_X Budget Trading Rule establishes timing requirements for the submission of NO_X allowance allocations to EPA by participating States for inclusion into the NO_X Allowance Tracking System (NATS), which would be operated by EPA.

In addition to timing requirements, today's proposal provides options for a recommended methodology for States to allocate NO_X allowances to their sources covered by the NO_X Budget Trading Program. A specific recommendation would be included in the final trading rule. States would have the flexibility to deviate from EPA's recommendation as long as the timing requirements (40 CFR 96.41) are met and total NO_X allowances allocated to regulated sources do not exceed the number of tons that the State apportions to these sources in the SIP. This would help ensure that the trading program can operate efficiently and effectively across multiple States.

In addition to EPA's traditional role in the approval and oversight of the SIP, EPA would be responsible for managing the emissions data and market functions

[11] For discussion on this subject, see Section F, below, that addresses New Source Review.

of the program, as well as performing annual reconciliation of monitored emissions and allowances. States choosing to join the trading program would be responsible for promulgating the supporting State regulations; submitting NO_X allowance allocations to EPA for inclusion in NATS; and enforcing the permitting, monitoring and excess emissions requirements. As established in the proposed transport rulemaking, the control period would extend from May through September. Based on results presented in the regulatory analysis for the proposed transport rule that suggest no significant changes in the location of emissions reductions resulting from an unrestricted trading program with a consistent control level (''Proposed Ozone Transport Rulemaking Regulatory Analysis,'' September 1997, pages 2–20 and 2–23, docket # III–B–01), trading could occur across participating States free from restrictions (other than the requirement to comply with existing emissions limits under title I and title IV of the Act). These and other program parameters, however, are predicated on the proposed transport rule and may be modified if the final transport rule differs from the proposal.

B. Evolution of the NO_X Budget Trading Program

Market-based systems to control NO_X emissions have been developed within the United States, including: The South Coast Air Quality Management District's Regional Clean Air Incentives Market (RECLAIM) and the Ozone Transport Commission's (OTC) NO_X Budget Program. Today's proposed NO_X Budget Trading Program builds directly upon the OTC program and recommendations from OTAG. In addition, EPA held two public workshops in November and December of 1997 specifically to solicit input on the development of the trading program. The proceedings of these workshops are also summarized in this Section.

1. OTC's NO_X Budget Program

The goals and implementation strategy of the OTC's NO_X Budget Program are similar to those of the proposed transport rule and today's proposed NO_X Budget Trading Program. Taking into account the work that has been done by the OTC, EPA has tried to develop a proposal that will minimize conflicts between the two programs by building upon the terms and provisions in the OTC program. Section V.E of this preamble further discusses the integration issues for the two programs.

On September 27, 1994, the OTC adopted a Memorandum of Understanding (MOU) committing the signatory States to the development and proposal of regionwide NO_X emissions reductions in two phases beginning in 1999 and 2003. The signatory States were Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, and the District of Columbia.

The OTC MOU requires reductions in ozone season NO_X emissions from utility and large industrial combustion facilities in order to further the effort to achieve the health-based NAAQS for ozone. These emissions reduction requirements will be implemented through a regionwide cap-and-trade program. The OTC States, in collaboration with EPA, industry, and environmental groups, drafted and approved a model rule in May 1996. This model rule serves as a template for States to adopt their own rules to implement the budget program defined by the OTC MOU. In addition to adopting rules, States in the OTC program are responsible for allocating NO_X allowances among regulated sources, certifying monitors and monitoring plans, auditing and recertifying sources, and enforcing the provisions of their State rules. In addition to EPA's traditional role in the approval and oversight of the SIP, EPA serves as the administrator for the NATS and the Emissions Tracking System (ETS), the data systems used to implement the OTC program. This entails issuing NO_X allowances and opening accounts, processing transfers and quarterly emissions reports, conducting annual reconciliation of emissions and allowances, and providing technical assistance to States and sources as needed.

To implement the program, the OTC MOU emissions reduction requirements were applied to a 1990 baseline for NO_X emissions in the Ozone Transport Region (OTR) to create an emissions budget for each of the 2 target years: 1999 (Phase II) and 2003 (Phase III). (Phase I required the installation of RACT by May 1995.) This budget was apportioned among all the States; each State is responsible for allocating its budget to regulated sources in its State. Sources are allowed to buy, sell, or trade NO_X allowances, and ultimately must hold allowances sufficient to cover all NO_X emitted during the ozone season. Beginning in 1999, the total NO_X emissions from regulated sources cannot exceed the number of allowances allocated in the OTR.

In order to ensure that NO_X emissions reductions are achieved and allowances are fungible, budget sources are required to monitor and report their NO_X emissions. Most sources use CEMS, as approved by EPA under 40 CFR Part 75. For smaller oil-and gas-burning units, alternative monitoring methods are available.

At the conclusion of each ozone season, sources have an opportunity to evaluate their reported emissions and obtain any additional NO_X allowances they may need to offset their emissions during the ozone season. By December 31 of each year, a regulated source submits a compliance certification report. Should a source lack sufficient allowances to offset emissions for the season, the OTC model rule requires subtraction of allowances from that source's allocation for the following year. If enough NO_X allowances are not held, an automatic offset will be imposed during the following year's ozone season where an amount of NO_X allowances will be deducted from the source in an amount equaling three NO_X allowances for each ton of excess emissions. The source is also subject to the application of existing State and Federal enforcement protocols and penalties.

The NO_X allowances that are not used are automatically carried over into the following year as banked allowances. The banking provisions of the OTC model rule provide for unlimited banking of allowances with a ''progressive flow control'' management scheme to control the withdrawal and use of banked allowances. (For a more detailed discussion of banking, see Section V.E.). Explicit program audit provisions are established in the OTC model rule to ensure that the use of banked NO_X allowances does not threaten the integrity of the system.

Finally, the OTC model rule makes provisions for possible rule modifications in the future. This ''mid-course correction'' provides an opportunity to revise the 2003 emissions reduction target and budget and to modify the OTC model rule in response to refined air quality modeling or other altered circumstances.

2. OTAG Process

The OTAG, a partnership among the 37 easternmost States and the District of Columbia, EPA, industry representatives and environmental groups, was charged with assessing the significance of ozone transport and with recommending to EPA control strategies for reducing this transport. The OTAG's initial meetings were in May and June of 1995, and its final recommendations were issued to

EPA on July 8, 1997 (see 62 FR 60376, Appendix B). The OTAG completed an extensive and comprehensive analysis of ozone transport and control, and EPA has taken OTAG's work and conclusions into account in developing this rulemaking.

The analysis and conclusions of the Trading and Incentives Workgroup of OTAG are particularly relevant to EPA's creation of the NO_X Budget Trading Program. The Trading and Incentives Workgroup was charged with designing market-based approaches to reduce NO_X emissions. This group identified two basic paths to market system implementation—identified as ''Track One'' and ''Track Two''—which could be used to facilitate achievement of the statewide budgets delineated in the proposed transport rulemaking. ''Track One'' was defined as an interstate cap-and-trade program for stationary sources, administered by a central regulatory authority, such as EPA. ''Track Two'' was defined as a market-based system without an emissions cap. As discussed above, trading with a cap better ensures that environmental goals will be met than trading without a cap. Therefore, for the purposes of assisting State achievement of the statewide budgets set forth in the proposed transport rulemaking, EPA is focusing on implementing a ''Track One'' type of program with today's proposed rule and is building upon OTAG's analysis and recommendations regarding the development of Track One programs.

3. EPA Model Trading Program Workshops

The EPA held two public workshops to solicit comments and suggestions from States and other stakeholders on a NO_X cap-and-trade program prior to developing today's proposed NO_X Budget Trading Rule. This Section describes the workshop process. Greater detail regarding program development and feedback received through the workshop process is provided within relevant Sections of this preamble.

The trading rule workshops were held on November 4 and 5, 1997 in Washington DC, and December 10 and 11, 1997 in Arlington, Virginia. Written comments during this pre-proposal phase were welcomed through December 31, 1997. Each workshop consisted of a 2-day forum: the first day was devoted to EPA/State discussions, and the second day was open to all interested parties. Over 150 people participated in each of the workshops. To facilitate meaningful comments from these participants, EPA developed working papers on critical issues that were made available for review prior to each workshop. These papers discussed major issues relevant to developing a NO_X Budget Trading Rule, delineated options and, in some cases, offered recommendations. The issues associated with each working paper were presented at the workshops, followed by open discussion periods allowing workshop participants to comment and discuss each issue.

The first workshop, addressed the foundations of the NO_X Budget Trading Program development. To achieve the required NO_X emissions reductions in the most cost-effective manner, the goals of the trading program were defined as meeting the budget, facilitating trading, and creating a workable program. The necessity of operating the NO_X Budget Trading Program within the framework of the proposed transport rulemaking dictated further requirements, such as a seasonal control period. Four fundamental trading rule components (applicability, monitoring, emissions limitations, and banking) were discussed at length.

After broad concepts for the NO_X Budget Trading Program framework were introduced and discussed at the first workshop, EPA revised and augmented the working papers in accordance with comments and discussion. At the second workshop, EPA presented recommendations and considerations of additional issues, seeking further input from participants. The original working papers on applicability, monitoring, emissions limitations, and banking were expanded, and new papers on the use of output in allocations and the creation of an energy efficiency set-aside were introduced in response to interest expressed at the first workshop. In addition, a paper presenting a skeleton of all the components of a model rule was presented to provide context for input and an indication of how the NO_X Budget Trading Rule as a whole was evolving.

The EPA found the workshop process to be very helpful in generating useful recommendations for developing the framework for the model rule. Today's NO_X Budget Trading Rule proposal incorporates comments and suggestions raised at both workshops, along with nearly fifty written comments received following the workshops. Listening to issues important to States through the workshop process was essential for EPA to develop a program that would meet States' needs. Since the ultimate cost savings of the regional trading program will increase with the number of participating States, it is advantageous to design a regional trading program that will likely be adopted by the greatest number of States. The workshops also served as a forum to discuss which program elements should be consistent among participating States, since consistency in State-adopted rules is essential for a viable regional cap-and-trade program. Also of importance in the workshop process was working with stakeholders, such as affected sources, in order to ensure that the trading program offers the necessary flexibility, as well as compatibility with other programs.

The working papers, a detailed summary of the input received during both workshops, and written comments are included in the proposed transport rulemaking docket (A–96–56, Section 2a).

4. RECLAIM Program

The RECLAIM program, which was adopted by the South Coast Air Quality Management District in October, 1993, and began January 1, 1994, provides another example of a cap-and-trade market system. This program regulates NO_X and sulfur oxides (SO_X) emissions from facilities that generally emit four or more tons per year of either pollutant from permitted equipment in the South Coast Air Basin, centered in Los Angeles.[12] The RECLAIM program currently includes approximately 330 facilities.

The RECLAIM program replaced command-and-control regulations with a market program to provide facilities with added flexibility and lowered compliance costs in achieving reductions required to meet State and Federal requirements for clean air programs. Facilities in the program are collectively required to cut their emissions by a specific amount each year under the program, resulting in an almost 80 percent reduction by 2003 for both SO_X and NO_X. Each facility participating in RECLAIM is allocated RECLAIM trading credits (RTCs) equal to its annual emissions limit. Initially, allocations are based on past peak production and the requirements of existing rules and control measures for each facility. Allocations decline annually through the 2003 compliance year, then remain constant during subsequent years. The RTCs, each representing the limited authorization to emit one pound of pollutant, expire annually. Facilities may trade these RTCs among themselves, providing that every quarter, each facility holds credits

[12] Some sources with annual emissions less than four tons are included in the program by virtue of their inclusion in a SIC category in which the majority of sources emit greater than four tons per year.

equal to or greater than their actual emissions for that quarter.

In terms of NO_X emitters, the RECLAIM program generally requires stationary sources that emit ten or more tons of NO_X annually or which burn any solid fuels to use CEMS to quantify their emissions. Smaller sources have additional monitoring options. Sources that emit four or more tons of NO_X and less than ten tons may use default emission rates. They must demonstrate that these rates are appropriate by monitoring process variables, performing periodic emissions testing, and conducting periodic tune-ups of equipment. The smallest sources in the RECLAIM program (those with annual emissions of less than four tons) may choose to use default emission rates that require less extensive testing and demonstration than those available to the larger sources.

The program's annual report for 1996 concluded that RECLAIM was continuing to meet its emissions reduction goals; an active trading market had developed; and the compliance rate, once it is finalized for the 1996 compliance year, will be in the 85 to 90 percent range.

C. NO_X Budget Trading Program

1. General Provisions

Today's proposed NO_X Budget Trading Rule will be incorporated into the 40 CFR as a new part 96. The subparts of 40 CFR part 96 are described below. The provisions of 40 CFR part 96 will become effective and apply to sources only if a State incorporates 40 CFR part 96 by reference into the State's regulation or adopts regulations that are in accordance with 40 CFR part 96.

a. Purpose. Subpart A of today's proposed NO_X Budget Trading Rule includes Sections describing: To whom the NO_X trading program would apply; the standard requirements for participants in the program (permitting, NO_X allowances, monitoring, excess emissions, and liability provisions); exemptions for retired units from the program requirements; definitions, measurements, and abbreviations; and computation of deadlines stated within the proposal.

b. Definitions, Measurements, Abbreviations, and Acronyms.

Many of the definitions, measurements, abbreviations, and acronyms are the same as those used in 40 CFR part 72 of the Acid Rain Program regulations, in order to maintain consistency among programs. However, additional terms specific to the NO_X Budget Trading Program, such as control period (the period beginning May 1 of each year and ending on September 30 of the same year), NO_X Budget unit (a unit subject to the emissions limitation under the NO_X Budget Trading Program), and several others are added. Key definitions are discussed in relevant Sections below describing the rule.

c. Applicability. The EPA proposes that the NO_X Budget Trading Rule be applicable to a core group of sources that includes all fossil fuel-fired, stationary boilers, combustion turbines, and combined cycle systems (i.e., ''units'') that serve an electrical generator of capacity greater than 25 MWe and to any fossil fuel-fired, stationary boilers, combustion turbines, and combined cycle systems not serving a generator that have a heat input capacity greater than 250 mmBtu/hr. A unit is considered fossil fuel-fired if fossil fuels account for more than 50 percent of the unit's heat input on an annual basis. These sources represent about 80 percent of the point source portion of the 2007 NO_X baseline emissions inventory and about 65 percent of the point source portion of the 2007 NO_X budget in the proposed ozone transport rulemaking. Additionally, these sources represent about 90 percent of the emissions reductions required in the proposed ozone transport rulemaking.

The EPA proposes the above core group of sources based on their significant contribution of NO_X emissions, range of cost-effective emissions reduction options, ability to monitor emissions, and ability to identify responsible parties. The following discussion examines the monitoring and responsible party criteria for the NO_X Budget Trading Program's applicability. Additional options for the trading program's applicability are also presented for consideration. The EPA solicits comment on the appropriateness of including all categories described above in the core group of sources, whether the size cut-offs should be higher or lower for these source categories, and the appropriateness of including other source categories in the core group.

i. Monitoring. In general, sources that participate in a cap-and-trade program must have the ability to accurately and consistently account for their emissions. Accuracy is an important design parameter because it ensures that emissions for all sources covered by the trading program are within the cap. In addition, because each NO_X allowance will have economic value, it is important to ensure that emissions (and thus allowances used) are accurately quantified. Consistency is an important feature because it ensures that accuracy is maintained from source to source and year to year. It also ensures that the sources in the trading program are treated equitably. Finally, consistency facilitates administration of the program for both the regulated community and State and Federal agencies.

When considering what source types to include in the proposed trading program (e.g., large boilers, process sources, mobile sources, area sources), EPA determined that the core sources were capable of accurate and consistent monitoring as outlined below.

- Large Electric Utility Units: For several years, units serving electricity generators greater than 25 MWe (with some exemptions for cogeneration and nonutility electricity generating units) have been complying with the title IV monitoring provisions. The EPA proposes to include these sources in the NO_X Budget Trading Program.
- Other Large Electricity Generating Units: Additionally, with deregulation of electric utilities, it is not clear how ownership of the electricity generating facilities will evolve. Therefore, EPA proposes to include all large electricity generating sources, regardless of ownership, in the trading program. As there is no relevant physical or technological difference between utilities and other power generators, the same monitoring provisions and the size cut-off of greater than 25 MWe are applicable to all units which serve generators.
- Other Large Steam Producing Units: There is also no fundamental physical or technological difference between a boiler, combustion turbine, or combined cycle system that produces steam for eventual production of electricity or for other industrial applications. Thus, EPA believes that the same monitoring provisions can be applied to a boiler, combustion turbine, or combined cycle system used for industrial steam.[13]

ii. Responsible Party. Another critical element of a trading program is to be able to identify a responsible party for each regulated source. The responsible party for a source covered by the trading program would be required to demonstrate compliance with the provisions of the NO_X Budget Trading Program. In general, the large sources included in the proposed trading program have readily identifiable owners and operators that would serve as the responsible party.

[13] Further, assuming a generator efficiency of approximately ⅓, the 25 MWe cutoff being used for electrical power producers is roughly equal to a 250 mmBtu/hr cutoff for steam producing boilers, combustion turbines, and combined cycle systems.

iii. Inclusion of Additional Source Categories. During the public workshops, several commenters recommended allowing a State to include additional sources beyond the core group into the trading program. As the applicability criteria proposed today are intended to define the minimum set of units required to participate in a trading program, inclusion of additional sources is allowed. Some States have existing or planned programs very similar to the one proposed today, but with different applicability criteria (e.g., the OTC NO_X Budget Program). States may choose to modify the applicability language to bring in smaller sources of the same type as those included in the core group or additional source categories. All additional sources (e.g., a certain industrial process) must meet all trading program requirements (including monitoring requirements of 40 CFR part 75 subpart H) and be able to identify a responsible party. The EPA believes that smaller sources of the same type as those included in the core group should be able to meet the trading program requirements and, thus, could be included in a State's trading rule without affecting EPA's streamlined approval of the SIP as described in Section V.D of this preamble.

The EPA is also taking comment on allowing or requiring additional stationary source categories beyond the proposed core group to be part of the trading program. There are three ways that some or all of the sources included in these additional categories could be included. The sources could be included as part of the core program applicability, as an additional list of source categories that a State could choose to include [14], or they could be individually opted-in according to the provisions under 40 CFR part 96 subpart I of the trading rule.

The EPA believes that there are a number of additional source categories that could account for their emissions using the monitoring protocols in 40 CFR part 75. Bringing a source or source category that meets these protocols into the trading program would also not affect EPA's streamlined approval of the SIP. The EPA proposes to develop a list of additional source categories beyond the core group that a State may bring into the trading program without affecting EPA's streamlined approval of the SIP.

If a State chose to bring other source categories beyond those included in this proposed list into the trading program, a more thorough EPA review may be needed. There are two main reasons for this review. The first is to ensure that the monitoring protocols that the State intended to use for the source or source category would provide accurate information and be consistent with the monitoring protocols being used for the core sources in the program. The second is to ensure that EPA could successfully administer the regional NO_X trading program with the addition of these sources. For example, EPA would have to determine that the reporting requirements for these source categories could be supported with the information systems that EPA develops and the resources that EPA employs to administer the program.

The EPA believes that the source categories that are simplest to consider adding are sources that vent all of their emissions to a stack, because existing monitoring protocols (e.g., 40 CFR part 75) can be used to accurately and consistently quantify mass emissions for these categories of sources. The two existing capped NO_X trading programs (the OTC program and the RECLAIM program) have also focused on these types of sources.

The OTC program has generally focused on the same types of sources that are in the proposed core group, electrical generating units and large industrial boilers that burn primarily fossil fuels. One notable exception to this is that Connecticut intends to cover municipal waste incinerators in Phase III of their program, which starts in 2003. The RECLAIM program has focused on a larger breadth of sources. These include industrial boilers and electrical generating units, but they also include: internal combustion engines, heaters, furnaces, kilns and calciners, ovens, fluid catalytic cracking units, dryers, fume incinerators/afterburners, test cells, tail gas units, sulfur acid production units and waste incinerators. In both programs, the monitoring requirements have been based on a tiered system that requires more stringent monitoring for units with higher emissions. Both programs require CEMS for larger units. In general, this would include units larger than 250 mmBtu with capacity factors of greater than 10 percent for the OTC program and units with emissions of ten or more tons of NO_X per year for the RECLAIM program. Both programs also offer less stringent, non-CEMS alternatives for smaller sources.

While RECLAIM has been able to account for emissions from a larger group of source categories than EPA is proposing to include in the core group, RECLAIM has had difficulty with some of these additional source categories. For instance, RECLAIM's 1996 audit explained that the standing working group on RECLAIM CEMS Technical issues (a group formed to address issues relating to RECLAIM monitoring) has focused on issues ''associated mainly with the difficult situations faced by refineries in implementing CEMS requirements.'' The audit goes on to explain that ''this is attributed to the variability of the fuel used in refinery equipment [e.g., catalytic cracking units] as compared to natural gas, the operational variability of much of the affected equipment, and the fact that many of the sources in an older refinery were never constructed with CEMS monitoring in mind''. Additionally, discussions with RECLAIM staff have indicated that units that have high concentrations of particulate emissions and emit to open baghouses, such as asphalt heaters and metal melting furnaces, have been difficult to monitor because of the high concentration of particulates. In short, RECLAIM's experience has indicated that the problems faced by these source categories require more resources for both the regulated community and the regulatory agency. Therefore, while EPA is taking comment on including all types of stationary sources that emit to stacks in the program, EPA believes that some sources are better suited for participating in a trading program because their emissions can more easily be accurately and consistently quantified.

Based on information available to EPA at this time, the specific additional source categories for which EPA is particularly interested in taking comment are: Process heaters, internal combustion engines, kilns and calciners, and municipal waste incinerators. If any of these source categories are included in the final rule as a part of the core group, EPA is proposing that they be included with applicability cut-offs roughly equivalent to the 25 megawatt cut-off used for electrical generating facilities and the 250 mmBtu cutoff used for industrial boilers. The EPA requests comment on the appropriateness of these cut-offs.

The EPA is taking comment on these particular additional categories because EPA believes these sources have the capacity to generate significant amounts of NO_X and are capable of monitoring using the protocols set forth in 40 CFR part 75. These are also source categories that are currently participating in the RECLAIM trading program or those that

[14] 40 CFR part 96 subpart E of the proposed trading rule addresses the allocation of NO_X allowances to NO_X Budget units which includes the core group of sources as well as any additional sources the State may choose to include in the trading program.

at least one of the States in the northeast region has considered including in the OTC NO_X Budget Trading Program.

The EPA believes that these source categories are capable of using 40 CFR part 75 monitoring because they vent all of their emissions to a stack or stacks, which could be monitored using CEMS. The EPA believes that the particular monitoring protocols in 40 CFR part 75 that would be applicable for these sources would be dependent on the fuel burned, the size of the source, and the magnitude of the emissions of the particular unit that was being included in the program. This is consistent with the way that the monitoring protocols are set forth for core sources. For example, all units that burned solid fuel (including all municipal waste combustors and cement kilns and process heaters that burned coal) would use a NO_X emission rate CEM and a flow CEM to determine NO_X mass.

Units that burn oil or gas (internal combustion engines and some process heaters and kilns) would have several other options depending upon their size. Large oil or gas units could use a NO_X emission rate CEM and a fuel flow meter to determine NO_X mass. Infrequently operated units could qualify to use the emission rate curve methodology set forth in Appendix E of 40 CFR part 75, and units with potential emissions [15] of under 25 tons per year could use the default emission factor protocols for low mass emitters set forth in 40 CFR 75.19.

The EPA notes that the currently proposed provisions in 40 CFR 75.19 do not contain default emission factors applicable for these types of units and requests comments on what factors would be appropriate. While smaller and less frequently operated units could use these simplified monitoring methodologies, they would also be allowed to use any of the monitoring methodologies available to other units in the program. The low mass emitter methodology as it is currently proposed was designed to provide very low emitting units a very cost effective way to account for their emissions using conservative uncontrolled default emission factors. Because it is based on conservative uncontrolled default emission factors, it does not allow units that use it to quantify emissions reductions. The owner or operator of a unit that qualified to use this methodology might choose to use another methodology such as the Appendix E methodology or CEMS because this would be more representative of the unit's actual emission rate. Another option that is not in the proposed 40 CFR part 75 rulemaking would be to change the low mass emitter methodology to allow units to use unit specific emission rates and actual unit heat inputs to get more accurate emissions estimates. Since the emission rates that were being used would not be as conservative, units would have to do more quality assurance to demonstrate that their reported emissions were more representative of their actual emissions. This might include periodic testing of emission rates and/or periodic tuning requirements for the equipment. These concepts could also be used in conjunction with controlled default emission rates to verify that the controls are operating properly and that the lower default rates are appropriate. All of these concepts are similar to the monitoring methodologies allowed for the smallest size units in the RECLAIM program.

The EPA is seeking comment on the following issues related to monitoring for both the specific additional source categories that EPA believes are most able to account for their emissions consistently and accurately and any additional stationary source categories that emit to a stack. (All comments related to the use of 40 CFR part 75 for monitoring for these sources should be submitted in the separate rulemaking on 40 CFR part 75 revisions—40 CFR part 75 revisions will be proposed in a notice entitled ''Acid Rain Program; Continuous Emission Monitoring Revisions'' that will be published in the **Federal Register** in the near future—rather than in the instant proceeding.)

1. Can these source categories monitor and report NO_X mass emissions using the protocols set forth in the proposed revisions to 40 CFR part 75? If not, why not?

2. Are there other protocols that should be included which would provide emissions measurement and reporting for these additional sources with accuracy and consistency comparable to that provided under 40 CFR part 75?

3. Are the thresholds set forth in 40 CFR part 75 for different monitoring methodologies appropriate for these types of sources? For example, in order to qualify to use the load vs. emission rate curve methodology set forth in Appendix E of 40 CFR part 75, a unit must have an average capacity factor of less than 10 percent for 3 years and have a maximum capacity factor of no more than 20 percent in any one of those years.

The EPA is also seeking comment on the following issues related to these source categories:

1. Should any of these source categories be included in the core program applicability, i.e., should their inclusion be mandatory for a State to participate in the NO_X Budget Trading Program?

2. Should States, at their option, be allowed to include any of these source categories and still receive streamlined approval of their SIPs?

In addition, EPA is taking comment on whether any other additional stationary source categories should be included. Finally, EPA is taking comment on whether individual States including these source categories would raise concerns about shifting of production activity (and thus emissions) to other States that do not choose to include these categories.

There is more uncertainty for the ability of source categories not identified in the core group or in the list of additional source categories to meet the trading program requirements. Adding other source categories not identified in the final NO_X Budget Trading Program would entail additional obligations for the State (e.g., allocating allowances, certifying monitors, and enforcing trading program requirements), would mean that EPA's approval of the SIP would not be as streamlined, and could affect EPA's ability to administer the region-wide program. Therefore, EPA would strongly encourage any State wishing to participate in the trading program to work with EPA before proposing a rule with expanded applicability criteria beyond that identified in the final NO_X Budget Trading Rule.

iv. Individual Opt-Ins. The EPA is proposing that individual point sources, not otherwise subject to the trading program and located in a State that is participating in the NO_X Budget Trading Program, be allowed to opt-in to the program. For a source to opt-in, it must meet the same monitoring and accountability requirements as other NO_X Budget sources. Thus, under the proposed rule, initial opt-ins would be boilers, combustion turbines, and combined cycle systems below the proposed (or State defined) applicability threshold. The EPA requests comment on whether individual opt-ins should also include any additional sources that may be included as part of the core group of sources as a result of the above discussion under Section iii, Inclusion of Additional Source Categories. The proposed opt-in provisions are further discussed in the opt-in Section of this preamble.

[15] The phrase ''potential emissions'' has a different meaning than the phrase ''potential to emit'' used elsewhere by the Agency.

v. Additional Options for Applicability. The EPA solicits comments on three different options that may be incorporated into the core applicability provision of the proposed trading rule. One option is to expand the trading program's core applicability to include smaller, new sources of the same type as are now proposed for the core applicability that commence operation on or after May 1, 2003, the start of the first ozone season (the first compliance period, after September, 2002). For example, the trading program could apply to all new units serving electricity generators 10 MWe or greater and new units not serving electricity generators and having a heat input capacity equal to or greater than 100 mmBtu/hr. The possibility exists that a significant number of smaller new units would be constructed and that activity from existing NO_X Budget units could be shifted to these new units. Over time, the increased number of smaller, new units not included in the trading program could make up a significant portion of the overall NO_X emissions in comparison to the NO_X emissions from the source categories purportedly included in the NO_X Budget Trading Program. To reduce this potential, it may be desirable to adjust the applicability criteria for new units to ensure that the trading program continues to cover a significant portion of the NO_X emissions for the source categories covered by the program.

A second option would be to expand the core applicability to include all new and modified sources that meet the definition of major new or modified source under the part D nonattainment NSR program and that are of the same type of source included in the proposed core applicability, even if these sources are smaller than the source size under option one, above. This would enable the trading program to integrate more fully with the NSR program. Under this option, the trading program applicability would include all new and modified units (whether or not they serve electricity generators) that commence operation on or after May 1, 2003. If smaller new sources were included in the trading program, these sources would have to meet the monitoring requirements of subpart H of 40 CFR part 75; the proposed revisions to 40 CFR part 75 contain new protocols for units with low NO_X mass emissions. Sources' compliance requirements could be streamlined significantly if they could meet their NSR offset obligations by participating in the NO_X Budget Trading Program (see Section F, below).

A third option would be to provide an exemption from the trading program for existing units that have a very low federally enforceable NO_X emissions limit (e.g., 25 tons per year), regardless of the nameplate capacity or the maximum potential hourly heat input of the unit. Commenters at the public workshops raised this option noting that a trading program generally reduces the cost of compliance. However, for some very infrequently used or very low emitting units, there may be more cost-effective ways to ensure any necessary reductions.

vi. Area and Mobile Sources. Comments were received at the public workshops about the opportunity to include additional sources beyond large stationary sources in the trading program. There was not consensus among workshop participants on this issue. However, most States in attendance were opposed to including area and mobile sources in the trading program at this time.

As noted above, EPA has identified key criteria that are important to the success of the trading program. First, it is essential that these sources are able to monitor at a level of accuracy consistent with the basic objectives of the program. In addition, the proposed trading program requires that all sources covered under the program be held accountable through a responsible party for their total emissions that occur from May through September of each year.

The EPA may consider inclusion of portions of mobile source or area source categories which best meet the key concerns mentioned above (e.g., measurement and accounting of all emissions and identification of responsible parties). Over the past decade, EPA and the States have developed procedures and protocols for Mobile Source Emissions Reduction Credit programs. This effort has focused on the generation of credits for specific categories of programs, including scrappage and clean-fueled fleet programs.

Key issues for the development of these mobile source programs include ensuring that the credits generated reflect real emissions reductions, development and implementation of an effective monitoring program, and identification of a responsible party for the implementation of the program and the ensuing emissions reductions. The EPA requests comment on the adequacy of the existing programs in addressing key issues for mobile source credit programs. Comment is also requested on whether these types of programs, as existing or with modification, should be considered for inclusion in the NO_X Budget Trading Program.

The EPA is interested in innovative ideas for including area and mobile sources in cap-and-trade type trading programs. Comments should address the categories of each source type that could most successfully be incorporated into a cap-and-trade program and that best address the key issues. Commenters should address how inclusion of the specific category recommended may be implemented and the expected effects of including these source types in the program (e.g., integrity of the program, public support, flexibility, cost savings, administrative feasibility). Additionally, comment is requested on any other types of concerns or issues associated with inclusion of these source types (e.g., environmental justice [16]).

d. Retired Unit Exemption. 40 CFR part 96 subpart A of today's proposal provides an exemption from NO_X Budget Trading Program requirements for retired units. The purpose of this provision is to free retired NO_X Budget units 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 NO_X AAR (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 NO_X Budget unit's retirement within 30 days of the cessation of activity. 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. Criteria within this provision ensure 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 allowances previously allocated or be allocated NO_X 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 allowances that a retired unit would be allocated would be dependent on the

[16] The EPA is aware of concerns relating to environmental justice issues. These concerns focus on the possibility that car scrappage programs might allow significant toxic VOC emissions increases in specific areas by concentrating region wide emissions in a local area. The National Environmental Justice Advisory Council (NEJAC) has recommended that the Agency involve stakeholders, analyze local environmental impacts of existing and proposed trading programs, and report back to NEJAC. Refer to Document IV–H–10 in EPA Air Docket A–96–56.

given State's allocation system. The NO_X allowance allocations are discussed below in Section V.C.5 of this preamble.

In order to resume operation without violating program requirements, the NO_X AAR of the NO_X Budget unit 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 first 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. Standard Requirements. Today's proposal delineates, in proposed 40 CFR part 96 subpart A the standard requirements, that NO_X budget units and their owners, operators, and NO_X AARs must meet under the NO_X Budget Trading Program. This provision sets forth and provides references to other portions of the trading rule for the full range of program requirements: permits, monitoring, NO_X 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 trading 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 to be unit-specific, except in the case of common stacks. 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 NO_X Budget unit from compliance with any other provision of the applicable, approved SIP, any federally enforceable permit, or the CAA. This provision ensures, for example, that a State may set a binding source-specific NO_X limitation and, regardless of how many allowances a NO_X Budget unit holds under the trading program, the emissions limit established in the SIP cannot be violated.

f. Computation of Time. Proposed 40 CFR 96.7 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 Acid Rain Program.

2. NO_X Authorized Account Representative

40 CFR part 96 subpart B of today's proposed NO_X Budget Trading Rule establishes the process for certifying the NO_X AAR and describes his or her duties. A NO_X AAR is the individual who is authorized to represent the owners and operators of each NO_X budget unit at a NO_X budget source in matters pertaining to the NO_X Budget Trading Program. Because the NO_X AAR is representing the owners and operators of all the NO_X Budget units at a NO_X Budget source, the NO_X AAR 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 NO_X AAR's responsibilities include: the submission of permit applications to the permitting authority, submission of monitoring plans and certification applications, holding and transferring NO_X allowances, and submission of emissions data and compliance reports. While the Acid Rain Program refers to the ''designated representative'' as the representative of owners and operators for non-allowance matters and the ''authorized account representative'' as the person for allowance matters, today's proposal uses only one term for all matters and somewhat streamlines the procedures for selection.

The Agency recognizes that the NO_X AAR cannot always be available to perform his or her duties. Therefore, the rule proposes to allow for the appointment of one alternate NO_X AAR (alternate NO_X AAR) for a NO_X budget source. The alternate NO_X AAR would have the same authority and responsibilities as the NO_X AAR. Therefore, unless expressly provided to the contrary, whenever the term ''NO_X authorized account representative'' is used in the rule, it should be read to apply to the alternate NO_X AAR as well. While the alternate NO_X AAR would have full authority to act on behalf of the NO_X AAR, all correspondence from EPA, including reports, would be sent only to the NO_X AAR.

Today's proposal requires the completion and submission of the account certificate of representation form in order to certify a NO_X AAR for a NO_X budget source and all NO_X budget units at the source. There would be one standard form which would be submitted by sources to EPA. The EPA would establish a compliance account for each unit in the NATS. The form would include: The plant name, State, and identifying number (ORIS or facility code); the NO_X AAR name, the NO_X AAR identification number (if already assigned), address, phone, fax, and e-mail (as well as similar information for the alternate NO_X AAR, if applicable); the name of every owner and operator of the source and each NO_X budget unit at the source; and certification language and signature of the NO_X AAR and alternate, if applicable.

In order to change the NO_X AAR, alternate NO_X AAR, or list of owners and operators, EPA is proposing that a new complete account certificate of representation be submitted. The EPA believes the NO_X AAR requirements afford the regulated community with flexibility, while ensuring source accountability and simplifying the administration of the trading program.

3. Permits

a. General Requirements. The EPA has attempted to minimize the number of new procedural requirements for NO_X Budget permitting and to defer, whenever possible, to the permitting programs already established by the permitting authority. The proposed NO_X Budget Trading Program regulations assume that the NO_X budget permit would be a portion of a federally enforceable permit issued to the NO_X Budget source and administered through permitting vehicles such as operating permits programs established under title V of the CAA and 40 CFR part 70. The term ''NO_X budget permit'' throughout this preamble and the NO_X Budget Trading Program regulations therefore refers to the NO_X Budget Trading Program portion of the permit issued by the permitting authority to a NO_X budget source.

b. Title V/Non-Title V Permits. Although many of the NO_X Budget sources that would participate in the NO_X Budget Trading Program must apply for and receive a title V permit, this would not be the case for every NO_X budget source. Sources presently required to have a title V permit are those that are ''major'' sources, as defined in title V and 40 CFR parts 70 and 71. Since there would be some NO_X budget sources that are not major sources, the NO_X Budget Trading Program would require only that a NO_X budget source have a federally enforceable permit, rather than require that each NO_X Budget source have a title V permit. The EPA believes that requiring all NO_X budget sources to have a title V permit would be unduly burdensome and that proper implementation of a NO_X Budget Trading Program can be achieved through federally enforceable permitting vehicles in addition to those established under title V and 40 CFR part 70 or 71.

For sources required to have a title V permit, the NO_X Budget Trading Program attempts, wherever possible, to allow the regulations promulgated by the permitting authority under title V and 40 CFR part 70 or 71 to determine how the NO_X budget permit would be administered. For those sources not required to have a title V permit, the NO_X Budget Trading Program attempts, wherever possible, to allow the permitting authority's non-title V permit regulations to govern how the NO_X budget permit would be administered. Essentially, this would enable the NO_X Budget Trading Program to operate within the regulatory framework already established by permitting authorities for both title V and non-title V permits.

The proposed rule requires that every NO_X budget unit have a federally enforceable permit. The EPA is concerned, however, that some States may not currently have permitting vehicles for the issuance of federally enforceable permits to smaller units that would be subject to the proposed trading rule. For such States, adoption of the NO_X budget rule would also require the State either to issue permits under its title V program to sources that would not otherwise require title V permits or to develop other permitting programs through which federally enforceable permits could be issued to such units.

Therefore, EPA requests comment on the option, for States without programs for issuing federally enforceable permits for smaller NO_X budget units, of not requiring such units to obtain federally enforceable permits. Under this option, the State's NO_X Budget Trading Rule would state that NO_X budget units that are not covered by a federally enforceable permit would still be subject to the emissions, monitoring, and other non-permit requirements of the trading rule, would have their emissions reported to and recorded on the EPA-administered Emissions Tracking System, and would have their NO_X allowance allocations, deductions, and transfers recorded on the EPA-administered NATS. The EPA requests comment on whether, under these circumstances, the units' obligations (e.g., to hold sufficient NO_X allowances each control period to cover NO_X emissions and to monitor emissions in accordance with 40 CFR part 75 subpart H) would be federally enforceable, with or without a federally enforceable permit reiterating the unit's requirements under the NO_X Budget Trading Program.

The EPA is soliciting comment on several other aspects of this issue. First, EPA is interested in State assessments of the extent of the problem in issuing federally enforceable permits to all sources included in the trading program. In particular, EPA seeks information on how many NO_X budget units (or what percent of States' NO_X budget units) would not be issued federally enforceable permits, but for the permit requirements of the proposed trading rule, and on the extent to which non-title V permitting programs are currently established and available for permitting NO_X budget units. Second, EPA seeks comments regarding the feasibility of the approach described above, under which federally enforceable permits would not be required for smaller NO_X budget units if the State lacked an existing program for issuing federally enforceable permits to such units. Lastly, EPA is interested in receiving suggestions regarding other possible approaches to address this matter.

c. NO_X Budget Permit Application Deadlines. The proposed rule sets the initial NO_X budget permit application deadlines for units in operation before January 1, 2000 with either title V or non-title V permits so that the permits will be issued by May 1, 2003. May 1, 2003 is the beginning of the first control period for the NO_X Budget Trading Program, and therefore also the date by which initial NO_X budget permits for existing units must be effective. Application submission deadlines are based on the permitting authority's title V and non-title V requirements for final action on a permit application. 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 for units in operation before 2000 governed by the permitting rule would be May 1, 2002 (12 months prior to May 1, 2003). The same principle applies to NO_X budget units commencing operation on or after January 1, 2000, except that the application submission deadline is calculated from the later of the date the NO_X budget unit commences operation or from May 1, 2003. The NO_X budget permit renewal application deadlines are the same as those that apply to permit renewal applications in general for sources with title V or non-title V permits. 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 NO_X budget permit application.

d. NO_X Budget Trading Program Permit Application. The NO_X Budget Trading Program requires that a NO_X budget permit application properly identify the source and include the standard requirements under proposed 40 CFR 96.6. The NO_X Budget Trading 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 NO_X Budget Trading Program requirements into a NO_X budget permit by including as part of such permit the NO_X budget permit application submitted by the source. Directly incorporating the NO_X budget permit application into the NO_X budget permit and, thus, into the source's operating permit or the overarching permit minimizes the administrative burden on the permitting authority of including the NO_X Budget Trading Program applicable requirements, and mirrors the approach successfully implemented by many permitting authorities in issuing Phase II Acid Rain permits under titles IV and V.

e. NO_X Budget Permit Issuance. As stated earlier, most of the procedures needed by a permitting authority to issue NO_X budget permits have already been established by the permitting authority through permitting vehicles such as operating permits programs under title V and 40 CFR part 70 or 71. 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 NO_X Budget Trading Program permit regulations generally require use of the procedures under these other regulations and add some requirements such as NO_X budget permit application submission and renewal deadlines, NO_X budget permit application information requirements and permit content, and initial NO_X budget permit effective dates.

f. NO_X Budget Permit Revisions. For revisions to the NO_X budget permit, the NO_X Budget 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 (for sources requiring a title V permit) or to non-title V permitting regulations (for sources not requiring a title V permit). The proposal also provides that the allocation, transfer, or deduction of NO_X allowances is automatically incorporated in the NO_X budget permit, and does not require a permit revision or reopening by the permitting authority. The NO_X budget permit must, however, expressly state that each unit

must hold enough NO_X allowances to account for NO_X emissions by the allowance transfer deadline for each control period and that there are offsets if the unit does not. The EPA believes that requiring the permitting authority to revise or reopen a NO_X budget permit each time a NO_X allowance allocation, transfer, or deduction is made would be burdensome and unnecessary. This is similar to the approach taken in the Acid Rain Program, where the transfer of SO_2 allowances are treated as ''automatic permit amendments'' that do not require any action by the permitting authority.

4. Compliance Certification

40 CFR part 96 subpart D of today's proposed NO_X Budget Trading Rule sets forth the requirements concerning certification by the NO_X AAR at the end of each control period that the unit was in compliance with the emissions limitation and other requirements of the NO_X Budget Trading Program. The NO_X AAR must submit a compliance certification report for each NO_X budget unit, by November 30 following the control period, to both the permitting authority and the Administrator. This report must identify the NO_X budget unit and include a compliance certification statement. The compliance certification statement must indicate whether all of the applicable requirements of the NO_X Budget Trading Program, including the requirement to hold allowances greater than or equal to emissions and the requirement to monitor and report according to the provisions in 40 CFR part 96 subpart H of today's proposal, were met by the unit for the most recent control period. The report also allows the NO_X AAR to specify which allowances (by serial number) should be deducted from the NO_X budget unit's compliance account and to specify the proportion of NO_X allowances to deduct for each unit if a group of units share a common stack.

The EPA is proposing that annual compliance certification reports must be submitted for several reasons. First, the report provides important information, such as whether there were any changes to the unit's monitoring plan used by EPA to evaluate the unit's monitoring and to determine compliance. Second, the report provides an opportunity for the owner or operator to use the flexibilities allowed in today's proposal to choose which NO_X allowances would be deducted to meet emissions reduction requirements rather than using the default methodologies for deducting allowances that are also set forth in today's proposal. The EPA is proposing that a copy of the compliance certification report be sent to both EPA and to the permitting authority because EPA needs the information in order to administer the compliance period reconciliation process and the permitting authority needs the information in order to ensure compliance with the SIP. The EPA is proposing a deadline of November 30 following the control period for submission because EPA believes this is sufficient time to compile the information required in the report, while still allowing EPA to perform reconciliation before the next control period begins.

5. NO_X Allowance Allocations

40 CFR part 96 subpart E of today's proposed model rule addresses the allocation of NO_X allowances to NO_X budget units. Within each participating State, the NO_X Budget Trading Program would establish a State trading program budget (i.e., a cap of seasonal NO_X emissions for all units included in the program) equal to a fixed total number of NO_X allowances that each State allocates to its NO_X budget units for each control period. States would have the ultimate responsibility for determining the size of their respective trading program budgets. 40 CFR part 96 subpart E of today's proposed rule sets timing requirements for when the allocations should be completed by each State and submitted to EPA for inclusion into the NATS and provides an option for how States may allocate NO_X allowances to the NO_X budget units.

a. Development of State Trading Program Budget. Today's proposal establishes in 40 CFR part 96 subpart E the total number of NO_X tons for the NO_X Budget Trading Program within a specific State. The proposed rule sets the State trading program budget at the level of NO_X emissions apportioned by an approved SIP for the ozone transport rulemaking to the State's sources meeting the definition of ''NO_X budget unit'' in the 2007 statewide emissions budget. Sources meeting the definition of ''NO_X budget unit'' would include the sources in the trading program's core group of sources as well as additional sources that a State may choose to include in the program as discussed above in Section V.C.1.c. The proposed transport rulemaking provides States the flexibility to meet the statewide emissions budgets with a different mix of control measures than were calculated in the transport rulemaking, thus potentially changing the total amount of NO_X tons apportioned to the NO_X budget units. Therefore, a State may determine the number of NO_X tons allotted for the State trading program budget provided the State complies with the overall requirements of the proposed transport rulemaking. Once a State sets the trading program budget, the limit is set for the total number of NO_X allowances that the State may allocate to the State's NO_X budget units for any one control period.

b. Timing Requirements. Today's proposed rule sets requirements for when a State would finalize NO_X allowance allocations for each control period in the NO_X Budget Trading Program and submit them to EPA for inclusion into the NATS. This topic was discussed at both of the public workshops as explained later in this Section. The timing requirements ensure that all NO_X budget units would have sufficient time and the same amount of time to plan for compliance for each control period, and sufficient time and the same amount of time to trade NO_X allowances. The timing requirements would also contribute to the efficient administration of the NO_X Budget Trading Program. By establishing this schedule at the outset of the trading program, both the States and EPA would be able to develop internal procedures for effectively implementing the NO_X allowance provisions of the trading program. This is particularly important for EPA with its role as administrator of the NATS for all participating States. The timing requirements would ensure that EPA would be able to record in the NATS the time sensitive NO_X allowance allocations for the NO_X budget units in all participating States at the same time for each control period.

At the public workshops, a range of options were discussed and commented on for the timing requirements. The timing options generally range from year-by-year allocations, in which the NO_X allowance allocations would be placed into the NATS on an annual basis for the upcoming control period; to a 5 to 10 year allocation where NO_X allowance allocations would be periodically placed into the NATS for 5 to 10 control periods; to a single, permanent allocation where the NO_X allowance allocations would be set only once at the beginning of the trading program and recorded in the NATS for an extended, rolling block of time (e.g., a rolling 30 year period).

Some commenters stated that timing options which provide an opportunity to periodically update the allocation of NO_X allowances to NO_X budget units have certain advantages. First, the current restructuring of the electricity industry may significantly affect the mix

of electricity generators that produce electricity in the future. As the utilization of existing electricity generators changes and new electricity generators begin operations, an allocation regime which is periodically updated would provide an opportunity to reallocate NO_X allowances based on this changing environment. Second, depending on the formula that is used to allocate the NO_X allowances, trading programs that periodically update the allocations may provide an opportunity to reward energy efficiency improvements at specific NO_X budget units. Incentives may be provided for energy efficiency improvements by rewarding NO_X budget units that increase their production efficiency over time with a larger number of NO_X allowances during the next allocation period. However, commenters also noted that allocation systems that are adjusted annually may restrict a NO_X budget unit's ability to plan for compliance by creating uncertainty year to year about the amount of future allocations that the NO_X budget unit would receive. In addition, annual allocations prevent a NO_X budget unit from officially transferring future year NO_X allowances because the NATS only contains the current year's NO_X allowances under this type of system. These commenters generally favored an allocation system that periodically allocates NO_X allowances for 5 to 10 control periods at a time.

Other commenters noted the advantages of a single, permanent allocation where the NO_X allowance allocations would be set only once at the beginning of the trading program. Permanent allocations provide a long planning horizon for the NO_X budget units that receive an allocation. Some commenters noted that permanent allocations provide a strong incentive for the owners or operators of high emitting units to retire or replace the units. Additionally, permanent allocations provide an incentive to improve a NO_X budget unit's energy efficiency and require less resources to administer as compared to updating allocation systems. In a permanent allocation system, all NO_X allowances are allocated to NO_X budget units at the beginning of the trading program. New NO_X budget units that begin operations after the allocation of NO_X allowances would be required to obtain NO_X allowances from the market in order to comply with the trading program requirements, or there would need to be a new source set-aside that increased from year to year, coupled with a declining allocation to existing sources. Therefore, commenters that support an allocation mechanism that provides NO_X allowances to new NO_X budget units were generally opposed to the permanent allocation approach.

In light of the comments from the public workshops, today's proposed rule attempts to strike a balance between systems that change the allocations on an annual basis and systems that establish a single, permanent allocation by proposing a system that allocates NO_X allowances for 5 to 10 years at a time. The proposed rule includes the following timing requirements for the allocation of NO_X allowances: by September 30, 1999, the State would submit to EPA NO_X allowance allocations for the control periods in the years 2003, 2004, 2005, 2006, and 2007. This initial submission date would provide the initial allocation information to NO_X budget units more than 3 years before the start of the trading program and would enable a State to include the first five years of NO_X allowance allocations as a part of its overall SIP submission to meet the requirements of the proposed transport rulemaking. After this initial allocation, two timing options are proposed for the allocations following the year 2007. One option, which is set forth in the proposed rule, is: by January 1, 2003 and January 1 of each year thereafter, the State would submit to EPA allocations for the control period in the year that is 5 years after the applicable submission deadline. Under this option, a State would ensure that its NO_X budget units are always allocated 5 years worth of NO_X allowances in the NATS. A second option, on which comment is also requested, is: By January 1, 2003, a State would submit to EPA NO_X allowance allocations for the control periods in 2008, 2009, 2010, 2011, and 2012. The State would maintain this schedule of submitting NO_X allowance allocations for 5 control periods by January 1 every five years after January 1, 2003. This option would ensure that the State's NO_X budget units are allocated no less than 5 years, and as much as 10 years, worth of NO_X allowances in the NATS at any one time. Under the second option, future allocations are made less frequently and, for some years, based on older data on unit utilization. The second option would also require a larger new source set-aside (as discussed below) to span the longer time frame before new sources would be incorporated in the updated allocation. In addition to the specific options described above, EPA also solicits comments on the full range of possible timing requirements including a single, permanent allocation system and an annually changing allocation system.

Today's proposed trading rule includes a provision that if a State were to fail to meet the timing requirements for submitting NO_X allowance allocations to EPA, EPA would allocate NO_X allowances to NO_X budget units in that State in accordance with 40 CFR 96.42 within 60 days of the applicable deadline. Section 96.42 is the Section of the model rule that will contain EPA's recommended approach for allocating NO_X allowances to NO_X budget units, which is discussed below. This provision is designed to ensure that all NO_X budget units included in the NO_X Budget Trading Program would receive NO_X allowance allocations at the same time for each control period. The EPA solicits comment on this provision.

c. Options for NO_X Allowance Allocation Recommendation

i. Basis for Developing an Allocation Recommendation. The EPA proposes that the final NO_X Budget Trading Rule include a recommended NO_X allowance allocation. This was discussed at length at the public workshops. Three approaches to addressing NO_X allowance allocations in the trading program were presented at the workshops. First, the rule could prescribe one method for allocating NO_X allowances. States that choose to participate in the NO_X Budget Trading Program would need to allocate NO_X allowances as prescribed by the rule. This option would have the benefit of going through public comment as a part of the rule development process. The second approach was for the rule to recommend one method for allocating NO_X allowances. States may choose to use the recommendation, to adjust the recommendation, or to develop an allocation method that is completely different from the recommendation. The third approach was for the rule to be silent on the method for allocating NO_X allowances and require the participating States to independently develop State specific allocation methods.

Workshop participants covered the entire range of approaches in their comments. Commenters in favor of a prescriptive allocation method argued that a standard system ensures that there is equity between NO_X budget units in different States, that the same environmental goals are pursued within all participating States (e.g., promotion of energy efficient units through output based emission limitations), that all State programs have the necessary consistency to promote interstate trading, and that a standard system

reduces industry and government resources necessary to develop and implement NO_X allowance allocations in each State. On the other end of the spectrum, commenters in favor of States having complete flexibility in the allocation method asserted that it is important for States to have the freedom to develop systems that address their specific needs. Furthermore, as long as all States follow the timing requirements for allocations in the proposed rule, the different State methods should be sufficiently compatible to realize the benefits of trading.

The EPA is sensitive to the argument that a more prescriptive proposed rule would ensure a consistent and administratively efficient multi-state program that is equitable for similar NO_X budget units. However, EPA also recognizes that the States which have commented on this subject have unanimously supported some degree of flexibility for developing allocation methods. Because EPA believes it is important for as many States as possible to participate in the NO_X Budget Trading Program, EPA is proposing that the final rule contain a recommendation for how States may allocate NO_X allowances but allow States the flexibility to differ from the recommendation. By including the recommended allocation method, the final rule would provide a complete model for the NO_X Budget Trading Program. This has the potential to ease the regulatory process for States that prefer the recommendation by providing a rule that can be quickly adapted for promulgation as a State rule and, as discussed below, more quickly considered by EPA as part of SIP review. In addition, in order to help facilitate administration of the program, EPA plans on ensuring that the necessary data collection protocols exist to support the option recommended in the final rule. This would include both standard data collection requirements and standard data reporting requirements.

ii. Options for an Allocation Recommendation. NO_X allowances could be distributed to NO_X budget units and other private parties by allocations based on actual operating data, via auctions, or by a variety of other mechanisms. Most of the workshop discussions and comments focused on how to allocate NO_X allowances based on actual operating data. In general terms, three different processes at a unit may be measured and used as a metric for allocating NO_X allowances: (1) The actual emissions (in tons of NO_X) from the unit, (2) the actual heat input (in mmBtu) of the unit, and (3) the actual production output (in terms of electricity generation and/or steam energy) of the unit. The option of allocating NO_X allowances based on a unit's actual NO_X emissions was not generally recommended because it is regarded as providing a perverse incentive by rewarding more NO_X allowances to units that have the greatest NO_X emissions. Heat input and output are regarded as more neutral measures of a unit's utilization, and therefore, more equitable options for basing allocations.

The EPA solicits comments on three options using input or output data for the allocation recommendation that would be included in the final trading rule.[17] The first option is to base the allocation recommendation on heat input data. This option may be 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. Additionally, methods currently exist for calculating allocations based on heat input data. It should be noted that in some specific instances, these protocols are designed to conservatively estimate heat input. For instance, new units that do not certify their monitors by the compliance deadline, may report heat input using the unit's maximum potential heat input. In another instance, low mass emitting units that use a simplified emissions estimation methodology would also report using the unit's maximum potential heat input. In both of these cases, the potential over-reporting of heat input, could lead to a larger percentage of allowances being allocated to these units. One potential option for these instances would be to require units in these types of situations to report one heat input value to be used for emissions estimation purposes and another less conservative value to be used for purposes of allowance allocations. Another option would be to apply a discount to reported heat input values in certain circumstances (e.g., during periods when monitors are not certified) for purposes of allocating allowances. The EPA seeks comment on whether this issue needs to be addressed to ensure equitable allocation of allowances. The other two options incorporate the use of output data for the allocation recommendation. The EPA believes that basing allocations on output has the potential benefit of promoting energy efficiency in an allocation system that periodically reallocates the NO_X allowances (see Section V.C.9.b of this preamble).

The second option for which EPA solicits comments would base the allocation recommendation on heat input data for the first five control periods of the trading program (control periods in the years 2003–2007). The allocation recommendation would then be converted to use output data for the control periods after the year 2007. Under this option, heat input data would be used for the first five years because a number of issues for the measurement, collection, and use of output data may not be fully resolved for all of the NO_X budget units that would be included in the trading program prior to the time that the allocation recommendation would need to be finalized for the initial allocation period. Section V.C.9.b of this preamble discusses a number of the issues associated with measuring and using output data. To facilitate the use of output data under this option, EPA proposes to work with stakeholders to design the output based system that would be used after the initial allocation period. As a part of this output based system, EPA would amend its Electronic Data Reporting format so that output data would be available for States through EPA's Emissions Tracking System.

In order to implement this option, EPA suggests the following schedule for developing the output based system that would be used in the allocation recommendation for the control periods after the year 2007: (1) EPA would issue a proposed system for output based allocations by the spring of 1999; (2) EPA would finalize an output based system by fall of 1999; (3) States wishing to use an output based system would adopt the necessary rules by fall of 2000; (4) output data could be measured and collected at NO_X budget units during the control periods in the years 2001 and 2002; (5) output data would be available for States to calculate allocations for the control periods after the year 2007, in time to meet the allocation timing requirements established in today's proposed rule. As discussed under Section V.C.5.b, allocations for the control period in the year 2008 would be submitted to EPA by January 1, 2003 for inclusion into the NATS. The EPA solicits comments on this suggested schedule for establishing a method for output based allocations and comments on the issues raised under Section V.C.9.b of this preamble.

[17] It is important to note that in today's trading program proposal, a State would have the flexibility of determining allocations to its NO_X budget units by whatever system it desires regardless of EPA's allocation recommendation.

The third option for which EPA solicits comments would base the allocation recommendation on output data, to the extent practicable, for all NO_X budget units from the start of the trading program. The allocations for the first five control periods of the trading program would be based on output data currently reported to government agencies other than EPA (such as the Department of Energy's Energy Information Agency, the Federal Energy Regulatory Commission, or State Public Utility Commissions). Depending upon the availability of information, it may be necessary in this option to use output for electricity generating facilities and input data for non-electricity generating facilities for the initial allocation period. The allocation recommendation would then be converted to use output data for all NO_X budget units for the control periods after the year 2007. As in the second option described above, EPA proposes to work with stakeholders to design a complete output based system that would be used after the initial allocation period. Unlike the output data used in the initial allocation period, the allocations for control periods after the year 2007 would be based on output data that would be reported in EPA's Electronic Data Reporting format and designed specifically to support a NO_X allowance allocation system. The EPA suggests the same schedule as outlined above in the second option for developing the complete output based system for allocating NO_X allowances.

iii. Framework for an Allocation Recommendation. As discussed above under Section V.C.5.c.i, EPA proposes to include a specific recommendation in the final trading rule for allocating NO_X allowances to NO_X budget units. This allocation recommendation may be based on either input or output data as outlined in one of the three options presented above under Section V.C.5.c.ii. In addition to the data used to support the allocations, EPA also solicits comments on two other key elements for an allocation recommendation: (1) Using a portion of the State's NO_X allowances as a set-aside for new NO_X budget units for control periods for which the unit was not allocated NO_X allowances, and (2) using either a fuel neutral or output neutral calculation to determine allocations for NO_X budget units.

Today's proposed rule includes an example of a specific allocation methodology that uses heat input data and addresses the above key elements. This allocation methodology would be appropriate for implementing an allocation system entirely based on heat input data or for implementing the initial allocation period of an allocation system that starts out using input data and later is converted to the use of output data. The allocation methodology would need to be modified for the use of output data to implement an allocation system that eventually converts to output data or for an allocation system that begins with using output data. The EPA solicits comment on the following allocation methodology for using input data and on the appropriateness of using the basic framework of this methodology for an output based allocation system. Furthermore, the allocation methodology establishes an allocation set-aside account equaling 2 percent of the State trading program budget for each control period for new NO_X budget units (i.e., units that commence operation during or after the period on which general NO_X allowance allocations are based). Based on analyses conducted using the Integrated Planning Model (IPM) and on the proposal to reallocate allowances every five years, 2 percent appears to be a reasonable portion of NO_X allowances to set aside for new units. The remaining 98 percent of the NO_X allowances are to be allocated to existing NO_X budget units. The EPA requests public comment on the use of a set-aside and on the proposed size of the set-aside, which EPA believes should be large enough to accommodate all new units entering the trading program.

Initial, unadjusted allocations to existing NO_X budget units, which equal 98 percent of the State trading program budget, would be based on actual heat input data (in mmBtu) for the units multiplied by an emission rate of 0.15 lb/mmBtu. For the control periods in the years 2003 through 2007, the heat input used in the allocation calculation equals the average of the heat input for the two highest control periods for the years 1995, 1996, and 1997. For the control periods after 2007, the heat input equals the heat input measured during the control period of the year that is six years before the year in which the allocations are being calculated. Therefore, the allocation calculation combined with the timing requirements discussed under Section V.C.5.b of this preamble results in the following schedule: The allocation for the control period in 2008 should be submitted to EPA by January 1, 2003 and based on heat input data for the control period in the year 2002; the allocation for the 2009 control period should be submitted to EPA by January 1, 2004 and based on 2003 control period heat input data. This schedule would continue indefinitely or until revised (e.g., to base allocations on output) through rulemaking. The heat input data used for calculating the allocations is to be data collected in accordance with the requirements of 40 CFR part 75 for units that were subject to these requirements for the year or years specified by the allocation calculation. For units not subject to 40 CFR part 75 requirements for the year or years specified by the allocation calculation, the heat input data used in the calculation should be the best available heat input data reported by the unit to the State. Once the initial allocation calculation is completed for all the existing NO_X budget units, the allocation for each unit would be adjusted proportionately so that the total allocation equals 98 percent of the State trading program budget.

A separate, allocation set-aside for new units would be established for each control period. Each set-aside would initially hold NO_X allowances equal to 2 percent of the NO_X allowances in the State trading program budget [18]. NO_X allowances in the allocation set-aside would be available to NO_X budget units for control periods that the unit was not allocated allowances because the unit commenced operation during or after the period on which general NO_X allowance allocations are based. To receive NO_X allowances from the allocation set-aside, the NO_X AAR for a unit would submit to the State a NO_X allowance request, in writing or in a format specified by the State. The request would be for no more than 5 consecutive control periods, starting with the control period during which the unit is projected to commence operation. For the 6th year and later, there would be sufficient operating data for the unit to be incorporated into the NO_X allowance allocations with existing NO_X budget units. The NO_X allowance request would be submitted prior to May 1 of the first control period for which NO_X allowances are requested and after the date on which the State issues a permit to construct the NO_X budget unit. The NO_X AAR may not request an amount of NO_X allowances for each control period that exceeds 0.15 lb/mmBtu multiplied by the NO_X

[18] The EPA is soliciting comment in Section F, below, on allowing certain sources, to which the trading program would not be generally applicable, to opt into the NO_X Budget Trading Program in order to fulfill the new source offset provisions under section 173 of the CAA. If this alternative is incorporated into the final trading rule, then the size of the allocation set-aside should be based on the expected new sources that are covered by the general applicability criteria and the additional sources that may opt in.

budget unit's maximum design heat input (in mmBtu) for the hours in the control period starting with the first day in which the unit is projected to operate. Maximum design heat input is used because actual heat input information for the baseyear period used for existing units would not be available since the new unit would have commenced operation during or after the baseline period.

Under this proposal, the State would review and allocate NO_X allowances to new units requesting NO_X allowances according to the order that the requests were received. Upon review, the State would make any necessary adjustments to the requests according to the requirements governing NO_X allowance requests. If the allocation set-aside for the control period for which NO_X allowances are requested has an amount of NO_X allowances not less than the number requested and verified by the State, the State would allocate the full (or adjusted) amount of NO_X allowances requested to the NO_X budget unit. If the set-aside for the control period for which NO_X allowances are requested has a smaller amount of NO_X allowances than the number requested and verified, the State would deny in part the request and only allocate the remaining number of NO_X allowances in the set-aside to the NO_X budget unit. Once the set-aside for a control period has been depleted of all NO_X allowances, the State would not allocate any NO_X allowances to additional units requesting NO_X allowances for the control period. NO_X budget units with NO_X allowance requests that were denied in whole or part would be responsible for obtaining the necessary amount of NO_X allowances from the NO_X allowance market in order to demonstrate compliance with the provisions of the proposed rule. The State would act on all NO_X allowance requests within 60 days upon receipt of the request and notify the NO_X AAR that submitted the request and the EPA of the number of NO_X allowances (if any) allocated for the control period. After September 30 of each year, the EPA would transfer NO_X allowances remaining in the set-aside for the control period to the set-aside for the following control period.

For new NO_X budget units that have been allocated NO_X allowances from the allocation set-aside, the EPA would deduct NO_X allowances following each control period based on the unit's actual utilization for the control period, determined in accordance to the requirements under 40 CFR part 96 subpart H of the proposed rule. Because, as discussed above, the allocation for a new unit from the set-aside is based on maximum design heat input, this procedure adjusts the allocation by actual heat input for the control period of the allocation. This adjustment is a surrogate for the use of actual utilization in a prior baseline period which is the approach used on allocating NO_X allowances to existing units. Without the adjustment procedures, a new unit (e.g., a peaking unit) could be allocated NO_X allowances assuming utilization far out of proportion to actual utilization and the set-aside could be insufficient to provide NO_X allowances for all new units at such an allocation level.

Under the actual utilization adjustment procedure, EPA would deduct a number of NO_X allowances according to the following equation: NO_X allowances deducted for actual utilization adjustment = (Number of NO_X allowances allocated for control period) − ((actual control period utilization (in mmBtu) × 0.15 lb/mmBtu)). The NO_X allowances deducted must have the same or an earlier compliance use date as the year of the control period for which NO_X allowances were allocated from the set-aside. (As discussed below in Section V.C.7.b of this preamble, the proposed rule reflects unlimited banking of NO_X allowances once the trading program begins in 2003. However, EPA is proposing several options concerning banking (including no banking) and requesting comment on them.) The NO_X AAR may identify the serial numbers of the NO_X allowances to be deducted. In the absence of such identification, the EPA would deduct NO_X allowances on a first-in, first-out basis. The EPA would transfer the NO_X allowances deducted into the State's set-aside for the following control period.

If additional NO_X allowances are moved into a set-aside resulting from the transfer of NO_X allowances from a previous year's set-aside or from the actual utilization adjustment, the State would allocate NO_X allowances to those NO_X allowance requests that were denied in whole or in part pursuant to the NO_X allowance request provisions under this Section of the proposed rule. However, requests for NO_X allowances by new units would not be granted retrospectively for control periods that have ended.

An additional option that was considered for inclusion in an EPA recommended allocation methodology was the use of a price signal auction for a portion of NO_X allowances. The transparency of the first SO_2 allowance auctions under Title IV accelerated price discovery and provided useful information to industry for making compliance decisions in the early years of the program. The value for this type of auction for NO_X allowances was discussed at the December public workshop. Commenters generally questioned the need for a price signal auction for NO_X allowances because of the market instruments currently available from the private sector, including several allowance price indexes. Based on these comments, EPA did not include a price signal auction in the proposed options for the allocation recommendation. The EPA solicits comment on this option.

The EPA solicits comments on any other allocation recommendation that may be made in the final rule. Comments should be of comparable detail to the example outlined in this Section.

6. NO_X Allowance Tracking System

40 CFR part 96 subpart F of today's proposed trading rule covers the NATS. The proposed rule is intended to be reasonably consistent with the NATS that was developed for implementation of the OTC's NO_X Budget Program. Such consistency would help to allow the integration of the two programs in the future. It would also save industry and government the time and resources necessary to develop new tracking systems.

The NATS would be an automated system used to track NO_X allowances held by NO_X budget units under the NO_X Budget Trading Program, as well as those allowances held by other organizations or individuals. Specifically, the NATS would track the allocation of all NO_X allowances, holdings of NO_X allowances in accounts, deduction of NO_X allowances for compliance purposes, and transfers between accounts. The primary role of NATS is to provide an efficient, automated means of monitoring compliance with the NO_X Budget Trading Program. The NATS 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. Although today's proposal assigns each allowance a unique serial number, EPA requests comments on the necessity of serial numbers and on whether the administrative burden to allowance holders and EPA of tracking and reporting serial numbers outweighs the benefits of serial numbers for tax and accounting purposes.

The EPA is proposing that NATS contain three primary types of accounts: compliance accounts, overdraft accounts, and general accounts.

Compliance accounts are created for each NO_X budget unit, and overdraft accounts are created for each source with two or more NO_X budget units, upon receipt of the account certificate of representation form. General accounts are created for any organization or individual upon receipt of a general account information form.

a. Compliance Accounts. As part of the implementation of the NO_X Budget Trading Program, EPA is proposing to establish compliance accounts for each NO_X budget unit upon receipt of the account certificate of representation form. These accounts would be identified by a 12-digit account number incorporating the plant's Office of Regulatory Information System's (ORIS) code or facility identification number as well as the number of the unit for which the compliance account is established. Allocations for the first six years (2003–2008), as prescribed by each State, would be transferred into these compliance accounts prior to the first control period in 2003. Prior to the second control period, in 2004, and each year thereafter, allocations for the new sixth year, as prescribed by each State, would be transferred into each compliance account (e.g., in 2004, year 2009 NO_X allowances would be allocated). As for the deadline for transferring NO_X allowances to cover emissions in the control period (i.e., the NO_X allowance transfer deadline of midnight on November 30), each compliance account (supplemented as discussed below by an overdraft account) must hold sufficient NO_X allowances to cover the NO_X budget unit's NO_X emissions for that year's control period.

b. Overdraft Accounts. Today's proposed trading rule provides for an overdraft account that would be automatically created for each source with two or more NO_X budget units, and represented by the source's NO_X AAR. The NO_X AAR may choose whether he or she wishes to utilize the account by transferring allowances into the account before the annual reconciliation process. NO_X allowances transferred into the overdraft account for a NO_X budget source by the NO_X allowance transfer deadline would be available for deduction during annual reconciliation if a NO_X budget unit at that source fails to hold sufficient NO_X allowances to cover emissions in its compliance account. This is similar to the approach used in the OTC NO_X Budget Program and provides additional flexibility for owners and operators in complying with the requirement to hold NO_X allowances covering emissions. If the compliance account and the overdraft account together do not contain enough NO_X allowances, then the unit would be out of compliance. The compliance account must be depleted of all NO_X allowances before the overdraft account is utilized.

The proposed rule would deduct NO_X allowances from the overdraft account beginning with the unit having the lowest NATS account number. The unit that fails to hold sufficient NO_X allowances between the compliance account and the overdraft account would be subject to the same consequences that would apply were only its compliance account being tapped for compliance, including the automatic excess emissions offset deduction and the applicable penalties under State law and the CAA. If the final trading rule includes provisions for the banking of NO_X allowances, such provisions would apply to the NO_X allowances held in the overdraft accounts as well as those held in compliance accounts.

Today's proposal allows the NO_X AAR to identify specific serial numbers for deduction from a compliance account. In the absence of a specific identification of NO_X allowances to be deducted, a FIFO (first-in, first-out) method would determine the order in which NO_X allowances would be deducted. The proposal does not, however, allow for the identification of specific NO_X allowances to be deducted from an overdraft account because NO_X allowance deductions from the overdraft account would take place automatically, in a set order, after the NO_X allowance transfer deadline has passed.

c. Compliance. Once a control period has ended, NO_X budget units would have a window of opportunity (i.e., until the NO_X allowance transfer deadline of midnight on November 30) to evaluate their reported emissions and obtain any additional NO_X allowances they may need to cover the emissions during the ozone season. On November 30 of each year, the NO_X AAR must also submit a compliance certification report for each NO_X budget unit. Should the NO_X budget unit not obtain sufficient NO_X allowances to offset emissions for the season, three NO_X allowances for each ton of excess emissions would be deducted from the unit's compliance account for the following control period. EPA believes that it is important to set up this automatic offset deduction because it ensures that non-compliance with the NO_X emission limitations of this part is a more expensive option than controlling emissions. 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.

d. General Accounts. Today's proposal allows any person or group to open a general account in NATS. These accounts would be identified by the ''9999'' that would compose the first four digits of the NATS account number. Unlike compliance accounts and overdraft accounts, general accounts cannot be used for compliance but can be used for holding or trading NO_X allowances (e.g., by NO_X allowance brokers or owners of multiple NO_X budget units). General accounts are currently used for SO_2 allowances in the Acid Rain Program.

To open a general account, a person or group must complete the standard general account information form, which is similar to the account certificate of representation that precedes the opening of a compliance account and any overdraft account. The form would include: the NO_X AAR name, phone, fax, and e-mail (as well as similar information for the Alternate NO_X AAR, if applicable); NO_X AAR mailing address; the names of all parties with an ownership interest with the respect to the NO_X allowances in the account; and certification language and signatures of the NO_X 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 AAR cited on the application of the establishment of his or her account in the NATS or of the registration of requested changes.

7. Banking

a. General Discussion. 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. Generally speaking, banking has several advantages: it can encourage earlier or greater reductions than are required from sources, stimulate the market and encourage efficiency, and provide flexibility in achieving emissions reduction goals (e.g., by allowing for periodic increased generation activity that may occur in response to interruptions of power supply from non-NO_X emitting sources). In addition, a banked allowance is one less ton of pollutant emitted in a given year. On the other hand, banking may result in banked allowances being used to allow emissions in a given year to exceed a State's trading program budget. The

following discussion summarizes the general issues associated with banking and then presents four specific banking options for consideration.

i. Banking After the Start of the Program. 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 trading program budget is in place, sources may over-control for one or more seasons and withdraw from the bank in a later season. This type of banking provides the general advantages as described above (encourages early reductions, stimulates the market, and provides flexibility to sources), while also potentially causing NO_X emissions in some control periods to be greater than the allowances allocated for those seasons.

ii. Banking Prior to the Start of the Program. Banking of credits or allowances for reductions prior to the start of the program allows sources to accumulate NO_X allowances for compliance use once the program begins. In addition to the general advantages of banking, this option allows sources to possibly delay required emissions reductions for some sources once the program begins by using banked allowances for compliance. As OTAG analyses concluded, the accumulation of significant amounts of allowances prior to the start of the program could defer the date at which the trading program budget is actually achieved, even though the early reductions may enable some air quality benefits to be realized sooner than anticipated. Early reductions can be realized either through the award of early reduction credits or the creation of a phased-in program.

iii. Management of Banking. Banking clearly introduces another variable into a cap-and-trade program; it may, in fact, inhibit or prohibit achievement of the desired emissions budget in a given season. To limit this variability and promote achievement of a budget, OTAG suggested several different management options: Adjusting the trading program budget downward by decreasing allocations so that expected variations would stay below the desired emissions level; imposing an accelerated rate of retirement on allowances used for emissions during ozone episodes; establishing an absolute limit on the amount of banked allowances that could be used each season or a discount rate on the use of banked allowances over a given level (flow control); and applying a transaction-specific discount rate to all banked allowances used in the future. In considering these options identified by OTAG for managing the use of banked allowances, it is important to remember that the model trading rule is being developed to attain the seasonal budget set forth in the proposed transport rulemaking.

The ''flow control'' option would allow banking, but would discourage the ''excessive use'' of banked allowances by establishing either an absolute limit on the number of banked allowances that could be used each season or a rate discounting the use of allowances over a given level. In the latter case, the number of banked allowances in the system would be tabulated each year to determine what percentage of the overall budget was banked, and therefore whether flow control could affect the use of banked allowances for compliance in the upcoming control period. If this percentage were below a predetermined amount (e.g., 10 percent as is the case with the OTC, since this level roughly equated emissions variations in years of low nuclear power availability), all banked allowances could be used without discounts in the upcoming control period. If this percentage were above the predetermined amount, a withdrawal ratio would be applied to each account holding banked NO_X allowances that could be used for compliance to determine the number that could be used to cover emissions at a 1-to-1 rate, and the number which, if used, would have to be used at a 2-to-1 rate. It is important to note that the withdrawal ratio would be applied only to banked NO_X allowances that could be used for compliance purposes, and therefore only to NO_X allowances banked in compliance and overdraft accounts. The withdrawal ratio would be determined each year prior to the control period to which it would pertain, but it would not be applied until the time of compliance certification at the end of that control period. This schedule provides the sources one full control period to plan for the application of flow control on their compliance and overdraft accounts.

To illustrate flow control, assume the total trading program budget across all participating States was 300,000 allowances, and 35,000 allowances were banked following a control period. Since more than 10 percent of the total trading program budget is banked, a withdrawal ratio would be applied to all accounts holding banked allowances that can be used for compliance in the upcoming control period. In this case, the ratio applied to accounts with banked allowances would be 0.86 (determined by dividing 10 percent of the total trading program budget by the total number of banked allowances, or 30,000/35,000). Thus, if a source holds 1,000 banked allowances at the end of this upcoming control period, it will be able to use 860 on a 1-for-1 basis, but will have to use the remaining 140, if necessary, on a 2-for-1 basis. As a result, if the source used all its banked NO_X allowances to cover emissions in the upcoming control period, the 1,000 allowances would equate to 930 tons of NO_X emissions (860 + 140/2).

In this manner, flow control manages the use of banked allowances beyond a predetermined level, here 10 percent of the region wide trading program budget. This discourages but does not prohibit the use of banked allowances and, thus, mitigates the effects of ''excessive use'' of banked allowances in a given control period. While limiting the annual flow of emissions on the one hand, flow control also preserves the benefits of banking, granting flexibility to sources, stimulating the market and maintaining some incentive to over-comply. Since the withdrawal ratio is known to sources prior to the control period, sources have certainty about how excessive use of banked allowances will be treated, and both States and EPA can minimize their involvement and let the market function relatively unfettered.

b. Options. The EPA is proposing, and requests comment on, four options for whether and how banking may be incorporated into the NO_X Budget Trading Program: (1) Banking is not a feature; (2) banking begins when the trading program begins; (3) units may generate early reduction credits for use after the start of the program and banking continues after the program begins; and (4) banking begins with the first-phase of a two-phase trading program and continues thereafter. The EPA is not adopting or recommending an option in this proposal. In the final rule, EPA intends to adopt a specific approach to banking based on the comments received on the four options and any other approaches suggested by commenters. Although EPA has not focused on any one approach at this time, the proposed rule reflects, for the purpose of illustration, option 2 (i.e., banking when the trading program begins and without any management of banked NO_X allowances).

Each of the four options is discussed below. If banking is allowed, development of a banking provision involves trade offs on the following design features: the length of time (if any) permitted for reductions yielding NO_X allowances prior to the start of the

trading program as determined in the proposed transport rulemaking; the level at which these reductions can be generated; and the type of management imposed on the use of banked NO_X allowances. The longer the period of time allowed for early reductions and the less stringent the level at which NO_X allowances can be generated, the more concern there will be about exceeding the program budget once the program begins. Because of this concern, arising from the potentially numerous banked NO_X allowances available at the start of the program, there may be a need for management of the use of banked NO_X allowances.

The EPA used the IPM model to help investigate the ramifications of different options. The results of this analysis were presented in the working paper on emissions banking presented at EPA's December 1997 model rule workshop, entitled ''Second Draft Working Paper: Emissions Banking. December 1997 Analysis of Banking in a NO_X Trading Program''. This paper is available as item number V–A–28 in Docket No. A–96–56 of the Air and Radiation Docket (see the **ADDRESSES** Section at the beginning of today's notice for further guidance on obtaining information from the docket). The EPA hopes that these analyses will help stakeholders consider the trade-offs in designing programs with banking and provide EPA comments on the best way to structure a trading program. Commenters should consider how best to strike a balance between the advantages of flexibility, encouraged early reductions, and potential lower compliance costs versus the potential exceedance of prescribed budgets due to excessive use of banked allowances in a given control period.

i. Option 1: No Banking. Not allowing banking in the NO_X Budget Trading Program would result in the automatic retirement of any NO_X allowances not surrendered for compliance following each control period. Under this option, the only NO_X allowances available for compliance in each control period would be those allocated within the budget for that control period. As a result, States would be assured of achieving their budgets established under the NO_X Budget Trading Program each control period. However, the ''no banking'' option does eliminate incentives for early reductions, reduces the program's flexibility, and may contribute to a ''use or lose'' mentality for the use of allowances by sources at the end of each control period.

ii. Option 2: Banking After Program Start Only. This option, which does not provide for early reductions, but allows banking of NO_X allowances after the start of the program, was the approach used in the supporting analysis for the proposed transport rulemaking. This option is presented without the imposition of a management system on the use of banked NO_X allowances because the volume of banked NO_X allowances is not expected to be excessive absent the opportunity for early reductions.

iii. Option 3: Early Reduction Credits. This option allows for the generation of early reduction credits for some time period prior to the start of the trading program; the NO_X allowances resulting from early reductions are banked for use once the program starts, and banking is an option throughout the life of the program.

Sources demonstrating tonnage emissions reductions in excess of a predetermined level in the year or years prior to the start date for the program earn early reduction credits; each credit is redeemed for a one-time award of one NO_X allowance. The NO_X allowances awarded for the generation of early reduction credits may be created as additional to the trading program budget, or may be drawn from the budget. If the NO_X allowances awarded for early reductions come from the trading program budget, each State participating in the NO_X Budget Trading Program would establish a set-aside of a small percentage of its seasonal trading program budget for purposes of awarding the generation of early reduction credits. For example, this set-aside could be 2–3 percent of the State trading program budget, pulled from each of the first five years of allocated NO_X allowances. The resulting set-aside could be distributed at the conclusion of the period in which early reduction credits can be generated, on a pro rata basis. Any NO_X allowances not awarded from this reserve would be returned to the State trading program budget for distribution as allocations. The EPA requests comment on this option of taking early reduction credits from the State trading program budgets and details regarding how this could be accomplished, if in a different manner than that suggested here.

If the NO_X allowances awarded for early reductions originate from within the trading program budget, their award could pose a threat to achievement of the budget once the program begins, even though future allocations will necessarily be decreased by an amount equivalent to the NO_X allowances awarded for early reductions. The shift of available NO_X allowances to the beginning of the program could potentially result in more emissions than budgeted levels in the early years of the program. If the NO_X allowances awarded for early reductions are created outside of the trading program budget, there should be even more concern regarding potential exceedance of the trading program budget since all awarded NO_X allowances are in excess of budgeted levels of emissions and thus, potentially have a more pronounced and extended impact on the achievement of the trading program budget. This concern is addressed later in this Section.

The award of NO_X allowances for early reductions under the NO_X Budget Trading Program, whether from within or outside of the budget, would require a case-by-case determination by participating States that the reductions claimed were real, surplus, and quantifiable. Part of this determination would be made based on monitored data. This monitored data should be based on the same standards that are being used to support the ongoing trading program. Therefore, any source wishing to receive early reduction credits would be required to have monitors in place and certified for the entire period that the awards are being made. Early reduction credits could be determined and awarded on either a unit-, source-, company-, or State-level basis. A unit- or source-level determination would necessitate a more substantial proof of legitimacy due to concerns of load-shifting to other units or sources. Load shifting is a particular concern in this instance because relatively few units would be pursuing the early reduction credits, leaving the majority of similar sources at a less stringent control level or no required level. Generally speaking, the opportunity for load shifting from sources subject to some emission control (e.g., units seeking early reduction credits) increases with the number of similar units or sources that are not subject to an equivalent emission control. Whether the load shifting is to units or sources with the same owner or with a different owner as compared to the original unit or source, such load shifting could eliminate the environmental benefit of reduced emissions at the original unit or source. The applicant would have to demonstrate that the requested credits were real and surplus, and not the result of load or production shifting. A company or State-level determination, on the other hand, would reduce, but may not eliminate, load-shifting concerns. The activity of all units owned by the company in the State (but not any other units) would be accounted for in the consideration of eligibility for

early reduction credits. The EPA solicits comment on using a company-level determination in order to reduce concern over utilization shifting.

Incorporating early reduction credits into the NO_X Budget Trading Program would also require determinations of the control level beyond which to award early reduction credits and the time period during which the credits can be earned. The control level should be set within the range of the already established title IV and title I levels and the level in the proposed transport rulemaking; EPA solicits comment on the level of 0.15 lb/mmBtu as proposed in the transport rulemaking. The time in which the credits could be earned could be either one, two, or three years prior to the start of the program; EPA solicits comment on a time period of two years. If the NO_X allowances awarded for early reductions come from outside of the trading program budget, a control level above 0.15 lb/mmBtu or a time period longer than two years may threaten program integrity by allowing the possibility of a large bank being established prior to the start of the program that could significantly delay achievement of the budget. If the NO_X allowances are awarded from within the budget, this control level and time period are still appropriate to protect program integrity, and also ensure that the NO_X allowance set-aside to reward early reductions does not withdraw too many NO_X allowances from the future trading program budget, and pose undue burden on sources in the program. Placing a limit on the number of NO_X allowances which may be awarded for early reductions, such as two percent of the first budget period, and reducing the first period budget by a like amount, could help to protect program integrity and ensure that too many allowances are not withdrawn from the first budget period.

The existence of early reduction credits in the NO_X Budget Trading Program could necessitate the consideration of a management scheme to control the use of banked allowances. A management scheme could be required even if the NO_X allowances are withdrawn from the budget, since exceedance of the budget would still be quite possible due to the shift of available NO_X allowances to the beginning of the program. As discussed above, a flow control management scenario, whereby the use of banked NO_X allowances over a predetermined percentage of the trading program budget would be constricted by a weighted withdrawal ratio, would be one way of discouraging the ''excessive use'' of banked allowances throughout a control period. Under this approach, a withdrawal ratio of two banked NO_X allowances to one for the current control period would be imposed on the use of some banked NO_X allowances whenever the percentage of banked NO_X allowances in the NO_X Budget Trading Program region exceeds 10 percent of the trading program budget for that control period. EPA acknowledges other percentages and withdrawal ratios are also feasible, but solicits comment on 10 percent and 2-for-1 as reasonable levels to ensure program integrity while providing the opportunity to bank NO_X allowances. The proposed flow control management scenario is the same system used in the OTC's model rule to manage the use of banked NO_X allowances. This system simply acts as a safeguard against excessive withdrawals of banked allowances in a given control period; if large amounts of banked NO_X allowances are not used, it will not be invoked.

These four factors together—the origin of the NO_X allowances awarded for early reductions, the time period for reductions, the level beyond which credits can be earned, and the subsequent management scheme for banked NO_X allowances—together determine the impact of the award of early reduction credits on achievement and maintenance of the NO_X Budget Trading Program budget.

iv. Option 4: Phased-In Program. For this option of a program utilizing phased-in emissions reductions, an initial limit or cap would be set at a level representing an emissions reduction less stringent than the desired budget that is the ultimate goal of the trading program. A NO_X budget source could over-control with respect to this preliminary level at one or more units and accrue NO_X allowances, building up a bank to be used to defer emissions reduction requirements when the first phase level is ratcheted downward to achieve the final budget under the trading program. Banking would begin with the first phase of the program and be allowed throughout the life of the program.

Implementing the NO_X Budget Trading Program as a phased-in program requires similar trade-offs to those required to implement early reduction credits, including consideration of the time period of the first phase during which banked allowances can be accumulated, the stringency of the control level and resulting budget mandated in the first phase, and the management scheme imposed. The implementation of a phased-in program, however, unlike the award of early reduction credits, requires all sources to participate in the first phase. In effect, a phased-in program creates an earlier compliance deadline for sources in all States participating in the NO_X Budget Trading Program. Unlike an early reduction credit approach, a phased-in approach would not require applicants to demonstrate that NO_X allowances were surplus of load shifting or States to conduct case-by-case reviews of applications because load shifting would be much less of a concern. This lowered environmental risk should allow a less stringent performance level to be used in the early phase, which would increase the opportunity to bank NO_X allowances. Monitoring and reporting in accordance with prescribed methodologies would be required by the new, earlier compliance deadline in order to track compliance and ensure the integrity of reductions and resulting generation of excess allowances.

To provide time for such monitoring and reporting to be put in place for all NO_X budget units, the first phase could be no sooner than two years prior to the start of the trading program at the level of control and timing mandated in the proposed transport rulemaking. The EPA solicits comment on a time period of two years. As would be the case with early reduction credits, the level of control for the first phase would be set at a level within the range of the title IV level and the level established in the proposed transport rulemaking. The EPA solicits comment on a level of 0.25 lb/mmBtu, a somewhat less stringent level than that considered without a phased-in program. However, even this level of control would enhance the ability of units to bank NO_X allowances and so would increase the need for a management scheme to ensure program integrity. The EPA also solicits comment on a flow control approach incorporating a withdrawal ratio of two to one for some banked NO_X allowances used for compliance in the current control period whenever the percentage of banked allowances in the NO_X Budget Trading Program region exceeds 10 percent of the trading program budget for that control period. Once again, it is important to note the interdependence of the time period for reductions prior to the program start, the level beyond which allowances can be earned, and subsequent management scheme for banked NO_X allowances.

8. Allowance Transfers

The EPA is proposing that once a NO_X AAR is appointed and an account is established in the NATS, NO_X allowances can be transferred to or from the accounts with the submission of an allowance transfer form to EPA.

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 and overdraft accounts are prohibited after the NO_X allowance transfer deadline (November 30) of each year until EPA completes the annual reconciliation process by deducting the necessary allowances.

There would be one standard NO_X allowance transfer form. This form would be submitted to the EPA in all cases. The form would include: The transferror and transferee NATS account numbers; the transferror's printed name, phone number, signature, and date of signature; and a list of allowances to be transferred, by serial number.

The EPA is moving towards electronic submission of allowance transfers. Full capability is expected by 2000. AARs would be informed of developments and/or requirements for electronic submissions as they arise.

9. Emissions Monitoring and Reporting

a. Requirements for Point Sources. 40 CFR part 96 subpart H of today's proposed model rule sets forth the emissions monitoring and reporting requirements for the NO_X Budget Trading Program. The EPA is proposing that units subject to the NO_X Budget Trading Program be required to meet the monitoring and reporting provisions that are contained in a proposed new 40 CFR part 75 subpart H to the monitoring and reporting provisions of the Acid Rain regulations. These revisions are being proposed in a separate rulemaking that contains a new subpart H of 40 CFR part 75, which addresses how NO_X mass emissions (i.e., tons of NO_X emitted) should be monitored and reported and which references relevant provisions in the other subparts of 40 CFR part 75 (revisions to be published in the **Federal Register** in the near future). All comments on the new subpart H of 40 CFR part 75 should be submitted in the separate rulemaking on 40 CFR part 75 revisions rather than in the instant proceeding.

The EPA is proposing that States use the proposed 40 CFR part 75 subpart H to support the monitoring and reporting for this program to ensure that emissions are consistently and accurately monitored and reported from unit to unit and from State to State. This consistency and accuracy in monitoring is necessary to ensure that a NO_X allowance actually represents one ton of emissions and that one ton of reported emissions from one source is equivalent to a ton of reported emissions from another source. This establishes the integrity of the NO_X allowance (i.e., the authority to emit one ton of NO_X) and instills confidence in the market mechanisms that are designed to provide sources with flexibility in achieving compliance. The consistency and accuracy in reporting is necessary to ensure that compliance can be determined quickly and consistently and that buyers and sellers of NO_X allowances can determine the value of what they are trading.

The EPA believes that the NO_X mass emissions monitoring provisions in 40 CFR part 75, as it is proposed to be revised, provide a reasonable and cost effective way to consistently and accurately monitor NO_X mass. One of the main advantages of using these provisions to support this program is that many of the NO_X budget units, i.e., existing utility units subject to the Acid Rain program, are already required to meet the monitoring and reporting requirements in the existing 40 CFR part 75. Under the proposed revisions to 40 CFR part 75, the main new requirement for these units would be to calculate and report hourly, quarterly, seasonal and annual NO_X mass emissions. In almost all cases, these values could be determined using existing 40 CFR part 75 monitoring systems.

In addition to sources currently subject to the Acid Rain Program, many additional sources in the OTC that are not subject to the Acid Rain Program, but that are covered by both the OTC's NO_X Budget Program and this proposal, will be meeting many of the monitoring and reporting requirements in existing 40 CFR part 75 by April 1, 1998 in order to comply with the OTC's NO_X Budget Program. Units covered by the proposed trading rule but not required to use the provisions of 40 CFR part 75 to comply with either the Acid Rain Program or the OTC's NO_X Budget Program will also benefit from using monitoring and reporting requirements that are based in large part on existing 40 CFR part 75 requirements that are already being used by a large number of units. Since existing State monitoring regulations vary greatly, and since many States do not currently require the monitoring and reporting of NO_X mass, it is necessary, for purposes of supporting the proposed trading program, to create consistent monitoring and reporting requirements. If 40 CFR part 75 monitoring and reporting are used in the trading program, units not currently using 40 CFR part 75 will have the benefit of much of the expertise and software that has already been developed to support the Acid Rain Program and the OTC NO_X Budget Program.

The notice of the proposed rulemaking concerning revisions to 40 CFR part 75 sets forth in detail the proposed revisions related to monitoring NO_X mass emissions. While comments on the proposed revisions to 40 CFR part 75 (including proposed 40 CFR part 75 subpart H) should be submitted in the separate 40 CFR part 75 rulemaking, an overview of the 40 CFR part 75 revisions is provided here to assist commenters in the instant rulemaking. The proposed 40 CFR part 75 revisions require units to determine NO_X mass emissions by monitoring NO_X emission rate (in lbs/mmBtu) and heat input (in mmBtu) on an hourly basis and by multiplying those two values together. Coal units and other units that burn solid fuel that are covered by the NO_X Budget Trading Program would be required to measure NO_X emission rate using a NO_X emission rate CEM consisting of a NO_X concentration CEM and a diluent CEM (CO_2 or O_2 CEM) and measure heat input using a diluent CEM and a flow CEM. All gas and oil units covered by the NO_X Budget Trading Program would be allowed to use this option or alternatively could measure heat input by using a fuel flowmeter and performing fuel sampling and analysis. This option for determining heat input is set forth in Appendix D of 40 CFR part 75 and referenced in the new subpart H of 40 CFR part 96. Gas and oil units that qualified as either peaking units or low mass emitting units under 40 CFR part 75 would also have additional lower cost monitoring methodologies available to them. Peaking units, for example, could do source testing to create heat input versus NO_X emission rate curves. Then based on hourly measurement of heat input from a fuel flowmeter and fuel sampling and analysis, the heat input versus NO_X emission rate curves would be used to estimate the hourly NO_X emission rate. This option for determining NO_X emission rate is set forth in Appendix E of 40 CFR part 75 and referenced in 40 CFR part 96 subpart H. This rate would be used in conjunction with heat input determined using the provisions in Appendix D of 40 CFR part 75 to determine NO_X mass. A unit that qualifies as a low mass emitting unit could use a default NO_X emission rate and the unit's maximum rated hourly heat input to determine NO_X mass emissions. The low mass emissions unit provisions are in proposed 40 CFR 75.19 and referenced in 40 CFR part 96 subpart H.

The proposed 40 CFR part 75 subpart H requires units to report hourly NO_X mass emissions throughout the year, rather than just in the seasonal control period. The EPA is proposing to make

the monitoring and reporting requirements year round, as under the Acid Rain Program, because EPA believes that this will facilitate integration with other monitoring and reporting requirements, such as New Source Performance Standards (NSPS) requirements, Compliance Assurance Monitoring (CAM) requirements and other State requirements. In the long run, EPA believes that this consolidation can help to ease the overall monitoring and reporting burden on sources.

The proposed changes to 40 CFR part 75 also highlight several additional issues that are particularly pertinent to monitoring NO_X mass emissions. These include: an alternative way to measure NO_X mass emissions using a NO_X concentration CEM and a flow CEM, specific requirements for monitoring NO_X emission rate at common stacks and heat input at common stacks and common fuel pipes, and the reporting of NO_X mass emissions on a total hourly basis rather than on an hourly mass emissions rate basis. More information on these issues can be found in the notice of proposed rulemaking for 40 CFR part 75 which will be published in the **Federal Register** in the near future. All comments on the proposed revisions to 40 CFR part 75, including any related to NO_X mass emissions, should be submitted in the 40 CFR part 75 rulemaking proceeding, rather than in the instant proceeding.

While units would be required to meet the technical monitoring requirements set forth in 40 CFR part 75, the general and administrative requirements related to monitoring are set forth in the proposed trading rule. These include: compliance dates, prohibitions, requirements for certification and recertification of monitors, recordkeeping and reporting requirements and procedures for requests for alternatives to the monitoring requirements.

The EPA is proposing that units that commence operation before January 1, 2000 have certified monitors installed and operating for this program by May 1, 2001, which is earlier than the compliance date (May 1, 2003) for emissions reductions in the proposed transport rulemaking and this trading program. Since no precertification of emissions reductions is needed for sources to make trades, it is important to make sure that the monitoring that is used to certify the emissions is verified before the start of the trading program. While up-front certification of monitors provides a great deal of assurance that sources would be able to account for their emissions, up-front reporting verifies that they can report their emissions. In addition, other aspects of the trading program that are discussed in other parts of this proposal, including a rolling allocation scheme based on updated monitored data and the banking of allowances before the beginning of the program, would require monitoring earlier than May 1, 2003. If a unit commences operation on or after January 1, 2000, it would be required to have certified monitors installed and operating by the later of: May 1, 2001; or 180 days after the unit commences operations or, if the unit is subject to any Acid Rain emission limitation, 90 days after the unit commences commercial operation. Deadlines for installation and certification of monitors are also established with regard to new stacks or flues constructed after the general installation and certification deadlines. Regardless of the deadline for installation and certification of monitors, if any unit is operating on or before May 1, 2001, but the monitors for that unit are not certified by May 1, 2001, the owner or operator must still account for emissions beginning on May 1, 2001 so that this data will be available to support the allocation provisions and possible provisions providing the opportunity to bank allowances before the beginning of the program. Similarly, if any unit is not operating on or before May 1, 2001 the owner or operator must account for emissions from the date and hour the unit commences operation. The owner or operator has three options for accounting for emissions until all of the required monitors are certified: Reference method monitoring; maximum potential values; or data from the monitors before certification is completed if certain quality assurance and data validation procedures are followed. This would be consistent with the requirement to hold NO_X allowances for all emissions in the ozone season and would assist with NSR integration, which requires accounting of all emissions.

The prohibitions Section of the trading rule sets forth several general prohibitions that would apply to all units included in the program. Units would not be able to use alternatives to the requirements in proposed subpart H of 40 CFR part 96 (and proposed revised 40 CFR part 75) unless that alternative was approved according to the procedures set forth for approval of alternatives to the monitoring requirements. The procedures for requests for alternatives to the monitoring requirements vary depending upon whether or not the unit involved is also subject to 40 CFR part 75 for purposes of compliance with title IV of the Act.

Units subject to 40 CFR part 75 for purposes of compliance with an Acid Rain emission limitation would already meet most of the requirements for the NO_X Budget Trading Program, by meeting the requirements for title IV. Before an owner or operator could deviate from the monitoring requirements for 40 CFR part 75 for this trading program or both this program and title IV, approval would have to be obtained from EPA. The EPA would take action on the petition for alternative monitoring in consultation with the appropriate State agency. This differs from the requirements for sources not subject to title IV who would need approval from both the State and EPA. The EPA believes that this is appropriate because EPA currently has authority to approve petitions for these sources. The additional requirements would involve reporting new data and, in a few cases, use of monitors not being used for purposes of title IV. The NO_X budget units subject to title IV would continue to meet the same requirements as other units subject to title IV, but would be required to include some additional data in the quarterly reports that they are already submitting for title IV purposes. This data would include hourly, quarterly, annual and ozone season NO_X mass emissions data. In addition, if a unit subject to title IV had to install additional monitors to comply with this program, those monitors would have to meet the certification and recertification requirements of the NO_X Budget Trading Program. The only reason that a unit would have to install additional monitors for this program would be if its currently installed monitors did not allow it to calculate NO_X mass. This would only be an issue if a unit shared a common stack with other units and chose to measure NO_X emission rate at the unit level, but measured heat input at the common stack level. For purposes of the Acid Rain Program, this unit would be allowed to apportion heat input to the unit level. While EPA believes this methodology is accurate enough for purposes of using heat input to determine reduced utilization, EPA does not believe that it is accurate enough for purposes of determining NO_X mass; EPA's rationale is discussed in the preamble to the 40 CFR part 75 rulemaking which will be published in the **Federal Register** in the near future.

The NO_X budget units not subject to title IV would be subject to essentially the same requirements for certification

and recertification and monitoring and reporting. The owner or operator of a unit would be responsible for initially certifying monitors. The owner or operator would be responsible for providing the permitting authority both a monitoring plan and notification of the time and date of the original certification tests in advance of those tests. The owner or operator would also be responsible for recertifying monitors if any major changes were made to the monitors and would be required to report emissions and other supporting data on a quarterly basis.

An owner or operator wishing to deviate from the monitoring requirements set forth in 40 CFR part 75 would have to petition for approval to do so. Unlike certifications and recertifications which would only have to be approved by the permitting authority, these petitions would have to be approved by both EPA and the permitting authority. There are three main reasons that petitions would have to be approved jointly. The first is that in order to ensure that emissions are accounted for equivalently from source to source and State to State, it is important that there be consistency in approving any alternatives to the allowed monitoring methodologies. By working with the permitting authority in all of the approvals for alternatives, EPA can help ensure this consistency. The second is that in order for EPA to fulfill its role as the repository for emissions data, it is important that all of the data be reported in a consistent format and that EPA be aware of any deviations from that consistent format. The final reason is that EPA cannot approve a SIP that allows a State the unlimited ability to approve alternatives not specifically spelled out in the SIP. If a State wants to approve a methodology that is not specifically part of the SIP, EPA would have to be involved in this approval.

b. Output Information. In general, the information available concerning the operation of a unit can be placed into one of three categories: Input, process, and output. Heat input is a measure of input; specifically, it is the chemical energy of the fuel burned. Variables related to combustion, such as temperature, are process variables. Measures of output from a unit include emissios; steam energy, and, for a unit serving an electricity generator, electrical power produced. Today's proposal presents options for allocating NO_X allowances based on actual information on unit operation. The EPA has received comments that allocations of NO_X allowances under the trading program should be made on the basis of electrical and/or steam output, rather than heat input, measurement.

A system where NO_X allowances are reallocated on an ongoing basis (as is being proposed today) may decrease the incentives for reducing NO_X emissions through the use of more efficient fuels or more efficient equipment. For example, assume a certain unit currently uses 500 mmBtu/hr to generate 50 MWe. Under a simple heat input based allocation scenario, if that unit increased its efficiency by 20 percent, so that it could produce 50MWe while using only 420 mmBtu/hr, it would lose 20 percent of its NO_X allowances in the next NO_X allowance reallocation, even though it is producing the same electricity. However, under an allocation scheme based on output, if this unit's electricity production did not change, it would receive the same number of NO_X allowances. Since a decrease in the amount of fuel needed is generally accompanied by a decrease in NO_X emissions, a unit increasing its efficiency would either have more NO_X allowances to sell on the market or would need to purchase less NO_X allowances to be in compliance. Thus, basing allocations on output gives units additional efficiency options for compliance, which should reduce the overall cost of the program. As an additional benefit, decreases in fuel usage would reduce emissions of other pollutants such as SO_2, mercury, and carbon dioxide (CO_2).

However, EPA is concerned that there may be some issues not yet fully addressed concerning allocation of NO_X allowances based on output. First are issues concerning the development of measurement protocols for output. Measurement protocols are critical for making a fair and expeditious allocation of NO_X allowances. There are two general locations at which power output of an electricity generating facility could be measured: gross generation at the generator, or net generation after plant power requirements have been consumed. Gross generation seems less appropriate, since an allocation based on output would primarily be intended to address efficiency improvements and allocation by gross generation fails to account for a plant's power requirements whose efficiency could be improved. To the extent the power is sold, net generation could be measured at the point of sale. Measurement at the point of sale has an advantage in that it is tracked by the source and the dispatch authority for crediting sales. A workable program requires only that all participants measure generation at the same general location and with the same method.

A second set of issues in allocating using output concerns how to relate product output to emissions output. Electrical generation and distribution systems at plants can be complex, with multiple units emitting through one or more stacks and serving multiple generators. If output is to be measured at the plant level, then it would be appropriate to measure total emissions from the plant, even if that meant measuring emissions from small units. Alternatively, the electrical output from small units could be measured and subtracted from plant-level electrical output to avoid the need to monitor emissions from small or infrequently used units.

For units producing steam that does not feed into a generator, different issues arise. These sources have steam production in addition to (or instead of) power generation as their final output. Allocating emissions to both types (steam producing and power generating) of sources would require the development of a method for converting the steam energy to an electrical power equivalent. The method would likely require assumptions about the efficiency of the conversion. The use of any general efficiency assumption, without considering the configuration and operation of each individual plant, could lead to penalizing plants that operate more efficiently than the general case (by not allocating enough allowances) and giving windfalls to plants that operate less efficiently than the general case (by allocating more allowances than warranted).

The EPA solicits comments on how the issues discussed above could be addressed in order to allow States to base the initial NO_X allowance allocations for this trading program on an output measure or convert an allocation system initially based on input to one based on output. As further explained in the allocation Section of the preamble, EPA may use this information in the development of a final rule that would provide States the opportunity of using output based allocations.

10. Opt-Ins

The NO_X Budget Trading Program includes provisions allowing for units that otherwise would not be subject to the trading program and that are located in a State that is participating in the trading program to voluntarily elect to participate (i.e., opt in). The opt-in provisions can further reduce the cost of complying with the NO_X budget by allowing those units, which may not otherwise be required to reduce NO_X emissions for a State to meet its budget,

to opt in to the trading program and make incremental, lower-cost reductions. The NO_X allowances freed up by the opt-in source's control action can be sold to other NO_X budget units for their compliance with the NO_X emission limitation. In general, units that opt in are treated like other NO_X budget units and are subject to the same requirements to monitor, to hold allowances to account for emissions, and to have a NO_X budget permit. Units that have opted in may also elect to withdrawal from the program if certain requirements are met.

a. Applicability for Opt-In Units. Today's proposal allows sources (i.e., units) to opt-in that are similar to, but smaller in capacity than, the sources covered under the proposed applicability provisions of the NO_X Budget Trading Program. A State would account for the opt-in unit in the State's SIP by adding the opt-in unit's NO_X emissions to the trading program budget in the SIP and subtracting the opt-in unit's NO_X emissions from the part of the SIP not covered under the NO_X Budget Trading Program.[19] The applicability Section of this preamble discusses and requests comment on the participation of other source types and sizes under the trading program. It also discusses whether other additional source categories should be included in the trading program. The sources in these categories could be included as part of the core program applicability, they could be included as an additional list of source categories that a State could choose to include as core sources, or they could be listed as sources that could choose to individually opt in.

b. Allowance Allocations for Opt-In Units. Today's proposal allocates NO_X allowances to an opt-in unit on a year-by-year basis. An opt-in unit is required to monitor and report the NO_X emission rate and the heat input according to the provisions under 40 CFR part 96 subpart H of the proposed rule for one control period prior to the unit entering the trading program. The NO_X emission rate and heat input measured at the unit during this initial period of time would become the unit's baseline emission rate and baseline heat input, respectively. The EPA requests comment on whether emissions rate or heat input data from periods prior to this initial period should also be used to set these baselines. The allocation for an opt-in unit is calculated by multiplying the lesser of the unit's baseline emission rate (in lb/mmBtu) or the most stringent State or Federal emissions limitation applicable to the NO_X budget opt-in source during the control period by the lesser of the unit's baseline heat input or the unit's actual heat input (in mmBtu) measured during the control period prior to the allocation calculation. The State would notify EPA by December 1 to allocate NO_X allowances to an opt-in unit for the next year's control period. While the proposal recommends opt-in allowance allocations based on heat input, EPA solicits comment on whether the allocations should be based on output. The options for using output and the factors considered are analogous to those discussed above concerning general allocations to NO_X budget units.

The EPA proposes to allocate NO_X allowances to opt-in units on a year-by-year basis to ensure that shifts in utilization from these units to other units not covered under the cap do not result in any significant increases in overall NO_X emissions. Such increases in emissions may occur if units outside the cap increase their utilization (and emissions) while NO_X allowances remain under the cap from an opt-in unit that reduces its utilization. The year-by-year allocation regime limits this potential problem while still maintaining continuing economic benefits for a unit to opt in because each of the future year allocations are calculated based on the unit's baseline emissions rate multiplied by the lesser of the baseline heat input or the previous year's utilization. By reducing a unit's actual emission rate below the baseline emission rate, an opt-in unit would continue to earn NO_X allowances to sell in the market in future years as long as they continued to operate at the same level. The EPA solicits comment on the appropriateness of the year-by-year allocations to account for the potential shifts in utilization for the different types of possible opt-in units including units that serve electricity generators as well as other types of industrial units.

c. Units Sharing Stacks or Fuel Pipe Headers With NO_X Budget Units. Today's proposal does not include special or simplified opt-in provisions for non-NO_X budget units that share a common stack or common fuel pipe header with a NO_X budget unit. Allowing these units to participate in the trading program may streamline the monitoring and reporting requirements for the NO_X budget units. For example, if a non-NO_X budget unit sharing a common stack with a NO_X budget unit is opted in to the trading program, it may no longer be necessary to apportion common stack emissions between two units. The NO_X AAR may simply elect the percentage of NO_X allowances to be deducted for each unit, provided that the total number deducted covers the common stack emissions. The EPA solicits comment on the desirability and method of opting in such units.

d. Withdrawal and Termination of Opt-In Units. The proposed trading rule addresses how an opt-in unit may withdraw from the trading program. An opt-in unit may withdraw from the NO_X Budget Program at any time, but a request to withdraw may be effective only on a date specified by the NO_X AAR that is before or after a control period. The EPA believes that the administrative burden for a permitting authority in processing a withdrawal effective during a control period, particularly in ascertaining the disposition of NO_X allowances and in determining compliance for a partial control period, is sufficient to warrant the prohibition of an effective date of withdrawal during a control period. Further, an opt-in source could seek to withdraw during a control period because the opt-in source projects that it will not hold enough NO_X allowances to account for its NO_X emissions for that control period. Under such a scenario, allowing the unit to ''opt out'' of the program during a control period could easily result in higher NO_X emissions, since an opt-in unit could emit enough NO_X to use up its NO_X allowance allocation for the control period prior to the end of that control period, withdraw from the program, and continue to emit NO_X after withdrawal during the control period. Such emissions would not be accounted for with the requisite surrender of NO_X allowances required under the NO_X Budget Program and could occur outside of a State's overall budget for NO_X.

If a NO_X budget opt-in unit becomes a NO_X budget unit under 40 CFR 96.4, the opt-in permit is terminated. This change in status for an opt-in unit could occur as a result of a modification, reconstruction, or repowering that may take place at the unit. An opt-in unit that becomes a NO_X budget unit under 40 CFR 96.4 is required to notify the permitting authority within 30 days of the change in status of the opt-in unit. The permitting authority revises the opt-in permit to reflect the NO_X budget permit content requirements of 40 CFR 96.23 effective as of the date of the

[19] Today's proposal also solicits comment on allowing sources not meeting the above description to opt in, at their discretion, if they are subject to part D nonattainment NSR preconstruction permitting requirements as major new sources or major modifications to existing sources and they can meet the other eligibility criteria of this trading program. The trading program budget in the SIP would not be increased for the new emissions at these opt-in sources because they would be entering the trading program in order to offset their new emissions (see Section F, below).

change in status. The NO_X allowances are deducted or allocated as necessary to ensure that the appropriate number of allowances are allocated to the unit consistent with 40 CFR part 96 subpart E of the proposed trading rule for each partial or full control period after the effective date of the change in status. In addition to the potential of an opt-in unit changing its status and becoming a NO_X budget unit under 40 CFR 96.4, it is also possible that an opt-in unit may become subject to the major new source review (NSR) requirements under section 173 of the Act by making a physical change or a change in the method of operation. In this case, triggering nonattainment NSR may also terminate an opt-in permit as discussed above. In Section C.1.c.v above, EPA seeks comment on treating all sources that are subject to major nonattainment NSR and that are of the same type of source included in the proposed core applicability as NO_X budget units.

11. Program Audits

The EPA would publish a report annually, commencing after the first year of compliance, that would contain, for each NO_X budget unit, the control period NO_X emissions and the number of NO_X allowances deducted for all reasons. This would be done in order for States to track emissions and NO_X allowance transaction activity in neighboring and upwind States. The proposed transport rulemaking has requirements for reporting of additional data to determine compliance for affected States. The EPA would also publish a report beginning in 2007 and every five years thereafter to assess the level of activity and/or emissions shifting from sources included in the NO_X Budget Program to sources not included. An assessment of opt-in sources (e.g., how many, from what sector, source size, duration of participation in program) would also be included in this periodic report.

12. Administration of Program

The administration of this program would be somewhat different from the administration of a typical State program. This is both because of the trading aspects of the program and because of the regional nature of the trading program. In order for the market forces underlying the trading program to work, the sources that participate in the trading program must have confidence in the market. This confidence stems from a number of factors including: a belief that all of the sources included in the program are following the same set of rules, and a belief that trades can be made easily, quickly and with a great deal of confidence that they will not be altered or denied. Several things can help to foster these beliefs and thus a confidence in the market. The first is to start with a consistent set of rules. This can be done by developing a model rule and having all States and sources that participate in the trading program abide by the ground rules set forth in the model rule. The second is to implement those rules in a consistent and efficient manner. Because of the multi-state nature of the program, it would be difficult for any individual State to do that by itself. Therefore, EPA is proposing that this program be implemented jointly by EPA and the States that choose to participate in the program. As part of this joint implementation, States would have specific roles, EPA would have specific roles, and there would be roles that States and EPA would perform jointly.

States would be responsible for developing and promulgating rules consistent with the model rule and for submitting those rules as part of the SIP. States would also be responsible for identifying sources subject to the rule, issuing new or revised permits as appropriate, and determining NO_X allowance allocations. In addition, they would be responsible for receiving, reviewing and approving most monitoring plans and monitoring certification applications, observing monitor certification and ongoing quality assurance testing and performing audits. The final primary area of State responsibility would be enforcement of the trading program. If violations occur, the State would take the lead in pursuing enforcement action. However, once the rules are approved as part of the SIP, they would become federally enforceable, and EPA could also take enforcement action.

The EPA would have two primary roles in administration of the program. The first role would be EPA's traditional role in the approval and oversight of the SIP. The second would be a more unique role for EPA, in which EPA would administer significant portions of the program.

In EPA's traditional role in the SIP process, EPA would be responsible for taking action to approve or disapprove the SIP revision once it was submitted to EPA. Once the SIP revision was approved, EPA would play an oversight role in ensuring that the SIP was completely implemented. This oversight role might include audits of the State program, or taking enforcement action, if EPA believed that sources were violating the SIP.

In EPA's more unique role as administrator of portions of the program, EPA would run both the emissions tracking system (ETS) and the NATS. ETS is the system that units would use to report their emissions data and that EPA would then use to verify total emissions for the control season. The EPA would use the same system that it is currently using to track emissions data from the Acid Rain Program and that it will soon be using to track emissions data from the OTC NO_X Budget Program. There are a number of advantages to the sources, States, and EPA to using this existing system. Since many units are already reporting to the system for purposes of the Acid Rain Program and more units will soon be reporting to the system for purposes of the OTC NO_X Budget Program, using this existing system will represent little change for many units and EPA. This will help to reduce administrative costs for both units and EPA and will help to minimize startup problems associated with a new program. It also means that each State will not need to develop, maintain and operate such a system.

In addition to receiving the emissions data, quality assuring it, and providing reports to both States and units about the emissions data, EPA would have several other responsibilities as the administrator of ETS. The EPA would be involved in approval of any petitions for alternatives to the allowable monitoring methods. The EPA would also be involved in providing units and States assistance in using ETS. This assistance may include: Answering individual questions from units and States, providing guidance documents and training for units and States, and providing software to assist in the submittal of emissions data.

As the administrator of NATS, EPA would be responsible for receiving applications for NO_X AARs, tracking all official transfers of NO_X allowances, and using the end of control season emissions data and NO_X allowance data to determine compliance for the control season. In order for EPA to play this role, each State would have to provide EPA with its NO_X allowance allocations consistent with a prescribed schedule and format. The NO_X AARs for individual sources would have to provide EPA with information about all official NO_X allowance transfers in a prescribed format. The NO_X AAR's would also have to provide EPA with an end of control season compliance certification. At the end of the control season, EPA would use all of this data to determine how many NO_X allowances should be deducted from each unit's compliance account or each source's overdraft account. In the event

that there were not enough NO_X allowances to cover a unit's emissions for a control period, EPA would notify the State and would automatically deduct NO_X allowances for the next year's control period according to the emissions offset provisions set forth in the proposed trading rule.

The main joint role that EPA and States would have is for the approval of alternatives to the allowable monitoring methods. This role is more fully discussed in Section V.C.9 of the preamble on monitoring.

D. SIP Approvability

The EPA's proposed ozone transport rulemaking set forth the general elements that a SIP needed to include (see 62 FR 60364–71). These criteria are more fully explained in Section IV.A of this supplemental proposal. One of the components of an approvable SIP is that it include fully adopted State rules for the regional transport strategy with compliance dates. One possible control strategy that a State might choose would be to implement this NO_X Budget Trading Rule (40 CFR part 96). If a State chooses to implement the NO_X Budget Trading Rule, the proposed ozone transport rulemaking explains that the trading rule will incorporate all necessary SIP criteria into the program design. In general, today's proposed trading rule meets the necessary SIP criteria. However, Section IV.A describes two criteria that a SIP must meet for EPA to approve the NO_X Budget Trading Rule portion of the SIP (see Section IV.A.3 for further discussion).

E. OTC Integration

Twelve of the thirteen OTC jurisdictions have committed to the implementation of a cap-and-trade program in order to achieve region-wide NO_X emissions reductions starting in 1999 to help reduce ozone transport and make progress toward attainment. Nine of those twelve jurisdictions are also included in the proposed ozone transport rulemaking. The goals and implementation strategy of the OTC program are similar to those of the proposed transport rule and today's proposed NO_X Budget Trading Program. However, there is a potential for conflict between the OTC Program and today's proposal. The EPA was involved in the development of the OTC Program and is aware of the issues that the OTC States faced in developing that program. Taking into account the work that has been done, EPA has tried to develop a proposal that will minimize conflicts between the two programs. Some differences still exist concerning applicability, allocations, banking and the use of banked allowances, emissions monitoring, and permitting. The purpose of this Section is to identify how EPA believes that these specific issues can be resolved, so that the goals of the OTC program can be achieved in concert with today's proposal. The EPA believes that these differences can be resolved as the OTC States undertake rulemakings to implement Phase III (beginning in 2003) of the OTC program.

1. Applicability

a. State Applicability. On a regional level, the NO_X Budget Trading Program is applicable to any of the 23 jurisdictions identified in the proposed transport rulemaking electing to participate. Three of the OTC States (Maine, New Hampshire, and Vermont), however, are not among the 23 jurisdictions cited in the proposed transport rulemaking. The OTC States have requested EPA to consider how these States may participate in the trading program. The EPA sees, and requests comment on, two options for addressing these States. One option is to exclude Maine, New Hampshire, and Vermont from participation in the NO_X Budget Trading Program; the other is to offer the States the opportunity to join the trading program by complying with the overall requirements of the proposed transport rulemaking. The EPA proposes the two alternative options and requests comment on them.

Denying Maine, New Hampshire, and Vermont the opportunity to participate in the NO_X Budget Trading Program can be justified by their exclusion from the proposed transport rulemaking. Based on analysis of the entire 37 State OTAG region, EPA proposed to determine that only 23 jurisdictions are significant contributors to a nonattainment or maintenance problem in another State. Since these three States were not among the 23 jurisdictions covered by the proposed transport rulemaking, arguably they should not be permitted to participate in the trading program designed to help achieve mandated reductions in the targeted States. Excluding Maine, New Hampshire, and Vermont from the trading program would restrict the ability for sources in these States to trade NO_X allowances with sources in other OTC States that are included in the proposed transport rulemaking and participating in today's proposed trading program. A second option would be to allow Maine, New Hampshire, and Vermont to participate in the NO_X Budget Trading Program by voluntarily enrolling in the proposed ozone transport rulemaking and implementing the requirements therein. This second option would assist with the integration of the OTC program with the NO_X Budget Trading Program by maintaining the ability for sources located in Maine, New Hampshire, and Vermont to trade NO_X allowances with sources located in the other participating OTC States.

b. Source Applicability. The source applicability criteria for today's proposed NO_X Budget Trading Program identifies a minimum, core group of sources. These core sources are fossil fuel-fired units (i.e., stationary boilers, combustion turbines, and combined cycle systems) serving electrical generators greater than 25 megawatts and other units not serving generators and having a heat input greater than 250 mmBtu per hour. Beyond the core sources, this proposal contains criteria for States to include additional sources in the trading program, as well as the process for allowing individual units to opt in.

The OTC program applies to a similar universe: fossil fuel-fired boilers and indirect heat exchangers of 250 mmBtu or greater, electricity generating units of 15 megawatts or greater, and ''opt-in'' sources. The main difference in applicability criteria between the OTC program and today's proposed NO_X Budget trading program is that the OTC includes units between 15 and 25 megawatts. However, today's proposal allows States to include smaller sources of the same type as those included in the core group such as electrical generating units between 15 and 25 megawatts, without affecting EPA's streamlined approval of the SIP as described in Section V.D of this preamble. This allows the OTC program applicability provisions to be reasonably compatible with those in the NO_X Budget Trading Program.

2. Allocations

Today's proposal establishes NO_X allowances as the currency for the NO_X Budget Program, and recommends a methodology for participating States to allocate NO_X allowances among NO_X budget sources. States are provided the flexibility to deviate from the recommendation, as long as the timing requirements for completion of allocations and submission of the information to EPA for inclusion into the NATS are met, the control periods for which allowances are allocated are the same, and total NO_X allowances allocated do not exceed the number of tons that the State apportions to NO_X budget sources in the SIP.

The OTC provides States full discretion to develop and adopt their own allocation methodologies. The

resulting allocation processes are in some cases incompatible with EPA's software capabilities, beyond the scope of EPA's resources to administer, and inconsistent with the efficient and orderly functioning of a NO_X allowance market. This experience showed the need for greater consistency among States for the allocation process. As a result, the OTC States would need to revise their allocation methodologies for Phase III of the OTC to be consistent with the timing requirements of the NO_X Budget Trading Program. Since the OTC is still discussing the implementation of Phase III, EPA believes that the schedule for this proposal provides an opportunity to develop allocation plans that meet the timing requirements in today's proposed trading program. Each OTC State would still be able to determine the specific allocation to each source provided the total number of allowances allocated did not exceed the trading program budget.

3. Emissions Banking

The OTC program provides for the banking of early reductions in 1997 and 1998 and of excess Phase II NO_X allowances in 1999 through 2002. Furthermore, the OTC program includes the use of a flow control mechanism to manage the use of banked allowances as described under Section V.C.7 of this preamble and an audit to assess the program's performance. Today's proposal solicits comments on four banking options that are discussed under the banking Section of this preamble. The EPA requests comments on how the OTC banking provisions may be integrated with the banking options under the proposed NO_X Budget Trading Program.

4. Emissions Monitoring and Reporting

The monitoring and reporting requirements in the proposed NO_X Budget Trading Program are based on the requirements in proposed revisions to 40 CFR part 75, the monitoring and reporting regulations under the Acid Rain Program. The monitoring and reporting requirements in the OTC's NO_X Budget Program are based on the current version of 40 CFR part 75 and on additional guidance that was developed in a collaborative process among States, sources, and EPA. This additional guidance sets forth requirements for reporting NO_X mass emissions which are not currently set forth in 40 CFR part 75 and provides some additional flexibilities for sources not subject to the Acid Rain Program. For sources that are subject to both the Acid Rain Program and the OTC NO_X Budget Program, use of the revised 40 CFR part 75 would require few changes to address the NO_X mass monitoring and reporting requirements in this proposal. However, for some sources that are only subject to the OTC NO_X Budget Program, the use of the revised 40 CFR part 75 in the proposal may require some changes.

The most significant change under the proposed NO_X Budget Trading Program would be that all units that burn coal or other solid fuels would be required to use a flow monitor and a diluent monitor to measure heat input. Under the OTC NO_X Budget Program, these units currently have two options for monitoring heat input: the first option is to use a flow monitor and a diluent monitor, and the second is to petition the State to use an alternative heat input methodology. There are two main reasons that EPA is proposing to limit the options for monitoring heat input for these types of units. First, EPA believes that in order to ensure fairness and to ensure that the emissions reductions required by this program are realized, it is important to have accurate and consistent monitoring across all of the sources. To date, no source under the OTC NO_X Budget Program has completed any testing to demonstrate that the alternatives are as consistent and accurate as the flow monitoring methodology. Second, EPA does not believe that there are significant cost savings associated with allowing the alternatives. In order to demonstrate that the alternative is as consistent and accurate as the flow monitoring methodology, the source is required to do initial certification testing and ongoing quality assurance testing very similar to the testing required for the use of flow monitoring methodology. The capital costs associated with setting up platforms and ladders so that this testing can be performed is one of the most significant capital costs associated with the flow monitor methodology, but this cost would also have to be incurred in order to perform testing on the alternative methodology. Similarly, some of the most significant costs associated with the ongoing use of the flow monitor methodology are ongoing quality assurance and data reporting. Performing similar quality assurance and data reporting is also a requirement for any alternative methodology. For these reasons, EPA believes the costs would be similar. In addition, if the alternatives are allowed, there would be an additional administrative burden placed on both States and sources in preparing and reviewing applications for alternative methodologies.

In addition to the specific requirement to use flow monitors for coal-fired facilities, the proposed revisions to 40 CFR part 75 change some of the ongoing quality assurance tests for flow monitors. The number of levels at which flow relative accuracy test audits (RATAs) have to be performed is reduced, but an additional quarterly quality assurance of the flow monitors has been added. The EPA believes that the combined effect of these changes reduces the overall cost of flow monitoring, while at the same time improving the quality of the data.

Another significant change between the OTC NO_X Budget Program and the proposed NO_X Budget Trading Program would be in the options allowed for low mass emitting units, or peaking units, that burn oil and/or gas. The OTC NO_X Budget Program offers a number of different options for these units, in addition to the CEM options that are allowed for all sources in the program. While these different options provide more flexibility, they also create more confusion and complexity for smaller sources. The EPA believes that by proposing fewer options, and simplifying these allowable options as much as possible, both cost and confusion for smaller sources can be minimized. The two non-CEM options that the proposed revisions to 40 CFR part 75 will allow for smaller sources are the use of a default emission rate based on unit type and fuel burned, and the use of source testing to determine unit specific NO_X emission rate versus load curves. The use of default emission rates is proposed to be limited to units that have actual emissions and projected emissions using such default emission rates of less than 25 tons per year. The use of the unit specific NO_X emission rate versus load curves is proposed to be limited to units that qualify as peaking units (a unit that has an average capacity of no more than 10.0 percent for three years, with a maximum capacity of no more than 20.0 percent in any one of those years.)

Most of the other changes in the proposed revisions to 40 CFR part 75 that would affect OTC NO_X Budget Trading Program sources are designed to reduce monitoring costs and provide additional flexibilities. These include: a reduction in fuel sampling for units that use fuel sampling and analysis to determine heat input; more flexibility for the scheduling of quality assurance testing to accommodate unexpected unit outages; and an option to reduce the amount of missing data that must be reported during periods of monitor recertification. More information on all of the proposed revisions to 40 CFR part

75 can be found in the proposal for that rule (notice entitled ''Acid Rain Program; Continuous Emission Monitoring Revisions'' that will be published in the **Federal Register** in the near future); comments on them should be submitted in that separate rulemaking.

5. Permitting

The OTC program does not explicitly require permits that are issued or modified for use under the OTC program to be federally enforceable. The proposed NO_X Budget Trading Rule requires federally enforceable permits. The EPA's rationale for requiring federally enforceable permits is further explained in Section V.C.3 of this preamble. This would potentially require the OTC States to amend the permitting provisions in the OTC program.

F. New Source Review

Under section 173 of the CAA, new and modified major sources located in nonattainment areas must offset their new emissions. The EPA believes that this requirement can be met through a source's participation in the NO_X Budget Trading Program defined in today's proposed rule. Simply put, in a system where the level of emissions cannot exceed an absolute mass emissions cap, new sources of emissions subject to the system must acquire sufficient NO_X allowances elsewhere in the system to offset any new emissions. Those sources from whom NO_X allowances are acquired must also hold sufficient NO_X allowances to cover their emissions. Therefore, since the trading program budget would not be increased for sources seeking offsets, NO_X allowances which are acquired necessarily come from actual emissions decreases that take place from other sources that are covered by the cap.

A key issue is how sources whose emissions increases are subject to the major NSR offset requirements may become participants in the trading program. All new units meeting the proposed applicability criteria, and all emissions increases at existing units meeting these criteria, would be subject to the NO_X Budget Trading Rule and, therefore, would be participants in the trading program. However, sources in need of NSR offsets but which do not meet the proposed applicability criteria may wish to participate in the trading program so as to satisfy their NSR offset requirement. The EPA notes that today's proposed rule makes no specific provision for the inclusion of these types of sources. Since EPA believes there may be significant benefits to integrating any new source review requirements with the NO_X Budget Trading Program, inclusion in the trading program of new sources that do not meet the proposed applicability criteria may well be helpful to both those sources and States that are concerned about finding offsets for new sources. The EPA solicits comments on allowing the opt in of new and modified sources, not otherwise subject to the program, in order to satisfy the section 173 offset provisions through participation in the trading program. Commenters should consider how these sources would be integrated into the trading program in a simple and straightforward manner which would not compromise any of the program's goals or requirements. For example, EPA expects that any source opting into the trading program would have to meet the permitting, monitoring, and accountability requirements applicable to core sources. At this time, EPA also solicits recommendations on: (1) How the section 173(c)(1) requirements pertaining to the geographic location of offsets can be met under the NO_X Budget Trading Program and (2) how to reconcile the seasonal nature of the proposed rule with the NSR requirements that the total annual tonnage of new emissions increases must be offset.

G. End Use Energy Efficiency and Renewable Energy

1. Background

This Section discusses the potential for a provision within a State's NO_X Budget Trading Rule to recognize and encourage the contribution that energy efficiency and renewables can make in meeting the NO_X budget. The December workshop with State, industry and non-governmental organization representatives included a discussion of a possible role for energy efficiency and renewables. As stated in the December workshop, energy efficiency and renewables can be important components of an effective NO_X reduction strategy. Greater deployment of energy efficiency and renewables technologies cannot only be a cost-effective means of preventing emissions of NO_X. It can also be a cost-effective way of preventing emissions of greenhouse gases, such as carbon dioxide (CO_2), and toxic substances, such as mercury.

There is a large potential for greater energy efficiency improvements that reduce energy demand. In addition, renewable resources that reduce demand at the consumer level are available, including technologies that generate electricity, such as rooftop photovoltaics, and technologies that reduce electricity demand such as solar hot water heaters. Greater penetration of energy efficiency and distributed renewable resources in the marketplace can save companies and individuals money and promote economic growth, thus reducing the economic cost of compliance with environmental requirements. These savings can be passed on to consumers through lower electricity rates.

The EPA has examined the potential for energy efficiency and renewables in the SIP call region. The most recent information on this potential comes from the Department of Energy's (DOE's) ''5-lab study,'' which quantifies the potential for energy efficiency and renewables to reduce carbon emissions in the U.S. via two scenarios. The first is the study's ''Efficiency'' case which consists of the potential for cost-effective energy efficiency and renewables technologies to penetrate the market given an invigorated promotion effort for greater market transformation. The second scenario is the ''High Efficiency'' case, which demonstrates the potential for emissions reductions from energy efficiency and renewables measures that are optimistic, but feasible to undertake. Both the DOE study and the findings and results from similar analyses that have been conducted in the last several years in different States or groups of States within the proposed ozone transport rulemaking region show substantial potential for NO_X reductions and ancillary benefits from greater adoption of energy efficiency and renewable technologies. According to an analysis based on the DOE 5-lab study, approximately 1,700 TBtu of energy can be saved by 2007, resulting in over 100,000 tons of avoided seasonal NO_X emissions in the SIP call region if the area achieves the increased rate of energy efficiency improvement outlined in the ''Efficiency'' case. These potentials increase to over 3,000 TBtu of energy saved and over 200,000 tons of avoided seasonal NO_X emissions (or 13 percent of the total tons of reductions needed) under the 5-lab ''High Efficiency'' case. The associated carbon emissions reductions are nearly 30 million metric tons of carbon equivalent (MMTCE) by 2007 for the ''Efficiency'' case, and over 50 MMTCE for the ''High Efficiency'' case.

In a recent study of energy efficiency opportunities in the mid-Atlantic States region (including New York, New Jersey and Pennsylvania), the American Council for an Energy-Efficient Economy (ACEEE) concluded that over

2,800 TBtu of energy could be saved in this area by 2010 under their aggressive efficiency scenario. This translates into over 200,000 tons of seasonal NO_X reduced by 2007, and nearly 160 million metric tons (MMT) of carbon emissions avoided. Enhanced deployment of energy efficiency technologies and distributed renewable resources, therefore, may be an important policy tool for States to consider in achieving multiple environmental objectives.

There are substantial economic benefits and compliance cost implications for using energy efficiency as a NO_X reduction strategy in the proposed ozone transport rulemaking region. The economic benefits of achieving the 5-lab study's ''Efficiency'' case level of improvement include the potential for creating a net increase of over 80,000 jobs. For the ''High Efficiency'' case, over 160,000 new jobs would be created. The mid-Atlantic study shows a net increase of approximately 16,000 new jobs created in the region, with a corresponding increase in gross State product (GSP) of over $60 billion by achieving the efficiency potential outlined in the study. Taking advantage of all of the energy efficiency and renewables potential in the SIP call region prior to applying other NO_X control methods, such as selective catalytic reduction (SCR) or selective non-catalytic reduction (SNCR), can lower the overall compliance costs of meeting the NO_X budget as well as reduce overall societal costs. The EPA's initial analyses show that compliance costs can be reduced in 2005 by nearly $150 million through accelerated adoption of energy efficiency and renewables consistent with the 5-lab study in the proposed ozone transport rulemaking region.

2. Energy Efficiency and Renewables Set-Aside Options

The EPA recognizes and has performed analyses that demonstrate the benefits of aggressive adoption of energy efficiency and renewables technologies as a NO_X reduction strategy in the proposed NO_X Budget Trading Program for the proposed ozone transport rulemaking region. However, EPA is not proposing a specific approach for an energy efficiency and renewables set-aside for NO_X Budget Trading Program in this action.

During the December workshop and in the discussion paper that was distributed afterward, EPA stated that an energy efficiency and renewables set-aside approach put forward by the Agency should meet three important goals: (1) reduce the total economic cost of meeting the proposed NO_X budget, (2) promote energy efficiency and renewables as effective NO_X and pollutant-reducing strategies through the accelerated adoption of such practices and technologies, and (3) reduce future CO_2-related liabilities by recognizing the positive impacts of energy efficiency and renewables on carbon emissions. In addition, EPA stressed that two key principles should guide the design of its approach for a set-aside program: (1) A set-aside program should encourage actions that increase efficiency that would not otherwise occur without the program, and (2) the set-aside program should maintain the integrity of the NO_X cap. The EPA noted in its December workshop discussion paper that the difficulties in designing an approach consistent with our objectives of reducing cost and meeting the goals and principles above are not trivial. At this time, EPA does not have adequate information to propose an approach that will accomplish the goals and meet the Agency's purposes, while adhering to the principles and addressing the design issues outlined at the December workshop.

The EPA is not including a proposal in this notice to include an energy efficiency and renewables set-aside in the NO_X Budget Trading Program. The EPA continues to consider whether and how to develop an approach to include energy efficiency and renewables in the NO_X Budget Trading Program. As part of this action, EPA today requests that interested parties submit information addressing the design issues and questions that require further investigation which are outlined below. Should EPA conclude in the future that there is adequate information to design an approach for including an energy efficiency and renewables set-aside to meet its purposes, EPA will either issue a proposal or guidance as appropriate.

While EPA continues to examine the possibility of designing an approach for a set-aside, EPA encourages States to consider including energy efficiency and renewables in their State NO_X Budget Trading programs.

• Issue (1) Rewarding Efficiency Improvements Above ''Business as Usual''

In developing an approach for energy efficiency and renewables in the NO_X Budget Trading Program, EPA believes it is important that the system encourage actions that increase the penetration of energy efficiency and renewables improvements beyond the normal rate at which they are currently and continuously incorporated into all sectors of the U.S. economy. Some remarks received in response to the discussion paper were of the opinion that it is unnecessary to be concerned with business-as-usual projects (or ''anyway'' tons or ''anyway'' projects), specifically because the respondents believe that the restructuring of the electric utility industry will result in the decline of demand side management (DSM) programs and reduce the rate of business-as-usual energy efficiency and renewables adoption to below a meaningful level. However, because energy efficiency projects often yield very attractive internal rates of return, many above 35 percent, and because there are many public information programs and private businesses aiming at getting more energy efficient and renewables products and choices into the market, there is likely to be a continuing level of energy efficiency improvement in the U.S. economy. Allocating NO_X allowances to existing, mandated and expected energy efficiency and renewables measures means that fewer allowances will be available to encourage incremental projects. The issue is in determining how to differentiate between the various types of measures and, particularly in future years, determining what types of measures were likely to have happened without the set-aside program. In regard to the amount of ''business-as-usual'' energy improvement due to energy efficiency and renewables, EPA requests the following information:

Question 1. How do States determine the amount of ''business-as-usual'' energy efficiency and renewables occurring across all sectors of the economy?

Question 2. What information do States and other entities have about the amounts and types of energy efficiency and renewables that have been occurring over the last 3–5 years?

The EPA suggested three options for determining projects eligible for set-aside NO_X allowances in its December workshop discussion paper. One option is to limit the reward of ''business-as-usual'' projects may be to require that projects attain a sizable efficiency improvement, over and above a set minimum. This will require the development of a set of average energy improvement metrics for the residential, commercial and industrial sectors. As an example, projects for efficiency in the commercial building sector would be compared to a target set below the average energy use per square foot that achieves a particular and higher level of efficiency than that of ''business as usual'' in that sector. Only projects that meet or exceed the target would be eligible to be awarded allowances, and

the size of the award would be based on the increment of improvement between the ''business as usual'' average and the achievement or exceedance of the target.

Two other options involve varying the length of the efficiency reward for different types of energy efficiency improvement measures, or restricting the number of NO_X allowances available to certain types of improvements. Under the second approach, certain types of energy efficiency improvements that have already been implemented or are likely to be implemented without an additional incentive (e.g., regulatorily mandated improvements unless implemented early, or energy efficiency improvements of products that bring them up to the industry average) would be allocated a shorter stream of allowances, while new and innovative energy efficiency improvements (incremental projects above ''business-as-usual'') would be allocated a longer stream of NO_X allowances. Under the third approach, the number of NO_X allowances allocated to energy efficiency improvements likely to occur anyway is restricted to some portion (e.g., 50 percent) of the full number of NO_X allowances they qualify for given the actual or expected load reduction.

Of the three options, the first seems to offer the best possibility for limiting rewards for energy efficiency improvements that would have occurred anyway. Options two and three would allocate a potentially smaller portion of NO_X allowances to projects that have already been implemented, are mandated, or are deemed to belong to a classification of improvements judged to be those likely to occur anyway. Either of these latter two approaches is difficult because it requires that a State be able to differentiate between those measures that would have been implemented anyway versus other types of energy efficiency improvements. Option one would require that projects attain a sizable efficiency improvement, over and above a set minimum. This would require the development of a set of energy improvement metrics for the residential, commercial and industrial sectors to use to distinguish baseline from accelerated or enlarged adoption of energy efficiency and renewables. One possibility for energy efficiency projects under this option would be to develop a set of energy use or intensity benchmarks that these projects would be required to meet or exceed in order to be eligible.

The EPA could use information from its own energy efficiency programs, such as Energy Star Buildings and Energy Star Homes, as a starting point for developing benchmarks in the residential and commercial buildings sectors. For example, in its Energy Star Homes program, home builders agree to construct new homes that will be 30 percent more energy efficient than the Model Energy Code (MEC). The EPA could establish the ''30 percent better than MEC'' as the benchmark that must be attained for applicants wishing to receive set-aside NO_X allowances based on new home developments that are more energy efficient. The applicant would have to first demonstrate that the homes built meet this benchmark, and then could be awarded NO_X allowances based on the improvement that reaching the benchmark represents in that sector. In considering the development of benchmarks to limit the rewarding of ''business-as-usual'' projects, EPA requests the following information:

Question 3. Do States and potential applicants for energy efficiency and renewables NO_X allowances have sufficient information about energy improvement metrics (e.g., energy use per square foot, MEC) or can they gather sufficient information about upgrade projects in order to be able to compare the results of these projects with a benchmark developed for that category (residential, commercial or industrial) of upgrade?

Question 4. If so, specifically what types of energy improvement measurements and information about upgrade projects are recorded or gathered by States and/or potential applicants for energy efficiency and renewables upgrades or projects?

Question 5. In addition to Energy Star Buildings and Energy Star Homes what other options are there for developing benchmarks in the residential and commercial buildings sectors?

Question 6. What kinds of benchmarks could be developed for industrial sector energy efficiency and renewables improvements, and how could they be developed? Since industries have both process and non-process energy use, how could benchmarks be developed for process (e.g., motors, compressed air, fans) and non-process (facility lighting and HVAC) efficiency measures in the industrial sector?

Question 7. In order to be able to use benchmarks for industrial sector energy efficiency it is necessary to separate the facility's non-process energy use from its process-related energy use. What methods might be used for distinguishing between an industrial facility's non-process energy use from its process energy use?

• Issue (2) Appropriate Size of the Set-Aside Allowance Pool

The EPA indicated in the December workshop discussion paper that the energy efficiency and renewables allowance pool within the budget for the NO_X Budget Trading Program should be set at an amount large enough to maximize the opportunities to promote energy efficiency and renewables projects, but not so large as to overstate the efficiency potential so that there are excess NO_X allowances that go unallocated. As pool size is related to the rewarding ''business-as-usual'' issue, EPA listed two alternatives in the December workshop discussion paper: (1) Limit the size of the pool and allocate NO_X allowances based on criteria that would minimize their allocation to ''business-as-usual'' projects, or (2) establish a larger pool so that there is room for both ''business-as-usual'' projects as well as incremental energy efficiency projects being undertaken. Using three different methods and the projections for energy efficiency potential from the 5-lab study, EPA showed that a set-aside pool in the range of 5–20 percent of the total electricity NO_X budget for a State or across the region could be considered

Note: these figures do not include a portion of the nonutility boiler NO_X budget.

The EPA received remarks indicating that a set-aside pool should be not less than 20 percent to allow for the full potential of both energy efficiency and renewables projects. Another recommendation made to EPA is that no specific pool size should be set within the budget for the NO_X Budget Trading Program. Rather, a State could opt to take all proposals for efficiency and renewables ''off-the-top'' of the allocation pool, and allocate the remainder to NO_X Budget units. Other respondents to the December discussion paper remarked that an ''off-the-top'' scheme would allow too little certainty for NO_X Budget units in planning for how to meet the NO_X cap. With regard to pool size, EPA requests the following information:

Question 8. What is a reasonable estimate for a pool size within the budget for the NO_X Budget Trading Program to award incremental energy efficiency projects that would not be undertaken without the availability of set-aside NO_X allowances?

Question 9. For States that may be interested in an ''off-the-top'' allocation method as opposed to a fixed percentage set-aside for energy efficiency and renewables projects, what allocation mechanisms could be designed to provide greater certainty to NO_X budget

units about the number of non-set-aside NO_X allowances for planning purposes for the upcoming ozone season?

Once a pool size is determined, the main issue of concern is how to translate load reductions into allowances. The December workshop discussion paper outlines three basic methods under consideration by EPA. The first method would be to develop a flat, region-wide, average NO_X rate that represents the average NO_X emissions reductions expected for a kWh reduced. For this method, the rate could be based on one of three NO_X rates: (1) The average NO_X rate calculated by dividing the total NO_X emissions in an area on an annual or seasonal basis by the total fossil fuel generation in that area for the same time period, expressed in lbs per kWh State or region specific data; (2) an average NO_X rate calculated by multiplying the proposed ozone transport rulemaking NO_X rate of 0.15 lbs per mmBtu by a system wide average heat rate in Btu per kWh; or (3) an average ''marginal'' NO_X rate in lbs per kWh representing the generation mix most likely to be backed out on the ''margin.'' This marginal NO_X rate is calculated by dividing the difference in NO_X emissions in an uncapped scenario between a reference or baseline amount of electricity demand and a reduced amount of demand (e.g., from energy efficiency) by the amount of generation (kWh) avoided due to the reduction in energy demand.

The second method would be to develop a regional or a State specific NO_X rate (average or marginal) in lbs/kWh utilizing the IPM model which would more accurately take into account the generation mix in each State and the power pools in which they participate. Developing a regional or a State specific rate would therefore take into account the amount of NO_X reduction actually attributed to energy efficiency in an uncapped NO_X environment. This method would likely result in different NO_X factors for each State. The third method would be to develop measure-specific marginal NO_X rates which would more accurately represent the load shape associated with particular energy efficiency measures (i.e., commercial lighting or industrial motors), or alternatively, NO_X factors for ''typical'' residential, commercial and industrial loads. This method would therefore more accurately represent the marginal generation units that would likely be dispatched less.

The third method, if used to develop measure-specific factors, could potentially result in dozens of different NO_X rates and would likely be too administratively burdensome. The first and second methods may result in either overstating or understating emissions reductions for a particular State. One respondent expressed a preference for State-specific NO_X factors to be used in translating energy savings into NO_X reductions and the corresponding NO_X allowances. Although State-by-State factors may more accurately reflect the fuel mix of a particular State, the use of different rates and whether States consistently use either an average or a marginal NO_X rate may impact the value of allowances. If inconsistent methods are used from one State to the next, then one State's efficiency allowances may be construed to be of greater value than another State's. In order to evaluate the three methods or an alternative to these methods, EPA requests the following information:

Question 10. What access do States or end users have to information necessary to obtain or calculate the average NO_X rate or the marginal NO_X rate for their State or power pool that may be used for translating energy efficiency savings into tons of NO_X reductions?

Question 11. If a marginal NO_X rate is not available or calculable and an average NO_X rate is used, how would a State or end user take into account the type of different fossil fuel mix that the efficiency savings is coming from? Is this necessary to do?

- Issue (3) Eligibility of and Allocation to Applicants and Projects

Although the scope of the set-aside comprises appropriate end use energy efficiency and distributed renewables improvements, it is not intended to limit the types of entities that may apply for allowances based on completed end use efficiency and renewables upgrades. But keeping in mind EPA's overall objective of rewarding real reductions, States may want to consider what types of end users could implement efficiency and renewables actions that best fit the criteria of providing real reductions, and focus their efforts on providing incentive for those types of entities. The EPA generally believes that entities that would be provided this incentive should be entities that would not otherwise be holding allowances for the purposes of being able to emit NO_X. Entities holding such NO_X allowances for these purposes have a direct incentive to take actions that will lower their need for NO_X allowances or free up NO_X allowances for trading, and so do not need an additional incentive. With regard to the industrial sector, the previous discussion and questions about whether benchmarks can be determined for improvements in the industrial sector, and whether or not industrial building energy use can be separated from industrial process use may be relevant to this discussion. Concerning which end users it may be more or less appropriate to award with NO_X allowances for reductions achieved through greater energy efficiency and use of renewable resources, EPA requests the following information:

Question 12. In determining which entities should be eligible to apply for set-aside NO_X allowances, is it appropriate to limit eligibility to those entities that would not otherwise be holding NO_X allowances for the purposes of being able to emit NO_X? If not, why not?

In addition, for reasons of administrative ease, it may be best for entities to be required to meet a minimum level of efficiency improvement or NO_X reduction. The purpose of this requirement would be to prevent the submission of large numbers of applications for small amounts of reductions, which may cause an excessive administrative burden, particularly in terms of time required for processing and verification. For example, applications for NO_X allowances of less than one ton of NO_X may be impractical because an allowance is defined as one ton of NO_X emissions. It may be advisable to set a higher threshold of NO_X reductions, such as five or ten tons or more, as a minimum for application. This would mean that an applicant for set-aside NO_X allowances would have to bring in energy efficiency and renewables projects that total no less than five or ten tons of NO_X reductions in order to be considered for an award. Concerning minimum thresholds for an award, EPA requests the following information:

Question 13. How many applications could a State reasonably review on an annual basis for the set-aside without causing an inordinate administrative burden? What would be the incremental administrative cost associated with the application process for the set-aside?

There is also a concern about whether or not the location of the applying entity or where the energy efficiency or renewables improvement is implemented matters. The location of the applying entity theoretically should not matter, as long as the energy efficiency and renewables improvements result in NO_X reductions in the proposed ozone transport rulemaking region.

However, there may be concern about awarding allowances for end use efficiency for projects in a State within the ozone transport rulemaking region where the load reduction or the majority

of the load reduction is realized at an electricity generating unit that is located outside the NO_X Budget Trading Program region. If it is likely that the end use efficiency will result in load reductions occurring outside of the proposed ozone transport rulemaking region, then the amount of NO_X allowances to be awarded should perhaps be adjusted to exclude the reductions occurring outside the region. This is in keeping with the principle of maintaining the integrity of the NO_X budget. However, in order to do this, States must be able to reasonably estimate what amount of generation is produced within the region versus that which is being imported from outside the area. In this regard, EPA requests the following information:

Question 14. Will States be able to reasonably estimate the amount of generation produced within their States and being imported from within the proposed ozone transport rulemaking region versus that which is being imported from outside the region? How?

Question 15. Is it necessary to make adjustments that would be to account for reductions from energy efficiency or renewables occurring outside the proposed ozone transport rulemaking region, and if so, what mechanisms are there for doing so?

There is also the matter of whether allowances for energy efficiency improvements should be awarded for actions that occur during the years prior to the start date for the NO_X Budget Trading Program. Since the first year for the trading program is 2003, it may be possible to award NO_X allowances for energy efficiency and renewables measures that are initiated and come on line between the finalization of the proposed NO_X Budget Trading Rule and the 2003 control period. This would effectively give end users credit for early actions taken to become more energy efficient or to bring on new renewable resources prior to the need for additional/other controls to meet the NO_X budget. In considering giving credit for early actions in the form of NO_X allowances from the set-aside pool, EPA requests the following information:

Question 16. What amount or level of incremental energy efficiency improvements or renewable resources, greater than ''business-as-usual,'' could/may come on line if credit for early action is given in the form of NO_X allowances from a set-aside that would be available for trading once the trading program begins?

Question 17. If no incremental projects could come on line under an early credit scheme, what are the barriers preventing them?

Another topic of importance in this area is the timing of applications for projects to be considered for NO_X allowances and how entities should apply. This concerns whether or not an end user may be awarded energy efficiency or renewables NO_X allowances prior to the implementation of the improvement, or if an award can only be made after the improvement is in place and has demonstrated results. While it would be unwise to award allocations based on estimated savings alone, greater incentive is provided to potential projects if the applicant has some degree of reasonable certainty of receiving allowances for a project that is being considered, provided that the expected energy savings and NO_X reductions are achieved. One option is to design a two-step application process, where an applicant makes a submission sufficiently prior to the first ozone season for which that efficiency/renewable project will be operational. The State would review the project proposal and pre-qualify that the project is eligible for allowances. Then prior to an ozone season, the applicant must make a demonstration (e.g., of six months or more) and verify whether the appropriate efficiency standard(s) or benchmark(s) has been met. If the demonstration and verification requirements are met, the State would then issue the appropriate amount of an allowance award. This option may provide more certainty to the project sponsor or applicant prior to undertaking the project and may give the State a better estimate of what level of activity will occur for efficiency set-aside allowances prior to the ozone season. However, this option will require two rounds of review for each project or application and so may be more administratively burdensome.

Another option would be to use a single-step application process, where applications would be made several months ahead of an ozone season for projects that are in place and can demonstrate and verify reductions at time of application. If the project meets eligibility criteria and expected reductions have occurred in line with efficiency standard or benchmark, the State would certify that applicant be awarded allowances for the appropriate ozone season(s). This second option may be less burdensome, but it may be more difficult to determine under this method which projects could be interpreted as ''business-as-usual'' types of projects, since they will already have been put in place without any guarantee of receiving NO_X allowances. In regard to determining the process for a project to apply for allowances, EPA requests the following information:

Question 18. Which option for reviewing and processing of applications for energy efficiency and renewables NO_X allowances is preferable and why? What is the estimated administrative burden associated with each option?

Question 19. Are there other options for reviewing and processing applications that offer a reasonable degree of incentive and certainty to applicants while minimizing the administrative burden to States? What is the estimated administrative burden?

The final matter in this issue area is how to handle over or under subscription of an energy efficiency and renewables set-aside pool. Two options outlined in EPA's December workshop discussion paper for dealing with leftover NO_X allowances in a given year or period include: (1) Banking the allowances to be used for potential shortfalls in future years, or (2) retiring them. The two options outlined in the December workshop discussion paper for dealing with shortfalls in NO_X allowances in a given year or period include: (1) Deferring allocation of allowances for later applicants in the cycle until the following year, or (2) setting aside a larger portion of allowances from the NO_X budget to award end use energy efficiency and renewables if shortfalls become a chronic problem. One response to this issue in the December workshop discussion paper recommends not setting a specific level of allowances in the set-aside, but rather allocating all NO_X allowances necessary to cover the eligible applications for efficiency and renewables measures in a given period first, then allocating the balance of allowances to NO_X budget units. However, the EPA is concerned that this method provides too little certainty to NO_X budget units in terms of being able to plan for the number of allowances they will need for a given ozone season and to consider allowance trading. Another suggestion received recommends discounting the allowances in the pool sufficiently to be able to cover any over subscription in a given period. This method would likely result in differences in the amount of allowances allocated to equivalent projects that are submitted for consideration in different periods. With respect to under or over subscription of the allowance pool, EPA requests the following information:

Question 20. Which of the options listed above for over subscription and for under subscription of the set-aside

pool is more administratively feasible for a State, and why?

Question 21. What other options or suggestions could be considered for handling the over subscription or under subscription of the set-aside pool?

• Issue (4) Persistence of Efficiency Award

Because energy efficiency and renewables measures result in permanent improvements in energy use and NO_X reductions, it may be appropriate to award energy efficiency and renewables NO_X allowances to these projects for more than one year. This provides a stream of allowances and provides greater incentive for incremental projects to be undertaken. There are tradeoffs, however, between the length of the stream of allowances awarded to a project and the ability to maintain sufficient availability of allowances over time to provide incentive for new projects that might not otherwise be financially viable. A shorter stream of energy efficiency NO_X allowances provides greater availability of such NO_X allowances over time to reward new projects, but provides less of an incentive (due to lower value) to undertake such projects. A longer stream provides more financial incentive, but limits the availability of allowances for future projects.

One respondent to the EPA December workshop discussion paper suggested that a five-year stream of allowances should be sufficient to provide incentive for new projects that might not otherwise be financially viable. And since the proposed NO_X Budget Trading Rule sets a five-year period as the duration of the initial allowance allocation to NO_X budget units, EPA believes that it is appropriate to set the duration of energy efficiency awards to five years. With regard to an appropriate duration of award for energy efficiency and renewables projects, EPA requests the following information:

Question 22. How large an incentive would a multi-year or a five-year stream of allowances provide for new energy efficiency or renewables projects that might not occur otherwise?

Question 23. What kinds of incremental projects might be implemented as the result of a multi-year or five-year stream of NO_X allowances?

• Issue (5) Verification Requirements and Procedures

In order to ensure that energy savings are measured in a reliable and consistent manner that provides valid information about the NO_X reductions achieved, and that can be used in translating these savings into their associated NO_X reductions for purposes of awarding NO_X allowances, a set-aside program should have effective verification requirements and procedures.

Some respondents to the December workshop discussion paper affirmed the need for strong measurement and verification protocols, but also stressed that it is important that the methods chosen should not be too complex. In addition, it was suggested that the methods and the degree of verification fit the type of measure and the entity. However, it is important that the methods used for measurements are reasonably consistent among all entities participating in any set-aside programs in the proposed ozone transport rulemaking region. Further, some respondents stated that the methods used for awarding set-aside allowances should be as accurate as the methods used for monitoring NO_X budget units for their use of allowances.

There are three major existing energy efficiency measurement protocols that may be used to verify reductions for purposes of a set-aside program: (1) The Conservation Verification Protocol (CVP) of the Acid Rain Program, (2) the International Performance Measurement and Verification Protocol (IPMVP) developed by DOE with energy service company (ESCO) input, and (3) New Jersey's Measurement Protocol for Commercial, Industrial and Residential Facilities (MPCIRF).

The CVP prescribes measurement methods and confidence levels for utilities to use in claiming sulfur dioxide (SO_2) allowances for savings produced by DSM measures. Although the CVP is comprehensive, this protocol may not be appropriate to EPA's purposes in a NO_X set-aside program because the CVP was developed for utilities, and the set-aside focuses on demand side improvements. DOE developed the IPMVP with ESCOs so they could use them with their customers to develop performance contracts for efficiency measures. The IPMVP however, has no regulatory component, and some of the verification methods it prescribes do not require the actual measurement of energy savings. The MPCIRF prescribes precise monitoring and verification methodologies by project type and also provides procedures for developing new monitoring and verification methods. In order to determine what kinds of reliable protocols exist or may need to be developed, EPA requests the following information:

Question 24. What is the degree of reliability and validity of the verification methods used in these protocols? What is the administrative burden associated with the use of one or more of these protocols?

Question 25. Are there particular parts or sections of one or more of these protocols that work particularly well and should be included in or used as a model in developing a new measurement and verification protocol? Why?

Question 26. What other protocols besides the CVP, the IPMVP and the MPCIRF exist that States or other entities have used to monitor and verify energy efficiency projects?

Question 27. What is the degree of reliability and validity of the verification methods used in these alternative protocols, and what is the associated administrative burden?

Where the degree of reliability and validity in the measurement of energy efficiency and renewables improvements is low, it is possible for a tradeoff to be made between the level of verification required (i.e., the certainty of load reduction) and the possibility that a given measure will not result in the expected load reduction. A discount factor or rate that is commensurate with the level of uncertainty of the reductions can be applied to lower the total amount of load reduction that would be awarded allowances. The less stringent the verification requirements, the higher the discount rates should be set.

One option in developing alternative verification/NO_X allowance discounting strategies is to determine the uncertainty bounds associated with a specific verification approach, and then set the discount rate such that there is, for example, a 90 or 95 percent probability that all of the allowances that would be awarded represent true load reductions. For a more conservative approach, the rate could be set at a 99 percent probability level. One variation on this option is to establish several verification/discount strategies rather than just one. These strategies could range from a low verification/high discount rate to a high verification/low or no discount rate. With regard to verification/allowance discounting strategies, EPA requests the following information:

Question 28. What are other options to the verification/allowance discounting strategies outlined above?

Question 29. What kinds of record keeping are currently done by States or others to monitor the progress and track the results of energy efficiency and renewables projects being done?

Question 30. Which option seems most manageable for States? Why?

VI. Interaction with Title IV NO_X Rule

On April 13, 1995, EPA promulgated NO_X emission rate limitations (in lb/mmBtu) for certain types of coal-fired utility boilers for the Acid Rain Program under title IV of the Act (60 FR 18751, April 13, 1995). The EPA set limits of 0.45 and 0.50 lb/mmBtu, respectively, for tangentially fired boilers and dry bottom, wall fired boilers (''Group 1 boilers''). On December 19, 1996, EPA promulgated additional NO_X emission rate limitations for Phase II of the program, i.e., revised limits for Group 1 boilers and new limits for cell burner, cyclone, wet bottom, and vertically fired boilers (''Group 2 boilers'') (61 FR 67112, December 19, 1996). In setting the December 19, 1996 NO_X limits, EPA also promulgated a final rule provision (which was to be included in 40 CFR part 76 of the acid rain regulations) that addressed the relationship between NO_X requirements under titles I and IV of the CAA. As part of recent litigation in which the December 19, 1996 regulations were upheld by the Court (*Appalachian Power* v. *U.S. EPA*, No. 96–1497, slip op. (D.C. Cir., February 13, 1998)), EPA requested a remand, which was granted by the Court, of 40 CFR 76.16 in order to provide additional opportunity for public comment on the provision. The EPA is therefore including in today's action a proposed 40 CFR 76.16 that is largely the same as the remanded rule provision. Obviously, in proposing a new 40 CFR 76.16, EPA is not requesting comment on any aspect of the December 19, 1996 final rule, including any issues addressed by the Court in *Appalachian Power*.

The EPA believes that NO_X reduction initiatives under title I and title IV should be coordinated, consistent with statutory requirements, in a way that promotes the goal of achieving necessary NO_X reductions in a cost-effective manner. In particular, today's proposed 40 CFR 76.16, which is proposed to be added to 40 CFR part 76 of the Acid Rain regulations under title IV, promotes this goal through provisions that address the interaction of: (i) efforts under title I, e.g., the proposed transport rulemaking, to reduce NO_X emissions through cap-and-trade programs; and (ii) the establishment of the title IV Phase II NO_X limits, i.e., the revised limits of 0.40 and 0.46 lb/mmBtu respectively for tangentially fired and dry bottom, wall-fired utility boilers and the new limits of 0.68, 0.86, 0.84, and 0.80 lb/mmBtu respectively for cell burner, cyclone, wet bottom, and vertically fired utility boilers.

Many utility boilers subject to the title IV Phase II NO_X limits are likely to face significant, additional NO_X reduction requirements as a result of the proposed SIP call. If, as EPA recommends, the proposed SIP call requirements are implemented in the form of a cap-and-trade program and the program results in utility NO_X emission reductions exceeding those that would be required by utility boilers complying with title IV Phase II NO_X limits, EPA believes that the cap-and-trade system should be relied on, in lieu of the title IV Phase II NO_X limits, to the fullest extent permissible under the CAA. Under such an approach, the reductions achievable under title IV will still be realized but in a manner that allows utilities to take advantage of the cost savings that result from flexibility, within a cap, to trade allowances among utilities, as well as among boilers owned by a single utility. Under the Acid Rain Program in title IV (as under other emission limit programs), each individual utility boiler must generally meet the applicable NO_X limit; only boilers with the same owner or operator may average their emissions and comply with a weighted average NO_X limit under a NO_X averaging plan.[20] Relief from the title IV Phase II NO_X limits is appropriately limited to utility boilers in the State or States covered by the cap-and-trade regime.

Under today's proposed § 76.16, the Administrator retains the authority to relieve boilers subject to a cap-and-trade program under title I from the Phase II NO_X limits under section 407(b)(2) if the Administrator finds that alternative compliance through the cap-and-trade program will achieve the same or more overall NO_X reductions from those boilers than will the section 407(b)(2) emission limitations. Section 76.16 sets forth the criteria that the cap-and-trade program must meet in order to ensure that the program will yield the necessary NO_X reductions. Since alternative compliance will be allowed only if the necessary NO_X reductions will still be made, this approach is consistent with the purposes of title IV and the Act in general.

The EPA believes that it has the authority under section 407(b)(2) to provide relief from the revised Group 1 limits and the Group 2 limits where the cap-and-trade program, replacing those limits, provides for the same or greater NO_X emissions reductions and thus the same or greater environmental protection. With regard to Group 1 boilers not subject to the existing Group 1 limits until 2000 (i.e., Group 1 Phase II boilers), section 407(b)(2) provides that the Administrator ''may'' establish more stringent emission limitations if more effective low NO_X burner technology is available (42 U.S.C. 7651f(b)(2)). The Administrator exercised her discretion to revise generally the Group 1 limits because more effective low NO_X burner technology is available, and the resulting additional reductions are cost effective, represent a reasonable step toward achieving regional NO_X reductions that are likely to be needed, and are consistent with section 401(b) (61 FR 671137). If it is determined that, for boilers in certain States, NO_X emissions will be the same or lower under a cap-and-trade program than under the revised Group 1 limits (and the Group 2 limits), it is reasonable to conclude that it is not necessary to revise the Group 1 limits for those boilers. Imposing the revised Group 1 limits on boilers subject to such a cap-and-trade program could limit the flexibility of utilities under the cap-and-trade program and thereby limit the potential cost savings from trading. While emissions averaging under section 407(e) provides some flexibility for a utility to overcontrol at its cheaper-to-control boilers and undercontrol at its more-expensive-to-control boilers, averaging is limited by statute to boilers with the same owner or operator. In contrast, under a cap-and-trade program, utilities may overcontrol at some of their units and sell NO_X allowances to other utilities that may undercontrol at some of their units. It is this greater flexibility, within a total annual emissions cap, that provides the opportunity to reduce compliance costs. If boilers subject to a cap-and-trade program are relieved of compliance with the revised Group 1 limits, this will likely result in achievement of reductions in a more cost-effective manner than if the revised Group 1 limits continued to be imposed on these boilers.

Section 407(b)(2) gives the Administrator discretion to make more stringent the initial Group 1 limits established in 1995, i.e., 0.45 and 0.50 lb/mmBtu respectively for tangentially fired and dry bottom wall-fired utility boilers (60 FR 18751), but not to relax these initial limits. Thus, the initial Group 1 limits will apply to Group 1 boilers covered by a cap-and-trade program. While retaining the initial Group 1 limits means that there may be less flexibility than if there were no

[20] In addition, if it is demonstrated that a boiler with installed NO_X control technology designed to meet the applicable standard NO_X limit cannot meet that limit, the boiler may be assigned a less stringent, alternative emission limitation under title IV.

section 407 limits on these boilers, relieving the boilers of the revised Group 1 limits still results in some increased flexibility and therefore is likely to yield cost savings.

Similarly, with regard to Group 2 boilers, section 407(b)(2) requires that the Administrator, taking account of environmental and energy impacts, set emission limits that are based on the reductions achievable using available control technologies with cost effectiveness comparable to low NO_X burners on Group 1 boilers. In setting the Group 2 limits, the Administrator relied in part on the additional NO_X reductions that will result and determined that these reductions are cost effective, represent a reasonable step toward achieving necessary regional NO_X reductions, and are consistent with section 401(b) (61 FR 67114). Again, if greater reductions from boilers in a State or group of States can be achieved through a cap-and-trade program in a more cost-effective manner than through imposition of Group 2 limits (and revised Group 1 limits) on the boilers, it is reasonable to relieve those units of the Group 2 limits. Taking account of these environmental and cost impacts, the Administrator can, in such circumstances, allow the cap-and-trade program to apply in lieu of the Group 2 limits.

Proposed 40 CFR 76.16 establishes the procedural and substantive requirements for relieving boilers of the revised Group 1 limits and the Group 2 limits. The proposed rule itself does not grant or require such relief. Instead, under the proposed rule, the Administrator has the discretion to act, on a case-by-case basis consistent with the established procedures, to provide such relief if he or she determines that the substantive requirements are met.

Consideration of whether to relieve boilers under a cap-and-trade program of the section 407(b)(2) limits may be initiated either by a petition by a State or group of States or on the Administrator's own motion. Because of the large number of utility companies and coal-fired boilers and the complexities that would result if relief from the section 407(b)(2) limits were considered on a boiler-by-boiler or utility-by-utility basis, the rule requires that any request for, and any determination whether to grant, such relief be made for an entire State or entire group of States. The cap-and-trade program involved must cover, for an entire State or group of States, all the units for which relief is sought or considered. This approach has the added benefit of making it more likely that the cap-and-trade program involved will be broad enough to provide a robust NO_X allowance market.

Further, the cap-and-trade program may be established through SIPs or FIPs covering the States involved. The relief from section 407(b)(2) limits is potentially available whether the cap-and-trade program is adopted voluntarily by States or imposed by EPA under title I. State petitions for such relief may be submitted, and the Administrator's consideration of whether to grant relief may begin, before the SIPs or FIPs (including revised SIPs or FIPs) establishing the cap-and-trade program are final and federally enforceable. This allows the process of deciding whether to grant relief from the section 407(b)(2) limits to be coordinated with the processing of these SIPs or FIPs. However, relief may not be granted until the SIPs or FIPs establishing the cap-and-trade program are actually in place, i.e., are final and federally enforceable.

The substantive requirements that must be met by the cap-and-trade program are essentially the same whether the program is implemented through a SIP or FIP and whether the consideration of relief from section 407(b)(2) limits is initiated by petition or on the Administrator's own motion. The Administrator has discretion to grant relief only if the cap-and-trade program meets certain requirements aimed at ensuring that the necessary NO_X reductions will still be achieved and that the program creates an opportunity for cost savings. First, each unit that is in the State or group of States and that would otherwise be subject to title IV NO_X emission limits must be subject to either (i) a cap on total annual NO_X emissions or (ii) two or more seasonal caps that together limit total annual NO_X emissions. This allows for a cap-and-trade program with different caps during different seasons, e.g., a summer cap consistent with the proposed trading rule and a cap for the rest of the year.

Second, the units must be allowed to trade authorizations to emit NO_X within the applicable cap. This element is what provides utilities the flexibility to reduce the costs of making the reductions necessary for achievement of the cap. If a utility demonstrates that relief from the title IV Phase II NO_X limits for units in a given State will make compliance less cost effective by limiting the utility's ability to use NO_X averaging plans to comply with the title IV NO_X limits that will still be applicable to the utility's units, the Administrator is required to take this into consideration in determining whether to approve such relief for units in that State.

Third, the units must surrender authorizations to emit NO_X (i.e., NO_X allowances) to account for their NO_X emissions during the period covered by the cap. It should be noted that this provision—and indeed the proposed 40 CFR 76.16 in general—do not address, and do not either require or bar, banking of NO_X allowances.

In addition, the units must be required to surrender allowances to account for any NO_X emissions consequences of reducing utilization at the generation facilities covered by the cap and shifting utilization to generation facilities not covered by the cap. This addresses a problem that potentially arises if a cap-and-trade program covers some but not all generation facilities. If, for example, a utility can reduce the use of a unit covered by the cap and offset the resulting reduced generation with increased generation at a unit not covered by the cap, circumvention of the cap may result. Shifting of utilization may be accomplished because of the nature of the electricity industry, which in general operates through an interstate transmission grid to which the generation facilities are connected. Because of the offsetting utilization changes at the two units, the atmosphere may receive the same total amount of NO_X emissions from the units. In addition, since only the reduced-utilization unit is subject to the cap and so allowances are used only to account for that unit's emissions, the unused allowances are available for use by other units subject to the cap. The net result is that the total emissions in the atmosphere (including emissions by the reduced-utilization unit, the increased-utilization unit, and the units acquiring and using the unused allowances) may exceed the cap. This is analogous to the reduced utilization problem in the SO_2 cap-and-trade program in Phase I, during which most units in the U.S. are not covered by the requirement to hold allowances for their SO_2 emissions (58 FR 60950, 60951, January 11, 1993). Section 408(c)(1)(B) of the CAA and 40 CFR 72.91 and 72.92 of the acid rain regulations require SO_2 allowance surrender to account for the emissions consequences of reduced utilization (60 FR 18462–63, 1995).

The NO_X cap-and-trade program must include appropriate allowance surrender provisions to address this problem by requiring NO_X allowance surrender to the extent necessary to account for the increased NO_X emissions, if any, at generation facilities (i.e., combustion devices serving

generators) not covered by the cap. The EPA recognizes that any allowance surrender provisions can only approximate the emissions consequences of shifting utilization from within-the-cap facilities to outside-the-cap facilities, (60 FR 18466). The EPA will evaluate NO_X allowance surrender provisions in light of this limitation and of the importance of adopting provisions that are workable and not overly complicated. The EPA believes that effective NO_X allowance surrender provisions can be developed that are less complex than those in place for reduced utilization in the SO_2 allowance trading program. The EPA also notes that the larger the group of States covered by the cap, and the more comprehensive the coverage by the cap of generation facilities in such States, the smaller the potential for shifting utilization from units under the cap to units outside the cap. The proposed rule, therefore, provides that the Administrator will consider showings that accounting for shifting utilization is not necessary because such shifting will not likely result in higher total NO_X emissions from sources in the State or the group of States involved or other States.

Fourth, the total annual emissions by all units that are subject to the cap and that would otherwise be subject to the section 407(b) limits must be equal to or less than the total annual emissions of such units if they were subject to the section 407(b) limits (without adjusting for alternative emission limitations and NO_X averaging plans). In determining the units' total annual emissions under the section 407(b) limits, the effect of alternative emission limitations—which reduce the amount of NO_X reductions achieved and whose precise levels for individual units would be difficult if not impossible to project—will not be considered. Requiring the cap-and-trade program to yield the same or fewer total annual emissions than the section 407(b) limits without considering alternative emission limitations will help ensure that the environmental benefits of the section 407(b)(2) are preserved under the cap-and-trade program (Economic Incentive Program Rules, 59 FR 16690, 16694, April 7, 1994).

In addition, the effect of averaging will not be considered in determining the units' total annual NO_X emissions because of the following reasons. If averaging is limited to units that are also subject to the cap-and-trade program, averaging is unnecessary to consider separately because it would not affect the total emissions of the averaging units under the section 407(b) limits (60 FR 18756 which explains that, considering actual annual utilization, actual weighted average emission rate of units in averaging plan cannot exceed weighted average emission rate if each unit had emitted at its 40 CFR 76.5, 76.6, or 76.7 limit and 60 FR 18769). If averaging includes units not subject to the cap-and-trade program and those units select emission rates under the plan that exceed the standard limits, this could have the effect of understating the reductions achieved under the title IV limits.

In order to avoid disputes over what period to use in comparing total annual emissions under the cap-and-trade program and the section 407(b) limits, the rule specifies how to select the period. The approach in the rule ensures that actual data is available for such period.

In addition to the substantive requirements for relieving units of the section 407(b)(2) limits, the rule addresses the procedures that the Administrator must follow in determining whether to exercise his or her discretion to grant relief. The Administrator must make this determination in a draft decision, subject to notice and comment, and then in a final decision. The draft decision must set forth not only the determination and its basis but also the specific procedures that will govern the issuance and any appeal of the final decision.

The proposed 40 CFR 76.16 imposes certain minimum procedural provisions that must be set forth in the draft decision. These procedural requirements are closely modeled after the procedures in 40 CFR part 72 of the Acid Rain regulations for the issuance of Acid Rain permits. Notice of the draft decision must be provided by service on interested persons, designated representatives of any sources with units otherwise subject to the title IV Phase II NO_X limits, and the air pollution control agencies in States that may be affected by the draft decision. The State agencies that must be provided notice include not only the States in which the units involved are located, but also neighboring States. The description in the proposed rule of the neighboring States (and areas in which there are federally recognized Indian Tribes) on which notice must be served is based on the provisions of the definition of ''affected States'' and the affected State review provisions in the 40 CFR part 71 regulations, which govern federal issuance of title V operating permits (61 FR 34202, 34229, and 34242–43, July 1, 1996). Notice must also be provided in the **Federal Register** and equivalent State publications. Notice in newspapers in general circulation in the areas in which the units involved are located is not required. The EPA maintains that newspaper notice in these circumstances is unnecessary, particularly since any NO_X cap-and-trade program being evaluated will have to go through notice and comment in order to be included in a SIP or FIP. Newspaper notice could also be unworkable in light of the number of units and States that could be involved.

The provisions for public comment period and public hearing are essentially the same as those in 40 CFR part 72. Notice must be given of the final decision in the same manner as notice of the draft decision. Any appeals of the final decision are governed by 40 CFR part 78, which governs other acid-rain-related decisions of the Administrator.

Finally, after the Administrator decides to relieve units of the section 407(b)(2) limits in light of a given cap-and-trade program, the SIP or FIP could potentially be revised in a way that may affect the cap-and-trade program and the basis for the Administrator's decision. In such circumstances, the Administrator may reconsider the decision to grant relief from the section 407(b)(2) limits. The ability to reconsider is explicitly preserved in the rule in order to ensure that the environmental benefit of the section 407(b)(2) limits that would otherwise apply to the units involved continues to be realized.

VII. Air Quality Assessment of the Statewide Emissions Budgets

A. Background Information

This Section contains an assessment of the impacts of the proposed budgets on ozone concentrations within the OTAG region. The assessment is based on photochemical modeling of the entire OTAG region for three emissions scenarios, a Base Year, a 2007 Base Case and the proposed statewide budgets. Modeling was performed for the four OTAG episodes using the OTAG version of UAM-V. The emissions associated with each State's budget were modeled collectively to examine the net benefits of the budgets applied across the 23 jurisdictions. The procedures for developing the emissions inputs for the Base Case and the Budget scenario are described in Section VII.B, Emissions Scenarios. A number of metrics were used to evaluate the impacts of the budgets on ozone concentrations, as described in Section VII, C, Analysis of Modeling Results. Finally, the results of

this assessment are provided in Section VII.D, Analysis Results and Findings. All of the model-ready emissions inputs and model predictions can be obtained in electronic form from the following EPA website: http://www.epa.gov/scram001/regmodcenter/t28.htm

B. Emissions Scenarios

The EPA modeled three emissions scenarios for each of the four OTAG episodes: Base Year, 2007 CAA Base Case, and 2007 Budget (command and control). Collectively, these scenarios are designed to provide a means to examine the expected impacts of the proposed budgets on ozone within the OTAG modeling domain. The Base Year scenario is intended to generally reflect emissions during the 1994–1996 time period. The CAA Base Case reflects growth to 2007 and controls mandated by the 1990 Clean Air Act Amendments, similar to the OTAG ''2007 Base1c'' scenario. The 2007 Budget scenario caps NO_X emissions, by State, at the level in the SIP call, as modified to correct minor errors and omissions identified by EPA subsequent to the November 7, 1997 SIP call.

1. Development of Emissions Inputs

a. Electric Generation Sources. For electric generation units (EGU), the Base Year is a composite of 1995 and 1996. The 1996 emissions were used unless heat input at a State level was higher in 1995. For those States, 1995 emissions were used. This is consistent with the budget development approach. For the 2007 Base Case, growth was applied to existing sources and CAA mandated controls, including title IV and RACT, were applied to all sources in the modeling domain. No additional controls beyond those mandated by the CAA were applied. For the 2007 Budget scenario, growth was applied to existing sources and the emission rate for each source >25 MWe in the 23 jurisdictions covered by the SIP call was set at .15 lb/mmBtu. Note that this application of the .15 lb/MMBtu limit does not reflect an emissions trading program. For sources outside the 23 jurisdictions but inside the modeling domain, the 2007 CAA Base Case emission rates were retained. Details on the development of these emissions scenarios are described in the revised Budget TSD.

b. Non-Electric Generation Point Sources. For the non-EGU point sources, the Base Year is 1995. The emissions are essentially the OTAG 1990 emissions projected to 1995 with a few minor changes. The 2007 emissions are the OTAG Base1c emissions with changes. The main change that was made was to reclassify certain sources as non-utility where they were incorrectly classified as utilities in the OTAG inventory. For the Budget scenario, a 70 percent reduction was applied to uncontrolled 2007 projected emissions for large sources (i.e. >250 MMBtu/hr). For medium sources (i.e. <=250 MMBtu/hr and emitting more than 1 ton/day) RACT was applied. For all small sources in the 23 jurisdictions and all sources outside these areas but inside the modeling domain, the 2007 CAA Base Case emissions were used.

c. Mobile and Area Sources. For the highway, nonroad and stationary area source sectors, EPA used the OTAG 1995 emissions for the Base Year and the OTAG 2007 Basic emissions for the 2007 CAA Base Case. For the Budget scenario, emissions for these sectors were modeled using OTAG ''level 0'' for highway mobile and OTAG ''level 1'' for stationary and nonroad area sources within the 23 jurisdictions covered by the SIP call. For areas outside these areas but inside the modeling domain, the 2007 CAA Base Case emissions were used.

2. Emission Summaries

State-level summaries of the weekday NO_X emissions used for modeling the Base Year, 2007 CAA Base Case, and Budget scenario are shown in Tables VII–1 through VII–3, respectively. For the purpose of these summaries, area sources include both stationary and nonroad area sources. The mobile emissions are day-specific and are presented for July 7, 1988. Where partial States are included in the modeling domain, only the emissions from the part of the State in the domain are presented. Table VII–4 shows the percent reduction between the 2007 CAA Base Case and the Budget NO_X emissions used as input for modeling.

C. Analysis of Modeling Results

1. Technical Procedures

The impacts of the proposed budgets on 1-hour and 8-hour ozone concentrations in each State are evaluated using various ozone ''metrics'' [21]. The focus of the analysis is on ozone predictions above the 1-hour and 8-hour NAAQS in areas which currently measure violations of these standards. This State-level assessment is supplemented with the OTAG Standard Table of Metrics to quantify the impacts in several ozone ''problem areas'' identified by OTAG. The remainder of this Section describes the procedures for calculating the metrics used in this assessment.

a. State-Level Analysis. Nine metrics were used to quantify the impacts of the budgets on ozone concentrations in each State. The metrics are listed below and defined in Section C.1.a.ii, Procedures for Calculating State-Level Metrics.

1-Hour Metrics

Metric 1—the number of grid cells with 1-hour daily maximum ozone concentrations >=125 ppb,

Metric 2—the magnitude and frequency of the ''ppb'' reductions in 1-hour daily maximum ozone concentrations >=125 ppb,

Metric 3—the number of days with 1-hour daily maximum ozone concentrations >=125 ppb, and

Metric 4—the ''areal exposure'' to hourly ozone concentrations >=125 ppb [22] (see definition in Section C.1.a.ii, Procedures for Calculating State-Level Metrics).

8-Hour Metrics

Metric 5—the number of grid cells with average second high 8-hour ozone concentrations >=85 ppb,

Metric 6—the magnitude and frequency of the ''ppb'' reductions in average second high 8-hour ozone concentration >=85 ppb,

Metric 7—the number of grid cells with 8-hour daily maximum ozone concentrations >=85 ppb,

Metric 8—the magnitude and frequency of the ''ppb'' reductions in 8-hour daily maximum 8-hour ozone concentrations >=85 ppb, and

Metric 9—the number of days with 8-hour daily maximum ozone concentrations >=85 ppb.

i. Selection of Grid Cells for Analysis. As noted above, the focus of this analysis is to evaluate the impacts of the budgets on concentrations in areas which violate the NAAQS. In this regard, the first step in calculating the metrics was to select appropriate sets of grid cells for analysis. The approach to grid cell selection is similar to that used in the proposed SIP call, Section II, ''Weight of Evidence Determination of Significant Contribution'' to quantify the contributions from upwind subregions on downwind nonattainment. Different sets of grid cells were selected for analyzing the results relative the 1-hour NAAQS and the 8-hour NAAQS. For both standards, there are two generic types of grid cells. The first type must meet the following

[21] Metrics are an aggregate of ozone concentrations or the difference in ozone concentrations between two or more scenarios. Metrics are used to provide a means of quantitatively evaluating multiple strategies.

[22] In brief, this metric represents the sum of the concentrations for all hourly ozone values >=125 ppb, divided by the area (km^2) covered by predictions >=125 ppb.

two-part test: (a) The grid cell must correspond geographically to (i.e. overlay) a county which currently violates the NAAQS and (b) the grid cell must have predicted ozone concentrations above the concentration level of the NAAQS (e.g. >=125 ppb for the 1-hour NAAQS and >=85 ppb for the 8-hour NAAQS). The second generic type of grid cell must meet only the second part of this two part test. That is, the grid cell must have predicted ozone above the NAAQS but may or may not be associated with a county violating the NAAQS. The 1-hour and 8-hour State-level metrics identified above were calculated for both types of grid cells. The rationale and procedures followed in the grid cell selection process are described below.

First, 1994–1996 ambient monitoring data were used to identify counties which currently violate the 1-hour and 8-hour NAAQS. A list of these counties is contained in the docket for this notice. The grid cells in the OTAG region were then screened to identify those grids which at least partially overlay one of the 1-hour violating counties. The same procedure was followed using the 8-hour violating counties. This process resulted in one set of grid cells associated with areas violating the 1-hour NAAQS and a separate set associated with areas violating the 8-hour NAAQS. The next step was to select the subset of 1-hour ''violating grid cells'' which also have predicted ozone concentrations above the NAAQS. For this, the 1-hour daily maximum concentrations for the 2007 Base Case model runs were examined to identify which grid cells had predicted values >=125 ppb during any one of the 4 episodes. The grid cells that met this test were then selected for analysis using the 1-hour metrics.

For the 8-hour analysis, the procedures for selecting the subset of grid cells was more complicated due to the distinction between the form of the 8-hour NAAQS and the episodic nature of the model predictions. In this regard, two sets of 8-hour predictions were included for analysis. One set considers those grid cells with 8-hour daily maximum concentrations >=85 ppb in the 2007 Base Case model runs (this set is analogous to the set of 1-hour data described above). Thus, a set of grid cells which (a) corresponds to counties violating the 8-hour NAAQS and (b) has 8-hour predictions >=85 ppb was selected for calculating the 8-hour metrics. However, although the analysis of 8-hour daily maximum values may provide useful information on the impacts of the budgets relative to high 8-hour concentrations, these data do not necessarily correspond to the form of the 8-hour NAAQS. In this regard, we also considered the approach followed in the proposed SIP call for dealing with this issue. That approach involved using ozone measurements to ''link'' the fourth highest 8-hour form of the NAAQS, based on three years of data, to the episodes modeled by OTAG (Staff Report-Procedures for Linking the OTAG Episodes to the 8-Hour Ozone NAAQS, October 1997, docket number, II–A–25). The results of that analysis indicate that the episodic average of the second highest 8-hour observed concentrations during the 1991, 1993, and 1995 episodes correspond best ''overall'' to the fourth highest 8-hour values calculated using 3 years of measured data. For the assessment of the budgets, the second highest 8-hour values averaged across the 1991, 1993, and 1995 episodes were calculated for each grid cell. Those grid cells which (a) correspond to counties violating the 8-hour NAAQS and (b) have an average second high 8-hour prediction >=85 ppb were selected for calculating the 8-hour metrics. Thus, for the 8-hour analysis, separate metrics were calculated for the daily maximum 8-hour values and for the average second high 8-hour values.

The previous discussion dealt with selecting grid cells which meet the two-part ''monitoring plus modeling'' test for both the 1-hour and 8-hour NAAQS. The other type of grid cell selected for analysis must only meet the model prediction part of the tests described above. The rationale for using this second type of grid cell is discussed next. Although the ''violating county'' grid cells may be most appropriate for this assessment because they are associated with areas violating the NAAQS, there are a number of limitations with this approach which warrant further consideration. First, in terms of the modeling data, the requirement that high ozone predictions spatially coincide with violating counties may be overly limiting given the uncertainties in the modeled wind regimes associated with the regional nature of the meteorological inputs. Also, the set of ''violating county'' grid cells excludes all grid cells that are over water and not touching any State land areas. In the real atmosphere, sea breeze and lake breeze wind flows can transport high ozone levels over water back on-shore to affect coastal land areas. This meteorological process is not fully treated in the model because of the coarse horizontal resolution of the grid cells (i.e. 12 km). Thus, high concentrations predicted just offshore may be inappropriately excluded from an analysis that is limited to the set of ''violating county'' grid cells. In terms of limitations to the monitoring data, there are relatively large areas in some portions of the domain without any monitors. Since the model predicts concentrations in grid cells which cover the entire domain, the model predictions may indicate an ozone problem in areas without monitors. In an attempt to address these concerns, grid cells were selected for analysis based on model predictions only. The criteria for selecting these grid cells involved the modeling part of the two part test described above. That is, for the 1-hour NAAQS a set of grid cells was selected if they have daily maximum 1-hour predictions >=125 ppb. Similarly, there are two sets of 8-hour grid cells. One set contains those grid cells with daily maximum 8-hour predictions >=85 ppb and the other set contains grid cells with an average second high 8-hour value >=85 ppb. Also, note that in this approach, all grid cells over land as well as over each of the Great Lakes and in a band 60 km (5 grid cells) wide along the East Coast are considered depending on whether or not they passed these 1-hour and 8-hour concentration tests.

ii. Procedures for Calculating State-Level Metrics. Each of the 1-hour and 8-hour metrics identified in Section C.1.a, State-Level Analysis, was calculated for the two types of grid cells described above. The procedures for calculating these metrics are described next. The results are discussed in Section D, Analysis Results and Findings. Metric 1 was calculated by first screening the 2007 Base Case 1-hour daily maximum predictions for each grid cell to select only those days with concentrations >=125 ppb. The daily maximum predictions from the Budget scenario for these same days and grids were also selected for analysis. The values from the Budget scenario were then subtracted from the corresponding 2007 Base Case values to derive a set of ''ppb'' differences for each day [23] and grid cell with ozone >=125 ppb in the Base Case. These ''ppb'' reductions were then grouped into seven concentration ranges (i.e. 2–5 ppb, 5–10 ppb, 10–15 ppb, 15–20 ppb, 20–25 ppb, and >25 ppb) and tallied by State. Metric 2 is simply a tabulation of the number of grid cells with at least one daily maximum ozone 1-hour concentration >=125 ppb. This metric was calculated

[23] Note that EPA followed the procedures established by OTAG by excluding predictions from the first three days of each episode from the calculation of metrics. These days are considered ''ramp-up'' days when ''initial'' conditions to the model might effect predictions.

for both the 2007 Base Case and the Budget scenario. For Metric 3, the number of days with a daily maximum ozone prediction >=125 ppb was tallied for each grid cell for both the 2007 Base Case and for the Budget scenario. These data were aggregated to show the number of grid cells that had 1 day, 2–4 days, 5–9 days, 10–14 days, or >=15 days with predicted 1-hour daily maximum ozone concentrations >=125 ppb. Metric 4 (areal exposure) was calculated by first summing all hourly concentrations that are >=125 ppb (i.e. add together the predicted hourly ''ppb'' values that are >=125 ppb) for each grid cell individually, for each day. These ''daily exposure'' values in each grid were then summed by grid cell over all days in all 4 episodes to produce the total exposure for each grid cell. The resulting grid cell exposure values were summed by State for all grid cells (with predictions >=125 ppb) in the State. The State total exposure values were then divided by the total area covered by the grid cells used in the calculations to produce the ''areal exposure'' values in units of ppb-hrs per km^2.

Procedures for calculating the five 8-hour metrics are similar to those followed for calculating the corresponding 1-hour metrics except that the 8-hour values (i.e. the 8-hour daily maxima and the average second high 8-hour values) were used in the calculations.

b. OTAG Standard Table of Metrics. As part of OTAG, a Standard Table of Metrics was developed to evaluate the relative effectiveness of OTAG's strategies. This table contains a set of 22 metrics which are calculated for each of 22 geographic areas. The OTAG Standard Table of Metrics for the Budget scenario compared to the 2007 Base Case is provided in the docket. From this full set of data, five of the metrics calculated for the 12 OTAG ozone ''problem areas'' were selected for analysis because of their relevance to this assessment. These metrics are listed below. The remaining OTAG metrics were not considered as applicable primarily because they do not focus on concentrations above the NAAQS. The 12 OTAG ''ozone problem areas'' are shown in Figure 1. The other 10 areas for which the OTAG metrics were calculated overlap these 12 areas. Note that the OTAG metrics are calculated using all grid cells that meet the criteria of the individual metrics. No attempt was made by OTAG to relate the grid cells used in these calculations to counties violating the NAAQS.

1-hr Metrics

- Number of grid cells with a 1-hour daily maximum ozone concentrations >124 and >140 ppb,
- ''Weighted sum of differences'' when the 2007 Base Case prediction is >124 ppb,
- Number of grid cells with a decrease of more than 4 ppb (2007 Base vs Budget) in daily maximum ozone when the 2007 Base Case ozone is >124 ppb, and
- Number of grid cells with an increase of more than 4 ppb (2007 Base vs Budget) in daily maximum ozone when the 2007 Base Case ozone is >124 ppb.

8-hr Metrics

- Number of grid cells with 8-hour daily maximum ozone concentrations >84 and >100 ppb.

The preceding 1-hour and 8-hour OTAG metrics are self-explanatory, except for the ''weighted sum of differences.'' In calculating this metric the change in daily maximum 1-hour ozone in a grid cell is multiplied by the corresponding 2007 Base Case ozone prediction in that grid cell. These concentration-''weighted'' differences are calculated for each day and then summed for the episode. Finally, the sum of ''weighted'' differences is divided by the sum of the 2007 Base Case daily maximum concentrations to produce the values for this metric. This metric provides a means for examining the ''average'' ozone reduction in a way that gives more importance or ''weight'' to reductions that occur at high concentrations.

D. Analysis Results and Findings

1. Introduction

The results and conclusions found in this Section are based on the suite of metrics outlined above in Section C, Analysis of Modeling Results. The discussion is organized such that the impacts on 1-hour concentrations and the impacts on 8-hour concentrations are presented separately. For each NAAQS the results for the State-level metrics are followed by the results for the OTAG ''problem areas.''

As indicated in Section C.1, Technical Procedures, the focus of this assessment is on the impacts of the budgets on 1-hour and 8-hour ozone above the NAAQS in areas which currently measure violations of these standards. In this regard, the discussion of the State-level impacts addresses only those metrics calculated using the ''violating county'' grid cells. The data for all metrics calculated using the set of grid cells selected based on model predictions only are included in the docket. Also, the discussion for the 8-hour NAAQS is based on the metrics calculated for the average second high 8-hour concentrations since this was found to best represent the form of the 8-hour NAAQS. The data for metrics calculated using the 8-hour daily maximum predictions are included in the docket.

For the State-level analyses, the modeling domain was divided into several regions. The impacts across the 23 jurisdictions subject to the SIP call are addressed separately for States in the Midwest, Southeast, and Northeast. The States included in each of these regions are listed in Table VII–5. For completeness, all of the metrics were also calculated for those States within the domain that are not subject to the SIP call. These data are included in the docket.

a. Impacts on 1-Hour Ozone Concentrations. The State-level analyses of 1-hour concentrations included Metrics 1–4: (1) The number of grid cells with 1-hour daily maximum concentrations >= 125 ppb; (2) the magnitude and frequency of the ''ppb'' reductions in 1-hour daily maximum ozone concentrations >= 125 ppb; (3) the number of days with 1-hour daily maximum ozone concentrations >= 125 ppb; and, (4) the ''areal exposure'' to hourly ozone concentrations >= 125 ppb. For ease of communication in the discussion of results, the following terminology is used in referring to these metrics:

Metric 1: the extent of ''nonattainment,''

Metric 2: the magnitude and frequency of ''nonattainment,''

Metric 3: the number of ''nonattainment'' days in each grid cell, and

Metric 4: exposure to ''nonattainment.''

In addition to the State-level analysis, the impacts on 1-hour ozone in the OTAG ''problem areas'' were investigated using several of the standard OTAG metrics, including: (1) The number of grid cells with daily maximum 1-hour ozone >124 ppb; and the number of grid cells with daily maximum 1-hour ozone >140 ppb; (2) the weighted sum of differences when the 2007 Base Case prediction is >124 ppb; and, (3) the number of grid cells with an increase of more than 4 ppb when the 2007 Base Case ozone is >124 ppb versus the number of grid cells with a decrease of more than 4 ppb when the 2007 Base Case ozone is >124 ppb. This last metric is designed to compare the regional benefits of NO_X emissions reductions to possible local disbenefits.

The results for these OTAG metrics follow the discussion of the State-level results.

i. State-Level Analyses—1-Hour Concentrations. The 1-hour metrics for States in the Midwest, Southeast, and Northeast are provided in Tables VII–6, VII–7, and VII–8, respectively. For the Midwest, the results indicate that the overall extent of 1-hour nonattainment (Metric 1) is reduced by 74 percent in this region as a result the emissions reductions provided by the Budget scenario. The results for Metric 2 indicate that over 50 percent of the ''ppb'' reductions in ozone are in the 10–15 ppb range or greater, with reductions in the magnitude of nonattainment at more than 25 ppb in Illinois and Indiana. In Michigan, nearly all of the reductions were in the range of 10–15 ppb or more. The results for Metric 3 show a large reduction in the number of 1-hour nonattainment days in four out of the five States having nonattainment in the 2007 Base Case. Note that although the number of nonattainment days in Ohio did not decline, the concentrations on these days were reduced, but not to below 125 ppb. In terms of exposure to nonattainment (Metric 4), there were large reductions in exposure for each of the 3 episodes that produced high concentrations in this region (i.e. 1988, 1991, and 1995). Overall, exposure to nonattainment was reduced by 77 percent in the Midwest as a result of the emissions reductions associated with the budget.

States in the Southeast are also predicted to have large benefits in mitigating the 1-hour nonattainment problem as a result of the budgets. The overall extent of nonattainment (Metric 1) is predicted to decline by 44 percent in this region with reductions of approximately 50 percent in Tennessee and Alabama. Large ''ppb'' reductions are also predicted using Metric 2. The four States with 1-hour nonattainment problems in the region (Alabama, Georgia, Tennessee, and Virginia) have reductions of 15 ppb or more. In Alabama, 34 percent of the reductions exceed 20 ppb and in Georgia, 48 percent of the reductions exceed 20 ppb. The number of nonattainment days is also reduced in the Southeast (Metric 3), but not to the same degree as in the Midwest. Still, the number of grid cells with one or more nonattainment days is reduced by 25 percent in Georgia and by 38 percent and 43 percent in Alabama and Tennessee, respectively. Looking at Metric 4 indicates that the total exposure to nonattainment across the Southeast was cut in half. For individual States and specific episodes, the reduction in exposure in this region ranged from 30 percent to 100 percent.

The emissions reductions in the budget are predicted to produce an overall 48 percent decline in the extent of nonattainment in the Northeast (Metric 1). The extent of nonattainment in Maryland and Pennsylvania was reduced by approximately 50 percent and by more than 70 percent in Delaware, Massachusetts, New Jersey, and Rhode Island. The ''ppb'' reductions (Metric 2) were greater than 25 ppb in Delaware, Maryland, Massachusetts, New Jersey, and Pennsylvania. The results for Metric 2 also indicate that the magnitude of nonattainment is reduced by 15 ppb or more in seven of the Northeast States (Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, and Pennsylvania). The total number of grid cells across the region with more than two nonattainment days declined by 46 percent (Metric 3), while the number of grid cells with more than five nonattainment days declined by 75 percent. Also, the exposure to nonattainment (Metric 4) in the Northeast was reduced in half as a result of the budgets. Except for Washington, DC, which had relatively low exposure because it covers a much smaller area than the Northeast States, the total exposure to nonattainment was reduced in the range from 44 percent in Connecticut to 89 percent in Maine.

ii. Ozone Problem Area Analyses—1-Hour Concentrations. In reviewing the metrics for the ozone ''problem areas,'' the analyses are restricted to the 3 sections of the Northeast Corridor and selected ozone problem areas: Richmond, Atlanta, Nashville, St. Louis, Louisville-Cincinnati, Lake Michigan Area, Detroit, Pittsburgh and Charlotte. The metrics are presented in Table VII–9 for each episode considered along with a composite for all four episodes.

The results for the three portions of the Northeast Corridor indicate that there is an overall decline of 40 percent to 67 percent in the number of grid cells with concentrations exceeding 124 and a somewhat comparable decrease of 51 percent to 65 percent in exceedences of 140 ppb. Reductions in these two metrics occur across all four episodes. The ''weighted sum of differences'' metric provides a way to quantify the ''ppb'' reductions in ozone with greater ''weight'' given to the reductions when concentrations are high. The results for this metric indicate that most of the ''ppb'' reductions in the three Northeast Corridor areas range from approximately 12 ppb to 18 ppb.

Examining the 1-hour metrics for the other problem areas indicates that all of the areas were predicted to have large decreases in the number of grid cells exceeding 124 ppb and 140 ppb. In general, the reductions in this metric are comparable to what was predicted for the Northeast Corridor. Specifically, in six areas (Nashville, Louisville-Cincinnati, Richmond, St Louis, Pittsburgh, and Charlotte), the number of grid cells >124 ppb decreases by 70 percent or more. Considering the ''weighted sum of differences'' metric, the ''ppb'' reduction in six of the areas outside the Northeast Corridor (Atlanta, Richmond, Nashville, Louisville-Cincinnati, Pittsburgh, and Charlotte) were generally close to, or greater than, 20 ppb.

In addition to evaluating the impact of the budgets in terms of ozone reductions, the model predictions were also examined to determine the extent of any increase or ''disbenefit'' in ozone concentrations. In this regard, EPA compared the number of grid cells exceeding 124 ppb that had more than a 4 ppb increase versus the number of such grid cells with more than a 4 ppb decrease. The results indicate that the extent of reductions in ozone far exceeds any increases. In two of the three Northeast Corridor areas, as well as in all of the other problem areas, more than 90 percent of the daily maximum values exceeding 124 ppb were reduced by 4 ppb or more. In terms of ozone ''disbenefits,'' five areas had no increases greater than 4 ppb. In those areas with a predicted increase, these increases represent a very small fraction of the total number of exceedences of 124 ppb.

b. Impacts on 8-Hour Ozone Concentrations. The analyses presented in this Section for the 8-hour ozone concentrations follow the same format as the previous discussion on 1-hour ozone concentration metrics. The State-level analysis is presented first followed by the analysis of the OTAG Metrics. The State-level metrics include Metric 5: the number of grid cells with average second high 8-hour ozone concentrations >= 85 ppb and Metric 6: the magnitude and frequency of the ''ppb'' reductions in average second high 8-hour ozone concentrations >= 85 ppb. Note that fewer 8-hour metrics are considered in this analysis because the link to the form of the 8-hour NAAQS results in a single average second high value in each grid cell. Thus, metrics involving ''multiple days'' or ''multiple hours'' are not directly applicable to the 8-hour NAAQS. Like the 1-hour discussion, for ease of communication of results, the following terminology is used in referring to these metrics:

Metric 5: the extent of ''nonattainment'' and

Metric 6: the magnitude and frequency of reductions in ''nonattainment.''

The 8-hour analysis includes the same geographic regions as the 1-hour analysis.

i. State-Level Analyses—8-Hour Concentrations. The results for the 8-hour metrics are presented for the Midwest, Southeast and Northeast in Tables VII–10, VII–11, and VII–12, respectively. In the Midwest, the proposed budgets reduced the overall extent of 8-hour nonattainment (Metric 5) by 89 percent. Six States (Kentucky, Indiana, Illinois, Michigan, Ohio, and West Virginia) have reductions of more than 80 percent. The magnitude and frequency of reductions is also large (Metric 6). Specifically, 97 percent of all of the ''ppb'' reductions are 5 ppb or greater and 21 percent of the reductions are 15 ppb or greater. In the Southeast, the overall extent of nonattainment (Metric 5) declines by 78 percent. All of the States in this region (Alabama, Georgia, North Carolina, South Carolina, Tennessee, and Virginia) show a decline in this metric of 60 percent or more. In addition, 80 percent of the ''ppb'' reductions are 10 ppb or greater with reductions of over 20 ppb in North Carolina. The Northeast region has a somewhat lesser reduction in the extent of 8-hour nonattainment (Metric 5) compared to the other two regions, with an overall reduction in this metric of 65 percent. Two States (New Jersey and Connecticut) have reductions in the extent of 8-hour nonattainment of approximately 60 percent while two other States (Delaware and Pennsylvania), along with Washington, DC have reductions in this metric of over 90 percent. In terms of the magnitude of the ''ppb'' reductions in nonattainment (Metric 6), approximately 97 percent of the reductions are greater than 5 ppb, 62 percent are greater than 10 ppb, and 9 percent are greater than 15 ppb. Looking at the individual States indicates that four States (Delaware, Maryland, New Jersey, and Pennsylvania) all have ''ppb'' reductions in the 15–20 ppb range.

ii. Ozone Problem Area Analyses—8-Hour Concentrations.

To investigate impacts on 8-hour ozone in the OTAG ''problem areas,'' two of the standard OTAG metrics were analyzed:

- the number of grid cells with 8-hour daily maximum ozone > 84 ppb; and
- the number of cells with 8-hour daily maximum ozone > 100 ppb.

The results, as provided in Table VII–13, indicate that the extent of high 8-hour concentrations in the northern and central portions of Northeast Corridor is generally reduced by 30 percent to 40 percent, considering all 4 episodes combined. The reductions are somewhat greater in the southern Corridor at 46 percent to 67 percent. For the problem areas outside the Corridor, seven of the areas (Atlanta, Charlotte, Louisville-Cincinnati, Nashville, Pittsburgh, and Richmond) had reductions of approximately 60 percent or more in the extent of 8-hour concentrations exceeding 84 ppb and 100 ppb.

2. Summary and Conclusions

In summary, the air quality impacts of the proposed budgets were modeled for the four OTAG episodes. The result were evaluated by comparing ozone predictions from the Budget scenario to a 2007 Base Case reflecting emissions reductions associated with CAA control programs. A number of 1-hour and 8-hour metrics were used to quantify the impacts at the State-level. In addition, several of the relevant metrics from the OTAG Standard Table of Metrics were examined to evaluate the impacts in ozone ''problem areas'' within the region.

The results of this analysis lead to the following major conclusions:

(1) The emissions reductions associated with the proposed statewide budgets are predicted to produce large reductions in both 1-hour and 8-hour concentrations in areas which currently violate the NAAQS and which would likely continue to have violations in the future without the SIP call budget reductions.

(2) Looking at individual ozone ''problem areas'' considered by OTAG shows similar results, based on the available metrics.

(3) Any ''disbenefits'' due to the NO_X reductions associated with the budgets are expected to be very limited compared to the extent of the ''benefits'' expected from these budgets.

(4) Even though the budgets are expected to reduce 1-hour and 8-hour ozone concentrations across all 23 jurisdictions, the analysis indicates that nonattainment problems requiring additional local control measures will likely continue in some areas currently violating the NAAQS (see also Section I.B, Updates with 1994–96 Air Quality Data).

E. Alternative Approaches

The effect of NO_X emissions on air quality in areas violating air quality standards depends, in part, on the distance between sources and receptor areas. Sources that are closer to areas violating air quality standards tend to have larger effects on air quality than sources that are far away. If there is significant variation in the contribution of emissions in different subregions within the 23-jurisdiction area, alternative approaches to calculating States' budgets other than those based on the application of uniform control measures will be evaluated. On the other hand, the large number of nonattainment areas spread out over the region and the several different weather patterns associated with summertime ozone pollution episodes should also be considered when evaluating a subregional approach. The EPA plans to evaluate alternative approaches in developing the final rule. These will consider alternative uniform approaches at levels below and above the proposal level as well as regional approaches that apply different control levels to different geographic regions.

The EPA solicited comment in the November 7, 1997 NPR on approaches for establishing State emissions budgets that factor in the differential effects on air quality in areas violating a standard. Comments advocating alternative approaches would be most helpful if they set forth concrete proposals on what analysis should form the basis of budget calculations. For example, some have suggested an approach that would attempt to quantify more explicitly the cost effectiveness of emissions reductions in terms of improvements in ambient ozone concentrations in areas violating a standard (measured, for example, as cost per population-weighted changes in parts per billion peak ozone concentration) taking into account the location of control measures through subregional modeling. If after review of alternative approaches (including sub-regional modeling analyses submitted by the States and other commenters), EPA concludes that a new approach is appropriate, EPA will issue a SNPR.

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Figure VII–1. Twelve of the Ozone "Problem Areas" Selected by OTAG

Figure VII-1. Twelve of the Ozone "Problem Areas" Selected by OTAG.

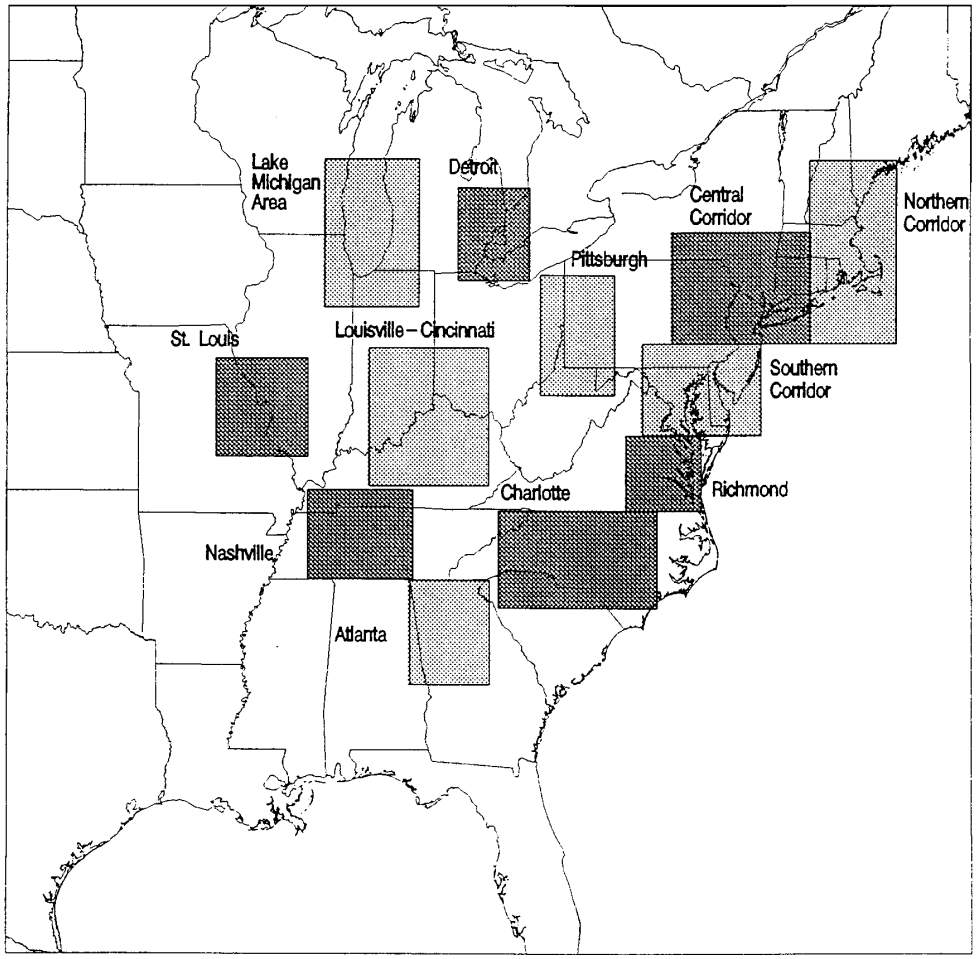

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TABLE VII–1.—BASE YEAR (1995/96) MODELING EMISSIONS OF NO_X

[Tons/day]

State	EGU	Non-EGU	Area	Highway	Total
Alabama	720.16	246.58	351.01	431.09	1748.84
Arkansas	188.47	58.55	212.98	232.64	692.64
Connecticut	54.10	36.10	128.47	211.86	430.53
Delaware	58.64	28.26	45.35	63.44	195.69
District of Columbia	3.97	2.58	18.52	19.96	45.03
Florida	1004.44	121.73	375.44	793.65	2295.26
Georgia	634.73	185.30	290.50	655.60	1766.13
Illinois	862.93	519.40	552.99	724.46	2659.78
Indiana	1138.63	280.04	380.34	495.91	2294.92
Iowa	252.19	69.31	179.77	239.78	741.05
Kansas	277.06	159.31	430.15	193.23	1059.75
Kentucky	1107.62	103.18	457.30	358.09	2026.19
Louisiana	346.66	870.30	720.25	300.05	2237.26
Maine	9.43	52.03	32.32	118.05	211.83
Maryland	336.13	90.36	186.20	307.20	919.89
Massachusetts	111.40	73.86	235.31	290.73	711.30
Michigan	555.44	353.14	383.65	633.21	1925.44
Minnesota	215.18	61.45	182.61	360.58	819.82
Mississippi	194.65	173.26	278.40	270.34	916.65
Missouri	588.13	74.08	237.45	417.50	1317.16
Nebraska	96.15	36.86	142.89	116.47	392.37
New Hampshire	65.36	6.97	43.95	96.20	212.48
New Jersey	143.02	143.33	265.11	404.10	955.56
New York	375.07	126.63	494.87	823.37	1819.94
North Carolina	969.62	186.09	238.08	608.02	2001.81
North Dakota	0.00	0.46	26.11	16.53	43.10
Ohio	1701.82	307.42	478.37	757.73	3245.34
Oklahoma	337.30	100.69	400.76	316.23	1154.98
Pennsylvania	878.45	531.22	402.97	630.38	2443.02
Rhode Island	21.82	2.21	28.05	53.40	105.48
South Carolina	429.77	169.16	164.21	352.85	1115.99
South Dakota	44.54	0.37	23.65	51.03	119.59
Tennessee	957.50	371.13	452.50	474.18	2255.31
Texas	1172.84	1290.89	760.77	1200.77	4425.27
Vermont	0.20	1.04	13.32	60.65	75.21
Virginia	432.34	146.16	357.88	578.05	1514.43
West Virginia	873.65	282.88	137.26	168.66	1462.45
Wisconsin	311.71	110.90	224.92	360.40	1007.93
Total	17471.12	7373.23	10334.68	14186.39	49365.42

TABLE VII–2.—2007 CAA BASE CASE MODELING EMISSIONS OF NO_X

[Tons/day]

State	EGU	Non-EGU	Area	Highway	Total
Alabama	619.16	314.95	361.70	416.80	1712.61
Arkansas	241.34	67.74	278.52	218.21	805.81
Connecticut	62.85	37.62	120.02	159.47	379.96
Delaware	85.86	34.82	40.33	60.30	221.31
District of Columbia	3.81	2.03	26.99	20.96	53.79
Florida	1193.66	143.06	396.06	935.38	2668.16
Georgia	635.45	224.98	306.47	599.03	1765.93
Illinois	908.72	442.08	558.24	622.86	2531.9
Indiana	1164.89	344.53	426.76	491.79	2427.97
Iowa	318.51	79.17	193.78	242.36	833.82
Kansas	278.16	200.10	387.65	206.14	1072.05
Kentucky	958.00	125.90	486.02	338.91	1908.83
Louisiana	370.72	797.24	764.56	288.99	2221.51
Maine	7.31	62.32	39.78	116.31	225.72
Maryland	289.05	94.67	227.65	271.66	883.03
Massachusetts	188.69	72.86	239.72	240.22	741.49
Michigan	511.62	402.98	428.71	622.31	1965.62
Minnesota	269.07	74.35	188.95	375.95	908.32
Mississippi	239.02	180.66	406.62	246.82	1073.12
Missouri	604.78	81.31	224.18	420.19	1330.46
Nebraska	93.92	41.46	136.45	119.41	391.24
New Hampshire	118.61	8.03	36.31	86.94	249.89
New Jersey	154.00	145.28	271.11	381.86	952.25

TABLE VII–2.—2007 CAA BASE CASE MODELING EMISSIONS OF NO_X—Continued

[Tons/day]

State	EGU	Non-EGU	Area	Highway	Total
New York	356.59	138.02	391.91	777.35	1663.87
North Carolina	672.59	227.44	250.26	551.56	1701.85
North Dakota	0.00	0.40	37.24	17.47	55.11
Ohio	1237.97	361.08	494.11	710.83	2803.99
Oklahoma	365.45	124.90	521.39	316.14	1327.88
Pennsylvania	906.73	558.46	382.86	556.86	2404.91
Rhode Island	10.47	2.34	22.85	51.46	87.12
South Carolina	437.29	235.36	186.94	365.30	1224.89
South Dakota	49.91	0.64	34.31	51.89	136.75
Tennessee	610.64	461.38	517.64	496.75	2086.41
Texas	1271.05	1114.13	825.12	1073.35	4283.65
Vermont	0.20	1.04	13.76	63.05	78.05
Virginia	415.27	168.41	411.85	603.89	1599.42
West Virginia	571.47	283.37	115.44	158.49	1128.77
Wisconsin	325.87	141.67	225.54	315.35	1008.43
Total	16548.70	7796.78	10977.80	13592.61	48915.89

TABLE VII–3.—2007 BUDGET MODELING EMISSIONS OF NO_X

[Tons/day]

State	EGU	Non-EGU	Area	Highway	Total
Alabama	224.26	159.58	335.69	386.24	1105.77
Arkansas	241.34	67.74	262.83	202.88	774.79
Connecticut	47.31	22.25	101.66	118.71	289.93
Delaware	40.59	15.18	36.83	57.67	150.27
District of Columbia	2.45	1.69	26.75	15.46	46.35
Florida	1193.66	143.06	351.44	875.17	2563.33
Georgia	246.29	96.16	267.79	529.59	1139.83
Illinois	278.01	278.58	477.65	529.99	1564.23
Indiana	377.70	195.89	398.19	454.61	1426.39
Iowa	318.51	79.17	176.64	227.15	801.47
Kansas	278.16	200.10	373.76	194.01	1046.03
Kentucky	283.92	79.77	462.46	315.42	1141.57
Louisiana	370.72	797.24	717.26	274.46	2159.68
Maine	7.31	62.32	37.87	109.26	216.76
Maryland	103.61	51.86	196.22	195.28	546.97
Massachusetts	112.86	43.88	208.53	157.66	522.93
Michigan	203.44	235.01	388.17	555.53	1382.15
Minnesota	269.07	74.35	166.35	353.51	863.28
Mississippi	239.02	180.66	370.67	229.32	1019.67
Missouri	196.28	60.26	194.63	375.51	826.68
Nebraska	93.92	41.46	127.59	112.49	375.46
New Hampshire	118.61	8.03	34.64	86.94	248.22
New Jersey	83.04	83.57	241.65	268.82	677.08
New York	266.18	96.55	340.98	642.00	1345.71
North Carolina	252.33	127.56	214.94	498.25	1093.08
North Dakota	0.00	0.40	36.37	16.33	53.1
Ohio	381.07	207.70	458.48	631.24	1678.49
Oklahoma	365.45	124.90	503.59	294.70	1288.64
Pennsylvania	357.05	314.54	343.61	499.34	1514.54
Rhode Island	10.81	2.34	18.98	38.89	71.02
South Carolina	151.97	127.09	164.62	337.58	781.26
South Dakota	49.91	0.64	31.29	48.65	130.49
Tennessee	191.00	240.31	451.78	461.03	1344.12
Texas	1271.05	1114.13	712.99	974.78	4072.95
Vermont	0.20	1.04	12.50	59.13	72.87
Virginia	176.69	73.05	379.47	544.69	1173.9
West Virginia	179.92	141.03	107.50	147.62	576.07
Wisconsin	124.49	77.21	192.28	284.20	678.18
Total	9108.20	5626.30	9924.65	12104.11	36763.26

TABLE VII–4.—PERCENT REDUCTION BETWEEN 2007 CAA BASE CASE AND BUDGET $N0_X$ EMISSIONS FOR MODELING

[Tons/day]

State	2007 Base case	Budget	Percent reduction
Alabama	1712.61	1105.77	35.4
Arkansas	805.81	774.79	3.9
Connecticut	379.96	289.93	23.7
Delaware	221.31	150.27	32.1
District of Columbia	53.79	46.35	13.8
Florida	2668.16	2563.33	3.9
Georgia	1765.93	1139.83	35.5
Illinois	2531.9	1564.23	38.2
Indiana	2427.97	1426.39	41.3
Iowa	833.82	801.47	3.9
Kansas	1072.05	1046.03	2.4
Kentucky	1908.83	1141.57	40.2
Louisiana	2221.51	2159.68	2.8
Maine	225.72	216.76	4.0
Maryland	883.03	546.97	38.1
Massachusetts	741.49	522.93	29.5
Michigan	1965.62	1382.15	29.7
Minnesota	908.32	863.28	5.0
Mississippi	1073.12	1019.67	5.0
Missouri	1330.46	826.68	37.9
Nebraska	391.24	375.46	4.0
New Hampshire	249.89	248.22	0.7
New Jersey	952.25	677.08	28.9
New York	1663.87	1345.71	19.1
North Carolina	1701.85	1093.08	35.8
North Dakota	55.11	53.1	3.6
Ohio	2803.99	1678.49	40.1
Oklahoma	1327.88	1288.64	3.0
Pennsylvania	2404.91	1514.54	37.0
Rhode Island	87.12	71.02	18.5
South Carolina	1224.89	781.26	36.2
South Dakota	136.75	130.49	4.6
Tennessee	2086.41	1344.12	35.6
Texas	4283.65	4072.95	4.9
Vermont	78.05	72.87	6.6
Virginia	1599.42	1173.9	26.6
West Virginia	1128.77	576.07	49.0
Wisconsin	1008.43	678.18	32.7
Total	48915.89	36763.26	24.8

TABLE VII–5.—LIST OF STATES IN EACH ANALYSIS REGION

Midwest	Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio, West Virginia, Wisconsin.
Southeast	Alabama, Georgia, North Carolina, South Carolina, Tennessee, Virginia.
Northeast	Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island.
Non-SIP Call States	Arkansas, Florida, Iowa, Kansas, Louisiana, Maine, Minnesota, Mississippi, Nebraska, New Hampshire, North Dakota, Oklahoma, South Dakota, Texas, Vermont.

TABLE VII–6.—1-HR AIR QUALITY METRICS FOR MIDWEST REGION (GRID CELLS SELECTED BASED ON ''MONITORED'' AND ''MODELED'' NONATTAINMENT)

[Modeled values include Daily Max 1-hr for all 4 Episodes]

	MO	WI	IL	IN	MI	OH	KY	WV	Total
Metric 1: Number of Grid Cell-Days with a Daily Max Ozone Value>=125 ppb									
2007 Base	4	0	10	3	23	3	0	0	43
2007 Budget	2	0	2	0	4	3	0	0	11
Difference	−2	0	−8	−3	−19	0	0	0	−32
Percent	−50.00	0.00	−80.00	−100.00	−82.61	0.00	0.00	0.00	−74.42
Metric 2: Number of Grid Cell-Days with Ozone Reductions, by Magnitude of the Reduction									
Magnitude of ozone reduction									
2–5 ppb	0	0	0	0	0	0	0	0	0
5–10 ppb	1	0	1	1	1	1	0	0	5
10–15 ppb	2	0	3	0	15	1	0	0	21
15–20 ppb	0	0	3	0	7	1	0	0	11
20–25 ppb	0	0	0	0	0	0	0	0	0
>25 ppb	0	0	2	2	0	0	0	0	4

TABLE VII–6.—1-HR AIR QUALITY METRICS FOR MIDWEST REGION (GRID CELLS SELECTED BASED ON ''MONITORED'' AND ''MODELED'' NONATTAINMENT)—Continued

[Modeled values include Daily Max 1-hr for all 4 Episodes]

	MO	WI	IL	IN	MI	OH	KY	WV	Total
Metric 3: Number of Grid Cells>=125 ppb, by Number of Days									
Baseline 2007	MO	WI	IL	IN	MI	OH	KY	WV	Total
Number of Days >=125 ppb:									
=1 day	2	0	6	5	0	3	3	0	19
2–4 days	1	0	2	9	0	0	0	0	12
5–9 days	0	0	0	0	0	0	0	0	0
10–14 days	0	0	0	0	0	0	0	0	0
>=15 days	0	0	0	0	0	0	0	0	0
Total	3	0	8	14	0	3	3	0	31
NO_X SIP Call:									
=1 day	0	0	2	4	0	0	3	0	9
2–4 days	1	0	0	0	0	0	0	0	1
5–9 days	0	0	0	0	0	0	0	0	0
10–14 days	0	0	0	0	0	0	0	0	0
>=15 days	0	0	0	0	0	0	0	0	0
Total	1	0	2	4	0	0	3	0	10
Difference (days)	−2	0	−6	−10	0	−3	0	0	−21
Percent	−66.7	0.0	−75.0	−71.4	0.0	−100.0	0.0	0.0	−67.7

Metric 4: Percent Reduction in Areal Exposures to ozone >=125 ppb

	July '88	July '91	July '93	July '95	All episodes				
MO	58.3	49.5	*	*	40.4				
WI	*	*	*	*	*				
IL	84.8	49.9	*	100.0	75.0				
MI	*	*	*	88.6	88.6				
KY	*	*	*	*	*				
IN	*	*	*	100.0	100.0				
OH	*	*	*	*	*				
WV	*	*	*	*	*				
Total	73.7	51.3	*	90.2	76.6				

*No areas >=125 ppb

TABLE VII–7.—1-HR AIR QUALITY METRICS FOR SOUTHEAST REGION (GRID CELLS SELECTED BASED ON ''MONITORED'' AND ''MODELED'' NONATTAINMENT)

[Modeled values include Daily Max 1-hr for all 4 Episodes]

	TN	AL	GA	SC	NC	VA	Total
Metric 1: Number of Grid Cell-Days with a Daily Max Ozone Value >+ 125 ppb							
2007 Base	27	108	203	0	0	14	352
2007 Budget	13	53	117	0	0	13	196
Difference	−14	−55	−86	0	0	−1	−156
Percent	−51.85	−50.93	−42.36	0.00	0.00	−7.14	−44.32
Metric 2: Number of Grid Cell-Days with Ozone Reductions, by Magnitude of the Reduction							
Magnitude of ozone reduction							
2–5 ppb	4	1	2	0	0	1	8
5–10 ppb	11	20	9	0	0	6	46
10–15 ppb	7	27	31	0	0	4	69
15–20 ppb	3	23	64	0	0	1	91
20–25 ppb	0	16	53	0	0	0	69
>25 ppb	0	21	44	0	0	0	65
Metric 3: Number of Grid Cells >= 125 ppb, by Number of Days							
Baseline 2007	TN	AL	GA	NC	VA	SC	Total
Number of Days >= 125 ppb							
= 1 day	7	9	5	0	0	0	21
2–4 days	6	14	15	0	1	0	36
5–9 days	1	8	17	0	2	0	28
10–14 days	0	1	3	0	0	0	4
>= 15 days	0	0	0	0	0	0	0
Total	14	32	40	0	3	0	89
NO_x SIP Call:							
= 1 day	6	6	8	0	0	0	20
2–4 days	2	11	10	0	1	0	24
5–9 days	0	3	11	0	2	0	16
10–14 days	0	0	1	0	0	0	1
>=15 days	0	0	0	0	0	0	0
Total	8	20	30	0	3	0	61
Difference (days)	−6	−12	−10	0	0	0	−28
Percent	−42.9%	−37.5%	−25.0%	0.0%	0.0%	0.0%	−31.5%

Metric 4: Percent Reduction in Areal Exposures to Ozone >= 125 ppb

	July '88	July '91	July '93	July '95	All Episodes		
TN	100.0	29.5	72.0	52.4	60.2		
AL	71.7	100.0	57.7	63.0	60.0		

TABLE VII–7.—1-HR AIR QUALITY METRICS FOR SOUTHEAST REGION (GRID CELLS SELECTED BASED ON ''MONITORED'' AND ''MODELED'' NONATTAINMENT)—Continued

[Modeled values include Daily Max 1-hr for all 4 Episodes]

	TN	AL	GA	SC	NC	VA	Total
GA	59.4	100.0	46.9	55.6	51.0		
NC	*	*	*	*	*	.....	.....
VA	18.7%	*	*	58.2%	24.1%	.....	.....
SC	*	*	*	*	*	.....	.....
Total	50.1	89.7	51.0	57.5	53.0	.....	.....

*No areas >= 125 ppb.

TABLE VII–8.—1-HR AIR QUALITY METRICS FOR NORTHEAST REGION (GRID CELLS SELECTED BASED ON ''MONITORED'' AND ''MODELED'' NONATTAINMENT)

[Modeled values include Daily Max 1-hr for all 4 Episodes]

	MD	DC	DE	PA	NJ	NY	CT	RI	MA	Total
Metric 1: Number of Grid Cell-Days with a Daily Max Ozone Value >= 125 ppb										
2007 Base	251	3	12	34	183	221	231	8	61	738
2007 Budget	111	3	3	17	54	154	141	2	13	381
Difference	−140	0	−9	−17	−129	−67	−90	−6	−48	−357
Percent	−55.78	0.00	−75.00	−50.00	−70.49	−30.32	−38.96	−75	−78.69	−48.37
Metric 2: Number of Grid Cell-Days with Ozone Reductions, by Magnitude of the Reduction										
Magnitude of ozone reduction										
2–5 ppb	7	0	0	3	5	26	16	0	3	60
5–10 ppb	27	1	0	7	12	63	58	2	7	177
10–15 ppb	43	0	0	14	41	89	115	6	27	335
15–20 ppb	91	0	1	6	90	24	25	0	15	252
20–25 ppb	40	0	6	2	19	1	0	0	2	70
>25 ppb	32	0	5	1	12	0	0	0	7	57

Metric 3: Number of grid Cells >= 125 ppb, by Number of Days

Baseline 2007	PA	NY	MD	DC	DE	NJ	CT	MA	RI	Total
Number of Days >= 125 ppb:										
=1 days	16	0	5	0	6	22	2	17	4	72
2–4 days	7	15	26	1	3	35	41	13	2	143
5–9 days	0	28	25	0	0	9	17	3	0	82
10–14 days	0	0	1	0	0	0	0	0	0	1
>=15 days	0	0	0	0	0	0	0	0	0	0
Total	23	43	57	1	9	66	60	33	6	298
NO_X SIP Call:										
=1 days	15	6	12	0	3	24	18	13	2	93
2–4 days	1	27	23	1	0	12	37	0	0	101
5–9 days	0	11	7	0	0	0	3	0	0	21
10–14 days	0	0	0	0	0	0	0	0	0	0
>=15 days	0	0	0	0	0	0	0	0	0	0
Total	16	44	42	1	3	36	58	13	2	215
Difference (days)	−7	1	−15	0	−6	−30	−2	−20	−4	−83
Percent	−30.4	2.3	−26.3	0.0	−66.7	−45.5	−3.3	−60.6	−66.7	−27.9

Metric 4: Percent Reduction in Areal Exposures to Ozone >= 125 ppb

	July '88	July '91	July '93	July '95	All episodes
PA	63.7	100.00	*	100.0	67.3
NY	40.2	55.33	*	43.5	47.2
MD	51.8	86.79	49.0	78.6	59.8
DC	8.9	*	*	*	8.9
DE	82.0	*	*	100.0	84.5
NJ	74.5	95.81	100.0	100.0	81.2
CT	31.6	68.51	100.0	61.1	43.9
MA	82.2	95.78	*	85.2	86.7
ME	92.3	82.80	*	*	89.3
Total	52.4	71.08	51.0	67.9	59.1

*No areas >= 125 ppb

TABLE VII–9.—SELECTED OTAG METRICS FOR 1-HR STANDARD

	No. corridor	Cn corridor	So. corridor	Rich-mond	Atlanta	Nashville	Louis-Cinci	St. Louis	Lk. MI area	Detroit	Pitts-burgh	Charlotte
Peak 1-Hr Total—# OF GRID CELLS >124 PPB												
July 4–11, 1988:												
2007 Base Case	337	484	522	148	38	56	71	10	46	54	27	157
2007 Budget	147	314	214	27	19	14	22	4	0	34	1	19
Difference	−190	−170	−308	−121	−19	−42	−49	−6	−46	−20	−26	−138
Percent	−56.4%	−35.1%	−59.90%	−81.8%	−50.0%	−75.0%	−69.0%	−60.0%	−100.0%	−37.0%	−96.3%	−87.9%
July 16–21, 1991:												
2007 Base Case	497	282	111	1	10	0	19	5	113	0	0	0
2007 Budget	160	141	19	0	0	0	10	2	58	0	0	0
Difference	−337	−141	−92	−1	−10	0	−9	−3	−55	0	0	0
Percent	−67.8%	−50.0%	−82.9%	−100.0%	−100.0%	0.0%	−47.4%	−60.0%	−48.7%	0.0%	0.0%	0.0%

TABLE VII–9.—SELECTED OTAG METRICS FOR 1-HR STANDARD—Continued

	No. corridor	Cn corridor	So. corridor	Rich-mond	Atlanta	Nashville	Louis-Cinci	St. Louis	Lk. MI area	Detroit	Pitts-burgh	Charlotte
July 22–29, 1993:												
2007 Base Case	1	5	105	38	178	39	4	1	0	0	0	123
2007 Budget	0	3	28	11	84	7	0	0	0	0	0	23
Difference	−1	−2	−77	−27	−94	−32	−4	−1	0	0	0	−100
Percent	−100.0%	−40.0%	−73.3%	−71.1%	−52.8%	−82.1%	−100.0%	−100.0%	0.0%	0.0%	0.0%	−81.3%
July 10–18, 1995:												
2007 Base Case	217	127	165	49	149	35	43	6	343	4	1	20
2007 Budget	137	74	37	19	47	6	9	0	233	1	0	3
Difference	−80	−53	−128	−30	−102	−29	−34	−6	−110	−3	−1	−17
Percent	−36.9%	−41.7%	−77.6%	−61.2%	−68.5%	−82.9%	−79.1%	−100.0%	−32.1%	−75.0%	−100.0%	−85.0%
2007 Base Case	217	127	165	49	149	35	43	6	343	4	1	20
2007 Budget	137	74	37	19	47	6	9	00	233	1	0	3
Difference	−80	−53	−128	−30	−102	−29	−34	−6	−110	−3	−1	−17
Percent	−36.9%	−41.7%	−77.6%	−61.2%	−68.5%	−82.9%	−79.1%	−100.0%	−32.1%	−75.0%	−100.0%	−85.0%
All Episodes:												
2007 Base Case	1052	898	903	236	375	130	137	22	502	58	28	300
2007 Budget	444	532	298	57	150	27	41	6	291	35	1	45
Difference	−608	−366	−605	−179	−225	−103	−96	−16	−211	−23	−27	−255
Percent	−57.8%	−40.8%	−67.0%	−75.8%	−60.0%	−79.2%	−70.1%	−72.7%	−42.0%	−39.7%	−96.4%	−85.0%
Peak 1-Hr Total—# οφ Γριδ Ψελλσ • 140 ππβ												
July 4–11, 1988:												
2007 Base Case	122	219	229	35	20	21	5	2	0	16	1	34
2007 Budget	52	139	95	4	6	9	0	0	0	2	0	4
Difference	−70	−80	−134	−31	−14	−12	−5	−2	0	−14	−1	−30
Percent	−57.4%	−36.5%	−58.5%	−88.6%	−70.0%	−57.1%	−100.0%	−100.0%	0.0%	−87.5%	−100.0%	−88.2%
July 16–21, 1991:												
2007 Base Case	149	114	11	0	4	0	5	0	28	0	0	0
2007 Budget	29	20	4	0	0	0	4	0	0	0	0	0
Difference	−120	−94	−7	0	−4	0	−1	0	−28	0	0	0
Percent	−80.5%	−82.5%	−63.6%	0.0%	−100.0%	0.0%	−20.0%	0.0%	−100.0%	0.0%	0.0%	0.0%
July 22–29, 1993:												
2007 Base Case	0	0	21	14	99	8	0	0	0	0	0	38
2007 Budget	0	0	4	0	38	1	0	0	0	0	0	5
Difference	0	0	−17	−14	−61	−7	0	0	0	0	0	−33
Percent	0.0%	0.0%	−81.0%	−100.0%	−61.6%	−87.5%	0.0%	0.0%	0.0%	0.0%	0.0%	−86.8%
July 10–18, 1995:												
2007 Base Case	142	59	35	22	49	3	14	0	191	0	0	4
2007 Budget	63	32	3	4	20	0	1	0	96	0	0	0
Difference	−79	−27	−32	−18	−29	−3	−13	0	−95	0	0	−4
Percent	−55.6%	−45.8%	−91.4%	−81.8%	−59.2%	−100.0%	−92.9%	0.0%	−49.7%	0.0%	0.0%	−100.0%
All Episodes:												
2007 Base Case	413	392	296	71	172	32	24	2	219	16	1	76
2007 Budget	144	191	106	8	64	10	5	0	96	2	0	9
Difference	−269	−201	−190	−63	−108	−22	−19	−2	−123	−14	−1	−67
Percent	−65.1%	−51.3%	−64.2%	−88.7%	−62.8%	−68.8%	−79.2%	−100.0%	−56.2%	−87.5%	−100.0%	−88.2%
Weighted Sum of Differences When the Base is > 124 ppb												
July 4–11, 1988	−13.8	−9.6	−18.5	−22.3	−18.3	−23.9	−17.4	−18.5	−13.8	−10	−24.5	−25.1
July 16–21, 1991	−15.1	−13.7	−16.9	−10.4	−29	0	−13.3	−6.1	−10.9	0	0	0
July 22–29, 1993	−5.7	−4.6	−15.8	−20	−21.3	−21.7	−26.2	−10.9	0	0	0	−22.6
July 10–18, 1995	−15.8	−11.5	−16.8	−19	−21.5	−22.1	−27.4	−16	−12.6	−8.5	−40.8	−23.7
# Grid Cells with more than a 4 ppb Decrease when Base is > 124 ppb												
July 4–11, 1988	330	386	496	144	38	55	67	10	46	51	27	156
Percent of Total	97.9%	79.8%	95.0%	97.3%	100.0%	98.2%	94.4%	100.0%	100.0%	94.4%	100.0%	99.4%
July 16–21, 1991	496	276	104	1	10	0	16	3	104	0	0	0
Percent of Total	99.8%	97.9%	93.7%	100.0%	100.0%	0.0%	84.2%	60.0%	92.0%	0.0%	0.0%	0.0%
July 22–29, 1993	1	3	102	38	178	37	4	1	0	0	0	123
Percent of Total	100.0%	60.0%	97.1%	100.0%	100.0%	94.9%	100.0%	100.0%	0.0%	0.0%	0.0%	100.0%
July 10–18, 1995	217	111	161	48	149	35	43	6	326	4	1	20
Percent of Total	100.0%	87.4%	97.6%	98.0%	100.0%	100.0%	100.0%	100.0%	95.0%	100.0%	100.0%	100.0%
All Episodes	1044	776	863	231	375	127	130	20	476	55	28	299
Percent of Total	99.2%	86.4%	95.6%	97.9%	100.0%	97.7%	94.9%	90.9%	94.8%	94.8%	100.0%	99.7%
# Grid Cells with more than a 4 ppb Increase when Base is > 124 ppb												
July 4–11, 1988	2	32	7	2	0	0	1	0	0	1	0	0
Percent of Total	0.6%	6.6%	1.3%	1.4%	0.0%	0.0%	1.4%	0.0%	0.0%	1.9%	0.0%	0.0%
July 16–21, 1991	0	0	2	0	0	0	2	0	2	0	0	0
Percent of Total	0.0%	0.0%	1.8%	0.0%	0.0%	0.0%	10.5%	0.0%	1.8%	0.0%	0.0%	0.0%
July 22–29, 1993	0	1	3	0	0	0	0	0	0	0	0	0
Percent of Total	0.0%	20.0%	2.9%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
July 10–18, 1995	0	0	1	0	0	0	0	0	0	0	0	0
Percent of Total	0.0%	0.0%	0.6%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

TABLE VII–9.—SELECTED OTAG METRICS FOR 1-HR STANDARD—Continued

	No. corridor	Cn corridor	So. corridor	Rich-mond	Atlanta	Nashville	Louis-Cinci	St. Louis	Lk. MI area	Detroit	Pitts-burgh	Charlotte
All Episodes	2%	33%	13%	2%	0%	0%	3%	0%	2%	1%	0%	0%
Percent of Total	0.2%	3.7%	1.4%	0.8%	0.0%	0.0%	2.2%	0.0%	0.4%	1.7%	0.0%	0.0%

TABLE VII–10.—8-HR AIR QUALITY METRICS FOR MIDWEST REGION (GRID CELLS SELECTED BASED ON ''MONITORED'' AND ''MODELED'' NONATTAINMENT)

	MO	WI	IL	IN	MI	OH	KY	WV	Total
Metric 5: Number of Grid Cell-Days with an Average 2nd High Ozone Value >=85 ppb									
Scenario									
2007 Base	2	0	7	31	21	39	43	7	150
2007 Budget	2	0	1	3	1	2	7	0	16
Difference	0	0	−6	−28	−20	−37	−36	−7	−134
Percent	0.00	0.00	−85.71	−90.32	−95.24	−94.87	−83.72	−100.00	−89.33
Metric 6: Number of Grid Cell-Days with Ozone Reductions, by Magnitude of the Reduction									
Magnitude of Ozone Reduction									
2–5 ppb	1	0	0	1	1	0	2	0	5
5–10 ppb	1	0	5	2	12	16	6	0	42
10–15 ppb	0	0	2	16	8	21	19	6	72
15–20 ppb	0	0	0	9	0	2	12	1	24
20–25 ppb	0	0	0	3	0	0	4	0	7
>25 ppb	0	0	0	0	0	0	0	0	0

TABLE VII–11.—8-HR AIR QUALITY METRICS FOR SOUTHEAST REGION (GRID CELLS SELECTED BASED ON ''MONITORED'' AND ''MODELED'' NONATTAINMENT)

	TN	AL	GA	SC	NC	VA	Total
Metric 5: Number of Grid Cell-Days with an Average 2nd High Ozone Value≤=85ppb							
Scenario							
2007 Base	48	39	44	13	52	16	212
2007 Budget	10	12	17	1	4	3	47
Difference	−38	−27	−27	−12	−48	−13	−165
Percent	−79.17	−69.23	−61.36	−92.31	−92.31	−81.25	−77.83
Metric 6: Number of Grid Cell-Days with Ozone Reductions, by Magnitude of the Reduction							
Magnitude of Ozone Reduction							
2–5 ppb	5	0	0	0	0	0	5
5–10 ppb	23	3	4	5	2	1	38
10–15 ppb	17	28	32	6	42	13	138
15–20 ppb	2	8	8	2	5	2	27
20–25 ppb	0	0	0	0	3	0	3
>25 ppb	0	0	0	0	0	0	0

TABLE VII–12.—8-HR AIR QUALITY METRICS FOR NORTHEAST REGION (GRID CELLS SELECTED BASED ON ''MONITORED'' AND ''MODELED'' NONATTAINMENT)

	MD	DC	DE	PA	NJ	NY	CT	RI	MA	Total
Metric 5: Number of Grid Cell-Days with an Average 2nd High Ozone Value>=85 ppb										
Scenario										
2007 Base	84	1	30	73	99	45	29	0	11	257
2007 Budget	40	0	1	4	37	33	11	0	6	91
Difference	−44	−1	−29	−69	−62	−12	−18	0	−5	−166
Percent	−52.38	−100.00	−96.67	−94.52	−62.63	−26.67	−62.07	0.00	−45.45	−65
Metric 6: Number of Grid Cell-Days with Ozone Reductions, by Magnitude of the Reduction										
Magnitude of Ozone Reduction										
2–5 ppb	1	0	0	1	1	6	1	0	1	11
5–10 ppb	18	1	3	19	17	34	28	0	9	129
10–15 ppb	57	0	13	46	75	0	0	0	1	192
15–20 ppb	7	0	14	7	6	0	0	0	0	34
20–25	0	0	0	0	0	0	0	0	0	0
>25 ppb	0	0	0	0	0	0	0	0	0	0

TABLE VII–13.—SELECTED OTAG METRICS FOR 8–HR STANDARD

	No. corridor	Cn. corridor	So. corridor	Rich-mond	Atlanta	Nashville	Louis-Cinci	St. Louis	Lk. MI Area	Detroit	Pitts-burgh	Charlotte
Peak 8–Hr Total—# of Grids > 84 ppb												
July 4–11, 1988:												
2007 Base Case	1624	1959	1696	580	154	485	1653	196	853	478	850	1195
2007 Budget	1132	1256	1115	313	68	139	447	32	435	253	197	450
Difference	−492	−703	−581	−267	−86	−346	−1206	−164	−418	−225	−653	−745
Percent	−30.3%	−35.9%	−34.3%	−46.0%	−55.8%	−71.3%	−73.0%	−83.7%	−49.0%	−47.1%	−76.8%	−62.3%

TABLE VII–13.—SELECTED OTAG METRICS FOR 8–HR STANDARD—Continued

	No. corridor	Cn. corridor	So. corridor	Rich-mond	Atlanta	Nashville	Louis-Cinci	St. Louis	Lk. MI Area	Detroit	Pitts-burgh	Charlotte
July 16–21, 1991:												
2007 Base Case	1333	1034	1058	112	56	93	875	129	615	172	605	71
2007 Budget	1019	573	552	12	21	10	198	37	512	51	81	0
Difference	−314	−461	−506	−100	−35	−83	−677	−92	−103	−121	−524	−71
Percent	−23.6%	−44.6%	−47.8%	−89.3%	−62.5%	−89.2%	−77.4%	−71.3%	−16.7%	−70.3%	−86.6%	−100.0%
July 22–29, 1993:												
2007 Base Case	161	204	610	206	855	395	545	56	79	23	59	1562
2007 Budget	88	134	315	92	374	125	78	17	24	2	0	387
Difference	−73	−70	−295	−114	−481	−270	−467	−39	−55	−21	−59	−1175
Percent	−45.3%	−34.3%	−48.4%	−55.3%	−56.3%	−68.4%	−85.7%	−69.6%	−69.6%	−91.3%	−100.0%	−75.2%
July 10–18, 1995:												
2007 Base Case	653	714	1489	527	693	708	1072	124	994	311	468	754
2007 Budget	437	321	642	142	260	160	215	52	712	150	20	96
Difference	−216	−393	−847	−385	−433	−548	−857	−72	−282	−161	−448	−658
Percent	−33.1%	−55.0%	−56.9%	−73.1%	−62.5%	−77.4%	−79.9%	−58.1%	−28.4%	−51.8%	−95.7%	−87.3%
All Episodes:												
2007 Base Case	3771	3911	4853	1425	1758	1681	4145	505	2541	984	1982	3582
2007 Budget	2676	2284	2624	559	723	434	938	138	1683	456	298	933
Difference	−1095	−1627	−2229	−866	−1035	−1247	−3207	−367	−858	−528	−1684	−2649
Percent	−29.0%	−41.6%	−45.9%	−60.8%	−58.9%	−74.2%	−77.4%	−72.7%	−33.8%	−53.7%	−85.0%	−74.0%
Peak 8–Hr Total—Grid Cells > 100 ppb												
July 4–11, 1988:												
2007 Base Case	817	862	975	302	64	149	383	25	320	139	215	458
2007 Budget	418	555	413	96	26	32	50	6	92	74	13	75
Difference	−399	−307	−562	−206	−38	−117	−333	−19	−228	−65	−202	−383
Percent	−48.8%	−35.6%	−57.6%	−68.2%	−59.4%	−78.5%	−86.9%	−76.0%	−71.3%	−46.8%	−94.0%	−83.6%
July 16–21, 1991:												
2007 Base Case	868	501	448	13	21	1	190	22	302	18	62	0
2007 Budget	511	305	109	0	4	0	22	7	204	1	0	0
Difference	−357	−196	−339	−13	−17	−1	−168	−15	−98	−17	−62	0
Percent	−41.1%	−39.1%	−75.7%	−100.0%	−81.0%	−100.0%	−88.4%	−68.2%	−32.5%	−94.4%	−100.0%	0.0%
July 22–29, 1993:												
2007 Base Base Case	34	59	212	85	322	97	71	4	0	0	0	399
2007 Budget	11	30	63	25	151	23	1	0	0	0	0	81
Difference	−23	−29	−149	−60	−171	−74	−70	−4	0	0	0	−318
Percent	−67.6%	−49.2%	−70.3%	−70.6%	−53.1%	−76.3%	−98.6%	−100.0%	0.0%	0.0%	0.0%	−79.7%
July 10–18, 1995:												
2007 Base Case	328	255	544	105	259	159	225	27	553	60	15	98
2007 Budget	230	139	139	34	112	28	27	1	423	17	1	6
Difference	−98	−116	−405	−71	−147	−131	−198	−26	−130	−43	−14	−92
Percent	−29.9%	−45.5%	−74.4%	−67.6%	−56.8%	−82.4%	−88.0%	−96.3%	−23.5%	−71.7%	−93.3%	−93.9%
All Episodes:												
2007 Base Case	2047	1677	2179	505	666	406	869	78	1175	217	292	955
2007 Budget	1170	1029	724	155	293	83	100	14	719	92	14	162
Difference	−877	−648	−1455	−350	−373	−323	−769	−64	−456	−125	−278	−793
Percent	−42.8%	−38.6%	−66.8%	−69.3%	−56.0%	−79.6%	−88.5%	−82.1%	−38.8%	−57.6%	−95.2%	−83.0%

VIII. Impact on Small Entities

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), provides that whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available a regulatory flexibility analysis, unless it certifies that the proposed rule, if promulgated, will not have ''a significant economic impact on a substantial number of small entities.'' *Id.*, section 605(b). Courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the rule. See, *e.g.*, *Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on regulated entities and not indirect impact on small entities not regulated).

In the proposed rulemaking, which EPA published by notice dated November 7, 1997, 62 FR 60318, EPA noted that the proposed rule would not directly regulate small entities. Instead, the proposed rule would require States to develop, adopt, and submit SIP revisions that would achieve the necessary NO_X emission reductions, and would leave to the States the task of determining how to obtain those reductions, including which entities to regulate. The EPA also noted, in the proposed rule, that because affected States would have discretion to choose which sources to regulate and how much emissions reductions each selected source would have to achieve, EPA could not, at the time of the proposal, predict the effect of the rule on small entities.

The purposes of the RFA, the RFA's statutory requirements for regulatory flexibility analyses, and the caselaw all shed light on the meaning of the term ''impact'' as used in the RFA. These sources indicate that a rule can have an ''impact'' of concern under the RFA only with respect to sources subject to the requirements of the rule.

The RFA's ''Findings and Purposes'' section states,

> It is the purpose of this Act to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and information requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.

Pub. L. 96–354, section 2(b). This statement of purpose indicates that Congress intended the RFA to ensure that agencies tailored the requirements of their regulations to the resources and capabilities of entities ''subject to [such] regulation.'' Other provisions of the RFA reflect this statement of purpose. For example, RFA sections 603 and 604 require that the initial and final regulatory flexibility analyses identify the types and estimate the numbers of small entities ''to which the proposed rule will apply'' (sections 603(b)(3) and 604(a)(3)); and other RFA provisions make clear that the regulatory flexibility analyses are to focus on how to minimize rule requirements for small entities (sections 603(c)(1) and (4), 605(a)(5)). Taken as a whole, these provisions suggest that agencies should undertake the RFA analyses only with respect to rules to which small entities are subject.

Two Federal court cases support this interpretation of ''impact': *Mid-Tex Elec. Co-op* v. *FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985), summarized above, and *United Distribution Companies* v. *FERC*, 88 F.3d 1105 (D.C. Cir. 1996). In *United Distribution Companies*, the court stated that the *Mid-Tex* court—

> * * * conducted an extensive analysis of the RFA provisions governing when a regulatory flexibility analysis is required and concluded that no analysis is necessary when an agency determines ''that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule.*''

Id. at 1170 (quoting *Mid-Tex* court, emphasis added by *United Distribution* court). For a more detailed analysis by EPA of the RFA, see ''Final Rule: National Ambient Air Quality Standards for Ozone,'' 62 FR 38856, 38888 (July 18, 1997).

For the reasons indicated above, EPA certified that the proposed rule would ''not have, if promulgated, a significant economic impact on a substantial number of small entities.'' The Agency received a number of comments on this certification, including several challenging the certification as improper under the RFA. The EPA is currently considering these comments and will respond to them in light of the rulemaking record after comments are received on this supplemental proposal.

Today's supplemental proposal does not contain anything that would adversely affect small entities. The SIP criteria and emissions reporting requirements proposed in today's action would apply only to States, and would not, by themselves, subject any other entities to any regulation. The NO_X budget trading program is a recommendation to States, but not a requirement, and thus does not subject any entities to any requirements. In addition, the trading program, if adopted by a State, would provide sources subject to the State NO_X controls additional flexibility in meeting SIP requirements. Thus, the trading program would have a beneficial effect on State-regulated sources, including small entities subject to those State requirements. Accordingly, EPA certifies that this supplemental proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities.

As noted in Section VI, Interaction with Title IV NO_X Rule, today's supplemental proposal includes, in addition to provisions directly related to the NO_X SIP call, a revision to the 40 CFR Part 76, which implements the NO_X requirements of the acid rain provisions in Title IV of the CAA Amendments and which applies directly to sources. The revision is designed to lessen the administrative requirements imposed on sources affected by the acid rain program that are in States that adopt a NO_X cap-and-trade program. Because the only impact of this revision will be to ease administrative requirements, it will not have any adverse effect on any small entity that may be subject to the rule's requirements. Accordingly, I certify that this part of today's proposed rule will not have a significant economic effect on a substantial number of small entities.

IX. 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, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that ''includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year.'' A ''Federal mandate'' is defined under section 421(6), 2 U.S.C. 658(6), to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate.'' A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is ''a condition of Federal assistance,'' section 421(5)(A)(i)(I). A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under section 202 of the UMRA, section 205, 2 U.S.C. 1535, of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

Under section 203 of UMRA, 2 U.S.C. 1533, before EPA establishes any regulatory requirements ''that might significantly or uniquely affect small governments'' EPA must have developed a small government agency plan. The plan must provide for notifying potentially affected small governments; enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates; and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under section 204 of UMRA, 2 U.S.C. 1534, if an agency proposes a rule that contains a ''significant Federal intergovernmental mandate[], the agency must develop a process to permit elected officials of State, local, and tribal governments to provide input into the development of the proposal.

The EPA addressed these issues, in the proposed rulemaking as to the proposed NO_X SIP call. However, as noted in Section VI, Interaction with Title IV NO_X Rule, today's supplemental proposal includes, in addition to provisions directly related to the proposed NO_X SIP call, a revision to the 40 CFR Part 76, which implements the NO_X requirements of the acid rain provisions in Title IV of the CAA Amendments and which applies directly to sources. The revision is designed to lessen the administrative requirements imposed on sources affected by the acid rain program that

are in States that adopt a NO_X cap-and-trade program. Because the only impact of this part of the rule will be to ease administrative requirements, it will not impose costs that would trigger the requirements of UMRA sections 202, 204, or 205. For the same reason, this part of the rule would not result in regulatory requirements that might significantly affect small governments; moreover, this part of the proposed rule would not impose requirements unique to small governments. Thus, the requirements of section 203 (2 U.S.C. 1533) do not apply to the revisions to 40 CFR Part 76.

X. 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.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1857.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St. SW, Washington, DC 20460 or by calling (202) 260–2740.

The EPA believes that it is essential that compliance with the regional control strategy be verified. Tracking emissions is the principal mechanism to ensure compliance with the budget and to assure the downwind affected States and EPA that the ozone transport problem is being mitigated. If tracking and periodic reports indicate that a State is not implementing all of its NO_X control measures beginning with the compliance date for NO_X controls or is off track to meet its statewide budget by 2007, EPA will work with the State to determine the reasons for noncompliance and what course of remedial action is needed. The reporting requirements are mandatory and the legal authority for the proposed reporting requirements resides in section 110(a) and 301(a) of the CAA. Emissions data being requested in today's proposal would not be considered confidential by EPA. Certain process data may be identified as sensitive by a State and are then treated as ''State-sensitive'' by EPA.

The reporting and record keeping burden for this collection of information is described below:

Respondents/Affected Entities: States, along with the District of Columbia, which are included in the NO_X SIP call.

Number of Respondents: 23.

Frequency of Response: Annually, triennially.

Estimated Annual Hour Burden per Respondent: 282.

Estimated Annual Cost per Respondent: $7,942.68.

Estimated Total Annual Hour Burden: 6,486.

Estimated Total Annualized Cost: $182,682.00.

There are no additional capital or operating and maintenance costs associated with the reporting requirements of the proposed rule. During the 1980s, an EPA initiative established electronic communication with each State environmental agency. This included a computer terminal for any States needing one in order to communicate with the EPA's national data base systems. Costs associated with replacing and maintaining these terminals, as well as storage of data files, have been accounted for in the ICR for the existing annual inventory reporting requirements (OMB # 2060–0088).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St., SW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St. NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Comments are requested by June 22, 1998. Include the ICR number in any correspondence.

XI. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This Section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if (i) the agency action consists of ''nationally applicable regulations promulgated, or final action taken, by the Administrator,'' or (ii) such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

Any final action related to the NO_X SIP Call is ''nationally applicable'' within the meaning of section 307(b)(1). As an initial matter, through this rule, EPA interprets section 110 of the Act in a way that could affect future actions regulating the transport of pollutants. In addition, the SIP Call, as proposed, would require 22 States and the District of Columbia to establish emissions budgets for NO_X. The SIP Call also is based on a common core of factual findings and analyses concerning the transport of ozone and its precursors between the different States subject to the SIP Call. Finally, EPA plans to establish in the final rule uniform approvability criteria that would be applied to all States subject to the SIP call. For these reasons, the Administrator also is determining that any final action regarding the NO_X SIP Call is of nationwide scope and effect for purposes of section 307(b)(1). Thus any petitions for review of final actions regarding the SIP Call must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is promulgated in the **Federal Register**.

XII. Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

As EPA indicated in the proposed rulemaking, this action is a ''significant regulatory action'' because it would have an annual effect on the economy of approximately $2 billion. 62 FR 60318, 60373. Accordingly, the notice of proposed rulemaking was submitted to OMB for review. For the same reason, today's supplemental notice of proposed rulemaking was submitted to OMB for review. Any written comments from OMB to EPA and any written EPA response to those comments are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

40 CFR Part 76

Environmental protection, Acid rain program, Air pollution control, Nitrogen dioxide, Reporting and recordkeeping requirements.

40 CFR Part 96

Environmental protection, Administrative practice and procedure, Air pollution control, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: April 28, 1998.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, parts 51, 76, and 96 of chapter I of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401, 7410, 7411, 7412, 7413, 7414, 7470–7479, 7501–7508, 7601, and 7602.

Subpart G—Control Strategy

2. Subpart G is amended to add §§ 51.121 and 51.122 to read as follows:

§ 51.121 Requirements for state implementation plan revisions relating to budgets for emissions of oxides of nitrogen.

(a) The EPA Administrator finds that the State implementation plans (SIPs) for the States listed in paragraph (c) of this section are substantially inadequate to comply with the requirements of section 110(a)(2)(D) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(D), and to mitigate adequately the interstate pollutant transport described in section 184 of the Clean Air Act, 42 U.S.C. 7511c, with respect to nonattainment areas under the 1-hour ozone national ambient air quality standards (NAAQS), to the extent that those SIPs do not provide for compliance with a budget of emissions of nitrogen oxides (''NO_X budget'') as described in paragraph (e) of this section. To cure such inadequacy, each of the States listed in paragraph(c) of this section must submit to EPA a SIP revision that provides for compliance with such NO_X budget and associated SIP provisions described in this section.

(b) The EPA Administrator determines that the States listed in paragraph (c) of this section must submit SIP revisions under section 110(a)(1) of the Clean Air Act, 42 U.S.C. 7410(a)(1), that provide for compliance with a NO_X budget, as described in paragraph (e) of this section and associated SIP provisions described in this section, to comply with the requirements of section 110(a)(2)(D) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(D), with respect to nonattainment areas under the 8-hour ozone NAAQS.

(c) The States subject to paragraphs (a) and (b) of this section are: Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin, and the District of Columbia.

(d)(1) The SIP submissions required under paragraphs (a) and (b) of this section must be submitted by no later than September 30, 1999.

(2) The State makes an official submission of its SIP revision to EPA only when:

(i) The submission conforms to the requirements of appendix V to this part; and

(ii) The State delivers five copies of the plan to the appropriate Regional Office, with a letter giving notice of such action.

(e)(1) The NO_X budget for a State listed in paragraph (c) of this section is defined as the total amount of NO_X emissions allowed from all sources in that State, as indicated in paragraph (e)(4) of this section with respect to that State.

(2) The SIP must provide for compliance with the NO_X budget during each ozone season, which includes May 1 through September 30 of the year 2007 and each subsequent year.

(3) The SIP must require implementation of its control measures by no later than September 30, 2002.

(4) The State-by-State amounts of the NO_X budget are as follows:

State	Budget
Alabama	155,617
Connecticut	39,909
Delaware	21,010
District of Columbia	7,000
Georgia	159,013
Illinois	218,679
Indiana	200,345
Kentucky	158,360
Maryland	73,628
Massachusetts	73,575
Michigan	199,238
Missouri	116,246
New Jersey	93,464
New York	185,537
North Carolina	153,106
Ohio	236,443
Pennsylvania	207,250
Rhode Island	10,132
South Carolina	109,267
Tennessee	187,250
Virginia	162,375
West Virginia	81,701
Wisconsin	95,902
Total	2,945,046

(f) Each SIP revision must set forth control measures to meet the NO_X budget which include 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) Should a State elect to impose control measures on NO_X sources serving electric generators with a nameplate capacity greater than 25 MWe or boilers with a maximum design heat input greater than 250 mmBtu/hr as a means of meeting its NO_X budget, then those measures must either:

(i) Impose a NO_X mass emissions cap on each source;

(ii) Impose a NO_X emission rate limit on each source and assume maximum operating capacity for every such source for purposes of estimating mass NO_X emissions; or

(iii) Impose any other regulatory requirement which the State has demonstrated to EPA provides equivalent or greater assurance than options in paragraphs (e)(2) (i) or (ii) of this section that the State will meet its NO_X budget.

(g)(1) Each SIP revision must demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely compliance with the NO_X budget during the 2007 ozone season.

(2) The demonstration must include the following:

(i) Each revision must contain a detailed baseline inventory of NO_X mass emissions from point, area, and mobile sources in the year 2007 absent the control measures specified in the SIP submission. The State must use the same baseline inventory that EPA used in calculating the State's NO_X budget.

(ii) Each revision must contain a summary of NO_X mass emissions in 2007 projected to result from implementation of each of the new control measures and from all NO_X sources together following implementation of such control measures. The summary must assume the same NO_X mass emissions for mobile sources assumed by EPA in calculating the State's budget, unless the State has adopted measures more stringent than the Federal measures incorporated into the budget calculation. The State must provide EPA with a summary of the computations, assumptions, and judgments used to determine the degree of reduction of projected emissions that will result from the implementation of the control measures.

(iii) Each revision must identify the sources of the data used in the projection of emissions.

(h) Each revision must comply with § 51.116 (regarding data availability).

(1) Each revision must provide for monitoring the status of compliance with any rules and regulations adopted to meet the NO_X budget. Specifically, the revision must meet the following requirements:

(i) 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—

(A) Information on the amount of NO_X emissions from the stationary sources; and

(B) 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;

(ii) The revision must comply with § 51.212 of this part (regarding testing, inspection, enforcement, and complaints);

(iii) If the revision contains any transportation control measures, then the revision must comply with § 51.213 (regarding transportation control measures);

(iv) If the revision contains measures to control NO_X sources serving electric generators with a nameplate capacity greater than 25 MWe or greater or boilers with a maximum design heat input greater than 250 mmBtu/hr, then the revision must require such sources to use a continuous emissions monitoring system.

(2) [Reserved]

(i) [Reserved]

(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 NO_X budget specified in paragraph (e) of this section;

(2) Enforce applicable laws, regulations, and standards, and seek injunctive relief;

(3) Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources.

(4) 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; also authority for the State to make such data 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 be submitted with the SIP revision.

(2) Legal authority adequate to fulfill the requirements of paragraphs (j)(3) and (4) of this section may be delegated to the State under section 114 of the Act.

(l)(1) A revision may assign legal authority to local agencies in accordance with section 51.232.

(2) Each revision must comply with section 51.240 (regarding general plan requirements).

(m) Each revision shall contain legally enforceable compliance schedules setting forth September 30, 2002 as the date by which all sources or categories of such sources must be in compliance with any applicable requirement of the SIP revision.

(n) Each revision must comply with section 51.280 (regarding resources).

(o) For purposes of the SIP revisions required by this section, EPA may make a finding under section 179(a)(1) through (4) of the Act, 42 U.S.C. 7509(a)(1)-(4), starting the sanctions process set forth in section 179(a) of the Act. Any such finding will be deemed a finding under section 52.31(c) and sanctions will be imposed in accordance with the order of sanctions and the terms for such sanctions established in section 52.31.

(p) Each revision must provide for State compliance with the reporting requirements set forth in section 51.122 of this part.

§ 51.122 Emissions reporting requirements for SIP revisions relating to budgets for NO_x emissions.

(a) For its transport SIP revision under section 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 that the emissions budget set forth in section 51.121(e)(4) is being met.

(1) *Annual reporting.* Each revision must provide for annual reporting of NO_X emissions data from all of the following sources and source categories:

(i) All NO_X sources within the State which the State chooses to regulate specifically for the purpose of meeting the NO_X budgets submitted under section 51.121(e)(4). This would include all NO_X sources within the State which are subject to measures included by the State in its transport SIP revision submitted under section 51.121. On road and nonroad mobile sources are not included unless controls greater than those Federally mandated are required for these sources.

(ii) The direct reporting of data from sources to EPA used for compliance

with the requirements of a trading program meeting the requirements of 40 CFR part 96 and/or direct reporting of data from sources to EPA used for meeting the monitoring and reporting requirements of subpart H of 40 CFR part 75 can be used to satisfy this requirement.

(2) *Triennial reporting.* Each plan must provide for triennial (i.e., every third year) reporting of NO_X emissions data from all sources within the State.

(3) *Year 2007 reporting.* Each plan must provide for reporting of year 2007 NO_X emissions data from all sources within the State.

(4) The data availability requirements in section 51.116 must be followed for all data submitted to meet the requirements of paragraphs (b)(1), (2) and (3) of this section.

(c) The data reported in paragraph (b) of this section for stationary point sources must meet the following minimum criteria:

(1) For annual data reporting purposes the data must include the following minimum elements:

(i) Inventory year.
(ii) State FIPS code.
(iii) County FIPS code.
(iv) Federal ID code (plant).
(v) Federal ID code (point).
(vi) Federal ID code (process).
(vii) Federal ID code (stack).
(vii) Site Name.
(viii) Physical Address.
(ix) SCC.
(x) Pollutant code.
(xi) Annual emissions.
(xii) Ozone Season emissions.
(xiii) Area designation.

(2) In addition, the annual data must include the following minimum elements as applicable to the emissions estimation methodology.

(i) Fuel heat content (annual).
(ii) Fuel heat content (seasonal).
(iii) Source of fuel heat content data.
(iv) Activity throughput (annual).
(v) Activity throughput (seasonal).
(vi) Source of activity/throughput data.
(vii) Winter throughput (%).
(viii) Spring throughput (%).
(ix) Summer throughput (%).
(x) Fall throughput (%).
(xi) Work weekday emissions.
(xii) Emission factor.
(xiii) Source of emission factor.
(xiv) Hr/day in operation.
(xv) Operations Start time (hour).
(xvi) Day/wk in operation.
(xvii) Wk/yr in operation.

(3) The triennial and 2007 inventories must include the following data elements:

(i) The data required in paragraphs (c)(1) and (c)(2) of this section.
(ii) X coordinate (latitude).
(iii) Y coordinate (longitude).
(iv) Stack height.
(v) Stack diameter.
(vi) Exit gas temperature.
(vii) Exit gas velocity.
(viii) Exit gas flow rate.
(ix) SIC.
(x) Boiler/process throughput design capacity.
(xi) Maximum design rate.
(xii) Maximum capacity.
(xiii) Primary control efficiency.
(xiv) Secondary control efficiency.
(xv) Control device type.

(d) The data reported in paragraph (b) of this section for area sources must include the following minimum elements:

(1) For annual inventories it must include:

(i) Inventory year.
(ii) State FIPS code.
(iii) County FIPS code.
(iv) SCC.
(v) Emission factor.
(vi) Source of emission factor.
(vii) Activity/throughput level (annual).
(viii) Activity throughput level (seasonal).
(ix) Source of activity/throughput data.
(x) Spring throughput (%).
(xi) Summer throughput (%).
(xii) Fall throughput (%).
(xiii) Control efficiency (%).
(xiv) Pollutant code.
(xv) Ozone Season emissions.
(xvi) Source of emissions data.
(xvii) Hr/day in operation.
(xviii) Day/wk in operation.
(xix) Wk/yr in operations.

(2) The triennial and 2007 inventories must contain at a minimum all the data required in paragraph (d)(1) of this section.

(e) The data reported in paragraph (b) of this section for mobile sources must meet the following minimum criteria:

(1) For the annual, triennial, and 2007 inventory purposes the following data must be reported:

(i) Inventory year.
(ii) State FIPS code.
(iii) County FIPS code.
(iv) Emission factor.
(v) Source of emission factor.
(vi) Activity (VMT by Roadway Class).
(vii) Source of activity data.
(viii) Pollutant code.
(ix) Summer work weekday emissions.
(x) Ozone season emissions.
(xi) Source of emissions data.

(2) [Reserved.]

(f) Approval of ozone season calculation by EPA. Each State must submit for EPA approval an example of the calculation procedure used to calculate ozone season emissions along with sufficient information for EPA to verify the calculated value of ozone season emissions.

(g) *Reporting schedules.* (1) Annual reports are to begin with data for the year 2003.

(2) Triennial reports are to begin with data for the year 2002.

(3) Year 2007 data are to be submitted for the year 2007.

(4) States must submit data for a required year by 12 months after the end of the calendar year for which the data are collected.

(h) Data Reporting Procedures. When submitting a formal NO_X budget emissions report and associated data, States shall notify the appropriate EPA regional office.

(1) States are required to report emissions data in an electronic format to the location given in paragraph (h)(5) of this section. Several options are available for data reporting.

(2) An agency may choose to continue reporting to the EPA Aerometric Information Retrieval System (AIRS) system using the AIRS facility subsystem (AFS) format for point sources. (This option will continue for point sources for some period of time after AIRS is reengineered (before 2002), at which time this choice may be discontinued or modified.)

(3) An agency may convert its emissions data into the Emission Inventory Improvement Program/ Electronic Data Interchange (EIIP/EDI) format. This file can then be made available to any requestor, either using E-mail, floppy disk, or value added network (VAN), or can be placed on a file transfer protocol (FTP) site.

(4) An agency may submit its emissions data in a proprietary format based on the EIIP data model.

(5) For options in paragraphs (h)(3) and (4) of this section, the terms *submitting* and *reporting* data are defined as either providing the data in the EIIP/EDI format or the EIIP based data model proprietary format to EPA, Office of Air Quality Planning and Standards, Emission Factors and Inventory Group directly or notifying this group that the data are available in the specified format and at a specific electronic location (e.g., FTP site).

(6) For annual reporting (not for triennial reports) a State may have sources submit the data directly to EPA. This option will be available to any source in a State that is both participating in a trading program meeting the requirements of part 96 of this chapter and that has agreed to accept data in this format. The EPA will

make both the raw data submitted in this format and summary data available to any State that chooses this option.

(i) *Definitions.* As used in this section, the following words and terms shall have the meanings set forth below:

(1) *Annual emissions.* Actual emissions for a plant, point, or process, either measured or calculated.

(2) *Ash content.* Inert residual portion of a fuel.

(3) *Area designation.* The designation of the area in which the reporting source is located with regard to the ozone national ambient air quality standard. This would include attainment or nonattainment designations. For nonattainment designations, the classification of the nonattainment area must be specified, i.e., transitional, marginal, moderate, serious, severe, or extreme.

(4) *Boiler design capacity.* A measure of the size of a boiler, based on the reported maximum continuous steam flow. Capacity is calculated in units of MMBtu/hr.

(5) *Control device type.* The name of the type of control device (e.g., wet scrubber, flaring, or process change).

(6) *Control efficiency.* The emissions reduction efficiency of a primary control device, which shows the amount of reduction of a particular pollutant from a process' emissions due to controls or material change. Control efficiency is usually expressed as a percentage or in tenths.

(7) *County/parish/reservation (FIPS).* Federal Information Placement System (FIPS). FIPS is the system of unique numeric codes developed by the government to identify States, counties, towns, and townships for the entire United States, Puerto Rico, and Guam.

(8) *Day/wk in operations.* Days per week that the emitting process operates.

(9) *Emission factor.* Ratio relating emissions of a specific pollutant to an activity or material throughput level.

(10) *Exit gas flow rate.* Numeric value of stack gas flow rate.

(11) *Exit gas temperature.* Numeric value of an exit gas stream temperature.

(12) *Exit gas velocity.* Numeric value of an exit gas stream velocity.

(13) *Fall throughput (%).* Portion of throughput for the three Fall months (September, October, November). This represents the expression of annual activity information on the basis of four seasons, typically spring, summer, fall, and winter. It can be represented either as a percentage of the annual activity (e.g., production in summer is 40 percent of the year's production), or in terms of the units of the activity (e.g., out of 600 units produced, spring = 150 units, summer = 250 units, fall = 150 units, and winter = 50 units).

(14) *Federal ID code (plant).* Unique codes for a plant or facility, containing one or more pollutant-emitting sources.

(15) *Federal ID code (point).* Unique codes for the point of generation of emissions, typically a physical piece of equipment.

(16) *Federal ID code (stack number).* Unique codes for the point where emissions from one or more processes are released into the atmosphere.

(17) *Federal Information Placement System (FIPS).* The system of unique numeric codes developed by the government to identify States, counties, towns, and townships for the entire United States, Puerto Rico, and Guam.

(18) *Heat content.* The thermal heat energy content of a solid, liquid, or gaseous fuel. Fuel heat content is typically expressed in units of Btu/lb of fuel, Btu/gal of fuel, joules/kg of fuel, etc.

(19) *Hr/day in operations.* Hours per day that the emitting process operates.

(20) *Maximum design rate.* Maximum fuel use rate based on the equipment's or process' physical size or operational capabilities.

(21) *Maximum nameplate capacity.* A measure of the size of a generator, and is put on the unit's nameplate by the manufacturer. The data element is reported in MW or KW.

(22) *Ozone season.* The period May 1 through September 30 of a year.

(23) *Physical address.* Street address of facility.

(24) *Point source.* A non-mobile source which emits 100 tons of NO_X or more per year. A non-mobile source which emits less NO_X per year than this amount is an area source.

(25) *Pollutant code.* A unique code for each reported pollutant that has been assigned in the EIIP Data Model. Character names are used for criteria pollutants, while Chemical Abstracts Service (CAS) numbers are used for all other pollutants. Some States may be using SAROAD codes for pollutants, but these should be able to be mapped to the EIIP Data Model pollutant codes.

(26) *Process rate/throughput.* A measurable factor or parameter that is directly or indirectly related to the emissions of an air pollution source. Depending on the type of source category, activity information may refer to the amount of fuel combusted, the amount of a raw material processed, the amount of a product that is manufactured, the amount of a material that is handled or processed, population, employment, number of units, or miles traveled. Activity information is typically the value that is multiplied against an emission factor to generate an emissions estimate.

(27) *SCC. Source category code.* A process-level code that describes the equipment or operation emitting pollutants.

(28) *Secondary control efficiency (%).* The emission reduction efficiency of a secondary control device, which shows the amount of reduction of a particular pollutant from a process' emissions due to controls or material change. Control efficiency is usually expressed as a percentage or in tenths.

(29) *SIC.* Standard Industrial Classification code. U.S. Department of Commerce's categorization of businesses by their products or services.

(30) *Site name.* The name of the facility.

(31) *Spring throughput (%).* Portion of throughput or activity for the three spring months (March, April, May). See the definition of Fall Throughput.

(32) *Stack diameter.* Stack physical diameter.

(33) *Stack height.* Stack physical height above the surrounding terrain.

(34) *Start date (inventory year).* The calendar year that the emissions estimates were calculated for and are applicable to.

(35) *Start time (hour).* Start time (if available) that was applicable and used for calculations of emissions estimates.

(36) *State/providence/territory (FIPS).* Federal Information Placement System (FIPS). FIPS is the system of unique numeric codes developed by the government to identify States, counties, towns, and townships for the entire United States, Puerto Rico, and Guam.

(37) *Summer throughput (%).* Portion of throughput or activity for the three summer months (June, July, August). See the definition of Fall Throughput.

(38) *Summer work weekday emissions.* Average day's emissions for a typical day.

(39) *VMT by Roadway Class.* VMT stands for vehicle miles traveled and is an expression of vehicle activity that is used with emission factors. The emission factors are usually expressed in terms of grams per mile of travel. Since VMT does not directly correlate to emissions that occur while the vehicle is not moving, these non-moving emissions are incorporated into EPA's MOBILE model emission factors.

(40) *Winter throughput (%).* Portion of throughput or activity for the three winter months (December, January, February). See the definition of Fall Throughput.

(41) *Week/year in operation.* Weeks per year that the emitting process operates.

(42) *Work Weekday.* Any day of the week except Saturday or Sunday.

(43) *X coordinate (latitude).* East-west geographic coordinate of an object.

(44) *Y coordinate (longitude).* North-south geographic coordinate of an object.

PART 76—ACID RAIN NITROGEN OXIDES EMISSION REDUCTION PROGRAM

3. The authority citation for part 76 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

4. Section 76.16 is added to read as follows:

§ 76.16 Alternative compliance.

(a)(1) A State or group of States may submit a petition requesting that the Administrator, on his or her own motion, may:

(i) Require the owners or operators of the Group 1, Phase II coal-fired utility units with a tangentially fired boiler or a dry bottom wall fired boiler in the State or the group of States to be subject to the applicable emission limitations for NO_X in § 76.5, in lieu of the applicable emission limitations for NO_X in § 76.7; and

(ii) Provide that the owners or operators of the Group 2 coal-fired utility units with a cell burner boiler, cyclone boiler, wet bottom boiler, or vertically fired boiler in the State or the group of States are not subject to the applicable emission limitations for NO_X in § 76.6.

(2) A petition under paragraph (a)(1) of this section must demonstrate that the requirements in paragraphs (b)(1) and (2) of this section are met.

(3) A petition under paragraph (a)(1) of this section may be submitted, but may not be approved by the Administrator, before the State implementation plan or Federal implementation plan covering the entire State, or the State implementation plans or Federal implementation plans covering the entire group of States, under paragraph (b) of this section become final and federally enforceable.

(b) The Administrator may take the actions in paragraphs (a)(1)(i) and (ii) of this section if he or she finds that, under the State implementation plan or Federal implementation plan covering the entire State or the State implementation plans or Federal implementation plans covering the entire group of States:

(1) Each unit that is in the State or the group of States and that, but for the provisions of this section, would be subject to emission limitations under this part

(i) Is subject to:

(A) A cap on total annual NO_X emissions; or

(B) Two or more seasonal caps that together limit total annual NO_X emissions;

(ii) May trade authorizations to emit NO_X within each such cap, provided that the Administrator will consider (to the extent demonstrated to his or her satisfaction) whether the cost savings from trading will be offset by elimination of the ability of an owner or operator of a unit in the State or the group of States to use a NO_X averaging plan under § 76.11 in lieu of emission limitations under § 76.5, § 76.6, or § 76.7 that remain applicable under the provisions of this section; and

(iii) Must use authorizations to emit NO_X to account for:

(A) Any NO_X emissions by such unit; and

(B) Any NO_X emissions resulting from reducing utilization of such unit below its baseline utilization (adjusted for changes in demand for electricity) and shifting utilization to any other unit, or combustion device serving a generator, that is not subject to each such cap, unless it is demonstrated to the satisfaction of the Administrator that any NO_X emissions under this paragraph (b)(1)(iii)(B) will not result in higher total NO_X emissions from sources in the State or group of States or in other States; and

(2)(i) Total annual NO_X emissions by all units that are in the State or the group of States and that, but for the provisions of this section, would be subject to emission limitations under this part will be equal to or lower than total annual NO_X emissions by such units if each such unit is treated as subject to the applicable emission limitation in § 76.5, § 76.6, or § 76.7 that would apply but for the provisions of this section.

(ii) In the case of a petition under paragraph (a) of this section, total annual NO_X emissions by the units will be determined using the actual utilizations of the units for the last 4 calendar quarters prior to submission of the petition. In the case of action by the Administrator on his or her own motion under paragraph (a) of this section, total annual NO_X emissions by the units will be determined using the actual utilizations of the units for the last 4 calendar quarters prior to issuance of the draft decision under paragraph (c) of this section.

(c) In acting on a petition or on his or her own motion under paragraph (a) of this section, the Administrator will issue, for public comment, a draft decision on the petition or a draft decision to act on his or her own motion and then a final decision. The Administrator may issue a draft decision, but not final decision, on a petition or on his or her own motion before the State implementation plan or Federal implementation plan covering the entire State, or the State implementation plans or Federal implementation plans covering the entire group of States, under paragraph (b) of this section become final and federally enforceable. The draft decision will set forth procedures that will govern issuance of the final decision and will provide for:

(1) Service of notice of issuance of the draft decision on.

(i) Any interested person;

(ii) The designated representative of each source with one or more units that, but for the provisions of this section, would be subject to the applicable emission limitation in § 76.6 or § 76.7; and

(iii) The air pollution control agencies that:

(A) Have jurisdiction over a unit covered by the draft decision;

(B) Are in a State, or area in which there is a federally recognized Indian tribe, whose air quality may be affected by the draft decision and that is contiguous to the State, or the area in which there is a federally recognized Indian tribe, where a unit covered by the draft decision is located; or

(C) Are in a State, or area in which there is a federally recognized Indian tribe, within 50 miles of a unit covered by the draft decision.

(2) Publication of notice of issuance of the draft decision in the **Federal Register** and in any State publication designed to give general public notice in the States in which the units covered by the draft decision are located;

(3) A public comment period of at least 30 days and extension or reopening of the comment period by the Administrator for good cause;

(4) A public hearing, upon request or on the Administrator's own motion, to the extent the Administrator determines that a public hearing will contribute to the decision-making process by clarifying one or more significant issues affecting the draft decision;

(5) Consideration by the Administrator of the comments on the draft decision received during the public comment period or any public hearing and written response by the Administrator to any such relevant comments;

(6) Notice of issuance of a final decision using the methods set forth in paragraphs (c)(1) and (2) of this section for providing notice of the draft decision; and

(7) Appeals, governed by part 78 of this chapter, of the final decision.

(d) If, after the Administrator issues a final decision under paragraph (c) of this section and takes the actions set forth in paragraphs (a)(1)(i) and (ii) of this section with regard to a State or group of States, a State implementation plan or Federal implementation plan covering the entire State or entire group of States is revised in a way that may affect the basis for the findings on which such decision is based, the Administrator may, upon petition or on his or her own motion, reconsider such decision.

(e) For purposes of this section, the term ''State'' shall mean one of the 48 contiguous States or the District of Columbia.

Authority: 42 U.S.C. 7401, 7403, 7410, and 7601.

5. Part 96 is added consisting of §§ 96.1 through 96.88 to read as follows:

PART 96—NO_X BUDGET TRADING PROGRAM

Subpart A—NO_X Budget Trading Program General Provisions

Sec.
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96.2 Definitions.
96.3 Measurements, abbreviations, and acronyms.
96.4 Applicability.
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96.10 Authorization and responsibilities of the NO_X authorized account representative.
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96.87 Change in regulatory status.
96.88 NO_X allowance allocations to opt-in units.

Authority: 42 U.S.C. 7401, 7403, 7410, and 7601.

Subpart A—NO_X Budget Trading Program General Provisions

§ 96.1 Purpose.

This part establishes general provisions and the applicability, permitting, allowance, excess emissions, monitoring, and opt-in provisions for the NO_X Budget Trading Program as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor. The owner or operator of a unit, or any other person, shall comply with the requirements of this part only if such compliance is required by a State that has jurisdiction over the unit and that incorporates by reference or otherwise adopts the requirements of this part. A State that adopts the requirements of this part authorizes the Administrator to assist the State in implementing the NO_X Budget Trading Program by carrying out the functions set forth for the Administrator in this part.

§ 96.2 Definitions.

The terms used in this part shall have the meanings set forth in this section as follows:

Account certificate of representation means the completed and signed submission required by subpart B of this part for certifying the designation of a NO_X authorized account representative for a NO_X Budget source or a group of identified NO_X Budget sources who is authorized to represent the owners and operators of such source or sources and of the NO_X Budget units at such source or sources with regard to matters under the NO_X Budget Trading Program.

Account number means the identification number given by the Administrator to each NO_X Allowance Tracking System account.

Acid Rain emissions limitation means, as defined in § 72.2 of this chapter, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under title IV of the Clean Air Act.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or *allocation* means the determination by the permitting authority or the Administrator of the number of NO_X allowances to be initially credited to a NO_X Budget unit or an allocation set-aside.

Automated data acquisition and handling system or *DAHS* means that component of the CEMS, or other emissions monitoring system approved for use under subpart H 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 H 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.

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).

Combined cycle system means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines

configured to improve overall efficiency of electricity generation or steam production.

Combustion turbine means an enclosed fossil or other fuel-fired device that is comprised of 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.

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. For purposes of § 96.70 and except as provided in § 96.5, for a unit that is a NO_X Budget unit under § 96.4 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, reconstructed, or repowered. For purposes of § 96.70 and except as provided in § 96.5 or subpart I of this part, for a unit that is not a NO_X Budget unit under § 96.4 on the date the unit commences commercial operation, the date the unit becomes a NO_X Budget unit under § 96.4 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. For purposes of § 96.21, § 96.42, or § 96.70 and except as provided in § 96.5, for a unit that is a NO_X Budget unit under § 96.4 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, reconstructed, or repowered. For purposes of § 96.21, 96.42, or 96.70 and except as provided in § 96.5 or subpart I of this part, for a unit that is not a NO_X Budget unit under § 96.4 on the date of commencement of operation, the date the unit becomes a NO_X Budget unit under § 96.4 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 NO_X Allowance Tracking System account, established by the Administrator for the NO_X Budget unit under subpart F of this part, in which the NO_X allowance allocations for the unit are initially recorded and in which are held NO_X allowances available for use by the unit for a control period for the purpose of meeting the unit's NO_X Budget emissions limitation.

Compliance certification means a submission to the permitting authority or the Administrator, as appropriate, that is required under subpart D of this part to report a NO_X Budget source's or a NO_X Budget unit's compliance or noncompliance with this part and that is signed by the NO_X authorized account representative in accordance with subpart B of this part.

Compliance use date means the first control period for which a NO_X allowance can be used for the purpose of meeting a unit's NO_X Budget emissions limitation.

Continuous emission monitoring system or *CEMS* means the equipment required under subpart H of this part to sample, analyze, measure, and provide, by readings taken at least once every 15 minutes, a permanent record of emissions, expressed in pounds per million British thermal units (lb/mmBtu) for nitrogen oxides. The equipment also provides, for each hour, a permanent record of emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included in a continuous emission monitoring system:

(1) Flow monitor;

(2) Nitrogen oxides pollutant concentration monitors;

(3) Diluent gas monitor (oxygen or carbon dioxide);

(4) A continuous moisture monitor when such monitoring is required by subpart H of this part; and

(5) An automated data acquisition and handling system.

Control period means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the NO_X authorized account representative and as determined by the Administrator in accordance with subpart H of this part.

Energy Information Administration means the Energy Information Administration of the United States Department of Energy.

EPA means the United States Environmental Protection Agency.

Excess emissions means any tonnage of nitrogen oxides emitted by a NO_X Budget unit during a control period that exceeds the NO_X Budget emissions limitation for the unit.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil fuel-fired means the combustion of fossil fuel, alone or in combination with any other fuel, where the fossil fuel comprises more than 50 percent of the annual heat input on a Btu basis.

General account means a NO_X Allowance Tracking System account, established under subpart F of this part, that is not a compliance account or an overdraft account.

Generator means a device that produces electricity.

Heat input means the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded, and reported to the Administrator by the NO_X authorized account representative and as determined by the Administrator in accordance with subpart H of this part, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy 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 equal to or greater 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 ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

Maximum potential hourly heat input means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use appendix D of part 75 of this chapter to report heat input, this value should be calculated, in accordance with part 75 of this chapter, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this

value should be reported, in accordance with part 75 of this chapter, using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent CO_2) or the minimum oxygen concentration (in percent O_2).

Maximum potential NO_X emission rate means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F of part 75 of this chapter, using the maximum potential nitrogen oxides concentration as defined in section 2 of appendix A of part 75 of this chapter, and either the maximum oxygen concentration (in percent O_2) or the minimum carbon dioxide concentration (in percent CO_2), under all operating conditions of the unit except for unit start up, shutdown, and upsets.

Monitoring system means any monitoring system that meets the requirements of subpart H of this part, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

Most stringent State or Federal NO_X emissions limitation means, with regard to a NO_X Budget opt-in source, the lowest NO_X emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means 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 measured in accordance with the United States Department of Energy standards.

Non-title V permit means a federally enforceable permit administered by the permitting authority pursuant to the Clean Air Act and regulatory authority under the Clean Air Act, other than title V of the Clean Air Act and part 70 or 71 of this chapter.

NO_X allowance means an authorization by the permitting authority or the Administrator under the NO_X Budget Trading Program to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter.

NO_X allowance deduction or *deduct NO_X allowances* means the permanent withdrawal of NO_X allowances by the Administrator from a NO_X Allowance Tracking System compliance account or overdraft account to account for the number of tons of NO_X emissions from a NO_X Budget unit for a control period, determined in accordance with subpart H of this part, or for any other allowance surrender obligation under this part.

NO_X allowances held or *hold NO_X allowances* means the NO_X allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subpart G of this part, in a NO_X Allowance Tracking System account.

NO_X Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of NO_X allowances under the NO_X Budget Trading Program.

NO_X Allowance Tracking System account means an account in the NO_X Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of NO_X allowances.

NO_X allowance transfer deadline means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO_X allowances may be submitted for recordation in a NO_X Budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NO_X Budget emissions limitation for the control period immediately preceding such deadline.

NO_X authorized account representative means, for a NO_X Budget source or NO_X Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_X Budget units at the source, in accordance with subpart B of this part, to represent and legally bind each owner and operator in matters pertaining to the NO_X Budget Trading Program or, for a general account, the natural person who is authorized, in accordance with subpart F of this part, to transfer or otherwise dispose of NO_X allowances held in the general account.

NO_X Budget emissions limitation means the tonnage equivalent of the NO_X allowances allocated to a NO_X Budget unit for use in a control period adjusted, as of the NO_X allowance transfer deadline, by transfers to or from the unit's compliance account, or the overdraft account of the source where the unit is located, of NO_X allowances available for compliance deductions for the unit for the control period in accordance with § 96.54.

NO_X Budget opt-in permit means a NO_X Budget permit covering a NO_X Budget opt-in source.

NO_X Budget opt-in source means a unit that has been elected to become a NO_X Budget unit under the NO_X Budget Trading Program and whose opt-in permit has been issued and is in effect under subpart I of this part.

NO_X Budget permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under this part, including any permit revisions, specifying the NO_X Budget Trading Program requirements applicable to a NO_X Budget source, to each NO_X Budget unit at the NO_X Budget source, and to the owners and operators and the NO_X authorized account representative of the NO_X Budget source and each NO_X Budget unit.

NO_X Budget source means a source that includes one or more NO_X Budget units.

NO_X Budget Trading Program means a regional nitrogen oxides air pollution control and emission reduction program established in accordance with this part and pursuant to § 51.121 of this chapter, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

NO_X Budget unit means a unit that is subject to the NO_X Budget Trading Program emissions limitation under § 96.4 or § 96.80.

Operating means, with regard to a unit under §§ 96.22(d)(2) and 96.80, having documented heat input for more than 876 hours in the 6 months immediately preceding the submission of an application for an initial NO_X Budget permit under § 96.83(a).

Operator means any person who operates, controls, or supervises a NO_X Budget unit, a NO_X Budget source, or unit for which an application for a NO_X Budget opt-in permit under § 96.83 is being or has been submitted and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Opt-in means to be elected to become a NO_X Budget unit under the NO_X Budget Trading Program through a final, effective NO_X Budget opt-in permit under subpart I of this part.

Overdraft account means the NO_X Allowance Tracking System account, established by the Administrator under subpart F of this part, for each NO_X Budget source where there are two or more NO_X Budget units.

Owner means any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a NO_X Budget unit or in a unit for which an application for a NO_X Budget opt-in permit under § 96.83 is being or has been submitted; or

(2) Any holder of a leasehold interest in a NO_X Budget unit or in a unit for which an application for a NO_X Budget opt-in permit under § 96.83 is being or has been submitted; or

(3) Any purchaser of power from a NO_X Budget unit or from a unit for which an application for a NO_X Budget opt-in permit under § 96.83 is being or has been submitted under a life-of-the-unit, firm power contractual arrangement. However, 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, upon the revenues or income from the NO_X Budget unit or the unit for which an application for a NO_X Budget opt-in permit under § 96.83 is being or has been submitted; or

(4) With respect to any general account, any person who has an ownership interest with respect to the NO_X allowances held in the general account and who is subject to the binding agreement for the NO_X authorized account representative to represent that person's ownership interest with respect to 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 NO_X Budget Trading Program in accordance with subpart C of this part.

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 writing 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 NO_X allowances, the movement of NO_X allowances by the Administrator from one NO_X Allowance Tracking System account to another, 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 appendix A of part 60 of this chapter.

Serial number means, when referring to NO_X allowances, the unique identification number assigned to each NO_X allowance by the Administrator, under § 96.53(c).

Source means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the Clean Air Act. 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 48 contiguous States and the District of Columbia specified in § 51.121(c) of this chapter, or any non-federal authority in or including such States or the District of Columbia (including local agencies, and Statewide agencies) or any eligible Indian tribe in an area of such State or the District of Columbia, that adopts a NO_X Budget Trading Program pursuant to § 51.121 of this chapter. To the extent a State incorporates by reference this part, the term ''State'' shall mean the incorporating State. The term ''State'' shall have its conventional meaning where such meaning is clear from the context.

State trading program budget means the total number of NO_X tons apportioned to all NO_X Budget units in a given State, in accordance with the NO_X Budget Trading Program, for use in a given control period.

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 as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton or tonnage means any ''short ton'' (i.e., 2,000 pounds). For the purpose of determining compliance with the NO_X Budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with subpart H of this part, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

Unit means a stationary boiler, combustion turbine, or combined cycle system.

Unit load means the total (i.e., gross) output of a unit in any control period (or other specified time period) produced by combusting a given heat input of fuel, expressed in terms of:

(1) The total electrical generation (MWe) for use within the plant and for sale; or

(2) In the case of a unit that uses heat input for purposes other than electrical generation, the total steam pressure (psia) produced by the unit.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or *hour of unit operation* means any hour (or fraction of an hour) during which a unit combusts any fuel.

Utilization means the heat input (expressed in mmBtu/time) for a unit.

§ 96.3 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu—British thermal unit.
hr—hour.
Kwh—kilowatt hour.
lb—pounds.
mmBtu—million Btu.
MWe—megawatt electrical.
ton—2000 pounds
CO_2—carbon dioxide.
NO_X—nitrogen oxides.
O_2—oxygen.

§ 96.4 Applicability.

The following units in a State shall be NO_X Budget units, and any source that includes one or more such units shall be a NO_X Budget source, subject to the requirements of this part:

(a) Any unit that, any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25 MWe; or

(b) Any unit that is not a unit under paragraph (a) of this section and that, any time on or after January 1, 1995, does not serve a generator and has a maximum design heat input greater than 250 mmBtu/hr.

§ 96.5 Retired unit exemption.

(a) This section applies to any NO_X Budget unit, other than a NO_X Budget opt-in source, that is permanently retired.

(b)(1) Any NO_X Budget unit, other than a NO_X Budget opt-in source, that is permanently retired shall be exempt from the NO_X Budget Trading Program, except for the provisions of this section, §§ 96.2, 96.3, 96.4, 96.7 and subparts E, F, and G 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 NO_X authorized account representative (authorized in accordance with subpart

B of this part) shall submit a statement to the permitting authority otherwise responsible for administering a NO_X Budget permit for the unit. A copy of the statement shall be submitted to the Administrator. The statement shall state (in a format prescribed by the permitting authority) that the unit is permanently retired 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 the permit 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. The owners and operators of the unit will be allocated allowances in accordance with subpart E of this part.

(2)(i) 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 NO_X authorized account representative of the source submits a complete NO_X Budget permit application under § 96.22 for the unit not less than 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations) prior to the later of May 1, 2003 or the date on which the unit is to first resume operation.

(ii) 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 non-title V permit shall not resume operation unless the NO_X authorized account representative of the source submits a complete NO_X Budget permit application under § 96.22 for the unit not less than 18 months (or such lesser time provided under the permitting authority's non-title V permits regulations) prior to the later of May 1, 2003 or the date on which the unit is to first resume operation.

(3) The owners and operators and, to the extent applicable, the NO_X authorized account representative of a unit exempt under this section shall comply with the requirements of the NO_X Budget 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 that is exempt under this section is not eligible to be a NO_X Budget opt-in source under subpart I of this part.

(5) 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.

(6) *Loss of exemption.* (i) On the earlier of the following dates, a unit exempt under paragraph (b) of this section shall lose its exemption:

(A) The date on which the NO_X authorized account representative submits a NO_X Budget permit application under paragraph (c)(2) of this section; or

(B) The date on which the NO_X authorized account representative is required under paragraph (c)(2) of this section to submit a NO_X Budget permit application.

(ii) For the purpose of applying monitoring requirements under subpart H of this part, a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

§ 96.6 Standard requirements.

(a) *Permit Requirements.* (1) The NO_X authorized account representative of each NO_X Budget source and each NO_X Budget unit at the source shall:

(i) Submit to the permitting authority a complete NO_X Budget permit application under § 96.22 in accordance with the deadlines specified in § 96.21(b) and (c);

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a NO_X Budget permit application and issue or deny a NO_X Budget permit.

(2) The owners and operators of each NO_X Budget source and each NO_X Budget unit at the source shall have a NO_X Budget permit issued by the permitting authority and operate the unit in compliance with such NO_X Budget permit.

(b) *Monitoring requirements.* (1) The owners and operators and, to the extent applicable, the NO_X authorized account representative of each NO_X Budget source and each NO_X Budget unit at the source shall comply with the monitoring requirements of subpart H of this part.

(2) The emissions measurements recorded and reported in accordance with subpart H of this part shall be used to determine compliance by the unit with the NO_X Budget emissions limitation under paragraph (c) of this section.

(c) *Nitrogen oxides requirements.* (1) The owners and operators of each NO_X Budget source and each NO_X Budget unit at the source shall hold NO_X allowances available for compliance deductions under § 96.54, as of the NO_X allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO_X emissions for the control period from the unit, as determined in accordance with subpart H of this part, plus any amount necessary to account for actual utilization under § 96.42(d) for the control period.

(2) Each ton of nitrogen oxides emitted in excess of the NO_X Budget emissions limitation shall constitute a separate violation of this part, the Clean Air Act, and applicable State law.

(3) A NO_X Budget unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of May 1, 2003 or the date on which the unit commences operation.

(4) NO_X allowances shall be held in, deducted from, or transferred among NO_X Allowance Tracking System accounts in accordance with subparts E, F, G, and I of this part.

(5) A 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 NO_X allowance was allocated.

(6) A NO_X allowance allocated by the permitting authority under the NO_X Budget Trading Program is a limited authorization to emit one ton of nitrogen oxides in accordance with the NO_X Budget Trading Program. No provision of the NO_X Budget Trading Program, the NO_X Budget permit application, the NO_X Budget permit, or an exemption under § 96.5 and no provision of law shall be construed to limit the authority of the United States or the State to terminate or limit such authorization.

(7) A NO_X allowance allocated by the permitting authority or the Administrator under the NO_X Budget Trading Program does not constitute a property right.

(8) Upon recordation by the Administrator under subpart F, G, or I of this part, every allocation, transfer, or deduction of a NO_X allowance to or from a NO_X Budget unit's compliance account or the overdraft account of the source where the unit is located is

deemed to amend automatically, and become a part of, the NO_X Budget unit's NO_X Budget permit by operation of law without any further review.

(d) *Excess emissions requirements.* (1) The owners and operators of a NO_X Budget unit that has excess emissions in any control period shall:

(i) Surrender the NO_X allowances required for deduction under § 96.54(d)(1); and

(ii) Pay any fine, penalty, or assessment or comply with any other remedy imposed under § 96.54(d)(3).

(2) [Reserved]

(e) *Recordkeeping and Reporting Requirements.* (1) Unless otherwise provided, the owners and operators of the NO_X Budget source and each NO_X Budget 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 account certificate of representation for the NO_X authorized account representative for the source and each NO_X Budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with § 96.13; ''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 account certificate of representation changing the NO_X authorized account representative.

(ii) All emissions monitoring information, in accordance with subpart H of this part; ''provided'' that to the extent that subpart H 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 NO_X Budget Trading Program.

(iv) Copies of all documents used to complete a NO_X Budget permit application and any other submission under the NO_X Budget Trading Program or to demonstrate compliance with the requirements of the NO_X Budget Trading Program.

(2) The NO_X authorized account representative of a NO_X Budget source and each NO_X Budget unit at the source shall submit the reports and compliance certifications required under the NO_X Budget Trading Program, including those under subparts D, H, or I of this part.

(f) *Liability.* (1) Any person who knowingly violates any requirement or prohibition of the NO_X Budget Trading Program, a NO_X Budget permit, or an exemption under § 96.5 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 NO_X Budget 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 NO_X Budget Trading Program that occurs prior to the date that the revision takes effect.

(4) Each NO_X Budget source and each NO_X Budget unit shall meet the requirements of the NO_X Budget Trading Program.

(5) Any provision of the NO_X Budget Trading Program that applies to a NO_X Budget source (including a provision applicable to the NO_X authorized account representative of a NO_X Budget source) shall also apply to the owners and operators of such source and of the NO_X Budget units at the source.

(6) Any provision of the NO_X Budget Trading Program that applies to a NO_X Budget unit (including a provision applicable to the NO_X authorized account representative of a NO_X budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under subpart H of this part, the owners and operators and the NO_X authorized account representative of one NO_X Budget unit shall not be liable for any violation by any other NO_X Budget unit of which they are not owners or operators or the NO_X authorized account representative and that is located at a source of which they are not owners or operators or the NO_X authorized account representative.

(g) *Effect on Other Authorities.* No provision of the NO_X Budget Trading Program, a NO_X Budget permit application, a NO_X Budget permit, or an exemption under § 96.5 shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NO_X authorized account representative of a NO_X Budget source or NO_X Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 96.7 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the NO_X Budget 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 NO_X Budget 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 NO_X Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

Subpart B—NO_X Authorized Account Representative for NO_X Budget Sources

§ 96.10 Authorization and responsibilities of the NO_X authorized account representative.

(a) Except as provided under § 96.11, each NO_X Budget source, including all NO_X Budget units at the source, shall have one and only one NO_X authorized account representative, with regard to all matters under the NO_X Budget Trading Program concerning the source or any NO_X Budget unit at the source.

(b) The NO_X authorized account representative of the NO_X Budget source shall be selected by an agreement binding on the owners and operators of the source and all NO_X Budget units at the source.

(c) Upon receipt by the Administrator of a complete account certificate of representation under § 96.13, the NO_X authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NO_X Budget source represented and each NO_X Budget unit at the source in all matters pertaining to the NO_X Budget Trading Program, not withstanding any agreement between the NO_X authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NO_X authorized account representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No NO_X Budget permit shall be issued, and no NO_X Allowance Tracking System account shall be established for a NO_X Budget unit at a source, until the Administrator has received a complete account certificate of representation under § 96.13 for a NO_X authorized account representative of the source and the NO_X Budget units at the source.

(e) (1) Each submission under the NO_X Budget Trading Program shall be submitted, signed, and certified by the NO_X authorized account representative

for each NO_X Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the NO_X authorized account representative: ''I am authorized to make this submission on behalf of the owners and operators of the NO_X Budget sources or NO_X Budget 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 NO_X Budget source or a NO_X Budget unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 96.11 Alternate NO_X authorized account representative.

(a) An account certificate of representation may designate one and only one alternate NO_X authorized account representative who may act on behalf of the NO_X authorized account representative. The agreement by which the alternate NO_X authorized account representative is selected shall include a procedure for authorizing the alternate NO_X authorized account representative to act in lieu of the NO_X authorized account representative.

(b) Upon receipt by the Administrator of a complete account certificate of representation under § 96.13, any representation, action, inaction, or submission by the alternate NO_X authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_X authorized account representative.

(c) Except in this section and §§ 96.10(a), 96.12, 96.13, and 96.51, whenever the term ''NO_X authorized account representative'' is used in this part, the term shall be construed to include the alternate NO_X authorized account representative.

§ 96.12 Changing the NO_X authorized account representative alternate NO_X authorized account representative; changes in the owners and operators.

(a) Changing the NO_X authorized account representative. The NO_X authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under § 96.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_X authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new NO_X authorized account representative and the owners and operators of the NO_X Budget source and the NO_X Budget units at the source.

(b) Changing the alternate NO_X authorized account representative. The alternate NO_X authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under § 96.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_X authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new alternate NO_X authorized account representative and the owners and operators of the NO_X Budget source and the NO_X Budget units at the source.

(c) *Changes in the owners and operators.* (1) In the event a new owner or operator of a NO_X Budget source or a NO_X Budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the NO_X authorized account representative and any alternate NO_X authorized account 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 NO_X Budget source or a NO_X Budget unit, including the addition of a new owner or operator, the NO_X authorized account representative or alternate NO_X authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

§ 96.13 Account certificate of representation.

(a) A complete account certificate of representation for a NO_X authorized account representative or an alternate NO_X authorized account representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the NO_X Budget source and each NO_X Budget unit at the source for which the account certificate of representation is submitted.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_X authorized account representative and any alternate NO_X authorized account representative.

(3) A list of the owners and operators of the NO_X Budget source and of each NO_X Budget unit at the source.

(4) The following certification statement by the NO_X authorized account representative and any alternate NO_X authorized account representative: ''I certify that I was selected as the NO_X authorized account representative or alternate NO_X authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO_X Budget source and each NO_X Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_X Budget Trading Program on behalf of the owners and operators of the NO_X Budget source and of each NO_X Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the permitting authority, the Administrator, or a court regarding the source or unit.''

(5) The signature of the NO_X authorized account representative and any alternate NO_X authorized account representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement or notice referred to in the account 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.

§ 96.14 Objections concerning the NO_X authorized account representative.

(a) Once a complete account certificate of representation under § 96.13 has been submitted and received, the permitting authority and the Administrator will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under § 96.13 is received by the Administrator.

(b) Except as provided in § 96.12(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 NO_X authorized account representative shall affect any representation, action, inaction, or submission of the NO_X authorized account representative or the finality of any decision or order by the permitting authority or the Administrator under the NO_X Budget 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 NO_X authorized account representative, including private legal disputes concerning the proceeds of NO_X allowance transfers.

Subpart C—Permits

§ 96.20 General NO_X budget trading program permit requirements.

(a) Each NO_X Budget source shall have a federally enforceable permit, which shall include a NO_X Budget permit, administered by the permitting authority.

(1) For NO_X Budget sources required to have a title V operating permit, the NO_X Budget 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 or subpart I of this part. The applicable provisions of such title V operating permits regulations shall include, but are not limited to, those provisions addressing operating permit applications, operating permit application shield, operating permit duration, operating permit shield, operating permit issuance, operating permit revision and reopening, public participation, and State and EPA review.

(2) For NO_X Budget sources required to have a non-title V permit, the NO_X Budget portion of the non-title V permit shall be administered in accordance with the permitting authority's regulations promulgated to administer non-title V permits, except as provided otherwise by this subpart or subpart I of this part. The applicable provisions of such non-title V permits regulations may include, but are not limited to, provisions addressing permit applications, permit application shield, permit duration, permit shield, permit issuance, permit revision and reopening, public participation, and State and EPA review.

(b) Each NO_X Budget permit (including a draft or proposed NO_X Budget permit, if applicable) shall contain all applicable NO_X Budget Trading Program requirements and shall be a complete and segregable portion of the permit under paragraph (a) of this section.

§ 96.21 Submission of NO_X Budget permit applications.

(a) *Duty to apply.* The NO_X authorized account representative of any NO_X Budget source with one or more NO_X Budget units shall submit to the permitting authority a complete NO_X Budget permit application under § 96.22 by the applicable deadline in paragraph (b) of this section.

(b)(1) For NO_X Budget sources required to have a title V operating permit:

(i) For any source, with one or more NO_X Budget units under § 96.4 that commence operation before January 1, 2000, the NO_X authorized account representative shall submit a complete NO_X Budget permit application under § 96.22 covering such NO_X Budget units to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations for final action on a permit application) before May 1, 2003.

(ii) For any source, with any NO_X Budget unit under § 96.4 that commences operation on or after January 1, 2000, the NO_X authorized account representative shall submit a complete NO_X Budget permit application under § 96.22 covering such NO_X Budget unit to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations for final action on a permit application) before the later of May 1, 2003 or the date on which the NO_X Budget unit commences operation.

(2) For NO_X Budget sources required to have a non-title V permit:

(i) For any source, with one or more NO_X Budget units under § 96.4 that commence operation before January 1, 2000, the NO_X authorized account representative shall submit a complete NO_X Budget permit application under § 96.22 covering such NO_X Budget units to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's non-title V permits regulations for final action on a permit application) before May 1, 2003.

(ii) For any source, with any NO_X Budget unit under § 96.4 that commences operation on or after January 1, 2000, the NO_X authorized account representative shall submit a complete NO_X Budget permit application under § 96.22 covering such NO_X Budget unit to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's non-title V permits regulations for final action on a permit application) before the later of May 1, 2003 or the date on which the NO_X Budget unit commences operation.

(c) *Duty to Reapply.* (1) For a NO_X Budget source required to have a title V operating permit, the NO_X authorized account representative shall submit a complete NO_X Budget permit application under § 96.22 for the NO_X Budget source covering the NO_X Budget units at the source in accordance with the permitting authority's title V operating permits regulations addressing operating permit renewal.

(2) For a NO_X Budget source required to have a non-title V permit, the NO_X authorized account representative shall submit a complete NO_X Budget permit application under § 96.22 for the NO_X Budget source covering the NO_X Budget units at the source in accordance with the permitting authority's non-title V permits regulations addressing permit renewal.

§ 96.22 Information requirements for NO_X Budget permit applications.

A complete NO_X Budget permit application shall include the following elements concerning the NO_X Budget source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the NO_X Budget 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 NO_X Budget unit at the NO_X Budget source and whether it is a NO_X Budget unit under § 96.4 or under subpart I of this part;

(c) The standard requirements under § 96.6; and

(d) For each NO_X Budget opt-in unit at the NO_X Budget source, the following

certification statements by the NO_X authorized account representative:

(1) ''I certify that each unit for which this permit application is submitted under subpart I of this part is not a NO_X Budget unit under 40 CFR 96.4 and is not covered by a retired unit exemption under 40 CFR 96.5 that is in effect.''

(2) If the application is for an initial NO_X Budget opt-in permit, ''I certify that each unit for which this permit application is submitted under subpart I is currently operating, as that term is defined under 40 CFR 96.2.''

§ 96.23 NO_X Budget permit contents.

(a) Each NO_X Budget permit (including any draft or proposed NO_X Budget permit, if applicable) will contain, in a format prescribed by the permitting authority, all elements required for a complete NO_X Budget permit application under § 96.22 as approved or adjusted by the permitting authority.

(b) Each NO_X Budget permit is deemed to incorporate automatically the definitions of terms under § 96.2 and, upon recordation by the Administrator under subparts F, G, or I of this part, every allocation, transfer, or deduction of a NO_X allowance to or from the compliance accounts of the NO_X Budget units covered by the permit or the overdraft account of the NO_X Budget source covered by the permit.

§ 96.24 Effective date of initial NO_X budget permit.

The initial NO_X Budget permit covering a NO_X Budget unit for which a complete NO_X Budget permit application is timely submitted under § 96.21(b) shall become effective by the later of:

(a) May 1, 2003;

(b) May 1 of the year in which the NO_X Budget unit commences operation, if the unit commences operation on or before May 1 of that year;

(c) The date on which the NO_X Budget unit commences operation, if the unit commences operation during a control period; or

(d) May 1 of the year following the year in which the NO_X Budget unit commences operation, if the unit commences operation on or after October 1 of the year.

§ 96.25 NO_X Budget permit revisions.

(a) For a NO_X Budget source with a title V operating permit, except as provided in § 96.23(b), the permitting authority will revise the NO_X Budget permit, as necessary, in accordance with the permitting authority's title V operating permits regulations addressing permit revisions.

(b) For a NO_X Budget source with a non-title V permit, except as provided in § 96.23(b), the permitting authority will revise the NO_X Budget permit, as necessary, in accordance with the permitting authority's non-title V permits regulations addressing permit revisions.

Subpart D—Compliance Certification

§ 96.30 Compliance certification report.

(a) *Applicability and deadline.* For each control period in which one or more NO_X Budget units at a source are subject to the NO_X Budget emissions limitation, the NO_X authorized account representative of the source shall submit to the permitting authority and the Administrator by November 30 of that year, a compliance certification report for each source covering all such units.

(b) *Contents of report.* The NO_X authorized account representative shall include in the compliance certification report under paragraph (a) of this section the following elements, in a format prescribed by the Administrator, concerning each unit at the source and subject to the NO_X Budget emissions limitation for the control period covered by the report:

(1) Identification of each NO_X Budget unit;

(2) At the NO_X authorized account representative's option, the serial numbers of the NO_X allowances that are to be deducted from each unit's compliance account under § 96.54 for the control period;

(3) At the NO_X authorized account representative's option, for units sharing a common stack and having NO_X emissions that are not monitored separately or apportioned in accordance with subpart H of this part, the percentage of allowances that is to be deducted from each unit's compliance account under § 96.54(e); and

(4) The compliance certification under paragraph (c) of this section.

(c) *Compliance certification.* In the compliance certification report under paragraph (a) of this section, the NO_X authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NO_X Budget units at the source in compliance with the NO_X Budget Trading Program, whether each NO_X Budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NO_X Budget Trading Program applicable to the unit, including:

(1) Whether the unit was operated in compliance with the NO_X Budget emissions limitation;

(2) Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute NO_X emissions to the unit, in accordance with subpart H of this part;

(3) Whether all the NO_X emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with subpart H of this part. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions has been made;

(4) Whether the facts that form the basis for certification under subpart H of this part of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under subpart H of this part, if any, has changed; and

(5) If a change is required to be reported under paragraph (c)(4) of this section, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

§ 96.31 Permitting authority's and Administrator's action on compliance certifications.

(a) The permitting authority or the Administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NO_X Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

(b) The Administrator may deduct allowances from or return allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under paragraph (a) of this section.

Subpart E—NO_X Allowance Allocations

§ 96.40 State trading program budget.

The State trading program budget allocated by the permitting authority under § 96.42 will equal the total number of tons of NO_X emissions apportioned to the NO_X Budget units under § 96.4 in the State, as determined by the applicable, approved State implementation plan.

§ 96.41 Timing requirements for NO_X allowance allocations.

(a) By September 30, 1999, the permitting authority will submit to the Administrator the NO_X allowance allocations, in accordance with § 96.42, for the control periods in 2003, 2004, 2005, 2006, and 2007. If the permitting authority fails to submit to the Administrator the NO_X allowance allocations in accordance with this paragraph (a), the Administrator will allocate NO_X allowances for the applicable control periods, in accordance with § 96.42, within 60 days of the deadline for submission by the permitting authority.

(b) By December 31, 2002 and December 31 of each year thereafter, the permitting authority will submit to the Administrator the NO_X allowance allocations, in accordance with § 96.42, for the control period in the year that is 6 years after the year of the applicable deadline for submission under this paragraph (b). If the permitting authority fails to submit to the Administrator the NO_X allowance allocations in accordance with this paragraph (b), the Administrator will allocate NO_X allowances for the applicable control period, in accordance with § 96.42, within 60 days of the applicable deadline for submission by the permitting authority.

§ 96.42 NO_X allowance allocations.

(a)(1) The heat input (in mmBtu) used for calculating NO_X allowance allocations for each NO_X Budget unit under § 96.4 will be:

(i) For a NO_X allowance allocation under § 96.41(a), the average of the two highest amounts of the unit's heat input for the control periods in 1995, 1996, and 1997; and

(ii) For a NO_X allowance allocation under § 96.41(b), the unit's heat input for the control period in the year that is 6 years before the year for which the NO_X allocation is being calculated.

(2) The unit's total heat input for the control periods in each year specified under paragraph (a)(1) of this section will be determined in accordance with part 75 of this chapter if the NO_X Budget 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.

(b) For each control period under § 96.41, the permitting authority will allocate to all NO_X Budget units under § 96.4 in the State that commenced operation before May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, a total number of NO_X allowances equal to 98 percent of the tons of NO_X emissions in the State trading program budget under § 96.40 in accordance with the following procedures:

(1) The permitting authority will allocate NO_X allowances to each NO_X Budget unit in an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section.

(2) If the initial total number of NO_X allowances allocated to all NO_X Budget units in the State for a control period under paragraph (a)(1) of this section does not equal 98 percent of the number of tons of NO_X emissions in the State trading program budget, the permitting authority will adjust the total number of NO_X allowances allocated to all such NO_X Budget units for the control period under paragraph (a)(1) of this section so that the total number of NO_X allowances allocated equals 98 percent of the number of tons of NO_X emissions in the State trading program budget. This adjustment will be made by: multiplying each unit's allocation by the total number of NO_X allowances allocated under paragraph (a)(1) of this section divided by 98 percent of the number of tons of NO_X emissions in the State trading program budget, and rounding to the nearest whole allowance as appropriate.

(c) For each control period under § 96.41, the permitting authority will allocate NO_X allowances to NO_X Budget units under § 96.4 in the State that commenced operation on or after May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, in accordance with the following procedures:

(1) The permitting authority will establish a separate allocation set-aside for each control period. Each allocation set-aside will be allocated NO_X allowances equal to 2 percent of the tons of NO_X emissions in the State trading program budget under § 96.40.

(2) The NO_X authorized account representative of a NO_X Budget unit under paragraph (c) of this section may submit to the permitting authority a request, in writing or in a format specified by the permitting authority, to be allocated NO_X allowances for no more than five consecutive control periods under § 96.41, starting with the control period during which the NO_X Budget unit is projected to commence operation. The NO_X allowance allocation request must be submitted prior to May 1 of the first control period for which the NO_X allowance allocation is requested and after the date on which the permitting authority issues a permit to construct the NO_X Budget unit.

(3) In a NO_X allowance allocation request under paragraph (c)(2) of this section, the NO_X authorized account representative may request for a control period NO_X allowances in an amount that does not exceed 0.15 lb/mmBtu multiplied by the NO_X Budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit is projected to operate.

(4) The permitting authority will review, and allocate NO_X allowances pursuant to, NO_X allowance allocation requests under paragraph (c)(2) of this section in the order that the requests are received by the permitting authority.

(i) Upon receipt of a NO_X allowance allocation request, the permitting authority will determine whether, and will make any necessary adjustments to the request to ensure that, the control period and the number of allowances specified are consistent with the requirements of paragraphs (c)(2) and (3) of this section.

(ii) If the allocation set-aside for the control period for which NO_X allowances are requested has an amount of NO_X allowances not less than the number requested (as adjusted under paragraph (c)(4)(i) of this section), the permitting authority will allocate the full, adjusted amount of the NO_X allowances requested to the NO_X Budget unit.

(iii) If the allocation set-aside for the control period for which NO_X allowances are requested has a smaller amount of NO_X allowances than the number requested (as adjusted under paragraph (b)(4)(i) of this section), the permitting authority will deny in part the request and allocate only the remaining number of NO_X allowances in the allocation set-aside to the NO_X Budget unit.

(iv) Once an allocation set-aside for a control period has been depleted of all NO_X allowances, the permitting authority will deny, and will not allocate any NO_X allowances pursuant to, any NO_X allowance allocation requests under which NO_X allowances

have not already been allocated for the control period.

(5) Within 60 days of receipt of a NO_X allowance allocation request, the permitting authority will take appropriate action under paragraph (c)(4) of this section and notify the NO_X authorized account representative that submitted the request and the Administrator of the number of NO_X allowances (if any) allocated for the control period to the NO_X Budget unit.

(6) After September 30 of each year, the Administrator will transfer any NO_X allowances remaining in the allocation set-aside for the control period for the year to the allocation set-aside for the following control period.

(7) If additional NO_X allowances are placed in the allocation set-aside for the control period pursuant to paragraphs (c)(6) or (d)(2) of this section, the permitting authority will allocate NO_X allowances, in accordance with paragraph (c)(4) of this section, to any NO_X allowance allocation requests that were originally denied in whole or in part. The permitting authority will notify the NO_X authorized account representative that submitted the request and the Administrator of the number of NO_X allowances (if any) allocated under this paragraph (c)(7).

(d) For a NO_X Budget unit that is allocated NO_X allowances under paragraph (c) of this section for a control period, the Administrator will deduct NO_X allowances under § 96.54(b) or (e) to account for the actual utilization of the unit during the control period.

(1) The Administrator will calculate the number of NO_X allowances to be deducted to account for the unit's actual utilization using the following formula, provided that the number of NO_X allowances to be deducted shall be zero if the number calculated is less than zero:

Unit's NO_X allowances deducted for actual utilization = (Unit's NO_X allowances allocated for control period)—(Unit's actual control period utilization x 0.15 lb/mmBtu) where:

''Unit's NO_X allowances allocated for control period'' is the number of NO_X allowances allocated to the unit for the control period under paragraph (c) of this section.

''Unit's actual control period utilization'' is the utilization (in mmBtu), as defined in § 96.2, of the unit during the control period.

(2) Any NO_X allowances deducted by the Administrator in accordance with paragraph (d) of this section will be transferred by the Administrator to the permitting authority's allocation set-aside for the following control period.

Subpart F—NO_X Allowance Tracking System

§ 96.50 NO_X Allowance Tracking System accounts.

(a) Nature and function of compliance accounts and overdraft accounts. Consistent with § 96.51(a), the Administrator will establish one compliance account for each NO_X Budget unit and one overdraft account for each source with one or more NO_X Budget units. Allocations of allowances pursuant to subpart E of this part, transfers of allowances pursuant to subpart G of this part, and deductions of allowances to cover NO_X emissions, account for actual utilization, or offset excess emissions of NO_X pursuant to § 96.54 will be recorded in the compliance accounts or overdraft accounts in accordance with this subpart.

(b) Nature and function of general accounts. Consistent with § 96.51(b), the Administrator will establish, upon request, a general account for any person. Transfers of allowances pursuant to subpart G of this part will be recorded in the general account in accordance with this subpart.

§ 96.51 Establishment of accounts.

(a) *Compliance accounts and overdraft accounts.* Upon receipt of a complete account certificate of representation under § 96.13, the Administrator will establish:

(1) A compliance account for each NO_X Budget unit for which the account certificate of representation was submitted; and

(2) An overdraft account for each source for which the account certificate of representation was submitted and that has two or more NO_X Budget units.

(b) *General accounts.* (1) Any person may apply to open a general account for the purpose of holding and transferring allowances. 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:

(i) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_X authorized account representative and any alternate NO_X authorized account representative;

(ii) At the option of the NO_X authorized account representative, organization name and type of organization;

(iii) A list of all persons subject to a binding agreement for the NO_X authorized account representative to represent their ownership interest with respect to the allowances held in the general account;

(iv) The following certification statement by the NO_X authorized account representative and any alternate NO_X authorized account representative: ''I certify that I was selected as the NO_X authorized account representative or the 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 NO_X Budget 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.''

(v) The signature of the NO_X authorized account representative and any alternate NO_X authorized account representative and the dates signed.

(2) 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 NO_X authorized account representative and any alternate 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 NO_X allowances held in the general account in all matters pertaining to the NO_X Budget Trading Program, not withstanding any agreement between the NO_X authorized account representative or any alternate NO_X authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NO_X authorized account representative or any alternate NO_X authorized account representative by the Administrator or a court regarding the general account.

(iii) Each submission concerning the general account shall be submitted, signed, and certified by the NO_X authorized account representative or the alternate NO_X authorized account representative for the persons having an ownership interest with respect to NO_X allowances held in the general account. Each such submission shall include the following certification statement by the NO_X authorized account representative: ''I am authorized to make this

submission on behalf of the persons having an ownership interest with respect to the 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.''

(iv) 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)(iii) of this section.

(3)(i) An application for a general account may designate one and only one NO_X authorized account representative and one and only one alternate NO_X authorized account representative who may act on behalf of the NO_X authorized account representative. The agreement by which the alternate NO_X authorized account representative is selected shall include a procedure for authorizing the alternate NO_X authorized account representative to act in lieu of the NO_X authorized account representative.

(ii) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section, any representation, action, inaction, or submission by the alternate NO_X authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_X authorized account representative.

(4)(i) The 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 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 NO_X authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(ii) The alternate 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 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 NO_X authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(iii)(A) In the event a new person having an ownership interest with respect to NO_X allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NO_X authorized account representative and any alternate NO_X authorized account representative of the source or unit, 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 NO_X allowances in the general account, including the addition of persons, the NO_X authorized account representative or alternate 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 NO_X allowances in the general account to include the change.

(5)(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)(4) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_X authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NO_X authorized account representative or the finality of any decision or order by the Administrator under the NO_X Budget Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NO_X authorized account representative for a general account, including private legal disputes concerning the proceeds of 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.

§ 96.52 NO_X Allowance Tracking System responsibilities of NO_X authorized account representative.

(a) Following the establishment of a 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 NO_X allowances in the account, shall be made only by the NO_X authorized account representative for the account.

(b) Authorized account representative identification. The Administrator will assign a unique identifying number to each NO_X authorized account representative.

§ 96.53 Recordation of NO_X allowance allocations.

(a) The Administrator will record the NO_X allowances for 2003, 2004, 2005, 2006, and 2007 in the NO_X Budget units' compliance accounts and the allocation set-asides, as allocated under subpart E of this part. The Administrator will also record the NO_X allowances allocated under § 96.88(a)(1) and (b) for each NO_X Budget opt-in source in its compliance account.

(b) Each year, after the Administrator has made all deductions from a NO_X Budget unit's compliance account and the overdraft account pursuant to § 96.54, the Administrator will record NO_X allowances, as allocated to the unit under subpart E of this part or under § 96.88(a)(2) and (b), in the compliance account for the year after the last year for which allowances were previously allocated to the compliance account. Each year, the Administrator will also record NO_X allowances, as allocated under subpart E of this part, in the allocation set-aside for the year after the last year for which allowances were previously allocated to an allocation set-aside.

(c) Serial numbers for allocated NO_X allowances. When allocating NO_X allowances to and recording them in an account, the Administrator will assign each NO_X allowance a unique

identification number that will include digits identifying the year for which the NO_X allowance is allocated.

§ 96.54 Compliance.

(a) *NO_X allowance transfer deadline.* The NO_X allowances are available to be deducted for compliance with a unit's NO_X Budget emissions limitation for a control period in a given year only if the NO_X allowances:

(1) Have compliance use dates prior to or the same as that year; and

(2) Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NO_X allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NO_X allowance transfer correctly submitted for recordation under § 96.60 by the NO_X allowance transfer deadline for that control period.

(b) *Deductions for compliance.* (1) Following the recordation, in accordance with § 96.61, of NO_X allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NO_X allowance transfer deadline for a control period, the Administrator will deduct NO_X allowances available under paragraph (a) of this section to cover the unit's NO_X emissions (as determined in accordance with subpart H of this part), or to account for actual utilization under § 96.42(d), for the control period:

(i) From the compliance account; and

(ii) Only if no more NO_X allowances available under paragraph (a) of this section remain in the compliance account from the overdraft account. In deducting allowances for units at the source from the overdraft account, the Administrator will begin with the unit having the compliance account with the lowest NO_X Allowance Tracking System account number and end with the unit having the compliance account with the highest NO_X Allowance Tracking System account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).

(2) The Administrator will deduct NO_X allowances first under paragraph (b)(1)(i) of this section and then under paragraph (b)(1)(ii) of this section:

(i) Until the number of NO_X allowances deducted for the control period equals the number of tons of NO_X emissions, determined in accordance with subpart H of this part, from the unit for the control period for which compliance is being determined, plus the number of NO_X allowances required for deduction to account for actual utilization under § 96.42(d) for the control period; or

(ii) Until no more NO_X allowances available under paragraph (a) of this section remain in the respective account.

(c)(1) *Identification of NO_X allowances by serial number.* The NO_X authorized account representative for each compliance account may identify by serial number the NO_X allowances to be deducted from the unit's compliance account under paragraph (b), (d), or (e) of this section. Such identification shall be made in the compliance certification report submitted in accordance with § 96.30.

(2) *First-in, first-out.* The Administrator will deduct NO_X allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO_X allowances by serial number under paragraph (c)(1) of this section, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Those NO_X allowances with a compliance use date the same as the year of the control period and that were allocated to the unit under subpart E or I of this part;

(ii) Those NO_X allowances with a compliance use date the same as the year of the control period and that were transferred and recorded in the account pursuant to subpart G of this part, in order of their date of recordation;

(iii) Those NO_X allowances with an earlier compliance use date than the year of the control period and that were allocated to the unit under subpart E or I of this part; and

(iv) Those NO_X allowances with an earlier compliance use date than the year of the control period and that were transferred and recorded in the account pursuant to subpart G of this part, in order of their date of recordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section, the Administrator will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO_X allowances, with a compliance use date the same as the year after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.

(2) If the compliance account or overdraft account does not contain sufficient NO_X allowances, the Administrator will deduct the required number of NO_X allowances, regardless of their compliance use date, whenever NO_X allowances are recorded in either account.

(3) Any allowance deduction required under paragraph (d) of this section shall not affect the liability of the owners and operators of the NO_X Budget unit 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 NO_X Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

(ii) Each ton of excess emissions is a separate violation.

(e) *Deductions for units sharing a common stack.* In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with subpart H of this part, the NO_X authorized account representative of the units may identify the percentage of NO_X allowances to be deducted from each such unit's compliance account to cover the unit's share of NO_X emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with § 96.30.

Notwithstanding paragraph (b)(2)(i) of this section, the Administrator will deduct NO_X allowances until the number of NO_X allowances equals the identified percentage of the number of tons of NO_X emissions, as determined in accordance with subpart H of this part, from the common stack for the control period in the year for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit.

(f) The Administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to paragraphs (b), (d), or (e) of this section.

§ 96.55 Banking [Reserved].

§ 96.56 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any NO_X Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify

the NO_X authorized account representative for the account.

§ 96.57 Closing of general accounts.

(a) The NO_X authorized account representative of a general account may instruct the Administrator to close the account by submitting a statement, in writing or in a format specified by the Administrator, requesting deletion of the account from the NO_X Allowance Tracking System and by correctly submitting for recordation under § 96.60 an allowance transfer of all NO_X allowances in the account to one or more other NO_X Allowance Tracking System accounts.

(b) If a general account shows no activity for a period of a year or more and does not contain any NO_X allowances, the Administrator may notify the NO_X authorized account representative for the account that the account will be closed and deleted from the NO_X Allowance Tracking System 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 NO_X allowances into the account under § 96.60 or a statement, in writing or in a format specified by the Administrator, submitted by the NO_X authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart G—NO_X Allowance Transfers

§ 96.60 Scope and submission of NO_X allowance transfers.

The NO_X authorized account representatives seeking recordation of a NO_X allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the NO_X allowance transfer shall include the following elements in a format specified by the Administrator:

(a) The numbers identifying both the transferror and transferee accounts;

(b) A specification by serial number of each NO_X allowance to be transferred; and

(c) The printed name and signature of the NO_X authorized account representative of the transferror account and the date signed.

§ 96.61 EPA recordation.

(a) Within 5 business days of receiving a NO_X allowance transfer, except as provided in paragraph (b) of this section, the Administrator will record a NO_X allowance transfer by moving each NO_X allowance from the transferror account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 96.60;

(2) The transferror account includes each NO_X allowance identified by serial number in the transfer; and

(3) The transfer meets all other requirements of this part.

(b) A NO_X allowance transfer that is submitted for recordation following the NO_X allowance transfer deadline and that includes any NO_X allowances with a compliance use date that is prior to or the same as the year of the control period to which the NO_X allowance transfer deadline applies will not be recorded until after completion of the process of recordation of NO_X allowance allocations in § 96.53(b).

(c) Where a 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.

§ 96.62 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a NO_X allowance transfer under § 96.61, the Administrator will notify each party to the transfer. Notice will be given, in writing or in a format to be specified by the Administrator, to the NO_X authorized account representatives of both the transferror and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a NO_X allowance transfer that fails to meet the requirements of § 96.61(a), the Administrator will notify, in writing or in a format to be specified by the Administrator, the 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 NO_X allowance transfer for recordation following notification of non-recordation.

Subpart H—Monitoring and Reporting

§ 96.70 General requirements.

The owners and operators, and to the extent applicable, the NO_X authorized account representative of a NO_X Budget unit, shall comply with the monitoring 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 § 96.2 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 replaced by the terms ''NO_X Budget unit,'' ''NO_X authorized account representative,'' and ''continuous emission monitoring system'' (or ''CEMS''), respectively, as defined in § 96.2.

(a) *Compliance dates.* (1)(i) The owner or operator of each NO_X Budget unit under § 96.4 that commences operation before January 1, 2000 shall ensure that all monitoring systems required under this subpart for monitoring NO_X emission rate and heat input are installed, all certification tests required under § 96.71 are successfully completed, and all other provisions of this subpart and part 75 of this chapter applicable to such systems are met on or before May 1, 2000.

(ii) The owner or operator of each NO_X Budget unit under paragraph (a)(1) of this section that has not successfully completed all certification tests required under § 96.71 by May 1, 2001 shall determine and report hourly NO_X emission rate and heat input, starting on such date until all such certification tests are successfully completed, using either:

(A) The maximum potential NO_X emission rate and the maximum potential hourly heat input of the unit;

(B) Reference methods under § 75.22 of this chapter; or

(C) Monitored data validated using the procedures in § 75.20(b)(3) of this chapter where the term ''recertification'' is replaced by the term ''initial certification.''

(2)(i) The owner or operator of each NO_X Budget unit under § 96.4 that commences operation on or after January 1, 2000 shall ensure that all monitoring systems required under this subpart for monitoring NO_X emission rate and heat input are installed, all certification tests required under § 96.71 are successfully completed, and all other provisions of this subpart and part 75 applicable to such systems are met on or before the later of the following dates:

(A) May 1, 2001; or

(B) Not later than the earlier of 180 days after the date on which the unit commences operation or, for units under § 96.4(a), 90 days after the date on which the unit commences commercial operation.

(ii) The owner or operator of each NO_X Budget unit under paragraph (a)(2) of this section that has not successfully completed all certification tests required under § 96.71 by the later of May 1, 2001 or the date on which the unit

commences operation shall determine and report hourly NO_X emission rate and heat input, starting on such date until all such certification tests are successfully completed, using either:

(A) The maximum potential NO_X emission rate and the maximum potential hourly heat input of the unit;

(B) Reference methods under § 75.22 of this chapter; or

(C) Monitored data validated using the procedures in § 75.20(b)(3) of this chapter where the term ''recertification'' is replaced by the term ''initial certification.''

(3)(i) The owner-operator of a NO_X Budget unit that completes construction of a new stack or flue after the applicable deadline in paragraph (a)(1)(i) or (2)(i) of this section or under subpart I of this part, shall ensure, with regard to such new stack or flue, that all monitoring systems required under this subpart for monitoring NO_X emission rate and heat input are installed, all certification tests required under § 96.71 are successfully completed, and all other provisions of this subpart and part 75 are met not later than 90 days after the date on which emissions first exit to the atmosphere through such new stack or flue.

(ii) The owner or operator of each NO_X Budget unit under paragraph (a)(3)(i) of this section that has not successfully completed all certification tests required under § 96.71 by not later than 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue under paragraph (a)(3)(i) of this section shall determine and report hourly NO_X emission rate and heat input, starting on such date until all such certification tests are successfully completed, using either:

(A) The maximum potential NO_X emission rate and the maximum potential hourly heat input of the unit;

(B) Reference methods under § 75.22 of this chapter; or

(C) Monitored data validated using the procedures in § 75.20(b)(3) of this chapter where the term ''recertification'' is *replaced* by the term ''initial certification.''

(4) The provisions of this subpart are applicable to a unit for which an application for a NO_X Budget opt-in permit is being or has been submitted, as provided in subpart I of this part.

(b) *Prohibitions.* (1) No owner or operator of a NO_X Budget 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 § 96.75.

(2) No owner or operator of a NO_X Budget 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 NO_X Budget 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 NO_X Budget unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by a retired unit exemption under § 96.5 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 NO_X authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with § 96.71(b)(2)(i).

§ 96.71 Initial certification and recertification procedures.

(a) The owner or operator of a NO_X Budget unit that is subject to an acid rain emissions limitation shall comply with the initial certification and recertification procedures of part 75 of this chapter, except that:

(1) If, prior to January 1, 1998, the Administrator approved a petition under § 75.17(a) or (b) of this chapter for apportioning the combined 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 of this chapter, the petition shall be resubmitted to the Administrator under § 96.75(a) to determine if the approval should apply under the NO_X Budget Trading Program.

(2) For any additional NO_X emission rate CEMS required under the common stack provisions in § 75.72 of this chapter, the owner or operator shall meet the requirements of paragraph (b) of this section.

(b) The owner or operator of a NO_X Budget unit that is not subject to an acid rain emissions limitation shall comply with the following initial certification and recertification procedures, and the owner or operator of a NO_X Budget unit that is subject to an acid rain emissions limitation shall meet the following initial certification and recertification procedures for any additional NO_X emission rate CEMS required under the common stack provisions in § 75.72 of this chapter.

(1) *Requirements for initial certification or recertification.* (i) The owner or operator shall ensure that each monitoring system required by subpart H of part 75 of this chapter (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter and shall ensure that all applicable certification tests are successfully completed by the deadlines specified in § 96.70(a). In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this part, in a location where no such monitoring system was previously installed, initial certification is required.

(ii) Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that is determined by the permitting authority or the Administrator to significantly affect the ability of the system to accurately measure or record NO_X emission rate or heat input 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 by performing all of the recertification testing required under § 75.20 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 is determined by the permitting authority or the Administrator to significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system. Examples of changes which require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or changing of flow rate monitor polynomial coefficients. Any change to a continuous emissions monitoring system for which

the permitting authority or the Administrator determines that a relative accuracy test audit (RATA) is not necessary, shall not require recertification, and any other tests that the permitting authority or the Administrator determines to be necessary (e.g., linearity checks, calibration error tests, automated data acquisition and handling system (DAHS) verifications) shall be performed. These other tests shall be considered diagnostic tests rather than recertification tests. The data validation procedures in § 75.20(b)(3) of this chapter shall be applied (replacing the term ''recertification'' with the term ''diagnostic'') to linearity checks, 7-day calibration error tests, and cycle time tests when these are required as diagnostic tests.

(2) *Certification approval process for initial certifications and recertification.* (i) *Notification of certification.* The NO_X authorized account representative shall submit to the permitting authority a written notice of the dates of certification in accordance with § 96.73.

(ii) *Certification application.* The NO_X authorized account 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 § 75.73 of this chapter.

(iii) Upon the earlier of the successful completion of the required certification procedures of paragraph (b)(1) of this section or the hour in which data that were considered conditionally valid according to the procedures in § 75.20(b)(3) of this chapter for the monitoring system or component thereof, the monitoring system or component thereof shall be deemed provisionally certified for use under the NO_X Budget 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 or component thereof under paragraph (b)(2)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system or component thereof, 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 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 (b)(2)(ii) of this section. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system which 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 NO_X Budget Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each continuous emission 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 (b)(2)(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 NO_X authorized account representative must submit the additional information required to complete the certification application. If the NO_X authorized account 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 (b)(2)(iv)(C) of this section.

(c) *Disapproval notice.* If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this part, or if the certification application is incomplete and the requirement for disapproval under paragraph (b)(2)(iv)(B) of this section has been met, 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 or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in paragraph (b)(2)(v) of this section for each monitoring system or component thereof which 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 § 96.72(b).

(v) *Procedures for loss of certification.* If the permitting authority issues a notice of disapproval of a certification application under paragraph (b)(2)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (b)(2)(iv)(D) of this section, then:

(A) The owner or operator shall substitute, for each hour of unit operation during the period of invalid data, the maximum potential NO_X emission rate or the maximum potential hourly heat input of the unit as applicable, until the earlier of the time, date, and hour (after the monitoring system or component thereof is adjusted, repaired, or replaced) when certification tests are successfully completed or the time, date, and hour specified under the data validation procedures under § 75.20(b)(3) of this chapter;

(B) The NO_X authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with the procedures in paragraphs (b)(2)(i) and (ii) of this section; and

(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.

§ 96.72 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality assurance requirements of Appendix B of part 75 of this chapter, data shall be substituted using the applicable procedures in subpart 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 or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 96.71 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 or component. 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 or component. The data measured and recorded by the system or component 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. The owner or operator shall follow the initial certification or recertification procedures in § 96.71 for each disapproved system.

§ 96.73 Notifications.

The NO_X authorized account representative for a NO_X Budget 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.

§ 96.74 Recordkeeping and reporting.

(a) The owner or operator of a NO_X Budget unit that is subject to an acid rain emissions limitation shall meet recordkeeping and reporting requirements in subparts F and G of part 75 of this chapter and paragraph (b) of this section, except that:

(1) For any additional NO_X emission rate CEMS required under the common stack provisions of § 75.72 of this chapter, the owner or operator shall meet the requirements of paragraph (b)(2) of this section;

(2) If the NO_X authorized account representative for the unit is not the same person as the designated representative for the unit under subpart B of part 72 of this chapter, all submissions under subpart F or G of part 75 of this chapter must be signed by both the NO_X authorized account representative and the designated representative; and

(3) Each quarterly report submitted to meet the requirements of § 75.64 of this chapter shall also include the data and information required in § 75.73 of this chapter.

(b) For NO_X Budget units that are not subject to an acid rain emissions limitation:

(1) *Monitoring Plans.* The owner or operator shall comply with requirements of § 75.62 of this chapter, except that the monitoring plan shall include all of the information required by § 75.73 of this chapter.

(2) *Certification Applications.* The NO_X authorized account representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests including the information required under § 75.73 of this chapter.

(3) *Quarterly reports.* (i) (A) Except as provided in paragraph (b)(3)(i)(B) of this section, the NO_X authorized account representative shall submit electronically a quarterly report for each calendar quarter beginning with the earlier of the calendar quarter that includes the date of initial provisional certification under § 96.71(b)(2)(iii) or May 1, 2001. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or May 1, 2001.

(B) If the unit commences operation after May 1, 2001, the NO_X authorized account representative shall submit electronically a quarterly report for each calendar quarter beginning with the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to the date that the unit commenced operation.

(ii) Each quarterly report shall be submitted to the Administrator within 30 days following the end of each calendar quarter and shall include, for each NO_X Budget unit (or group of units using a common stack), all of the data and information required in § 75.73 of this chapter.

(iii) *Compliance certification.* The NO_X authorized account representative shall submit to the Administrator a compliance certification 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:

(A) 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

(B) With regard to a unit with add-on emission controls and for all hours where 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 monitoring plan and the substitute values do not systematically underestimate NO_X emissions.

(iv) The NO_X authorized account representative shall comply with all of the quarterly reporting requirements in § 75.64(d), (f), and (g) of this chapter.

§ 96.75 Petitions.

(a)(1) The NO_X authorized account representative of a NO_X Budget 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.

(2) Notwithstanding paragraph (a)(1) of this section, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of § 75.70 of this chapter, the petition is governed by paragraph (b) of this section.

(b)(1) The NO_X authorized account representative of a NO_X Budget 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. The NO_X authorized account representative of a NO_X Budget unit that is subject to an acid rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of § 75.50 of this chapter. (2) Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent the petition under paragraph (b)(1) of this section is approved by both the permitting authority and the Administrator.

Subpart I—Individual Unit Opt-Ins

§ 96.80 Applicability.

A unit that is in the State, is not a NO_X Budget unit under § 96.4, and is operating, may qualify, under this subpart, to become a NO_X Budget opt-in source. A unit that is a NO_X Budget unit, is covered by a retired unit exemption under § 96.5 that is in effect, or that is not operating, is not eligible to become a NO_X Budget opt-in source.

§ 96.81 General.

Except otherwise as provided in this part, a NO_X Budget opt-in source shall be treated as a NO_X Budget unit for purposes of applying subparts A through H of this part.

§ 96.82 NO_X authorized account representative.

A unit for which an application for a NO_X Budget opt-in permit is being or has been submitted, or a NO_X Budget opt-in source, located at the same source as one or more NO_X Budget units, shall have the same NO_X authorized account representative as such NO_X Budget units.

§ 96.83 Applying for NO_X Budget opt-in permit.

(a) *Applying for initial NO_X Budget opt-in permit.* In order to apply for an initial NO_X Budget opt-in permit, the NO_X authorized account representative of a unit qualified under § 96.80 may submit to the permitting authority at any time, except as provided under § 96.86(g):

(1) A complete NO_X Budget permit application under § 96.22;

(2) A monitoring plan submitted in accordance with subpart H of this part; and

(3) A complete account certificate of representation under § 96.13, if no NO_X authorized account representative has been previously designated for the unit.

(b) *Duty to reapply.* The NO_X authorized account representative of a NO_X Budget opt-in source shall submit a complete NO_X Budget permit application under § 96.22 to renew the NO_X Budget opt-in permit in accordance with § 96.21(c) and, if applicable, an updated monitoring plan in accordance with subpart H of this part.

§ 96.84 Opt-in process.

The permitting authority will issue or deny a NO_X Budget opt-in permit for a unit for which an initial application for a NO_X Budget opt-in permit under § 96.83 is submitted, in accordance with § 96.20 and the following:

(a) *Interim review of monitoring plan.* The permitting authority will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NO_X Budget opt-in permit under § 96.83. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_X emissions rate and heat input of the unit are monitored and reported in accordance with subpart H of this part. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.

(b) If the permitting authority determines that the unit's monitoring plan is sufficient under paragraph (a) of this section and after completion of monitoring system certification under subpart H of this part, the NO_X emissions rate and the heat input of the unit shall be monitored and reported in accordance with subpart H of this part for one full control period during which monitoring system availability is not less than 80 percent and during which the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a ''NO_X Budget unit'' prior to issuance of a NO_X Budget opt-in permit covering the unit.

(c) Based on the information monitored and reported under paragraph (b) of this section, the unit's baseline heat rate shall be calculated as the unit's total heat input (in mmBtu) for the control period and the unit's baseline NO_X emissions rate shall be calculated as the unit's total NO_X mass emissions (in lb) for the control period divided by the unit's baseline heat rate.

(d) After calculating the baseline heat input and the baseline NO_X emissions rate for the unit under paragraph (c) of this section, the permitting authority will serve a draft NO_X Budget opt-in permit on the NO_X authorized account representative of the unit.

(e) *Confirmation of intention to opt-in.* Within 20 days after the issuance of the draft NO_X Budget opt-in permit, the NO_X authorized account representative of the unit must submit to the permitting authority, in writing, a confirmation of the intention to opt in the unit or a withdrawal of the application for a NO_X Budget opt-in permit under § 96.83. The permitting authority will treat the failure to make a timely submission as a withdrawal of the NO_X Budget opt-in permit application.

(f) *Issuance of draft NO_X Budget opt-in permit.* If the NO_X authorized account representative confirms the intention to opt in the unit under paragraph (e) of this section, the permitting authority will issue the draft NO_X Budget opt-in permit in accordance with § 96.20.

(g) Not withstanding paragraphs (a) through (f) of this section, if at any time before issuance of a draft NO_X Budget opt-in permit for the unit, the permitting authority determines that the unit does not qualify as a NO_X Budget opt-in source under § 96.80, the permitting authority will issue a draft denial of a NO_X Budget opt-in permit for the unit in accordance with § 96.20.

(h) *Withdrawal of application for NO_X Budget opt-in permit.* A NO_X authorized account representative of a unit may withdraw its application for a NO_X Budget opt-in permit under § 96.83 at any time prior to the issuance of the final NO_X Budget opt-in permit. Once the application for a NO_X Budget opt-in permit is withdrawn, a NO_X authorized account representative wanting to reapply must submit a new application for a NO_X Budget permit under § 96.83.

(i) *Effective date.* The effective date of the initial NO_X Budget opt-in permit shall be May 1 of the first control period starting after the issuance of the initial NO_X Budget opt-in permit by the permitting authority. The unit shall be a NO_X Budget opt-in source and a NO_X Budget unit as of the effective date of the initial NO_X Budget opt-in permit.

§ 96.85 NO_X Budget opt-in permit contents.

(a) Each NO_X Budget opt-in permit (including any draft or proposed NO_X Budget opt-in permit, if applicable) will contain all elements required for a complete NO_X Budget opt-in permit application under § 96.22 as approved or adjusted by the permitting authority.

(b) Each NO_X Budget opt-in permit is deemed to incorporate automatically the definitions of terms under § 96.2 and, upon recordation by the Administrator under subpart F, G, or I of this part, every allocation, transfer, or deduction of NO_X allowances to or from the compliance accounts of each NO_X Budget opt-in source covered by the NO_X Budget opt-in permit or the overdraft account of the NO_X Budget source where the NO_X Budget opt-in source is located.

§ 96.86 Withdrawal from NO_X Budget Trading Program.

(a) *Requesting withdrawal.* To withdraw from the NO_X Budget Trading Program, the NO_X authorized account representative of a NO_X Budget opt-in source shall submit to the permitting authority a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than 90 days prior to the requested effective date of withdrawal.

(b) *Conditions for withdrawal.* Before a NO_X Budget opt-in source covered by a request under paragraph (a) of this section may withdraw from the NO_X Budget Trading Program and the NO_X Budget opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period immediately before the withdrawal to be effective, the NO_X authorized account

representative must submit or must have submitted to the permitting authority an annual compliance certification report in accordance with § 96.30.

(2) If the NO_X Budget opt-in source has excess emissions for the control period immediately before the withdrawal is to be effective, the Administrator will deduct or have deducted from the NO_X Budget opt-in source's compliance account, or the overdraft account of the NO_X Budget source where the NO_X Budget opt-in source is located, the full amount required under § 96.54(d) for the control period.

(3) After the requirements for withdrawal under paragraphs (b)(1) and (2) of this section are met, the Administrator will deduct from the NO_X Budget opt-in source's compliance account, or the overdraft account of the NO_X Budget source where the NO_X Budget opt-in source is located, NO_X allowances equal in number to and with the same or earlier compliance use date as any NO_X allowances allocated to that source under § 96.88 for any control period for which the withdrawal is to be effective. The Administrator will close the NO_X Budget opt-in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO_X Budget opt-in source. The NO_X authorized account representative for the NO_X Budget opt-in source shall become the NO_X authorized account representative for the general account.

(c) A NO_X Budget opt-in source that withdraws from the NO_X Budget Trading Program shall comply with all requirements under the NO_X Budget Trading Program concerning all years for which such NO_X Budget opt-in source was a NO_X Budget opt-in source, even if such requirements arise or must be complied with after the withdrawal takes effect.

(d) *Notification.* (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of NO_X allowances required), the permitting authority will issue a notification to the NO_X authorized account representative of the NO_X Budget opt-in source of the acceptance of the withdrawal of the NO_X Budget opt-in source as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the NO_X authorized account representative of the NO_X Budget opt-in source that the NO_X Budget opt-in source's request to withdraw is denied. If the NO_X Budget opt-in source's request to withdraw is denied, the NO_X Budget opt-in source shall remain subject to the requirements for a NO_X Budget opt-in source.

(e) *Permit amendment.* After the permitting authority issues a notification under paragraph (d)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the NO_X Budget permit covering the NO_X Budget opt-in source to terminate the NO_X Budget opt-in permit as of the effective date specified under paragraph (d)(1) of this section. A NO_X Budget opt-in source shall continue to be a NO_X Budget opt-in source until the effective date of the termination.

(f) *Reapplication upon failure to meet conditions of withdrawal.* If the permitting authority denies the NO_X Budget opt-in source's request to withdraw, the NO_X authorized account representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(g) *Ability to return to the NO_X* Budget Trading Program. Once a NO_X Budget opt-in source withdraws from the NO_X Budget Trading Program and its NO_X Budget opt-in permit is terminated under this section, the NO_X authority account representative may not submit another application for a NO_X Budget opt-in permit under § 96.83 for the unit prior to the date that is 4 years after the date on which the terminated NO_X Budget opt-in permit became effective.

§ 96.87 Change in regulatory status.

(a) *Notification.* When a NO_X Budget opt-in source becomes a NO_X Budget unit under § 96.4, the NO_X authorized account representative shall notify in writing the permitting authority and the Administrator of such change in the NO_X Budget opt-in source's regulatory status, within 30 days of such change.

(b) *Permitting authority's and Administrator's action.* (1)(i) When the NO_X Budget opt-in source becomes a NO_X Budget unit under § 96.4, the permitting authority will revise the NO_X Budget opt-in source's NO_X Budget opt-in permit to meet the requirements of a NO_X Budget permit under § 96.23 as of an effective date that is the date on which such NO_X Budget opt-in source becomes a NO_X Budget unit under § 96.4.

(ii)(A) The Administrator will deduct from the compliance account for the NO_X Budget unit under paragraph (b)(1)(i) of this section, or the overdraft account of the NO_X Budget source where the unit is located, NO_X allowances equal in number to and with the same or earlier compliance use date as:

(*1*) Any NO_X allowances allocated to the NO_X Budget unit (as a NO_X Budget opt-in source) under § 96.88 for any control period after the last control period during which the unit's NO_X Budget opt-in permit was effective; and

(*2*) If the effective date of the NO_X Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the NO_X allowances allocated to the NO_X Budget unit (as a NO_X Budget opt-in source) under § 96.88 for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under paragraph (b)(1)(i) of this section, divided by the total number of days in the control period.

(B) The NO_X authorized account representative shall ensure that the compliance account of the NO_X Budget unit under paragraph (b)(1)(i) of this section, or the overdraft account of the NO_X Budget source where the unit is located, includes the NO_X allowances necessary for completion of the deduction under paragraph (b)(1)(ii)(A) of this section. If the compliance account or overdraft account does not contain sufficient NO_X allowances, the Administrator will deduct the required number of NO_X allowances, regardless of their compliance use date, whenever NO_X allowances are recorded in either account.

(iii) (A) For every control period during which the NO_X Budget permit revised under paragraph (b)(1)(i) of this section is effective, the NO_X Budget unit under paragraph (b)(1)(i) of this section will be treated, solely for purposes of NO_X allowance allocations under § 96.42, as a unit that commenced operation on the effective date of the NO_X Budget permit revision under paragraph (b)(1)(i) of this section and will be allocated NO_X allowances under § 96.42.

(B) Notwithstanding paragraph (b)(1)(iii)(A) of this section, if the effective date of the NO_X Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the following number of NO_X allowances will be allocated to the NO_X Budget unit under paragraph (b)(1)(i) of this section under § 96.42 for the control period: the number of NO_X allowances otherwise allocated to the NO_X Budget unit under § 96.42(c) for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under paragraph (b)(1)(i) of this section,

divided by the total number of days in the control period.

(2)(i) When the NO_X authorized account representative of a NO_X Budget opt-in source does not renew its NO_X Budget opt-in permit under § 96.83(b), the Administrator will deduct from the NO_X Budget opt-in unit's compliance account, or the overdraft account of the NO_X Budget source where the NO_X Budget opt-in source is located, NO_X allowances equal in number to and with the same or earlier compliance use date as any NO_X allowances allocated to the NO_X Budget opt-in source under § 96.88 for any control period after the last control period for which the NO_X Budget opt-in permit is effective. The NO_X authorized account representative shall ensure that the NO_X Budget opt-in source's compliance account or the overdraft account of the NO_X Budget source where the NO_X Budget opt-in source is located includes the NO_X allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain sufficient NO_X allowances, the Administrator will deduct the required number of NO_X allowances, regardless of their compliance use date, whenever NO_X allowances are recorded in either account.

(ii) After the deduction under paragraph (b)(2)(i) of this section is completed, the Administrator will close the NO_X Budget opt-in source's compliance account. If any NO_X allowances remain in the compliance account after completion of such deduction and any deduction under § 96.54, the Administrator will close the NO_X Budget opt-in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO_X Budget opt-in source. The NO_X authorized account representative for the NO_X Budget opt-in source shall become the NO_X authorized account representative for the general account.

§ 96.88 NO_X allowance allocations to opt-in units.

(a) *NO_X allowance allocation.* (1) By December 31 immediately before the first control period for which the NO_X Budget opt-in permit is effective, the permitting authority will allocate NO_X allowances to the NO_X Budget opt-in source and submit to the Administrator the allocation for the control period in accordance with paragraph (b) of this section.

(2) By no later than December 31, after the first control period for which the NO_X Budget opt-in permit is in effect, and December 31 of each year thereafter, the permitting authority will allocate NO_X allowances to the NO_X Budget opt-in source, and submit to the Administrator allocations for the next control period, in accordance with paragraph (b) of this section.

(b) For each control period for which the NO_X Budget opt-in source has an approved NO_X Budget opt-in permit, the NO_X Budget opt-in source will be allocated NO_X allowances in accordance with the following procedures:

(1) The heat input (in mmBtu) used for calculating NO_X allowance allocations will be the lesser of:

(i) The NO_X Budget opt-in source's baseline heat input determined pursuant to § 96.84(c); or

(ii) The NO_X Budget opt-in source's heat input, as determined in accordance with subpart H of this part, for the control period in the year prior to the year of the control period for which the NO_X allocations are being calculated.

(2) The permitting authority will allocate NO_X allowances to the NO_X Budget opt-in source in an amount equaling the heat input (in mmBtu) determined under paragraph (b)(1) of this section multiplied by the lesser of:

(i) The NO_X Budget opt-in source's baseline NO_X emissions rate (in lb/mmBtu) determined pursuant to § 96.84(c); or

(ii) The most stringent State or Federal NO_X emissions limitation applicable to the NO_X Budget opt-in source during the control period.

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Part III

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Test Procedure for Water Heaters; Final Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–94–230]

RIN 1904–AA52

Energy Conservation Program for Consumer Products: Test Procedure for Water Heaters

AGENCY: Office of Energy Efficiency and Renewable Energy, Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE or the Department) is amending its test procedure for water heaters. The first-hour rating for storage-type water heaters is revised to more accurately measure large storage-type water heaters. Also, electric and gas-fired instantaneous water heaters are rated at the maximum flow rate to distinguish them from storage-type water heaters.

EFFECTIVE DATE: This rule is effective June 10, 1998.

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I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act, as amended (EPCA or the Act), establishes the Energy Conservation Program for Consumer Products other than Automobiles (Program).[1] The products currently subject to this Program include water heaters, which are the subject of today's Final Rule.

Under the Act, the Program consists essentially of three parts: testing, labeling, and the Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology (formerly the National Bureau of Standards), is required to amend or establish test procedures as appropriate for each of the covered products. Section 323 of EPCA, 42 U.S.C. 6293. The purpose of the test procedures is to produce test results that measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. The test procedure must not be unduly burdensome to conduct. Section 323(b)(3) of EPCA, 42 U.S.C. 6293(b)(3).

Beginning 180 days after a test procedure for a product is prescribed, no manufacturer, distributor, retailer, or private labeler may make representations with respect to the energy use, efficiency, or cost of energy consumed by such products, except as reflected in tests conducted according to the DOE procedure. Section 323(c)(2) of EPCA, 42 U.S.C. 6293(c)(2).

Furthermore, DOE is required to determine to what extent, if any, an amended test procedure would alter the measured energy efficiency or measured energy use of any covered product as determined under the existing test procedure. Section 323(e)(1) of EPCA, 42 U.S.C. 6293(e)(1).

B. Background

Today's Final Rule amends DOE's test procedure for water heaters by revising the method used to determine the first-hour rating of storage-type water heaters, adding a new rating for electric and gas-fired instantaneous water heaters, and amending the definition of a heat pump water heater.

On March 23, 1995, DOE published in the **Federal Register** (60 FR 15330) a Notice of Proposed Rule and Public Hearing on proposed amendments to clarify the water heater test procedure and requested data, comments, and information regarding its applicability and workability. The Department conducted a public hearing on July 12, 1995, and a public workshop on February 12, 1997, and requested written comments.

The proposed amendments to the water heater test procedure included revisions to make the water heater test procedure applicable to electric and oil-fired instantaneous water heaters; coverage for testing storage-type water heaters with rated storage capacities less than 20 gallons (76 liters); revision of the first-hour rating for storage-type water heaters; amendment to the current definition for heat pump water heater; and the addition of new definitions for heat pump water heater storage tank, add-on heat pump water heater, integral heat pump water heater, and solar water heater. In addition, DOE requested comments on the adequacy of the test procedure for heat pump water heaters regarding the use of a backup electric resistance element(s).

II. Discussion of Comments

A. General Comments

Forty commenters submitted written comments in response to the proposed rulemaking on water heaters. After reviewing these comments and the comments presented during the public hearing, the Department held a public workshop on February 12, 1997, to solicit additional comments on the issues in the Proposed Rule. Workshop topics included the daily hot water consumption of 64.3 gallons (243.4 liters) and the thermostat setting of 135°F (57.2°C) in the existing test procedure. The notice for the public workshop was published in the **Federal Register** (62 FR 4202, January 29, 1997). Nine commenters submitted written comments prior to and after the workshop. Those written comments received prior to the workshop (from the Gas Appliance Manufacturers Association [GAMA], February 12, 1997, Water Heater Test Procedure Workshop Transcript [hereafter referred to as ''February 1997 Transcript''] at Appendix I; Electric Power Research Institute [EPRI], February 1997 Transcript at Appendices E and J; and Controlled Energy Corp. [CEC], February

[1] Part B of Title III of Energy Policy and Conservation Act, as amended, is referred to in this Final Rule as ''EPCA'' or the ''Act.'' Part B of Title III is codified at 42 U.S.C. 6291–6309.

1997 Transcript at Appendix H) were distributed to all participants at the beginning of the workshop for inclusion in the workshop session. During the rulemaking process, a number of commenters stated their support of the EPRI recommendations on all issues. These commenters included: Northeast Utilities Service Co., No. 11; The Dayton Power & Light Co., No. 15; Utilities District of Western Indiana, No. 16; National Rural Electric Coop. Assoc., No. 18; Decatur County REMC, No. 19; Pennsylvania Power & Light Co., No. 20; Central and South West Services, Inc., No. 21; Centerior Energy, No. 22; Hawaiian Electric Co., No. 23; Southern Company Services, Inc., No. 24; Potomac Electric Power Co., No. 26; East Kentucky Power Cooperative, Inc., No. 34; Ohio Edison Co., No. 39; Southern California Edison Co., No. 43; Duke Power Co., No. 44; and Nevada Power Co., No. 45.

The following is a summary of the public comments, presented during and after both the public hearing and the workshop, on each of the DOE proposed amendments/revisions, and on other issues concerning the existing test procedure.

On October 31, 1997, the comment period was reopened on the issues of the maximum gallons (liters) per minute rating for electric and gas-fired instantaneous water heaters and the energy factor of the heat pump water heater storage tank. (62 FR 58923, October 31, 1997.)

B. Product Specific Comments

1. Instantaneous Water Heaters

a. Coverage of Electric and Oil-Fired Instantaneous Water Heaters. The current test procedure does not address the testing of electric and oil-fired instantaneous water heaters, because they are not defined in the test procedure. In the 1995 proposed rulemaking for water heaters, DOE proposed definitions for these two types of instantaneous water heaters so they would be subject to the same test procedures as gas-fired instantaneous water heaters (i.e., the first-hour rating test and the 24-hour simulated use test).

GAMA agreed that electric and oil-fired instantaneous water heaters should be covered in the test procedures. However, GAMA said it is unaware of any residential oil-fired instantaneous models on the market. (GAMA, No. 1 at 2 and February 1997 Transcript at 119.) Edison Electric Institute (EEI), Bock Water Heaters (Bock), the Federal Trade Commission (FTC), and the Oregon Energy Office (Oregon) also stated that they know of no residential oil-fired instantaneous water heaters on the market. (EEI, February 1997 Transcript at 119; Bock, February 1997 Transcript at 120; FTC, February 1997 Transcript at 120; and Oregon, No. 51 at 3.) In response to the reopening notice of October 1997, Controlled Energy Corporation provided information on a kerosene-fired instantaneous water heater sold by Monitor Products, Inc. (CEC, No. 64 at 1.) The California Energy Commission (CAEC) also provided information on one oil-fired instantaneous water heater manufactured by Monitor Products of Princeton, NJ, which meets the definition in the test procedure for the input BTU rating. The CAEC also informed DOE that Monitor intends to introduce another smaller instantaneous water heater soon, and the CAEC opposed the DOE withdrawing coverage for oil-fired instantaneous water heaters. (CAEC, No. 68 at 1–2.)

Virginia Power stated that it does not support the testing and rating of electric units because of the small variance in efficiency among them. Virginia Power stated that electric units are not typically compared to oil or gas-fired instantaneous water heaters. Virginia Power claimed the incomparability is due to the difference in utilization between gas-fired and electric instantaneous water heaters. (Virginia Power, No. 50 at 2 and No. 66 at 3.) The Department interprets this statement to mean that gas-fired models are for whole-house applications, whereas electric models are for point-of-use applications such as kitchen or lavatory sinks.

EPRI stated that neither the existing nor the proposed test should be applied to instantaneous water heaters because a heating rating of more than 150,000 Btu per hour is needed to satisfy whole-house applications and all instantaneous water heaters for residential use are below that heating capacity. EPRI claimed that an instantaneous water heater should not have an efficiency rating because the efficiency rating would falsely imply an equivalency with tank-type water heaters. (EPRI, No. 56 at 11.)

The Oregon Energy Office suggested that an energy efficiency rating for instantaneous water heaters is needed, and suggested that a test procedure should be developed that would take into account the warm-up and cool-down losses during a draw for all units (as well as the flue and pilot light losses for gas-fired units). Oregon stated that the procedure for instantaneous water heaters should not be the same as for storage-type water heaters. (Oregon, No. 51 at 3.)

GAMA claimed for electric models that there are distinctions between larger models intended for multiple points of use and smaller models intended for a single point of use. GAMA suggested that DOE may need to make distinctions between such units by creating separate classes of instantaneous water heaters. (GAMA, No. 1 at 2.)

DOE believes that separate classes of electric instantaneous water heaters would require technical data on these models, such as: (1) The intended purpose of use; (2) the frequency of daily draws at the point of use; (3) the average volume of each draw; and (4) the average amount of the total daily draw. However, DOE believes that at the present time, the development of separate classes of electric instantaneous water heaters for residential application is not needed because, even at the proposed maximum input power rating of 12 kW (40,944 Btu/h), an electric instantaneous water heater can only supply a maximum of 1.06 gallons per minute (gpm) (4.01 liters per minute [L/min]) of water at a 77°F (42.8°C) temperature rise (from 58°F to 135°F [14.4°C to 57.2°C]) on a continuous draw basis. DOE believes this is far below the requirements of a whole-house application which could range from 3–5 gallons per minute. Furthermore, the limit on the input heating rate of electric instantaneous water heaters is not likely to change because it is limited by the current carrying capacity of wiring in most residential housing.

Additionally, DOE believes that the variation of the energy efficiency of electric instantaneous water heaters would be small for similar sized models, provided they are tested under similar conditions because energy losses only occur during the warm-up and cool-down of the heaters between water draws. However, test data are needed to determine the magnitude of these losses, which are functions of the water used during each draw and the frequency of draws. No field data is available on the average draw rate, amount per draw, and the average daily draw volumes for these small electric, point-of-use type instantaneous water heaters. The daily hot water usage of 64.3 gal (243.4 L) specified for whole-house application does not apply to these small heating capacity electric units. Consequently, the energy efficiency, and energy consumption cannot be determined for these units without additional data. Therefore, DOE will not test electric instantaneous water heaters for energy efficiency or energy consumption until a future rulemaking when the daily hot

water usage data for point-of-use instantaneous water heaters are available.

DOE did not receive any indication until after the October 1997 notice of reopening that residential oil-fired instantaneous water heaters are on the market. DOE's belief that these water heaters were not being sold in the United States was supported by GAMA, Bock, EEI, the FTC, and the Oregon Energy Office. DOE believes that there is not time for adequate public review and comment to include oil-fired instantaneous water heaters in this rulemaking. Accordingly, DOE withdraws its proposal to test oil-fired instantaneous water heaters in today's Final Rule.

The Department will continue to require the testing of gas-fired instantaneous water heaters for energy efficiency and energy consumption because data is needed for the FTC labeling program.

b. GPM v. First-Hour Rating. In the 1995 proposed rulemaking, DOE proposed testing for electric and oil-fired instantaneous water heaters based on the first-hour rating currently used for gas-fired instantaneous water heaters. This proposal would test instantaneous water heaters in a manner equal to gas-fired storage-type water heaters. On October 31, 1997, DOE reopened the comment period on first-hour rating for instantaneous water heaters. In its reopening notice, DOE proposed to revise the first-hour rating for instantaneous water heaters from gallons per hour to a test that measures the maximum flow rate in gallons per minute (gpm) (liters per minute [L/min]) at a 77°F (42.8°C) temperature rise. DOE proposed to call this rating the maximum gpm rating.

DOE's proposed revision was in response to concerns raised by several commenters regarding the March 1995 proposed rule. EEI, EPRI and the Tennessee Valley Authority (TVA) considered the proposed first-hour rating procedure for instantaneous water heaters to be inappropriate because it would lead consumers to ''mistakenly compare instantaneous and storage-type water heaters as being equivalent.'' They argued that a storage-type water heater can supply a large amount of hot water during a short draw period, whereas an instantaneous water heater may not be able to supply a similar amount of hot water because it is limited by its heating rate. (EEI, No. 2 at 5, No. 27 at 5, and July 12–13, 1995, Public Hearing Transcript [hereafter referred to as July 1995 Transcript] at 22 and 27; EPRI, No. 17 at 4; and TVA, No. 14 at 2.)

During the 1997 workshop and in its written comments, EPRI recommended a rating based on the maximum gpm flow rate at a 50°F (27.8°C) temperature rise if a single rating value is used, and at both a 50°F and 77°F temperature rise if two rating values are used. EPRI stated that it prefers a rating at both a 50°F and 77°F temperature rise. (EPRI, No. 56 at 11.)

GAMA supported EPRI's alternative of a maximum flow rate. However, GAMA's alternative test procedure involves adjusting the flow rate to obtain a temperature rise of 77°F in the instantaneous water heater, and using this maximum gpm flow rate as the rating characteristic, rather than the current first-hour rating value. GAMA recommended that the temperature rise be the same as specified for storage-type water heaters—that is, 77°F, not 50°F as suggested by other commenters. (GAMA, No. 35 at 2.) GAMA stated it selected a temperature rise of 77°F because hot water also will be used for machine-related applications (dishwashers and clothes washers) that require a 135°F (57.2°C) temperature. (GAMA, February 1997 Transcript at 127 and 138.)

Virginia Power supports the proposal to rate instantaneous water heaters with a maximum gpm rating. (Virginia Power, No. 42 at 2 and No. 66 at 2–3.) However, Virginia Power supports dual maximum gpm ratings, at both 50–52°F and 77°F rise. Virginia Power stated that both temperature rises are used in applications (human-contact at 110°F [43.3°C] and machine use at 135°F [57.2°C]. Virginia further stated that DOE's statement in the October 1997 reopening notice that a 77°F temperature rise will ensure that consumers in cold regions of the country will have an acceptable water temperature is inconsistent with the rationale used to establish other parameters of the test procedure (i.e., establishing on the basis of national average values). (Virginia Power, No. 50 at 2 and No. 66 at 3.) EEI supported Virginia's position on this issue. (EEI, No. 65 at 1.) Oregon stated that both a 50°F and 77°F would be useful in sizing a unit properly. (Oregon, No. 51 at 3.) State Industry claimed that a rating value based on a nominal temperature rise of 50°F would not provide consumers with information on whether the heater is capable of delivering hot water at a 77°F temperature rise. (State Industry, February 1997 Transcript at 134.)

Based on the comments, DOE believes there is a consensus that the current first-hour rating for instantaneous water heaters may mislead consumers because it may overstate the capability of the instantaneous water heater to provide a given quantity of hot water at a given instant of time. The suggestion from GAMA, EEI, EPRI, and other commenters to replace the first-hour rating parameter with a maximum flow rate (gpm) over a specific temperature rise (77°F [42.8°C] or 50°F [27.8°C]) instead of a total volume flow over one hour is reasonable. This comparison measures the ability of instantaneous water heaters to deliver the maximum possible amount of hot water to the user at a specific temperature rise occurring any single moment. Because some consumer appliances require a hot water temperature in the 135–140°F (57.2–60°C) range, information on the amount of flow at a 77°F rise is needed. Also, a rating value based on a nominal temperature rise of 50°F would not provide consumers with information on whether the heater is capable of delivering hot water at 135°F. Therefore, DOE believes that the maximum flow rate at the rated energy input rate and at a temperature rise of 77°F across the water heater should be specified for rating the capability of instantaneous water heaters to deliver hot water. Furthermore, this maximum flow rate should be specified in place of the first-hour rating. The Department is therefore creating a new rating for instantaneous gas and electric water heaters using a ''maximum gpm draw rate at 77°F rise'' criterion, and renaming the criterion from ''First-Hour Rating'' to ''Maximum GPM Draw Rating'' in Sections 5.2 and 6.2 of today's Final Rule.

c. Water Temperature Rise. Regarding the outlet water temperature for gas-fired instantaneous water heaters, the Controlled Energy Corporation (CEC) submitted a written statement to DOE and distributed the statement at the February 1997 workshop. CEC stated that the outlet water temperature for an instantaneous water heater should be at 110–115°F because there is no practical domestic use for water at 135°F. (CEC, February 1997 Transcript at Appendix H at 4 and No. 63 at 3.) Additionally, CEC claimed the 135°F temperature specified for storage-type water heaters is simply to increase the heat content of the stored water and therefore is not relevant for instantaneous water heaters. (CEC, February 1997 Transcript at Appendix H at 4.)

Group Thermo suggested that a 50°F temperature rise is too low for some cold regions of the country, and Bock suggested it is too low for certain well water sources. EEI supported a temperature rise of 50°F because there are many places like Miami and Texas with high ground water temperatures for

most, if not all, of the year. EPRI supported a 50°F temperature rise because that is representative of typical human usage and a rise of 77°F because that is typical of machine usage. A.O. Smith favored a single rating at a 77°F temperature rise because it is simpler and allows comparisons with storage-type water heaters. (Group Thermo, February 1997 Transcript at 133 and 138; Bock, February 1997 Transcript at 132; EEI, February 1997 Transcript at 136; A.O. Smith, February 1997 Transcript at 141; and EPRI, No. 56 at 11.)

The Department will continue to specify the test conditions for water heater temperatures at 58°F inlet (Title 10 CFR, Part 430, Subpart B, Appendix E, Section 2.3) with a 77°F rise to address (1) machine-use applications that require a 135°F water temperature for efficient operation, and (2) the performance of a water heater in regions of the country that may have a significantly lower supply (inlet) temperature. Additionally, a single value of 77°F rise will reduce the test burden on manufacturers.

d. Draw Schedule. DOE did not propose any changes in the draw schedule for instantaneous water heaters. There were several comments addressing this issue. During the 1997 workshop, EPRI commented that for large, whole-house, fossil-fueled instantaneous water heaters, the losses due to warm-up and cool-down after each water draw become significant because of the thermal mass of the water and the heat exchanger. Also, EPRI stated the number of draws (six) in the existing test procedure for energy factor (EF) tests is not high enough to account for the daily total cyclical loss that occurs in practice. EPRI claimed that in the field there are 20–50 draws per day. EPRI suggested that tests be conducted on smaller tank types and whole-house instantaneous water heaters to compare the difference in losses caused by a larger number of draws throughout the day. (EPRI, February 1997 Transcript at 166, 173, and 178.)

In its written statement, CEC also requested that the draw schedule in the 24-hour simulated use test for modulating gas-fired instantaneous water heaters be changed from an equal number of draws at the maximum and minimum firing rates (three at each) to 75% of the draws at the maximum firing rate and 25% at the minimum firing rate. CEC stated that this would reflect the fact that most of the daily hot water consumption is at the maximum firing rate, which, CEC stated, is when the efficiency of its heater is highest. CEC stated that the minimum firing rate is provided for the convenience of consumers for hand washing, etc. (CEC, February 1997 Transcript at Appendix H at 3 and No. 63 at 2.)

DOE recognizes that the number of draws will affect the energy factor and the annual energy consumption of instantaneous water heaters. The reason is that the warm-up and cool-down of the heat exchanger between hot water draws will reduce the measured average outlet temperature from the specified nominal 135°F resulting in a lower energy factor and a higher energy consumption when the outlet temperature is adjusted back to the nominal temperature in the calculation procedure. The decrease in outlet temperature is proportional to the number of draws under a constant total daily draw volume. However, DOE has no data on the amount of daily hot water usage at the minimum or maximum firing rate for modulating gas-fired instantaneous water heaters. Hence, there is no basis for DOE to change the number of draws for instantaneous water heaters at either a fixed firing rate or for modulating instantaneous water heaters at the minimum or maximum firing rate in the 24-hour simulated use test. Additionally, DOE needs data to substantiate any change to the number of draws during the 24-hour simulated use test for instantaneous water heaters because changing the number of draws is likely to reduce the energy factor for existing units thereby requiring a modification to the energy conservation standard for those products.

e. Energy Factor Measurement. DOE proposed a 24-hour simulated use test for instantaneous water heaters that is exactly the same as the 24-hour simulated use test for storage-type water heaters. The 24-hour simulated use test would determine the amount of fuel or electricity used during a 24-hour period to heat 64.3 gallons of water to 135°F with the water being drawn in six equal draws at one-hour intervals. Also, if the instantaneous water heater allows variable input rates, the fuel or electricity consumed to heat 64.3 gallons of water to 135°F during a 24-hour period would be determined with three draws at the maximum flow rate and three draws at the minimum flow rate. In the current test procedure, the recovery efficiency is calculated from the output energy of the first draw (determined from water mass, temperature, and specific heat) divided by the measured input energy used during the first draw of the 24-hour simulated use test for units with a single firing rate. For modulated units, the recovery efficiency is the average of the two recovery efficiencies calculated on the basis of data from the first draw (at the maximum input rate) and the fourth draw (at the minimum input rate) of the 24-hour simulated use test.

In its comments to the 1995 proposed rulemaking, Paloma Industries, Inc., suggested that for gas-fired instantaneous water heaters, two EF values should be determined in the test procedure. These values would reflect test conditions with (1) the pilot light being continuously on, and (2) the pilot light being off except when hot water is needed. The pilot-light-on condition is the case in which the pilot light is always on regardless of whether there is a demand for hot water. The second test condition is for the case in which a consumer turns the pilot light off when hot water is not needed. Paloma claims that with its Piezo-Elecric Ignition and Subsidiary Pilot Burner Assembly, the consumer can manually light the pilot easily (in about 10 seconds time) when hot water is needed. CEC concurred with Paloma. (Paloma Industries, No. 7 at 3; CEC, February 1997 Transcript at Appendix H at 4 and No. 63 at 2.) Furthermore, CEC stated that differentiating water heaters with pilot lights from those without is even more important because CEC will introduce a unit in 1998 with electronic ignition. (CEC, No. 63 at 2.)

With respect to the issue of the pilot light status between hot water draws, GAMA recognized that turning off the pilot will reduce energy consumption and increase the energy factor. GAMA also stated that turning off the pilot light may not be practical for a whole-house application. Bock expressed the same opinion. Oregon suggested that it is possible to have two energy factors, one based on the pilot light on between draws and one based on it being off. Oregon also recommended that a test procedure for instantaneous water heaters should account for warm-up, cool-down and pilot light losses. (GAMA, February 1997 Transcript at 170 and 176; Bock, February 1997 Transcript at 171; Oregon, No. 51 at 3.)

DOE believes the suggestion to compute two energy factors is valid only if the consumer can conveniently turn the pilot light off and on automatically at the point of use (e.g., at the faucet or showerhead) and if no other faucet or appliance requiring hot water is connected to the same water heater. Neither Paolma nor CEC indicated that such an approach was possible with their equipment although CEC has stated that it will introduce a model with electronic ignition in 1998. DOE believes that manual shut-off for pilot lights on instantaneous water heaters

would not be practical for widespread use and energy savings. Therefore, DOE will continue to calculate one energy factor.

2. Storage-type Water Heaters With Rated Storage Capacities Less Than 20 Gallons

In the 1995 proposed rulemaking, DOE proposed to cover storage-type water heaters with rated storage capacitites less than 20 gallons (76 liters). This proposal was in response to a July 17, 1991, letter from GAMA that stated that storage-type water heaters less than 20 gallons (76 liters) are not covered by the existing test procedure.

To cover these water heaters, DOE proposed to adopt the draw rate and the schedules in ANSI/ASHRAE Standard 118.2–1993, ''Method of Testing for Rating Residential Water Heaters,'' to be used in the first-hour rating test and the 24-hour simulated use test. The draw schedules are as follows: (1) For units with rated storage less than 10 gallons (38 liters), a total volume of 9 gallons (34 liters) shall be withdrawn, and (2) for units with rated storage greater than or equal to 10 gallons (38 liters) but less than 20 gallons (76 liters), a total volume of 24 gallons (91 liters) shall be withdrawn. The draw rate for both draw schedules shall be 1.0 gallon ± 0.25 gallons per minute (3.8 liters †0.95 liters per minute). DOE also requested comments and data on its proposal to extend test procedure coverage to storage-type water heaters of less than 20 gallons (76 liters).

Several commenters objected to one or more of these proposals. These commenters variously cited the following reasons: (1) The existing minimum efficiency standards are based on field applications and usage requirements for larger volume water heaters and are inappropriate for smaller-volume water heaters, for example, fitting and connection losses would be unfairly treated for smaller-volume water heaters because those losses would represent a larger percentage of total losses; (2) it is difficult to install thermocouples and to control flow rates in smaller-volume water heaters; (3) smaller-volume water heaters cannot meet the efficiency requirement because they typically are installed in confined areas, which limits the amount of insulation used to reduce surface losses; and (4) a flow rate of 1 gpm during water draws is too large for smaller water heaters' it would quickly deplete the quantity of hot water in tanks of 2.5 gallons or less. (GAMA, No. 1 at 3, No. 35 at 3, and July 1995 Transcript at 12; EPRI, No. 17 at 2; EEI, No. 2 at 6, No. 27 at 5, and July 1995 Transcript at 28; Oregon, No. 51 at 3 and February 1997 Transcript at 164 and 195; TVA, No. 14 at 1; The Southern Company Services, Inc., No. 24 at 2; American Electric Power, No. 38 at 1; Potomac Electric Power, No. 26 at 3; CSW, No. 4 at 2; Centerion Energy, No. 22 at 1; Nevada Electric Power, No. 45 at 2; National Rural Electric Cooperative Association, No. 18 at 2; Decatur County REMC, No. 19 at 1; and Dayton Power and Light, No. 20 at 1.)

GAMA suggested that separate piping arrangement figures be used for floor-mounted models of less than 20 gallons storage capacity. GAMA provided the schematic drawings for its suggested changes. (GAMA, No. 1 at 6 and July 1995 Transcript 17.)

Vaughn Manufacturing Corporation claimed: (1) The number of units is a small percentage of the total; (2) this is a utilitarian product which is used to fit special circumstances when other alternatives are not available; and (3) the publication of energy factors will not cause the purchaser to choose a more efficient model to an extent that will make a significant difference in national energy conservation. (Vaughn, No. 31 at 2.)

However, AGA believed that the large number of such heaters sold justifies some measurement that could be used for a minimum standard. (AGA, February 1997 Transcript at 184-185.) GAMA proposed running only a stand-by loss test for the measurement, and EPRI proposed to base this measurement on the maximum stand-by loss without considering daily water consumption. GAMA argued that any standard would have to be connected to some level of daily consumption. The FTC pointed out that if the test procedure covers these products, they would have to be labeled, and the label has to contain a value for energy consumption. In its written comments, GAMA stated that the applicable maximum hourly stand-by loss requirement in ASHRAE 90A–1980 was 43W. GAMA asserted that because the ASHRAE loss was based on an 80°F temperature difference, the DOE maximum loss rate should be 36.3W, based on the 67.5°F temperature difference for the DOE test. GAMA concluded that the DOE proposal for the 24-hour simulated use test should be scrapped and that only an hourly stand-by loss should be measured by the test procedure. (GAMA, No. 35 at 4 and February 1997 Transcript at 165 and 185–186; EPRI, February 1997 Transcript at 183–184; and FTC, February 1997 Transcript at 186.) This proposal was not supported by Virginia Power, who claimed that losses for fittings were greater for small tanks and that specialized uses for these tanks may limit the kinds of modifications leading to improved efficiency. Oregon supported the stand-by loss proposal and added that heaters with capacity equal to or less than 2 gallons (7.6 liters) be exempt from coverage and that all water heaters less than 20 gallons (76 liters) be exempt from the Energy Guide labeling requirement. EPRI expressed general support for GAMA's proposal, but suggested that a combination of stand-by loss and recovery efficiency rather than a single energy efficiency term be used to determine the energy standard for small water heaters. (Virginia Power, No. 42 at 3; Oregon, No. 51 at 3 and February 1997 Transcript at 164 and 195; EPRI, No. 56 at 5 and February 1997 Transcript at 164, 183, and 188 and at Appendix J at 2.)

Although the Department believes the stand-by loss measurement for water heaters less than 20 gallons (76 liters) proposed by GAMA and EPRI may be feasible, DOE will reserve consideration of this proposal for a future revision of the test procedure. The reasons for this decision are: (1) Absence of data to determine the appropriate daily hot water consumption, and (2) DOE's need to develop and evaluate the stand-by loss procedure. Therefore, DOE is withdrawing its proposal in today's Final Rule.

3. Definitions

In the 1995 proposed rule making, DOE solicited comments on the addition to the test procedure of definitions of a heat pump water heater storage tank and a solar water heater. DOE also proposed to revise the definition of a heat pump water heater to specify two types, an integral heat pump water heater and an add-on heat pump water heater.

The following discussion ensued:

(i) Solar Water Heater. GAMA stated that it did not understand the purpose or intent of the expanded definitions or the need to define ''solar water heaters'' for the test procedure. GAMA suggested that the requirement that a solar water heater obtain 50% of its annual heating energy from the sun is not a definitive criterion because a solar water heater with less than 50% of its input energy from the sun is still a solar water heater. (GAMA, July 1995 Transcript at 15 and No. 1 at 5.)

(ii) Heat Pump Water Heater Storage Tank. During the February 1997 workshop, GAMA proposed that a 50-gallon tank standardized with respect to the energy factor is adequate and should be used to test any add-on heat pump water heater sold without a tank by its manufacturer. (The existing DOE test

procedure specifies a 47-gallon tank meeting the minimum standard energy factor or not greater than .02 EF above the minimum.) GAMA objected to the Department's proposal for a special heat pump water heater storage tank.

EPRI objected to the inclusion of a special heat pump water heater storage tank, and proposed that an add-on heat pump water heater be tested with a standard 50-gallon tank as required under the existing DOE test procedure. EPRI further stated that there are no storage tanks labeled and designed for use exclusively with heat pump water heaters. All other commenters, such as the Oregon Energy Office and Virginia Power, agreed with GAMA's and EPRI's proposals for a standard 50-gallon tank. The Oregon Energy Office called for a revision of the original definition. (GAMA, February 1997 Transcript at 229; EPRI, No. 17 at 5 and February 1997 Transcript at 227; Oregon, No. 51 at 6; Virginia Power, No. 50 at 4.)

(iii) Add-on Heat Pump Water Heaters. EEI expressed concerns about the definition of add-on heat pump water heaters. EEI and EPRI claimed the definition is inappropriate and should not be adopted. They stated that add-on heat pump water heaters are designed to work with any electric water heater tank and that some are designed to work with any tank. EPRI claimed the new definition limits the availability of tanks for use with add-on heat pump water heaters. EPRI believes that this new definition would increase the cost. Further, EEI found that this definition is ill-advised, because new tanks of essentially identical construction must meet two definitions, thus creating confusion and potentially increasing the cost of heat pump water heaters. (EEI, No. 2 at 7, and No. 27 at 7; EPRI, No. 17 at 5.)

Virginia Power proposed deleting ''heat pump'' from the last line of the definition. (Virginia Power, No. 50 at 4.)

Vaughn Manufacturing Corp. commented that the addition of more than one category of heat pump water heaters, or even solar water heaters, will add to the confusion because it may lead consumers to compare test results of dissimilar types of water heaters. (Vaughn, No. 31 at 4.)

(iv) Integral Heat Pump Water Heaters. GAMA suggested that, instead of the 1995 DOE proposed definitions of ''integral heat pump water heaters'' and ''add-on heat pump water heaters,'' the respective definitions should be ''heat pump water heaters with tanks'' and ''heat pump water heaters without tanks''.

Also, GAMA objected to the term ''integral heat pump water heaters'' because it implies that the heat pump is structurally integrated with a tank, whereas in reality, the heat pump and the tank can be physically separated, but are usually sold by the manufacturer as a packaged unit. (GAMA, February 1997 Transcript at 230.)

Virginia Power proposed deleting the definition of ''integral heat pump water heater.'' (Virginia Power, No. 50 at 4.)

(v) *Proposed Revisions.* DOE responded to these comments in the October 1997 reopening notice. In this notice, DOE proposed the following revisions:

- Withdraw the definition of solar water heaters.
- Withdraw the proposal for heat pump water heater storage tanks for testing with an add-on heat pump water heater.
- Delete the definition of integral heat pump water heaters.
- Replace the definition of ''integral heat pump water heaters'' with the definition, ''Heat pump water heater with storage tank means an air-to-water heat pump sold by the manufacturer with an insulated storage tank as a packaged unit. The tank may be integral with or separated from the heat pump.''
- Replace the definition of ''add-on heat pump water heater'' with the definition, ''Heat pump water heater without storage tank (also called add-on heat pump water heater) means an air-to-water heat pump designed for use with a storage-type water heater or with a storage tank that is not specified or supplied by the manufacturer.''

EEI, Virginia Power, and GAMA supported DOE's proposed definitional changes in the October 1997 notice of reopening. (EEI, No. 65 at 1; Virginia Power, No. 66 at 4; and GAMA, No. 67 at 1.) No commenter took issue with the proposed definitional changes.

Therefore, DOE is adopting in this Final Rule the proposed revision as stated above.

4. Heat Pump Water Heaters

a. Back-up Electric Resistance Heating. In the Proposed Rule, the Department requested comments on the adequacy of the existing test procedure regarding back-up electric heating elements for heat pump water heaters because the current test setup and parameters may not represent operating conditions requiring the resistance element(s) to be activated. The existing procedure does not account for energy used by these elements because most heat pump water heaters are capable of meeting the test draw requirements of the 24-hour simulated use test for the energy factor and, therefore, the back-up electric resistance heating element(s) is not activated.

GAMA stated that the current draw schedule is such that the back-up electric resistance element(s) does not turn on during testing. Although GAMA concluded from tests conducted at Intertek Testing Service (ITS) that changing the current draw schedule by increasing the volume of water withdrawn will not activate the elements, it still argued that in residential applications, a significant percentage of the energy for water heating (15–20%) comes from the back-up resistance element(s). GAMA asserted that this energy should be included in determining the annual energy consumption of the heat pump water heater. This view is shared by the Southern Company Services (SCS). (GAMA, No. 1 at 5, No. 35 at 5, July 1995 Transcript at 16, and February 1997 Transcript at 241; and SCS, No. 24 at 2.) Vaughn Manufacturing Corporation claimed that the one-hour recovery between the six small draws prejudices the test procedure in favor of heat pump water heaters. Furthermore, Vaughn claimed, this test profile is not based on a representative average use cycle. (Vaughn, No. 31 at 3.) Georgia Power recommended that the draw schedule continue to stipulate 10.7 gallons per draw for each hour. (Georgia Power, No. 54 at 2.)

GAMA recommended adding some electrical energy to the annual energy consumption calculation but GAMA did not recommend a specific amount of energy. GAMA claimed that this electrical energy was necessary because no resistance heating was measured during tests of heat pump water heaters using the DOE test procedure and GAMA claims that it is well accepted that heat pump water heaters use backup resistance heating during periods of heavy draws. (GAMA, No. 57 at 2 and February 1997 Transcript at 240–260.) The recommendation was supported by AGA and the Oregon Energy Office. (AGA, February 1997 Transcript at 254 and 263; Oregon, February 1997 Transcript at 248, 250, and 255; and Oregon, No. 51 at 5.)

However, EPRI claimed that its data shows that less than 10 percent of the energy consumption for water heating with heat pumps actually comes from the back-up resistance elements for customers who use about 64 gallons of hot water per day. EPRI argued that it would be improper to apply a correction factor to compensate for resistance elements that do not activate during average test conditions. Moreover, EPRI added that if a correction factor is applied to heat pump water heaters,

then correction factors due to regional conditions would need to be applied to all types of water heaters. Based on these reasons, EPRI is opposed to the recommendation by GAMA. (EPRI, No. 56 at 2, February Transcript at 239, 248, 257 and 264 and at Appendix J at 2.) Virginia Power agreed with EPRI's comments. (Virginia Power, No. 50 at 4, and February 1997 Transcript at 249 and 258.)

Other opponents to GAMA's recommendation included Abrams and Associates, who commented that the purpose of the test procedures is to rate water heaters for comparison purposes rather than to reflect actual household applications. Lawrence Berkeley National Laboratory (LBNL) stated that heat pump water heaters do not need a separate test procedure to account for backup resistance heating because of their insignificant market share and greater efficiency. EEI commented that to activate the heating elements would require a draw in excess of 50 gallons, which is not realistic. AIL Research stated that no correction factor should be used until data becomes available. (Abrams, February 1997 Transcript at 260; LBNL, February 1997 Transcript at 252; EEI, February 1997 Transcript at 255; and AIL, February 1997 Transcript at 261–264.)

The Department believes that the 24-hour simulated use test for the energy factor must be based on average test conditions that also apply to other water heaters of comparable size and use so that all storage-type water heaters are tested and rated on a consistent and uniform basis. Furthermore, DOE notes that based on test data submitted by GAMA, the back-up heating elements for heat pump water heaters will not activate when the volume of hot water drawn is changed from 10.7 gallons to a more severe 21.4 gallons per draw during two of the six draws of the 24-hour simulated use test. The Department believes that any single draw in the draw schedule greater than the 21.4 gallons per draw (as tested) would not be considered as an average use pattern. Because the test procedure is for comparison purposes and is not intended to take into account all potential field use patterns (such as the draw-down of the storage tank), DOE considers that a revision to the current draw schedule of 10.7 gallons per draw for the six draws in the 24-hour simulated use test (for example, stipulating 21.4 gallons per draw for two of the six draws) is not necessary because it will not change the result. Furthermore, there is no agreement on an average percent of the annual energy consumption that comes from the resistance heating elements. Therefore, the Department concludes that applying a correction to the energy factor and/or annual energy consumption of the heat pump water heater to account for the energy used by the resistance elements that do not activate during testing is unwarranted and will not be included in today's Final Rule.

b. Installation Requirements. The installation requirements in Section 4.1 of Appendix E of the current test procedure state that a heat pump water heater without a manufacturer-supplied storage tank shall be connected to the storage tank in accordance with the manufacturer's instructions. The requirements further state, ''If installation materials are not provided by the heat pump manufacturer, use uninsulated 8 foot (2.44 m) long connecting hoses, having an inside diameter of 5/8 inch (1.6 cm).'' The intent of this requirement is to specify a uniform test setup for those units that do not include manufacturer's instructions. DOE asked for comments on this issue.

EPRI commented that the term ''installation materials'' in this context is unclear. EPRI suggested changing ''installation materials'' to a more descriptive term because most manufacturers of add-on heat pump water heaters, or any other type of water heater, do not provide the plumbing hardware and should not be penalized for not doing so. (EPRI, No. 17 attached report at 6.) American Electric Power claimed that the installation requriements were vague. (American Electric, No. 38 at 1.) Oregon suggested that in cases in which manufacturers do not include instructions, the test procedure should be performed using insulated hoses of sufficient length and size to properly mount the heat pump unit relative to the storage tank. (Oregon, No. 51 at 6.)

To make the wording clear, DOE is revising the text in section 4.1 of Appendix E from ''installation materials'' to ''installation instructions'' as suggested by EPRI. DOE disagrees with Oregon's comment because in most residences, the hot water pipes usually are not insulated. DOE believes that the 8-foot hose is adequate to make the heat-pump-to-water-heater connection and ensure that the heat loss from the uninsulated hose is equal for all add-on heat pump water heaters that do not have manufacturers' installation instructions.

c. Heat from the Ambient Air. The current and proposed test procedures use the same test conditions and test procedures for oil-fired, electric and heat pump water heaters. Vaughn claimed that because the DOE test procedure does not account for heat removed from the ambient air, the procedure favors heat pump water heaters. (Vaughn, No. 31 at 3.)

The Department has considered this topic and has concluded that the interactions between heat pump water heaters and the building environment are extremely complex and difficult to measure. Furthermore, in some cases, heat pump water heaters may be installed outside the building, in which case the heat removed from the ambient air is free and does not need to be counted. For these reasons, DOE will address building and heat pump interactions in a future rulemaking.

5. First-Hour Rating for Storage-type Water Heaters

In the 1995 proposed rulemaking, DOE proposed a revised test procedure for the first-hour rating for storage-type water heaters. The proposed revision specifies the start of a first draw at the beginning of the one-hour period, when the average tank temperature is at the specified limit of 135°F ± 5°F (57.2°C ± 2.8°C) and all the thermostats are satisfied. The first draw is terminated when the outlet water temperature decreases by 25°F (13.9°C) below the maximum outlet temperature recorded during the draw. Successive draws are initiated when the uppermost thermostat is satisfied following a tank recovery, and ended when the outlet water temperature decreases by 25°F (13.9°C) below the maximum outlet temperature recorded during each particular draw.

At the end of the one-hour period, a final draw is initiated if no draw is in progress. This draw is terminated when the outlet water temperature decreases to the value used to terminate the draw that was completed before this final draw. If a draw is in progress at the end of the one-hour period, this draw is continued until the outlet water temperature decreases by 25°F (13.9°C) below the maximum outlet temperature recorded during this draw. A temperature correction factor is applied to the last draw. The correction factor is a quotient in which the numerator is the average delivered water temperature of the last draw minus the minimum water temperature of the next-to-last draw and the denominator is the average delivered water temperature of the next-to-last draw minus the minimum water temperature of the next-to-last draw. The correction factor corrects for any significant reduction in energy content of the draw due to a lower average outlet water temperature over the draw

than those obtained during the earlier draws.

Thermally compensating dip tubes and integral mixing valves result in higher first-hour ratings. DOE did not propose to apply a correction factor to water heaters employing these features because the Department was unaware of the existence of these features on currently manufactured water heaters. However, EPRI, EEI, and Nevada Power Company stated that because at least one U.S. manufacturer has purchased the right to manufacture and sell the equivalent of an ''internal mixing'' product, DOE should develop a procedure that accounts for differences in hot water delivery temperatures. (EEI, No. 27 at 5; EPRI, No. 17 at 12; and Nevada Power Company, No. 45 at 3.) Southern Company Services (SCS) argued that specifications for mixing valves (similar to internal mixing) are not relevant to efficiency and the use of mixing valves should not be restricted. Furthermore, SCS supported the test procedure proposed by Dr. Carl Hiller of EPRI, which it claimed would not be affected by mixing valves. (SCS, No. 24 at 2.)

EEI and EPRI commented that DOE's proposed first-hour rating procedure, while an improvement over the current (1991 Final Rule) and previous (1978) DOE procedures, is still flawed and should not be implemented. Both EEI and EPRI based their comments on the analysis of the DOE proposed procedure by Dr. Carl Hiller of EPRI. (EEI, No. 2 at 2, No. 27 at 2, and July 1995 Transcript at 22; and EPRI, No. 17 attached report at 2.)

Dr. Hiller commented that the DOE proposed procedure is based on unrealistic water consumption behavioral patterns, and bears little relevance to the sizing of hot water systems. Dr. Hiller stated that the procedure gives misleadingly high ratings to units having a high heat input rate, thus penalizing electric systems and systems with larger tanks. Dr. Hiller suggested that the entire proposed procedure should be abandoned and replaced with an alternative developed by EPRI. (EPRI, No. 17 at 9 and 13.)

Specifically, Dr. Hiller claimed that the DOE proposed first-hour rating procedure for storage-type water heaters is characterized by the following: (1) It penalizes large tanks because the draw rate of 3 gpm causes the draws to take longer for larger tanks, thus limiting useful reheat time; (2) the temperature correction factor applied to the last draw is cumbersome; (3) the draw at the end of the one-hour test results in a variable test time; (4) depending on the thermostat setting and behavior, two similar tanks may show dramatic differences in their first-hour ratings; (5) the one-hour time period in the procedure is arbitrary and relatively irrelevant to water heating system sizing; and (6) the procedure fails to account for the energy content of water delivered at different temperatures during the draws. (EPRI, No. 17 at 9–13.)

Dr. Hiller proposed three EPRI alternatives to DOE's first-hour rating procedure. The first alternative calculates first-hour rating as the sum of (1) the volume of water from an initial draw (multiplied by a factor to correct to a uniform delivery temperature of 110°F (43.3°C) and (2) the maximum useful reheat volume (water is heated to 110°F [43.3°C]) at the rated energy input between the end of the first recovery (after the first draw) and the end of a specified reheat time period. This EPRI proposal uses a calculation to determine the maximum useful reheat volume during the specific reheat period; EPRI notes that the maximum useful reheat volume could also be determined with actual draws. In this proposal, EPRI advocates a reheat period of 35–45 minutes instead of one hour. (EPRI, No. 17 at 13.)

The second EPRI alternative, proposed by Dr. Hiller at the February 1997 workshop, bases tank sizing on a graph of the way hot water is actually used over a specific time period together with graphical representations of hot water delivery capability (a stepwise function versus time due to reheat delay) for various water heaters. The water heater size is found by overlaying the two graphs of hot water delivery capability and hot water consumption requirement. EPRI provided examples of data for several tank sizes for hot water delivered not exceeding once per day, once per week and once per month derived from a 2½ year EPRI field study at 14 metered sites with electric storage-type water heaters. (EPRI, No. 56 at 6, and February 1997 Transcript at Appendix J at 4–10.)

In its comments after the February 1997 workshop, EPRI proposed a third alternative first-hour rating procedure, which modified its first proposal. In this procedure, hot water is drawn initially and during four reheat cycles. Data from the five corresponding draws (stepwise in form as in the second alternative) are used to establish a graphical representation of hot water availability versus time, including the reheat time delay between the first draw after recovery (on the basis of the cut-out of the uppermost thermostat) and the subsequent draw. From these measurements, the actual first draw volume available and the actual average reheat rate of the system are determined. After the first reheat is completed, a linear calculation is performed to estimate the number of additional gallons that can be produced based on the average reheat rate. Then the ''minimum'' maximum water availability curve is calculated. The hot water delivery rating from the graph is determined based on the minimum hot water availability curve together with a ''critical design time interval'' of 35 minutes. EPRI claimed that this procedure accounts for the first draw volume and the reheat rate, as well as the reheat time delay between the hot water run-out after the first draw and the completion of the recovery (on the basis of the cut-out of the uppermost thermostat). EPRI claimed that this procedure is better than the DOE proposed procedure because the reheat delay time is accounted for. The third alternative differs from the first alternative primarily because the third alternative involves four cycles of reheating, and the water temperature at the top of the tank after recovery is at 135°F (57.2°C) instead of 110°F (43.3°C). (EPRI, No. 56 attached report at 11–12.)

This proposal includes an optional method that permits manufacturers to list the first draw as the first draw rating because the 35-minute hot water delivery rating is typically at or near the first draw capability of the tank. This avoids the need to perform the four reheats and five draws. (EPRI, No. 56 attached report at 13.)

Virginia Power and American Electric Power (AEP) also stated their opposition to the DOE first-hour rating and their support of a maximum first draw rating. Virginia Power claimed that the maximum first draw rating more accurately represents typical consumer action. (Virginia Power, No. 50 at 2; AEP, No. 53 at 1.)

Rheem Manufacturing claimed the first-hour rating is seldom used by consumers in purchasing water heaters. (Rheem, February 1997 Transcript at 154–155.)

Georgia Power claimed that the first-hour rating is biased toward gas-fired water heaters. Georgia Power proposed an alternative method which involves checking the temperature in the top of the tank periodically after the first draw is complete. When the temperature is above the minimum setpoint temperature, a second draw should begin. It claimed that this procedure reflects the way a consumer would use hot water after a run-out. (Georgia Power, No. 54 at 1.)

GAMA stated that it does not support EPRI's alternative first-hour rating

procedures. GAMA claimed that the current and proposed DOE test procedure, in which water is drawn from a tank full of heated water and then subsequent draws are made each time the tank returns to the setpoint temperature within an hour, is an appropriate way to evaluate a water heater's capability to provide heated water. GAMA stated that the DOE procedure may require some modifications and corrections in the calculations, but GAMA did not believe it is necessary to rewrite the entire first-hour rating procedure (as suggested by EPRI). (GAMA, No. 1 at 2, and No. 35 at 2, and July 1995 Transcript at 10.)

GAMA claimed the 1990 procedure gives a first-hour rating volume that may be smaller than the first draw volume for larger tanks. GAMA presented the results of tests conducted by its water heater manufacturer members that compared representative models of gas-fired and electric water heaters. The test results were compiled from both the current test procedure and the 1995 DOE proposed first-hour rating test procedure. The data show that the proposed procedure does provide a first-hour rating that reflects a combination of the water heater's storage capacity and recovery rate. In a written submittal at the February 1997 workshop, GAMA presented additional test results conducted by Intertek Testing Service on water heaters tested in the GAMA efficiency certification program. The data showed that 53 gas-fired water heaters (with storage capacities of 30–50 gallons) were tested, and the difference between the first-hour rating using the proposed procedure and the first-hour rating based on the current procedure varied from −0.2 gallons to 8.0 gallons with a standard deviation for each tank volume class tested of 3.7–6.0 gallons. The data also showed that 51 electric water heaters (with storage capacities of 30–82 gallons) were tested, and the differences in rating value were from 3.7 gallons to 5.5 gallons with a standard deviation for each tank volume class tested of 2.0–5.8 gallons. GAMA believed that the data is indicative of a general trend and that it does support the use of the proposed first-hour rating test procedure. (GAMA, No. 1 at 2, No. 35 at 2, and February 1997 Transcript at 91–92 and at Appendix I at 1–2.)

GAMA, in the same written submittal at the February 1997 workshop, claimed DOE should provide an alternative conservative calculation for the first-hour rating. GAMA's suggested calculations are based on 1995 and 1996 data from GAMA's efficiency certification program. The 1996 data show that the volume of the first draw compared to the rated volume is about 0.85 for gas-fired water heaters and 0.78–0.85 for electric water heaters. GAMA proposed three calculations for first-hour rating: (1) For gas-fired water heaters, the first-hour rating equals 0.8 of the tank volume plus an energy-based correction factor; (2) for dual-element electric water heaters, the first-hour rating equals 0.75 of the tank volume plus an energy-based correction factor; and (3) for a single element electric water heater, the first-hour rating equals 0.75 of the volume. GAMA claimed these calculations give conservative results. (GAMA, February 1997 Transcript at Appendix I at 1–2.)

GAMA, in a later submittal following the February 1997 workshop, stated that its proposed optional first-hour calculation for electric water heaters should be modified to provide a more accurate first-hour value for larger volume models. It stated that the original calculation leads to an assumption that no recovery will occur for 24 minutes with an 80-gallon tank. GAMA stated that because the lower heating element turns on in 2–5 minutes into the first-hour rating test in all electric water heaters, GAMA decided to modify the volume-related correction factor for dual-element electric water heaters to reflect this. (GAMA, No. 57 at 1.)

Supporters of the DOE proposal for determining the first-hour rating include the AGA, which finds it useful in determining the proper size of a water heater, stating that proper sizing is important for energy conservation, customer satisfaction and safety. (AGA, No. 55 at 1.) The Oregon Energy Office recommended DOE adopt its 1995 proposal and not adopt any part of the EPRI proposals because Oregon claimed EPRI put too much weight on the first draw volume, thus promoting larger tanks. (Oregon Energy Office, No. 51 at 2 and February 1997 Transcript at 110–112.) In a statement submitted after the February 1997 workshop, Battelle Columbus presented some experimental data and analysis of a 35,500 Btu/h, 50-gallon gas-fired water heater. Battelle presented data to show that the test water heater was able to satisfy the ''once a month'' draw schedules based on the EPRI field tests of 15 actual households. Battelle claimed that the test water heater could meet 12 of the 15 household hot water loads with a delivery temperature above 110°F. Battelle claimed the data showed that the DOE first-hour rating procedure is a good predictor of water heater performance. (Battelle, No. 58 at 1.)

George Kusterer of Bock Water Heaters stated that the information relating to EPRI's alternate first-hour rating method is inconclusive and recommended it not be accepted by DOE. Bock also claimed that a first-hour rating based only on the first draw will not work. (Bock, February 1997 Transcript at 146, 151 and 153.)

In response to EPRI's comments on the effect of the draw rate, DOE does not agree that a 3 gpm draw rate will result in a shorter reheat time for larger tanks. This is due to the fact that, for most electric water heaters, the bottom element will turn on within 5 minutes into the first draw. Also, a larger draw rate and a longer reheat time may not increase the total amount of hot water drawn because the heat input rate and not the draw rate will determine whether a tank can recover to a minimum temperature of 110°F. This recovery capability is the reason that the size of the storage tank is not the only criterion for first-hour rating.

Tank size is critical for simultaneous water usage, but tank recovery rate, either by a greater input rate or by dual—heating element design, could prove critical during times of consecutive hot water usages. While it is true that a consumer will not wait for the tank water temperature to reach 135°F or the thermostat to cut out before turning on the hot water faucet, the one-hour rating does provide a simple and easy to understand indication of the combined effects of tank size and recovery rate within a reasonable time frame where heavy use of hot water may occur (for example, during the morning hours). It is also a definitive procedure for manufacturers to use for labeling but it is not necessarily an appropriate criterion for tank sizing since that depends on consumer behavior and uses of hot water.

The temperature correction factor is used to adjust the volume of the last draw to account for the possible lower heat content of the last draw than those earlier draws with fully heated water. DOE has created the temperature correction factor as a simple arithmetic temperature ratio using temperature data that has already been measured during the test. DOE realizes that the temperature of the last draw may be at a lower temperature than those of earlier draws.

DOE does not believe that due to the imposition of the last draw at the one-hour mark, two similar tanks, one at 111°F and the other at 109°F, will result in a large difference in the amount of total volume drawn. The temperature correction factor is specifically applied to prevent that from happening. For example, assuming that the whole tank of water at 111°F is drawn, the

temperature ratio, (111–110)/(130–110) = 0.05, will add only 5% of the last draw volume to the total volume drawn at the one-hour mark. (For illustration purposes, the maximum outlet temperature is assumed to be 135°F and the average outlet water temperature during a regular—not the imposed—draw is assumed to be 130°F.) DOE believes this difference of 5% of the volume of the tank is acceptable for grouping models of storage-type water heaters.

There were claims that the DOE test period of one hour is too long. The one-hour time period is related to a similar period of high water consumption in most residences. Although the EPRI data indicates a shorter time, DOE believes that more data is necessary to establish a national average pattern of use, and DOE does not believe that a reduction of 25 minutes in test time, as suggested by EPRI, is merited. There were no comments from manufacturers or GAMA that the shorter test time was desirable. Rather, Darrell Paul, EEI, Bock, and Group Thermo stated that people tend to adjust their hot water use pattern during high consumption periods to account for short periods without hot water. (Battelle Columbus, February 1997 Transcript at 47; EEI, February 1997 Transcript at 49; Bock, February 1997 Transcript at 52; Group Thermo, February 1997 Transcript at 53.)

Regarding the comment that a final draw results in a variable testing time, certainly the imposition of a final draw extends the test period beyond one hour. However, the procedure requires the cessation of input energy at the one-hour mark. Therefore, DOE believes this is an equitable way to account for all the usable heat energy input to the water heater within the one-hour time frame.

DOE does not believe that a correction factor for hot water tanks with induced interim mixing will improve the accuracy of the test procedure enough to warrant its inclusion. DOE does agree that a temperature correction factor should be applied to the water drawn during each of the draws if a thermally compensating dip tube or an internal mixing device is used. However, at the present time there is no water heater that employs a mixing valve or thermally compensating dip tube during its normal operation. One design that does employ a mixing device is a special application for utility demand-side management in which higher temperature hot water is heated and stored during periods of low electricity demand. However, such a tank can be tested under the proposed DOE test. Therefore, a correction factor for induced internal mixing is not needed at this time.

The Department reviewed and evaluated two of the proposals presented by EPRI (the second and the third, the latter of which is EPRI's modification of its first alternative). DOE considers that the second proposal, as stated by EPRI, is still in the development stage. DOE believes that when completely developed, the method may be included and used, in graphical or tabulated forms, in a design manual for use by designers to size the hot water tank for the needs of a particular customer. However, to adopt the procedure for a single number rating purpose would require the development of, and agreement by all concerned parties to, an average national utilization curve to be used in conjunction with EPRI's hot water delivery capability graphs for various models of water heaters. The Department believes that prospect will not be feasible in the near future. Furthermore, the Department believes that EPRI's third proposal should not be adopted. The reasons are (1) the procedure puts more weight on the first draw, which would tend to encourage the use of larger tanks; (2) the hot water produced during the recovery period is not included, even though it is available at the end of recovery; (3) the proposed four reheat cycles may require a very long test time, especially for larger electric tanks; (4) for water heaters with a lower heat input rate, the subsequent draw rate, which provides continuous 135°F (heated up from the 58°F inlet condition) water and is calculated on the basis of the reheat rate, will be much lower; and (5) the procedure, and any modification to it, has not been tested.

The Department has decided not to adopt the optional calculation procedure proposed by GAMA. The Department checked the optional calculation procedure against data published in the GAMA directory and found that the results for first hour rating varied among electric, gas-and oil-fired water heaters. Furthermore, the coefficients proposed by GAMA were based on the current test procedure for first hour rating. The Department believes that the optional calculation may have merit, but the coefficients need to be based on the first hour rating in this Final Rule. For these reasons, the Department has decided to adopt the 1995 proposed procedure for first-hour rating in today's Final Rule.

6. Installation of Under-the-Counter and Counter-Top Water Heaters

The installation requirements in section 4 of Appendix E of the proposed test procedure do not distinguish under-the-counter water heaters from counter-top water heaters. GAMA recommended these be addressed separately because they are intended for different installations. GAMA indicated that because the water connections for counter-top models are within the water heater jacket, they can be installed flush to the back wall, and that this is not true for under-the-counter models. GAMA also recommended that separate piping arrangements be provided for floor-mounted water heaters with storage capacities less than 20 gallons. GAMA submitted four figures illustrating these configurations. (GAMA, July 1995 Transcript at 17 and No. 1 at 6.) Intertek Testing Services confirmed that GAMA's suggested changes are consistent with the normal practice in testing these types of models. Intertek further furnished piping schematics for those under-the-counter models that have a side inlet port and a top center outlet port. (Intertek, No. 62 at 1.)

The Department supports these proposals. The Department understands that if a counter-top model is installed with the back surface of the water heater jacket flush against the wall, the heat loss through the back surface will be different from an installation in which the back surface is exposed directly to the ambient air. DOE also understands that for under-the-counter models, the limitation of space under the counter necessitates a short piping connection, which should be reflected in the installation requirement. Therefore, the installation figures for piping connections for under-the-counter and counter-top water heaters as provided by GAMA and Intertek are included in today's Final Rule (as Figures 3, 4, 5, 6, 7A, and 7B in Appendix E). Sections 4.1 and 4.3 of Appendix E are revised to indicate these new figures and the requirement for a simulated wall against the back side of a counter-top model.

7. Test Conditions

a. Daily Hot Water Usage. The current test procedure prescribes water heater testing to determine the energy factor must be based on a daily hot water usage of 64.3 gallons per day (gpd). DOE did not propose to change the daily hot water usage in the 1995 proposed rulemaking.

The American Gas Association (AGA) and Battelle Columbus argued that the current daily hot water usage is outdated and proposed it be lowered to 54 gpd to reflect a recent study. (AGA, No. 25 at 2; and Battelle, No. 46 at 1.) Virginia Power suggested lowering the daily hot water usage to 50 gpd or less. Virginia Power also stated that because

the daily usage value is used in energy estimation and design calculations, changing it to a current value will maximize the usefulness and applicability of the test results. EEI suggested lowering the daily hot water usage to 50–57 gpd. Georgia Power argued for a value close to 50 gpd. (Virginia Power, No. 50 at 3 and February 1997 Transcript at 212 and 223; EEI, February 1997 Transcript at 201; and Georgia Power, No. 54 at 2.) EPRI stated that there is substantial evidence, based on its recent study of submetered electric utility load data from 28 different sources, that the daily hot water consumption should be less than 50 gallons. However, EPRI, as well as GAMA, the Oregon State Energy Office, A.O. Smith, and Effikal International (Effikal), indicated that lowering the gpd value would not alter the relative efficiency ranking (based on energy factor) of the water heaters, but would impose an additional cost burden on industry for retesting and relabeling. The five commenters, therefore, suggested that DOE maintain the current daily hot water usage of 64.3 gpd in the test procedure. GAMA also suggested that, if necessary, it is possible to use linear estimation of energy consumption based on a different daily usage. The Oregon Energy Office suggested that the variation of the daily usage value with individual consumers is quite large, and the current 64.3 gpd may not be too far from the average. (EPRI, No. 56 at 13 and February 1997 Transcript at 221 and at Appendix J at 2; GAMA, February 1997 Transcript at 215; Oregon State Energy Office, February 1997 Transcript at 219; A.O. Smith, February 1997 Transcript at 220; Effikal, February 1997 Transcript at 224; and Oregon, No. 51 at 4.)

The Department believes that the current value of 64.3 gpd is useful in determining an energy factor for consumers to use to compare water heaters. The Department believes that revising the value so it can be used to estimate or predict energy consumption will require a more detailed evaluation of individual installation locations, thermostat settings, and use patterns. Based on the fact that a revised daily hot water usage has not been agreed upon, and that the industry would be financially burdened, the Department concludes that revising the daily hot water usage is unwarranted in today's Final Rule.

b. Storage Tank Temperature. The existing test procedure uses a thermostat setting of 135°F ± 5°F (57.2°C ± 2.8°C). DOE did not propose to revise this setting in the 1995 proposed rulemaking. AGA suggested that the thermostat setting be lowered to 120°F ± 5°F (48.9°C ± 2.8°C) to reflect the manufacturers' recommendation to consumers to lower the temperature settings on water heaters thus preventing potential scalding. (AGA, No. 25 at 4.)

Both Virginia Power and Bock Water Heaters also supported lowering the current thermostat setting to 120°F (48.9°C). The reasons cited included: (1) The current setting of 135°F (57.2°C) does not reflect how consumers actually operate their water heaters; (2) most energy-related organizations advocate a setting of 120° ±F (48.9°C) when promoting energy efficiency and safety; (3) scalding by hot water at 135°F (57.2°C) is a major concern in some areas; and (4) certain local codes restrict the thermostat setting to be no higher than 120°F (48.9°C). EEI stated that for several years many customers have been told to set their thermostats at 120°F (48.9°C). (Virginia Power, No. 50 at 3 and February 1997 Transcript at 212 and 223; Bock Water Heaters, February 1997 Transcript at 207 and 211; and EEI, February 1997 Transcript at 201.)

In contrast, six commenters, individually or in support of another commenter's position, opposed lowering the thermostat setting from 135°F ± 5°F (57.2°C ± 2.8°C). (EPRI, No. 56 at 2 and February 1997 Transcript at 199, 208, and 218 and at Appendix J at 1; GAMA, February 1997 Transcript at 215 and at Appendix I at 3; Oregon State Energy Office, No. 51 at 4 and February 1997 Transcript at 201, 204, and 219; Group Thermo, February 1997 Transcript at 206; A.O. Smith, February 1997 Transcript at 220; and Effikal International, February 1997 Transcript at 224.) Their various comments are: (1) A setting at 120°F (48.9°C) could pose a potential health risk (e.g., legionella) to consumers; (2) a setting at 135°F (57.2°C) is necessary to meet consumers' expected hot water needs (as with machine-use for washing clothes); (3) a setting at 135°F (57.2°C) reflects realistic household settings; and (4) changing the thermostat setting from 135°F (57.2°C) will not alter the comparative ranking of water heaters but would result in a substantial cost to industry in retesting and relabeling. EEI stated that it would not object if the current requirement in the test procedure is not revised. (EEI, February 1997 Transcript at 220.)

Based on the comments in the record regarding actual field thermostat setting by consumers, potential health concerns and the potential burden on industry, the Department concludes that revision of the thermostat setting from 135°F ± 5°F (57.2°C ± 2.8°C) to 120°F ± 5°F (48.9°C ± 2.8°C) is unwarranted in today's Final Rule.

c. Ambient Air Temperature. The current DOE test procedure specifies ambient air temperature for heat pump water heaters to be 67½°F ± 1°F (19.7°C ± 0.6°C) and for all other water heater types to be between 65° F (18.3°C) and 70° F (21.1°C) . DOE did not propose a change to these values. EPRI stated that the existing ambient air temperature values are satisfactory, but suggested using a nationwide survey to determine more representative ambient air temperature values. (EPRI, No. 56. at 5.) DOE believes a survey is unnecessary and will continue to use the current values.

d. Supply Water Temperature. The current DOE test procedure specifies supply water temperature to be 58°F ± 2°F (14.4°C ± 1.1°C). DOE did not propose a change to this value. EPRI stated that the existing supply water temperature value is satisfactory, but suggested revisiting the value periodically because of the possible change of the average source temperature caused by regional shifts in the population. (EPRI, No. 56 at 5 and 6.) DOE believes the current value for supply water temperature is appropriate and that changing it would place an unreasonable burden on manufacturers.

e. Relative Humidity. The current DOE test procedure specifies relative humidity for heat pump water heaters to be between 49% and 51%. DOE did not propose a change to this value. EPRI stated that the existing humidity value is satisfactory, but suggested using weighted regional averages in the future to account for humidity extremes. (EPRI, No. 56 at 5 and 6.) DOE believes the current value for humidity is appropriate and that changing it would place an unreasonable burden on manufacturers.

8. Cost-Based Correction Factor for Fossil-Fueled Residential Appliances

The current procedure provides a test method to measure the energy efficiency of water heaters that is used to rate units of similar volumes for comparison purposes. This measure of energy efficiency is known as the energy factor (EF). DOE did not propose any amendment to the existing test method in the Proposed Rule.

AGA commented that because the energy factor is calculated from measurements of the consumption of energy at the site, the EF for fossil-fueled water heaters is substantially lower than the EF for electric water heaters. AGA also stated that gas-fired water heaters typically cost consumers considerably less to operate. AGA stated

that there is no correlation between the current energy descriptor and the cost of operation. AGA believes this inconsistency between the energy descriptor and cost of operation can be extremely misleading to the consumer if a purchase decision is based primarily on the energy factor or annual energy consumption. Therefore, AGA suggested that the energy usage of the water heater be adjusted by a multiplication factor of 0.298 which represents the ratio of the average cost of fossil fuel to electricity. (AGA, No. 25 at 5.)

The 0.298 factor is the inverse of DOE's F-factor of 3.36 which was proposed in the furnaces/boilers, vented home heating equipment and pool heaters test procedures. The F-factor would have allowed the consumption of fossil fuel and electricity to be combined into a single value by placing the two energy types on a common basis. (60 FR 4348, January 20, 1995.)

In response to disagreement from an overwhelming majority of commenters regarding the proposed F-factor, the Department stated that the Energy Policy and Conservation Act, as amended, requires the energy efficiency of a furnace to be based on consumption of energy at the site per the definition of ''energy use,'' 42 U.S.C. 6291(4). The Department also concluded that the statute does not permit the promulgation of an energy efficiency standard that is expressed in terms of annual operating costs of the furnace. Based on this analysis, the Department withdrew the proposed F-Factor in its Final Rule Regarding Test Procedures for Furnaces/Boilers, Vented Home Heating Equipment and Pool Heaters. (62 FR 26140, May 12, 1997.) Likewise, DOE will not adjust the energy factor for electric water heaters to a source basis as proposed by AGA.

III. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

In this rule, the Department will finalize amendments to test procedures that may be used to implement future energy conservation standards for water heaters. The Department has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* The rule is covered by Categorical Exclusion A5, for rulemakings that interpret or amend an existing rule without changing the environmental effect, as set forth in the Department's NEPA regulations at Appendix A to Subpart D, 10 CFR part 1021. This Final Rule will not affect the quality or distribution of energy usage and, therefore, will not result in any environmental impacts. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

B. Review Under Executive Order 12866, ''Regulatory Planning and Review'

Today's Final Rule is not a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, today's action is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

C. Review Under the Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, requires that an agency prepare an initial regulatory flexibility analysis for any rule, for which a general notice of proposed rulemaking is required, that would have a significant economic effect on small entities unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. DOE certified in the notice of proposed rulemaking that the rule would not have a significant economic impact on a substantial number of small entities. DOE estimates there are approximately 7 manufacturers of water heaters for specialty markets that may be small entities as defined in the Regulatory Flexibility Act. The manufacturers of heat pump water heaters and storage-type water heaters already make the types of measurements required by this rule, and the cost of compliance will be negligible. Today's revised test procedures will have no immediate impact on manufacturers of instantaneous water heaters because there currently are no energy efficiency standards for instantaneous water heaters; in any event, the cost of compliance would not be significant. DOE received no comments on its certification in the proposed rule.

D. ''Takings'' Assessment Review

DOE has determined pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation, if adopted, would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

E. Federalism Review

Executive Order 12612, ''Federalism,'' 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are substantial direct effects, then this Executive Order requires preparation of a Federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

The Final Rule published today would not regulate the States. Accordingly, DOE has determined that preparation of a Federalism assessment is unnecessary.

F. Review Under the Paperwork Reduction Act

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

G. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on executive agencies the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by sections 3(a) and 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and reducing burdens; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of

them. DOE reviewed today's rule under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, it meets the requirements of those standards.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.*, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a final agency rule 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 (adjusted annually for inflation) in one year.

The Department has determined that this Final Rule does not include any requirements that would result in the expenditure of money by State, local, and tribal governments. It also would not result in costs to the private sector of $100 million or more in any one year. Therefore, the requirements of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

I. Congressional Notification

Consistent with Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801–808, DOE will submit to Congress a report regarding the issuance of today's Final Rule prior to the effective date set forth at the outset of this notice. The report will note the Office of Management and Budget's determination that this rule does not constitute a ''major rule'' under that Act. 5 U.S.C. 801, 804.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, D.C., on April 6, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: Part B, Title III, Energy Policy and Conservation Act, (42 U.S.C. 6291–6309), as amended.

2. Appendix E to Subpart B of Part 430 is revised to read as follows:

Appendix E to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Water Heaters

1. Definitions

1.1 *Cut-in* means the time when or water temperature at which a water heater control or thermostat acts to increase the energy or fuel input to the heating elements, compressor, or burner.

1.2 *Cut-out* means the time when or water temperature at which a water heater control or thermostat acts to reduce to a minimum the energy or fuel input to the heating elements, compressor, or burner.

1.3 *Design Power Rating* means the nominal power rating that a water heater manufacturer assigns to a particular design of water heater, expressed in kilowatts or Btu (kJ) per hour as appropriate.

1.4 *Energy Factor* means a measure of water heater overall efficiency.

1.5 *First-Hour Rating* means an estimate of the maximum volume of ''hot'' water that a storage-type water heater can supply within an hour that begins with the water heater fully heated (i.e., with all thermostats satisfied). It is a function of both the storage volume and the recovery rate.

1.6 *Heat Trap* means a device which can be integrally connected or independently attached to the hot and/or cold water pipe connections of a water heater such that the device will develop a thermal or mechanical seal to minimize the recirculation of water due to thermal convection between the water heater tank and its connecting pipes.

1.7 *Instantaneous Water Heaters*

1.7.1 *Electric Instantaneous Water Heater* Reserved.

1.7.2 *Gas Instantaneous Water Heater* means a water heater that uses gas as the energy source, initiates heating based on sensing water flow, is designed to deliver water at a controlled temperature of less than 180°F (82°C), has an input greater than 50,000 Btu/h (53 MJ/h) but less than 200,000 Btu/h (210 MJ/h), and has a manufacturer's specified storage capacity of less than 2 gallons (7.6 liters). The unit may use a fixed or variable burner input.

1.8 *Maximum gpm (L/min) Rating* means the maximum gallons per minute (liters per minute) of hot water that can be supplied by an instantaneous water heater while maintaining a nominal temperature rise of 77°F (42.8°C) during steady state operation.

1.9 *Rated Storage Volume* means the water storage capacity of a water heater, in gallons (liters), as specified by the manufacturer.

1.10 *Recovery Efficiency* means the ratio of energy delivered to the water to the energy content of the fuel consumed by the water heater.

1.11 *Standby* means the time during which water is not being withdrawn from the water heater. There are two standby time intervals used within this test procedure: $\tau_{stby,1}$ represents the elapsed time between the time at which the maximum mean tank temperature is observed after the sixth draw and subsequent recovery and the end of the 24-hour test; $\tau_{stby,2}$ represents the total time during the 24-hour simulated use test when water is not being withdrawn from the water heater.

1.12 *Storage-type Water Heaters*

1.12.1 *Electric Storage-type Water Heater* means a water heater that uses electricity as the energy source, is designed to heat and store water at a thermostatically controlled temperature of less than 180°F (82°C), has a nominal input of 12 kilowatts (40,956 Btu/h) or less, and has a rated storage capacity of not less than 20 gallons (76 liters) nor more than 120 gallons (450 liters).

1.12.2 *Gas Storage-type Water Heater* means a water heater that uses gas as the energy source, is designed to heat and store water at a thermostatically controlled temperature of less than 180°F (82°C), has a nominal input of 75,000 Btu (79 MJ) per hour or less, and has a rated storage capacity of not less than 20 gallons (76 liters) nor more than 100 gallons (380 liters).

1.12.3 *Heat Pump Water Heater* means a water heater that uses electricity as the energy source, is designed to heat and store water at a thermostatically controlled temperature of less than 180°F (82°C), has a maximum current rating of 24 amperes (including the compressor and all auxiliary equipment such as fans, pumps, controls, and, if on the same circuit, any resistive elements) for an input voltage of 250 volts or less, and, if the tank is supplied, has a manufacturer's rated storage capacity of 120 gallons (450 liters) or less. Resistive elements used to provide supplemental heating may use the same circuit as the compressor if (1) an interlocking mechanism prevents concurrent compressor operation and resistive heating or (2) concurrent operation does not result in the maximum current rating of 24 amperes being exceeded. Otherwise, the resistive elements and the heat pump components must use separate circuits. A heat pump water heater may be sold by the manufacturer with or without a storage tank.

a. Heat Pump Water Heater with Storage Tank means an air-to-water heat pump sold by the manufacturer with an insulated storage tank as a packaged unit. The tank and heat pump can be an integral unit or they can be separated.

b. Heat Pump Water Heater without Storage Tank (also called Add-on Heat Pump Water Heater) means an air-to-water heat pump designed for use with a storage-type water heater or a storage tank that is not specified or supplied by the manufacturer.

1.12.4 *Oil Storage-type Water Heater* means a water heater that uses oil as the energy source, is designed to heat and store water at a thermostatically controlled temperature of less than 180°F (82°C), has a nominal energy input of 105,000 Btu/h (110 MJ/h) or less, and has a manufacturer's rated storage capacity of 50 gallons (190 liters) or less.

1.12.5 *Storage-type Water Heater of More than 2 Gallons (7.6 Liters) and Less than 20 Gallons (76 Liters).* Reserved.

1.13 *ASHRAE Standard 41.1–86* means the standard published in 1986 by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., and titled Standard Measurement Guide: Section on Temperature Measurements.

1.14 *ASTM–D–2156–80* means the test standard published in 1980 by the American

Society for Testing and Measurements and titled ''Smoke Density in Flue Gases from Burning Distillate Fuels, Test Method for''.

1.15 *Symbol Usage* The following identity relationships are provided to help clarify the symbology used throughout this procedure:

C_p specific heat capacity of water

E_{annual} annual energy consumption of a water heater

E_f energy factor of a water heater

F_{hr} first-hour rating of a storage-type water heater

F_{max} maximum gpm (L/min) rating of an instantaneous water heater rated at a temperature rise of 77°F (42.8°C) across the heater

i a subscript to indicate an ith draw during a test

M_i mass of water removed during the ith draw (i=1 to 6) of the 24-hr simulated use test

M^*_i for storage-type water heaters, mass of water removed during the ith draw (i=1 to n) during the first-hour rating test

M_{10m} for instantaneous water heaters, mass of water removed continuously during a 10-minute interval in the maximum gpm (L/min) rating test

n for storage-type water heaters, total number of draws during the first-hour rating test

Q total fossil fuel and/or electric energy consumed during the entire 24-hr simulated use test

Q_d daily water heating energy consumption adjusted for net change in internal energy

Q_{da} adjusted daily water heating energy consumption with adjustment for variation of tank to ambient air temperature difference from nominal value

Q_{dm} overall adjusted daily water heating energy consumption including Q_{da} and Q_{HWD}

Q_{hr} hourly standby losses

Q_{HW} daily energy consumption to heat water over the measured average temperature rise across the water heater

Q_{HWD} adjustment to daily energy consumption, Q_{hw}, due to variation of the temperature rise across the water heater not equal to the nominal value of 77°F (42.8°C)

Q_r energy consumption of fossil fuel or heat pump water heaters between thermostat (or burner) cut-out prior to the first draw and cut-out following the first draw of the 24-hr simulated use test

$Q_{r,\ max}$ energy consumption of a modulating instantaneous water heater between cut-out (burner) prior to the first draw and cut-out following the first draw of the 24-hr simulated use test

$Q_{r,\ min}$ energy consumption of a modulating instantaneous water heater from immediately prior to the fourth draw to burner cut-out following the fourth draw of the 24-hr simulated use test

Q_{stby} total energy consumed by the water heater during the standby time interval $\tau_{stby,\ 1}$

Q_{su} total fossil fueled and/or electric energy consumed from the beginning of the first draw to the thermostat (or burner) cut-out following the completion of the sixth draw during the 24-hr simulated use test

T_{min} for modulating instantaneous water heaters, steady state outlet water temperature at the minimum fuel input rate

$\bar{T}_0$ mean tank temperature at the beginning of the 24-hr simulated use test

$\bar{T}_{24}$ mean tank temperature at the end of the 24-hr simulated use test

$\bar{T}_{a,\ stby}$ average ambient air temperature during standby periods of the 24-hr use test

$\bar{T}_{del}$ for instantaneous water heaters, average outlet water temperature during a 10-minute continuous draw interval in the maximum gpm (L/min) rating test

$\bar{T}_{del,\ i}$ average outlet water temperature during the ith draw of the 24-hr simulated use test

$\bar{T}_{in}$ for instantaneous water heaters, average inlet water temperature during a 10-minute continuous draw interval in the maximum gpm (L/min) rating test

$\bar{T}_{in,\ i}$ average inlet water temperature during the ith draw of the 24-hr simulated use test

$\bar{T}_{max,\ 1}$ maximum measured mean tank temperature after cut-out following the first draw of the 24-hr simulated use test

$\bar{T}_{stby}$ average storage tank temperature during the standby period $\tau_{stby,\ 2}$ of the 24-hr use test

$\bar{T}_{su}$ maximum measured mean tank temperature after cut-out following the sixth draw of the 24-hr simulated use test

$\bar{T}_{t,\ stby}$ average storage tank temperature during the standby period $\tau_{stby,\ 1}$ of the 24-hr use test

$\bar{T}^*_{del,\ i}$ for storage-type water heaters, average outlet water temperature during the ith draw (i=1 to n) of the first-hour rating test

$T^*_{max,\ i}$ for storage-type water heaters, maximum outlet water temperature observed during the ith draw (i=1 to n) of the first-hour rating test

$T^*_{min,\ i}$ for storage-type water heaters, minimum outlet water temperature to terminate the ith draw during the first-hour rating test

UA standby loss coefficient of a storage-type water heater

V_i volume of water removed during the ith draw (i=1 to 6) of the 24-hr simulated use test

V^*_i volume of water removed during the ith draw (i=1 to n) during the first-hour rating test

V_{10m} for instantaneous water heaters, volume of water removed continuously during a 10-minute interval in the maximum gpm (L/min) rating test

V_{max} steady state water flow rate of an instantaneous water heater at the rated input to give a discharge temperature of 135°F ± 5°F (57.2°C ± 2.8°C)

V_{min} steady state water flow rate of a modulating instantaneous water heater at the minimum input to give a discharge temperature of T_{min} up to 135°F ± 5°F (57.2°C ± 2.8°C)

V_{st} measured storage volume of the storage tank

W_f weight of storage tank when completely filled with water

W_t tare weight of storage tank when completely empty of water

η_r recovery efficiency

ρ density of water

$\tau_{stby,\ 1}$ elapsed time between the time the maximum mean tank temperature is observed after the sixth draw and the end of the 24-hr simulated use test

$\tau_{stby,\ 2}$ overall standby periods when no water is withdrawn during the 24-hr simulated use test

2. Test Conditions

2.1 *Installation Requirements.* Tests shall be performed with the water heater and instrumentation installed in accordance with Section 4 of this appendix.

2.2 *Ambient Air Temperature.* The ambient air temperature shall be maintained between 65.0°F and 70.0°F (18.3°C and 21.1°C) on a continuous basis. For heat pump water heaters, the dry bulb temperature shall be maintained at 67.5°F ± 1°F (19.7°C ± 0.6°C) and, in addition, the relative humidity shall be maintained between 49% and 51%.

2.3 *Supply Water Temperature.* The temperature of the water being supplied to the water heater shall be maintained at 58°F ± 2°F (14.4°C ± 1.1°C) throughout the test.

2.4 *Storage Tank Temperature.* The average temperature of the water within the storage tank shall be set to 135°F ± 5°F (57.2°C ± 2.8°C).

2.5 *Supply Water Pressure.* During the test when water is not being withdrawn, the supply pressure shall be maintained between 40 psig (275 kPa) and the maximum allowable pressure specified by the water heater manufacturer.

2.6 *Electrical and/or Fossil Fuel Supply.*

2.6.1 *Electrical.* Maintain the electrical supply voltage to within ± 1% of the center of the voltage range specified by the water heater and/or heat pump manufacturer.

2.6.2 *Natural Gas.* Maintain the supply pressure in accordance with the manufacturer's specifications. If the supply pressure is not specified, maintain a supply pressure of 7–10 inches of water column (1.7–2.5 kPa). If the water heater is equipped with a gas appliance pressure regulator, the regulator outlet pressure shall be within ± 10% of the manufacturer's specified manifold pressure. For all tests, use natural gas having a heating value of approximately 1,025 Btu per standard cubic foot (38,190 kJ per standard cubic meter).

2.6.3 *Propane Gas.* Maintain the supply pressure in accordance with the manufacturer's specifications. If the supply pressure is not specified, maintain a supply pressure of 11–13 inches of water column (2.7–3.2 kPa). If the water heater is equipped with a gas appliance pressure regulator, the regulator outlet pressure shall be within ± 10% of the manufacturer's specified manifold pressure. For all tests, use propane gas with a heating value of approximately 2,500 Btu per standard cubic foot (93,147 kJ per standard cubic meter).

2.6.4 *Fuel Oil Supply.* Maintain an uninterrupted supply of fuel oil. Use fuel oil

having a heating value of approximately 138,700 Btu per gallon (38,660 kJ per liter).

3. Instrumentation

3.1 *Pressure Measurements.* Pressure-measuring instruments shall have an error no greater than the following values:

Item measured	Instrument accuracy	Instrument precision
Gas pressure	± 0.1 inch of water column (± 0.025 kPa)	± 0.05 inch of water column (± 0.012 kPa).
Atmospheric pressure	± 0.1 inch of mercury column (± 0.34 kPa)	± 0.05 inch of mercury column (± 0.17 kPa).
Water pressure	± 1.0 pounds per square inch (± 6.9 kPa)	± 0.50 pounds per square inch (± 3.45 kPa).

3.2 *Temperature Measurement*

3.2.1 *Measurement.* Temperature measurements shall be made in accordance with the Standard Measurement Guide: Section on Temperature Measurements, ASHRAE Standard 41.1–86.

3.2.2 *Accuracy and Precision.* The accuracy and precision of the instruments, including their associated readout devices, shall be within the following limits:

Item measured	Instrument accuracy	Instrument precision
Air dry bulb temperature	± 0.2°F (± 0.1°C)	± 0.1°F (± 0.06°C)
Air wet bulb temperature	± 0.2°F (± 0.1°C)	± 0.1°F (± 0.06°C)
Inlet and outlet water temperatures	± 0.2°F (± 0.1°C)	± 0.1°F (± 0.06°C)
Storage tank temperatures	± 0.5°F (± 0.3°C)	± 0.25°F (± 0.14°C)

3.2.3 *Scale Division.* In no case shall the smallest scale division of the instrument or instrument system exceed 2 times the specified precision.

3.2.4 *Temperature Difference.* Temperature difference between the entering and leaving water may be measured with any of the following:

a. A thermopile
b. Calibrated resistance thermometers
c. Precision thermometers
d. Calibrated thermistors
e. Calibrated thermocouples
f. Quartz thermometers

3.2.5 *Thermopile Construction.* If a thermopile is used, it shall be made from calibrated thermocouple wire taken from a single spool. Extension wires to the recording device shall also be made from that same spool.

3.2.6 *Time Constant.* The time constant of the instruments used to measure the inlet and outlet water temperatures shall be no greater than 5 seconds.

3.3 *Liquid Flow Rate Measurement.* The accuracy of the liquid flow rate measurement, using the calibration if furnished, shall be equal to or less than ± 1% of the measured value in mass units per unit time.

3.4 *Electric Energy.* The electrical energy used shall be measured with an instrument and associated readout device that is accurate within ± 1% of the reading.

3.5 *Fossil Fuels.* The quantity of fuel used by the water heater shall be measured with an instrument and associated readout device that is accurate within ± 1% of the reading.

3.6 *Mass Measurements.* For mass measurements greater than or equal to 10 pounds (4.5 kg), a scale that is accurate within ± 1% of the reading shall be used to make the measurement. For mass measurements less than 10 pounds (4.5 kg), the scale shall provide a measurement that is accurate within ± 0.1 pound (0.045 kg).

3.7 *Heating Value.* The higher heating value of the natural gas, propane, or fuel oil shall be measured with an instrument and associated readout device that is accurate within ± 1% of the reading. The heating value of natural gas and propane must be corrected for local temperature and pressure conditions.

3.8 *Time.* The elapsed time measurements shall be measured with an instrument that is accurate within ± 0.5 seconds per hour.

3.9 *Volume.* Volume measurements shall be measured with an accuracy of ± 2% of the total volume.

4. Installation

4.1 *Water Heater Mounting.* A water heater designed to be freestanding shall be placed on a ¾ inch (2 cm) thick plywood platform supported by three 2 × 4 inch (5 cm × 10 cm) runners. If the water heater is not approved for installation on combustible flooring, suitable non-combustible material shall be placed between the water heater and the platform. Counter-top water heaters shall be placed against a simulated wall section. Wall-mounted water heaters shall be supported on a simulated wall in accordance with the manufacturer-published installation instructions. When a simulated wall is used, the recommended construction is 2 × 4 inch (5 cm × 10 cm) studs, faced with ¾ inch (2 cm) plywood. For heat pump water heaters that are supplied with a storage tank, the two components, if not delivered as a single package, shall be connected in accordance with the manufacturer-published installation instructions and the overall system shall be placed on the above-described plywood platform. If installation instructions are not provided by the heat pump manufacturer, uninsulated 8 foot (2.4 m) long connecting hoses having an inside diameter of ⅝ inch (1.6 cm) shall be used to connect the storage tank and the heat pump water heater. With the exception of using the storage tank described in 4.10, the same requirements shall apply for heat pump water heaters that are supplied without a storage tank from the manufacturer. The testing of the water heater shall occur in an area that is protected from drafts.

4.2 *Water Supply.* Connect the water heater to a water supply capable of delivering water at conditions as specified in Sections 2.3 and 2.5 of this appendix.

4.3 *Water Inlet and Outlet Configuration.* For freestanding water heaters that are taller than 36 inches (91.4 cm), inlet and outlet piping connections shall be configured in a manner consistent with Figures 1 and 2. Inlet and outlet piping connections for wall-mounted water heaters shall be consistent with Figure 3. For freestanding water heaters that are 36 inches or less in height and not supplied as part of a counter-top enclosure (commonly referred to as an under-the-counter model), inlet and outlet piping shall be installed in a manner consistent with Figures 4, 5, and 6. For water heaters that are supplied with a counter-top enclosure, inlet and outlet piping shall be made in a manner consistent with Figures 7A and 7B, respectively. The vertical piping noted in Figures 7A and 7B shall be located (whether inside the enclosure or along the outside in a recessed channel) in accordance with the manufacturer-published installation instructions.

All dimensions noted in Figures 1 through 7 shall be achieved. All piping between the water heater and the inlet and outlet temperature sensors, noted as T_{IN} and T_{OUT} in the figures, shall be Type ''L'' hard copper having the same diameter as the connections on the water heater. Unions may be used to facilitate installation and removal of the piping arrangements. A pressure gauge and diaphragm expansion tank shall be installed in the supply water piping at a location upstream of the inlet temperature sensor. An appropriately rated pressure and temperature relief valve shall be installed on all water heaters at the port specified by the manufacturer. Discharge piping for the relief valve shall be non-metallic. If heat traps, piping insulation, or pressure relief valve insulation are supplied with the water heater, they shall be installed for testing. Except when using a simulated wall, clearance shall be provided such that none of the piping contacts other surfaces in the test room.

4.4 *Fuel and/or Electrical Power and Energy Consumption.* Install one or more

instruments which measure, as appropriate, the quantity and rate of electrical energy and/or fossil fuel consumption in accordance with Section 3. For heat pump water heaters that use supplemental resistive heating, the electrical energy supplied to the resistive element(s) shall be metered separately from the electrical energy supplied to the entire appliance or to the remaining components (e.g., compressor, fans, pumps, controls).

4.5 *Internal Storage Tank Temperature Measurements.* Install six temperature measurement sensors inside the water heater tank with a vertical distance of at least 4 inches (100 mm) between successive sensors. A temperature sensor shall be positioned at the vertical midpoint of each of the six equal volume nodes within the tank. Nodes designate the equal volumes used to evenly partition the total volume of the tank. As much as is possible, the temperature sensor should be positioned away from any heating elements, anodic protective devices, tank walls, and flue pipe walls. If the tank cannot accommodate six temperature sensors and meet the installation requirements specified above, install the maximum number of sensors which comply with the installation requirements. The temperature sensors shall be installed either through (1) the anodic device opening; (2) the relief valve opening; or (3) the hot water outlet. If installed through the relief valve opening or the hot water outlet, a tee fitting or outlet piping, as applicable, shall be installed as close as possible to its original location. If the relief valve temperature sensor is relocated, and it no longer extends into the top of the tank, a substitute relief valve that has a sensing element that can reach into the tank shall be installed. If the hot water outlet includes a heat trap, the heat trap shall be installed on top of the tee fitting. Added fittings shall be covered with thermal insulation having an R value between 4 and 8 $h \bullet ft^2 \bullet °F/Btu$ (0.7 and 1.4 $m^2 \bullet °C/W$).

4.6 *Ambient Air Temperature Measurement.* Install an ambient air temperature sensor at the vertical mid-point of the water heater and approximately 2 feet (610 mm) from the surface of the water heater. The sensor shall be shielded against radiation.

4.7 *Inlet and Outlet Water Temperature Measurements.* Install temperature sensors in the cold-water inlet pipe and hot-water outlet pipe as shown in Figures 1, 2, 3, 4, 5, 6, 7a and 7b, as applicable.

4.8 *Flow Control.* A valve shall be installed to provide flow as specified in sections 5.1.4.1 for storage tank water heaters and 5.2.1 for instantaneous water heaters.

4.9 *Flue Requirements.*

4.9.1 *Gas-Fired Water Heaters.* Establish a natural draft in the following manner. For gas-fired water heaters with a vertically discharging draft hood outlet, a 5-foot (1.5-meter) vertical vent pipe extension with a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. For gas-fired water heaters with a horizontally discharging draft hood outlet, a 90-degree elbow with a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. A 5-foot (1.5-meter) length of vent pipe shall be connected to the elbow and oriented to discharge vertically upward. Direct vent gas-fired water heaters shall be installed with venting equipment specified in the manufacturer's instructions using the minimum vertical and horizontal lengths of vent pipe recommended by the manufacturer.

4.9.2 *Oil-Fired Water Heaters.* Establish a draft at the flue collar at the value specified in the manufacturer's instructions. Establish the draft by using a sufficient length of vent pipe connected to the water heater flue outlet, and directed vertically upward. For an oil-fired water heater with a horizontally discharging draft hood outlet, a 90-degree elbow with a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. A length of vent pipe sufficient to establish the draft shall be connected to the elbow fitting and oriented to discharge vertically upward. Direct-vent oil-fired water heaters should be installed with venting equipment as specified in the manufacturer's instructions, using the minimum vertical and horizontal lengths of vent pipe recommended by the manufacturer.

4.10 *Heat Pump Water Heater Storage Tank.* The tank to be used for testing a heat pump water heater without a tank supplied by the manufacturer (see Section 1.12.3b) shall be an electric storage-type water heater having a measured volume of 47.0 gallons ±1.0 gallon (178 liters ±3.8 liters); two 4.5 kW heating elements controlled in such a manner as to prevent both elements from operating simultaneously; and an energy factor greater than or equal to the minimum energy conservation standard (as determined in accordance with Section 6.1.7) and less than or equal to the sum of the minimum energy conservation standard and 0.02.

5. Test Procedures

5.1 *Storage-type Water Heaters, Including Heat Pump Water Heaters.*

5.1.1 *Determination of Storage Tank Volume.* Determine the storage capacity, V_{st}, of the water heater under test, in gallons (liters), by subtracting the tare weight—measured while the tank is empty—from the gross weight of the storage tank when completely filled with water (with all air eliminated and line pressure applied as described in section 2.5) and dividing the resulting net weight by the density of water at the measured temperature.

5.1.2 *Setting the Thermostat.*

5.1.2.1 *Single Thermostat Tanks.* Starting with a tank at the supply water temperature, initiate normal operation of the water heater. After cut-out, determine the mean tank temperature every minute until the maximum value is observed. Determine whether this maximum value for the mean tank temperature is within the range of 135°F±5°F (57.2°C±2.8°C). If not, turn off the water heater, adjust the thermostat, drain and refill the tank with supply water. Then, once again, initiate normal operation of the water heater, and determine the maximum mean tank temperature after cut-out. Repeat this sequence until the maximum mean tank temperature after cut-out is 135°F±5°F (57.2°C±2.8°C).

5.1.2.2 *Tanks with Two or More Thermostats.* Follow the same sequence as for a single thermostat tank, i.e. start at the supply water temperature, operate normally until cutout. Determine if the thermostat that controls the uppermost heating element yields a maximum water temperature of 135°F±5°F (57.2°C±2.8°C), as measured by the in-tank sensors that are positioned above the uppermost heating element. If the tank temperature at the thermostat is not within 135°F±5°F (57.2°C±2.8°C), turn off the water heater, adjust the thermostat, drain and refill the tank with supply water. The thermostat that controls the heating element positioned next highest in the tank shall then be set to yield a maximum water temperature of 135°F±5°F (57.2°C±2.8°C). This process shall be repeated until the thermostat controlling the lowest element is correctly adjusted. When adjusting the thermostat that controls the lowest element, the maximum mean tank temperature after cut-out, as determined using all the in-tank sensors, shall be 135°F±5°F (57.2°C±2.8°C). When adjusting all other thermostats, use only the in-tank temperature sensors positioned above the heating element in question to evaluate the maximum water temperature after cut-out.

For heat pump water heaters that control an auxiliary resistive element, the thermostat shall be set in accordance with the manufacturer's installation instructions.

5.1.3 *Power Input Determination.* For all water heaters except electric types having immersed heating elements, initiate normal operation and determine the power input, P, to the main burners (including pilot light power, if any) after 15 minutes of operation. If the water heater is equipped with a gas appliance pressure regulator, the regulator outlet pressure shall be set within ± 10% of that recommended by the manufacturer. For oil-fired water heaters the fuel pump pressure shall be within ± 10% of the manufacturer's specified pump pressure. All burners shall be adjusted to achieve an hourly Btu (kJ) rating that is within ± 2% of the value specified by the manufacturer. For an oil-fired water heater, adjust the burner to give a CO_2 reading recommended by the manufacturer and an hourly Btu (kJ) rating that is within ± 2% of that specified by the manufacturer. Smoke in the flue may not exceed No. 1 smoke as measured by the procedure in ASTM–D–2156–80.

5.1.4 *First-Hour Rating Test.*

5.1.4.1 *General.* During hot water draws, remove water at a rate of 3.0±0.25 gallons per minute (11.4±0.95 liters per minute). Collect the water in a container that is large enough to hold the volume removed during an individual draw and suitable for weighing at the termination of each draw. Alternatively, a water meter may be used to directly measure the water volume(s) withdrawn.

5.1.4.2 *Draw Initiation Criteria.* Begin the first-hour rating test by imposing a draw on the storage-type water heater. After completion of this first draw, initiate successive draws based on the following criteria. For gas-and oil-fired water heaters, initiate successive draws when the thermostat acts to reduce the supply of fuel to the main burner. For electric water heaters having a single element or multiple elements that all operate simultaneously, initiate

successive draws when the thermostat acts to reduce the electrical input supplied to the element(s). For electric water heaters having two or more elements that do not operate simultaneously, initiate successive draws when the applicable thermostat acts to reduce the electrical input to the element located vertically highest in the storage tank. For heat pump waters heaters that do not use supplemental resistive heating, initiate successive draws immediately after the electrical input to the compressor is reduced by the action of the water heater's thermostat. For heat pump waters heaters that use supplemental resistive heating, initiate successive draws immediately after the electrical input to the compressor or the uppermost resistive element is reduced by the action of the applicable water heater thermostat. This draw initiation criterion for heat pump water heaters that use supplemental resistive heating, however, shall only apply when the water located above the thermostat at cut-out is heated to 135°F±5°F (57.2°C±2.8°C).

5.1.4.3 *Test Sequence.* Establish normal water heater operation. If the water heater is not presently operating, initiate a draw. The draw may be terminated anytime after cut-in occurs. After cut-out occurs (i.e., all thermostats are satisfied), monitor the internal storage tank temperature sensors described in section 4.5 every minute.

Initiate a draw after a maximum mean tank temperature has been observed following cut-out. Record the time when the draw is initiated and designate it as an elapsed time of zero ($\tau^* = 0$). (The superscript * is used to denote variables pertaining to the first-hour rating test.) Record the outlet water temperature beginning 15 seconds after the draw is initiated and at 5-second intervals thereafter until the draw is terminated. Determine the maximum outlet temperature that occurs during this first draw and record it as $T^*_{max,\ 1}$. For the duration of this first draw and all successive draws, in addition, monitor the inlet temperature to the water heater to ensure that the required 58°F±2°F (14.4°C±1.1°C) test condition is met. Terminate the hot water draw when the outlet temperature decreases to $T^*_{max,1} - 25°F$ ($T^*_{max,1} - 13.9°C$). Record this temperature as $T^*_{min,1}$. Following draw termination, determine the average outlet water temperature and the mass or volume removed during this first draw and record them as $T^*_{del,1}$ and M^*_1 or V^*_1, respectively.

Initiate a second and, if applicable, successive draw each time the applicable draw initiation criteria described in section 5.1.4.2 are satisfied. As required for the first draw, record the outlet water temperature 15 seconds after initiating each draw and at 5-second intervals thereafter until the draw is terminated. Determine the maximum outlet temperature that occurs during each draw and record it as $T^*_{max,\ i}$, where the subscript i refers to the draw number. Terminate each hot water draw when the outlet temperature decreases to $T^*_{max,\ i} - 25°F$ ($T^*_{max,\ i} - 13.9°C$). Record this temperature as $T^*_{min,\ i}$. Calculate and record the average outlet temperature and the mass or volume removed during each draw ($\bar{T}^*_{del,\ i}$ and M^*_i or V^*_i, respectively). Continue this sequence of draw and recovery until one hour has elapsed, then shut off the electrical power and/or fuel supplied to the water heater.

If a draw is occurring at an elapsed time of one hour, continue this draw until the outlet temperature decreases to $T^*_{max,\ n} - 25°F$ ($T^*_{max,\ n} - 13.9°C$), at which time the draw shall be immediately terminated. (The subscript n shall be used to denote quantities associated with the final draw.) If a draw is not occurring at an elapsed time of one hour, a final draw shall be imposed at one hour. This draw shall be immediately terminated when the outlet temperature first indicates a value less than or equal to the cut-off temperature used for the previous draw ($T^*_{min,\ n} - 1$). For cases where the outlet temperature is close to $T^*_{min,\ n} - 1$, the final draw shall proceed for a minimum of 30 seconds. If an outlet temperature greater than $T^*_{min,\ n} - 1$ is not measured within 30 seconds, the draw shall be immediately terminated and zero additional credit shall be given towards first-hour rating (i.e., $M^*_n = 0$ or $V^*_n = 0$). After the final draw is terminated, calculate and record the average outlet temperature and the mass or volume removed during the draw ($\bar{T}^*_{del,\ n}$ and M^*_n or V^*_n, respectively).

5.1.5 *24-Hour Simulated Use Test.* During the simulated use test, a total of 64.±3 1.0 gallons (243±3.8 liters) shall be removed. This value is referred to as the daily hot water usage in the following text.

With the water heater turned off, fill the water heater with supply water and apply pressure as described in section 2.5. Turn on the water heater and associated heat pump unit, if present. After the cut-out occurs, the water heater may be operated for up to three cycles of drawing until cut-in, and then operating until cut-out, prior to the start of the test.

At this time, record the mean tank temperature (T_o), and the electrical and/or fuel measurement readings, as appropriate. Begin the 24-hour simulated use test by withdrawing a volume from the water heater that equals one-sixth of the daily hot water usage. Record the time when this first draw is initiated and assign it as the test elapsed time (τ) of zero (0). Record the average storage tank and ambient temperature every 15 minutes throughout the 24-hour simulated use test unless a recovery or a draw is occurring. At elapsed time intervals of one, two, three, four, and five hours from $\tau = 0$, initiate additional draws, removing an amount of water equivalent to one-sixth of the daily hot water usage with the maximum allowable deviation for any single draw being ± 0.5 gallons (1.9 liters). The quantity of water withdrawn during the sixth draw shall be increased or decreased as necessary such that the total volume of water withdrawn equals 64.3 gallons ± 1.0 gallon (243.4 liters ± 3.8 liters).

All draws during the simulated use test shall be made at flow rates of 3.0 gallons ± 0.25 gallons per minute (11.4 liters ± 0.95 liters per minute). Measurements of the inlet and outlet temperatures shall be made 15 seconds after the draw is initiated and at every subsequent 5-second interval throughout the duration of each draw. The arithmetic mean of the hot water discharge temperature and the cold water inlet temperature shall be determined for each draw ($\bar{T}_{del,\ i}$ and $\bar{T}_{in,\ i}$). Determine and record the net mass or volume removed (M_i or V_i), as appropriate, after each draw.

At the end of the recovery period following the first draw, record the maximum mean tank temperature observed after cut-out, $T_{max,\ 1}$, and the energy consumed by an electric resistance, gas or oil-fired water heater, Q_r. For heat pump water heaters, the total electrical energy consumed during the first recovery by the heat pump (including compressor, fan, controls, pump, etc.) and, if applicable, by the resistive element(s) shall be recorded as Q_r.

At the end of the recovery period that follows the sixth draw, determine and record the total electrical energy and/or fossil fuel consumed since the beginning of the test, Q_{su}. In preparation for determining the energy consumed during standby, record the reading given on the electrical energy (watt-hour) meter, the gas meter, and/or the scale used to determine oil consumption, as appropriate. Record the maximum value of the mean tank temperature after cut-out as T_{su}. Except as noted below, allow the water heater to remain in the standby mode until 24 hours have elapsed from the start of the test (i.e., since = 0). Prevent the water heater from beginning a recovery cycle during the last hour of the test by turning off the electric power to the electrical heating elements and heat pump, if present, or by turning down the fuel supply to the main burner at an elapsed time of 23 hours. If a recovery is taking place at an elapsed time of 23 hours, wait until the recovery is complete before reducing the electrical and/or fuel supply to the water heater. At 24 hours, record the mean tank temperature, T_{24}, and the electric and/or fuel instrument readings. Determine the total fossil fuel or electrical energy consumption, as appropriate, for the entire 24-hour simulated use test, Q. Record the time interval between the time at which the maximum mean tank temperature is observed after the sixth draw and the end of the 24-hour test as $_{stby,\ 1}$. Record the time during which water is not being withdrawn from the water heater during the entire 24-hour period as $_{stby,\ 2}$.

5.2 *Instantaneous Gas and Electric Water Heaters*

5.2.1 *Setting the Outlet Discharge Temperature.* Initiate normal operation of the water heater at the full input rating for electric instantaneous water heaters and at

the maximum firing rate specified by the manufacturer for gas instantaneous water heaters. Monitor the discharge water temperature and set to a value of 135°F ± 5°F (57.2°C ± 2.8°C) in accordance with the manufacturer's instructions. If the water heater is not capable of providing this discharge temperature when the flow rate is 3.0 gallons ± 0.25 gallons per minute (11.4 liters ± 0.95 liters per minute), then adjust the flow rate as necessary to achieve the specified discharge water temperature. Record the corresponding flow rate as V_{max}.

5.2.2 *Additional Requirements for Variable Input Instantaneous Gas Water Heaters.* If the instantaneous water heater incorporates a controller that permits operation at a reduced input rate, adjust the flow rate as necessary to achieve a discharge water temperature of 135°F ± 5°F (57.2°C ± 2.8°C) while maintaining the minimum input rate. Record the corresponding flow rate as V_{min}. If an outlet temperature of 135°F ± 5°F (57.2°C ± 2.8°C) cannot be achieved at the minimum flow rate permitted by the instantaneous water heater, record the flow rate as V_{min} and the corresponding outlet temperature as T_{min}.

5.2.3 *Maximum GPM Rating Test for Instantaneous Water Heaters.* Establish normal water heater operation at the full input rate for electric instantaneous water heaters and at the maximum firing rate for gas instantaneous water heaters with the discharge water temperature set in accordance with Section 5.2.1. During the 10-minute test, either collect the withdrawn water for later measurement of the total mass removed, or alternatively, use a water meter to directly measure the water volume removed.

After recording the scale or water meter reading, initiate water flow throughout the water heater, record the inlet and outlet water temperatures beginning 15 seconds after the start of the test and at subsequent 5-second intervals throughout the duration of the test. At the end of 10 minutes, turn off the water. Determine the mass of water collected, M_{10m}, in pounds (kilograms), or the volume of water, V_{10m}, in gallons (liters).

5.2.4 *24-hour Simulated Use Test for Gas Instantaneous Water Heaters.*

5.2.4.1 *Fixed Input Instantaneous Water Heaters.* Establish normal operation with the discharge water temperature and flow rate set to values of 135°F ± 5°F (57.2°C ± 2.8°C) and V_{max} per Section 5.2.1, respectively. With no draw occurring, record the reading given by the gas meter and/or the electrical energy meter as appropriate. Begin the 24-hour simulated use test by drawing an amount of water out of the water heater equivalent to one-sixth of the daily hot water usage. Record the time when this first draw is initiated and designate it as an elapsed time, τ, of 0. At elapsed time intervals of one, two, three, four, and five hours from τ = 0, initiate additional draws, removing an amount of water equivalent to one-sixth of the daily hot water usage, with the maximum allowable deviation for any single draw being ± 0.5 gallons (1.9 liters). The quantity of water drawn during the sixth draw shall be increased or decreased as necessary such that the total volume of water withdrawn equals 64.3 gallons ± 1.0 gallons (243.4 liters ± 3.8 liters).

Measurements of the inlet and outlet water temperatures shall be made 15 seconds after the draw is initiated and at every 5-second interval thereafter throughout the duration of the draw. The arithmetic mean of the hot water discharge temperature and the cold water inlet temperature shall be determined for each draw. Record the scale used to measure the mass of the withdrawn water or the water meter reading, as appropriate, after each draw. At the end of the recovery period following the first draw, determine and record the fossil fuel or electrical energy consumed, Q_r. Following the sixth draw and subsequent recovery, allow the water heater to remain in the standby mode until exactly 24 hours have elapsed since the start of the test (i.e., since τ = 0). At 24 hours, record the reading given by the gas meter and/or the electrical energy meter as appropriate. Determine the fossil fuel or electrical energy consumed during the entire 24-hour simulated use test and designate the quantity as Q.

5.2.4.2 *Variable Input Instantaneous Water Heaters.* If the instantaneous water heater incorporates a controller that permits continuous operation at a reduced input rate, the first three draws shall be conducted using the maximum flow rate, V_{max}, while removing an amount of water equivalent to one-sixth of the daily hot water usage, with the maximum allowable deviation for any one of the three draws being ± 0.5 gallons (1.9 liters). The second three draws shall be conducted at V_{min}. If an outlet temperature of 135°F ± 5°F (57.2°C ± 2.8°C) could not be achieved at the minimum flow rate permitted by the instantaneous water heater, the last three draws should be lengthened such that the volume removed is:

$$V_{4,5,6} = \frac{64.3\ \text{gal}}{6} \times \left[\frac{77°\ \text{F}}{(T_{min} - 58°\ \text{F})}\right]$$

or

$$V_{4,5,6} = \frac{243\ \text{L}}{6} \times \left[\frac{42.8°\ \text{C}}{(T_{min} - 14.4°\ \text{C})}\right]$$

where T_{min} is the outlet water temperature at the flow rate V_{min} as determined in Section 5.2.1, and where the maximum allowable variation for any one of the three draws is ± 0.5 gallons (1.9 liters). The quantity of water withdrawn during the sixth draw shall be increased or decreased as necessary such that the total volume of water withdrawn equals $(32.15 + 3T1 \bullet V_{4,5,6}) \pm 1.0$ gallons $((121.7 + 3 \bullet V_{4,5,6}) \pm 3.8$ liters).

Measurements of the inlet and outlet water temperatures shall be made 5 seconds after a draw is initiated and at every 5-second interval thereafter throughout the duration of the draw. Determine the arithmetic mean of the hot water discharge temperature and the cold water inlet temperature for each draw. Record the scale used to measure the mass of the withdrawn water or the water meter reading, as appropriate, after each draw. At the end of the recovery period following the first draw, determine and record the fossil fuel or electrical energy consumed, $Q_{r,\ max}$. Likewise, record the reading of the meter used to measure fossil fuel or electrical energy consumption prior to the fourth draw and at the end of the recovery period following the fourth draw, and designate the difference as $Q_{r,min}$. Following the sixth draw and subsequent recovery, allow the water heater to remain in the standby mode until exactly 24 hours have elapsed since the start of the test (i.e., since τ=0). At 24 hours, record the reading given by the gas meter and/or the electrical energy meter, as appropriate. Determine the fossil fuel or electrical energy consumed during the entire 24-hour simulated use test and designate the quantity as Q.

6. Computations

6.1 *Storage Tank and Heat Pump Water Heaters.*

6.1.1 *Storage Tank Capacity.* The storage tank capacity is computed using the following:

$$V_{st} = \frac{(W_f - W_t)}{\rho}$$

Where:

V_{st} = the storage capacity of the water heater, gal (L).

W_f = the weight of the storage tank when completely filled with water, lb (kg).

W_t = the (tare) weight of the storage tank when completely empty, lb (kg).

ρ = the density of water used to fill the tank measured at the temperature of the water, lb/gal (kg/L).

6.1.2. *First-Hour Rating Computation.* For the case in which the final draw is initiated at or prior to an elapsed time of one hour, the first-hour rating shall be computed using,

$$F_{hr} = \sum_{i=1}^{n} V_i^*$$

Where:

n = the number of draws that are completed during the first-hour rating test.

V^*_i = the volume of water removed during the *ith* draw of the first-hour rating test, gal (L)

or, if the mass of water is being measured,

$$V_i^* = \frac{M_i^*}{\rho}$$

Where:

M^*_i = the mass of water removed during the ith draw of the first-hour rating test, lb (kg).

ρ = the water density corresponding to the average outlet temperature measured during the *ith* draw, $(\bar{T}^*_{del,\ i})$, lb/gal (kg/L).

For the case in which a draw is not in progress at the elapsed time of one hour and a final draw is imposed at the elapsed time of one hour, the first-hour rating shall be calculated using

$$F_{hr} = \sum_{i=1}^{n-1} V_i^* + V_n^* \left(\frac{\overline{T}^*_{del,n} - T^*_{min,n-1}}{\overline{T}^*_{del,n-1} - T^*_{min,n-1}} \right)$$

where n and V^*_i are the same quantities as defined above, and

V^*_n = the volume of water drawn during the nth (final) draw of the first-hour rating test, gal (L)

$\bar{T}^*_{del,n-1}$ = the average water outlet temperature measured during the $(n-1)$th draw of the first-hour rating test, °F (°C).

$\bar{T}^*_{del,n}$ = the average water outlet temperature measured during the nth (final) draw of the first-hour rating test, °F (°C).

$\bar{T}^*_{min,n-1}$ = the minimum water outlet temperature measured during the $(n-1)$th draw of the first-hour rating test, °F (°C).

6.1.3 *Recovery Efficiency.* The recovery efficiency for gas, oil, and heat pump storage-type water heaters is computed as:

$$\eta_r = \frac{M_1 C_{p1}\left(\overline{T}_{del,1} - \overline{T}_{in,1}\right)}{Q_r} + \frac{V_{st}\rho_2 C_{p2}\left(\overline{T}_{max,1} - \overline{T}_o\right)}{Q_r}$$

Where:

M_1 = total mass removed during the first draw of the 24-hour simulated use test, lb (kg), or, if the volume of water is being measured,

$M_1 = V_1 \rho_1$

Where:

V_1 = total volume removed during the first draw of the 24-hour simulated use test, gal (L).

ρ_1 = density of the water at the water temperature measured at the point where the flow volume is measured, lb/gal (kg/L).

C_{p1} = specific heat of the withdrawn water, $(\bar{T}_{del,1} + \bar{T}_{in,1})$ / 2, Btu/lb°F (kJ/kg°C).

$\bar{T}_{del,1}$ = average water outlet temperature measured during the first draw of the 24-hour simulated use test, °F (°C).

$\bar{T}_{in,1}$ = average water inlet temperature measured during the first draw of the 24-hour simulated use test, °F (°C).

V_{st} = as defined in section 6.1.1.

ρ_2 = density of stored hot water, $(\bar{T}_{max,1} + \bar{T}_o)$/ 2, lb/gal (kg/L).

C_{p2} = specific heat of stored hot water evaluated at $(\bar{T}_{max,1} + \bar{T}_o)$ / 2, Btu/lb°F (kJ/kg∘°C).

$\bar{T}_{max,1}$ = maximum mean tank temperature recorded after cut-out following the first draw of the 24-hour simulated use test, °F (°C).

$\bar{T}_o$ = maximum mean tank temperature recorded prior to the first draw of the 24-hour simulated use test, °F (°C).

Q_r = the total energy used by the water heater between cut-out prior to the first draw and cut-out following the first draw, including auxiliary energy such as pilot lights, pumps, fans, etc., Btu (kJ). (Electrical auxiliary energy shall be converted to thermal energy using the following conversion: 1 kWh = 3,412 Btu.)

The recovery efficiency for electric water heaters with immersed heating elements is assumed to be 98%.

6.1.4 *Hourly Standby Losses.* The hourly standby energy losses are computed as:

$$Q_{hr} = \frac{Q_{stby} - \dfrac{V_{st}\rho C_p\left(\overline{T}_{24} - \overline{T}_{su}\right)}{\eta_r}}{\tau_{stby,1}}$$

Where:

Q_{hr} = the hourly standby energy losses of the water heater, Btu/h (kJ/h).

Q_{stby} = the total energy consumed by the water heater between the time at which the maximum mean tank temperature is observed after the sixth draw and the end of the 24-hour test period, Btu (kJ).

V_{st} = as defined in section 6.1.1.

ρ = density of stored hot water, $(\bar{T}_{24} + \bar{T}_{su})$ / 2, lb/gal (kg/L).

C_p = specific heat of the stored water, $(\bar{T}_{24} + \bar{T}_{su})$ / 2, Btu/lb•°F (kJ/kg•°C).

$\bar{T}_{24}$ = the mean tank temperature at the end of the 24-hour simulated use test, °F (°C).

$\bar{T}_{su}$ = the maximum mean tank temperature observed after the sixth draw, °F (°C).

η_r = as defined in section 6.1.3.

$\tau_{stby,1}$ = elapsed time between the time at which the maximum mean tank temperature is observed after the sixth draw and the end of the 24-hour simulated use test, h.

The standby heat loss coefficient for the tank is computed as:

$$UA = \frac{Q_{hr}}{\overline{T}_{t,stby,1} - \overline{T}_{a,stby,1}}$$

Where:

UA = standby heat loss coefficient of the storage tank, Btu/h•°F (kJ/h•°C).

Q_{hr} = as defined in this section.

$\bar{T}_{t,stby,1}$= overall average storage tank temperature between the time when the maximum mean tank temperature is observed after the sixth draw and the end of the 24-hour simulated use test, °F (°C).

$\bar{T}_{a,stby,1}$= overall average ambient temperature between the time when the maximum mean tank temperature is observed after the sixth draw and the end of the 24-hour simulated use test, °F (°C).

6.1.5 *Daily Water Heating Energy Consumption.* The daily water heating energy consumption, Q_d, is computed as:

$$Q_d = Q - \frac{V_{st}\rho C_p\left(\overline{T}_{24} - \overline{T}_o\right)}{\eta_r}$$

Where:

Q = total energy used by the water heater during the 24-hour simulated use test including auxiliary energy such as pilot lights, pumps, fans, etc., Btu (kJ). (Electrical auxiliary energy shall be converted to thermal energy using the following conversion: 1 kWh = 3,412 Btu.)

V_{st} = as defined in section 6.1.1.

ρ= density of the stored hot water, $(\bar{T}_{24} + \bar{T}_o)$ / 2, lb/gal (kg/L).

C_p = specific heat of the stored water, $(\bar{T}_{24} + \bar{T}_o)$ / 2, Btu/lb•°F (kJ/kg•°C).

$\bar{T}_{24}$ = mean tank temperature at the end of the 24-hour simulated use test, °F (°C).

$\bar{T}_o$ = mean tank temperature at the beginning of the 24-hour simulated use test, recorded one minute before the first draw is initiated, °F (°C).

η_r = as defined in section 6.1.3.

6.1.6 *Adjusted Daily Water Heating Energy Consumption.* The adjusted daily water heating energy consumption, Q_{da}, takes into account that the temperature difference between the storage tank and surrounding ambient air may not be the nominal value of 67.5°F (135°F–67.5°F) or 37.5°C (57.2°C–19.7°C) due to the 10°F (5.6°C) allowable variation in storage tank temperature, 135°F ± 5°F (57.2°C ± 2.8°C), and the 5°F (2.8°C) allowable variation in surrounding ambient temperature 65 °F (18.3°C) to 70°F (21.1°C). The adjusted daily water heating energy consumption is computed as:

$$Q_{da} = Q_D - [(\bar{T}_{stby,2} - \bar{T}_{a,stby,2}) - (135°F - 67.5°F)]\, UA\tau_{stby,2}$$

$$\text{or } Q_{da} = Q_D - [(\bar{T}_{stby,2} - \bar{T}_{a,stby,2}) - (57.2°C - 19.7°C)]\, UA\tau_{stby,2}$$

Where:

Q_{da} = the adjusted daily water heating energy consumption, Btu (kJ).

Q_d = as defined in section 6.1.5.

$T_{stby,2}$ = the mean tank temperature during the total standby portion, $\tau_{stby,2}$, of the 24-hour test, °F (°C).

$\bar{T}_{a,stby,2}$ = the average ambient temperature during the total standby portion, $\tau_{stby,2}$, of the 24-hour test, °F (°C).

UA = as defined in section 6.1.4.

$\tau_{stby,2}$ = the number of hours during the 24-hour simulated test when water is not being withdrawn from the water heater.

A modification is also needed to take into account that the temperature difference between the outlet water temperature and supply water temperature may not be equivalent to the nominal value of 77°F

(135°F–58°F) or 42.8°C (57.2°C–14.4°C). The following equations adjust the experimental data to a nominal 77°F (42.8°C) temperature rise.

The energy used to heat water, Btu/day (kJ/day), may be computed as:

$$Q_{HW} = \sum_{i=1}^{6} \frac{M_i C_{pi}\left(\overline{T}_{del,i} - \overline{T}_{in,i}\right)}{\eta_r}$$

Where:

M_i = the mass withdrawn for the *i*th draw (i = 1 to 6), lb (kg).

C_{pi} = the specific heat of the water of the *i*th draw, Btu/lb•°F (kJ/kg•°C).

$\overline{T}_{del,i}$ = the average water outlet temperature measured during the *i*th draw (i=1 to 6), °F (°C).

$\overline{T}_{in,i}$ = the average water inlet temperature measured during the *i*th draw (i=1 to 6), °F (°C).

η_r = as defined in section 6.1.3.

The energy required to heat the same quantity of water over a 77°F (42.8°C) temperature rise, Btu/day (kJ/day), is:

$$Q_{HW,77°F} = \sum_{i=1}^{6} \frac{M_i C_{pi}(135°F - 58°F)}{\eta_r}$$

$$\text{or } Q_{HW,42.8°C} = \sum_{i=1}^{6} \frac{M_i C_{pi}(57.2°C - 14.4°C)}{\eta_r}$$

The difference between these two values is:

$Q_{HWD} = Q_{HW,77°-F} - Q_{HW}$

or $Q_{HWD} = Q_{HW,42.8°-F} - Q_{HW}$

which must be added to the adjusted daily water heating energy consumption value. Thus, the daily energy consumption value which takes into account that the temperature difference between the storage tank and ambient temperature may not be 67.5°F (37.5°C) and that the temperature rise across the storage tank may not be 77°F (42.8°C) is:

$Q_{dm} = Q_{da} + Q_{HWD}$

6.1.7 Energy Factor. The energy factor, Ef, is computed as:

$$E_f = \sum_{i=1}^{6} \frac{M_i C_{pi}(135°F - 58°F)}{Q_{dm}}$$

or

$$E_f = \sum_{i=1}^{6} \frac{M_i C_{pi}(57.2°C - 14.4°C)}{Q_{dm}}$$

Where:

Q_{dm} = the modified daily water heating energy consumption as computed in accordance with section 6.1.6, Btu (kJ).

M_i = the mass withdrawn for the ith draw (i = 1 to 6), lb (kg).

C_{pi} = the specific heat of the water of the ith draw, Btu/lb °F (kJ/kg °C).

6.1.8 *Annual Energy Consumption.* The annual energy consumption for storage-type and heat pump water heaters is computed as:

$E_{annual} = 365 \times Q_{dm}$

Where:

Q_{dm} = the modified daily water heating energy consumption as computed in accordance with section 6.1.6, Btu (kJ).

365 = the number of days in a year.

6.2 *Instantaneous Water Heaters.*

6.2.1 *Maximum GPM (L/min) Rating Computation.* Compute the maximum gpm (L/min) rating as:

$$F_{max} = \frac{M_{10m}\left(\overline{T}_{del} - \overline{T}_{in}\right)}{10(\rho)(135°F - 58°F)}$$

$$\text{or } F_{max} = \frac{M_{10m}\left(\overline{T}_{del} - \overline{T}_{in}\right)}{10(\rho)(57.2°C - 14.4°C)}$$

which may be expressed as:

$$F_{max} = \frac{M_{10m}\left(\overline{T}_{del} - \overline{T}_{in}\right)}{10(\rho)(77°F)}$$

$$\text{or } F_{max} = \frac{M_{10m}\left(\overline{T}_{del} - \overline{T}_{in}\right)}{10(\rho)(42.8°C)}$$

Where:

M_{10m} = the mass of water collected during the 10-minute test, lb (kg).

$\overline{T}_{del}$ = the average delivery temperature, °F (°C).

$\overline{T}_{in}$ = the average inlet temperature, °F (°C).

ρ = the density of water at the average delivery temperature, lb/gal (kg/L).

If a water meter is used the maximum gpm (L/min) rating is computed as:

$$F_{max} = \frac{V_{10m}\left(\overline{T}_{del} - \overline{T}_{in}\right)}{10(77°F)}$$

$$\text{or } F_{max} = \frac{V_{10m}\left(\overline{T}_{del} - \overline{T}_{in}\right)}{10(42.8°C)}$$

Where:

V_{10m} = the volume of water measured during the 10-minute test, gal (L).

$\overline{T}_{del}$ = as defined in this section.

$\overline{T}_{in}$ = as defined in this section.

6.2.2 *Recovery Efficiency*

6.2.2.1 *Fixed Input Instantaneous Water Heaters.* The recovery efficiency is computed as:

$$\eta_r = \frac{M_1 C_{p1}\left(\overline{T}_{del,1} - \overline{T}_{in,1}\right)}{Q_r}$$

Where:

M_1 = total mass removed during the first draw of the 24-hour simulated use test, lb (kg), or, if the volume of water is being measured,

$M_1 = V_1 \cdot \rho$

Where:

V_1 = total volume removed during the first draw of the 24-hour simulated use test, gal (L).

ρ= density of the water at the water temperature measured at the point where the flow volume is measured, lb/gal (kg/L).

C_{p1} = specific heat of the withdrawn water, $(\overline{T}_{del,1} + \overline{T}_{in,1}) / 2$, Btu/lb °F (kJ/kg °C).

$\overline{T}_{del,1}$ = average water outlet temperature measured during the first draw of the 24-hour simulated use test, °F (°C).

$\overline{T}_{in,1}$ = average water inlet temperature measured during the first draw of the 24-hour simulated use test, °F (°C).

Q_r = the total energy used by the water heater between cut-out prior to the first draw and cut-out following the first draw, including auxiliary energy such as pilot lights, pumps, fans, etc., Btu (kJ). (Electrical auxiliary energy shall be converted to thermal energy using the following conversion: 1 kWh = 3,412 Btu.)

6.2.2.2 *Variable Input Instantaneous Water Heaters.* For instantaneous water heaters that have a variable firing rate, two recovery efficiency values are computed, one at the maximum input rate and one at the minimum input rate. The recovery efficiency used in subsequent computations is taken as the average of these two values. The maximum recovery efficiency is computed as:

$$\eta_{r,max} = \frac{M_1 C_{p1}\left(\overline{T}_{del,1} - \overline{T}_{in,1}\right)}{Q_{r,max}}$$

Where:

M_1 = as defined in section 6.2.2.1.

C_{p1} = as defined in section 6.2.2.1.

$\overline{T}_{del,1}$ = as defined in section 6.2.2.1.

$\overline{T}_{in,1}$ = as defined in section 6.2.2.1.

$Q_{r,max}$ = the total energy used by the water heater between burner cut-out prior to the first draw and burner cut-out following the first draw, including auxiliary energy such as pilot lights, Btu (kJ).

The minimum recovery efficiency is computed as:

$$\eta_{r,min} = \frac{M_4 C_{p4}\left(\overline{T}_{del,4} - \overline{T}_{in,4}\right)}{Q_{r,min}}$$

Where:

M_4 = the mass withdrawn during the fourth draw, lb (kg), or, if the volume of water is being measured,

$M_4 = V_4\,\rho$

Where:

V_4 = total volume removed during the first draw of the 24-hour simulated use test, gal (L).

ρ = as defined in 6.2.2.1

C_{p4} = the specific heat of water, Btu/lb°F (kJ/kg °C).

$\overline{T}_{del,4}$ = the average delivery temperature for the fourth draw, °F (°C).

$\overline{T}_{in}$, 4 = the average inlet temperature for the fourth draw, °F (°C).

$Q_{r,min}$ = the total energy consumed between the beginning of the fourth draw and burner cut-out following the fourth draw, including auxiliary energy such as pilot lights, Btu (kJ).

The recovery efficiency is computed as:

$$\eta_r = \frac{\eta_{r,\max} + \eta_{r,\min}}{2}$$

Where:

$\eta_{r,max}$ = as calculated above.
$\eta_{r,min}$ = as calculated above.

6.2.3 *Daily Water Heating Energy Consumption.* The daily water heating energy consumption, Q_d, is computed as:

$Q_d = Q$

Where:

Q = the energy used by the instantaneous water heater during the 24-hr simulated use test.

A modification is needed to take into account that the temperature difference between the outlet water temperature and supply water temperature may not be equivalent to the nominal value of 77°F (135°F − 58°F) or 42.8°C (57.2°C − 14.4°C). The following equations adjust the experimental data to a nominal 77°F (42.8°C) temperature rise.

The energy used to heat water may be computed as:

$$Q_{HW} = \sum_{i=1}^{6} \frac{M_i C_{pi}\left(\overline{T}_{del,i} - \overline{T}_{in,i}\right)}{\eta_r}$$

Where:

M_i = the mass withdrawn during the ith draw, lb (kg).
C_{pi} = the specific heat of water of the ith draw, Btu/lb°F (kJ/kg (°C).
$\overline{T}_{del,i}$ = the average delivery temperature of the ith draw, °F (°C).
$\overline{T}_{in,i}$ = the average inlet temperature of the ith draw, °F (°C).
η_r = as calculated in section 6.2.2.2.

The energy required to heat the same quantity of water over a 77°F (42.8°C) temperature rise is:

$$Q_{HW,\,77°F} = \sum_{i=1}^{6} \frac{M_i C_{pi}(135°F - 58°F)}{\eta_r}$$

$$\text{or } Q_{HW,\,42.8°C} = \sum_{i=1}^{6} \frac{M_i C_{pi}(57.2°C - 14.4°C)}{\eta_r}$$

Where:

M_i = the mass withdrawn during the *i*th draw, lb (kg).
C_{pi} = the specific heat of water of the ith draw, Btu/lb°F (kJ/kg (°C).
η_r = as calculated above.

The difference between these two values is:

$Q_{HWD} = Q_{HW,\,77°F} - Q_{HW}$
or $Q_{HWD} = Q_{HW,\,42.8°C} - Q_{HW}$

which much be added to the daily water heating energy consumption value. Thus, the daily energy consumption value which takes into account that the temperature rise across the storage tank may not be 77°F (42.8°C) is:

$Q_{dm} = Q_d + Q_{HWD}$

6.2.4 *Energy Factor.* The energy factor, E_f, is computed as:

$$E_f = \sum_{i=1}^{6} \frac{M_i C_{pi}(135°F - 58°F)}{Q_{dm}}$$

$$\text{or } E_f = \sum_{i=1}^{6} \frac{M_i C_{pi}(57.2°C - 14.4°C)}{Q_{dm}}$$

Where:

Q_{dm} = the daily water heating energy consumption as computed in accordance with section 6.2.3, Btu (kJ).
M_i = the mass associated with the *i*th draw, lb (kg).
C_{pi} = the specific heat of water computed at a temperature of (58°F + 135°F) / 2, Btu/lb °F [(14.4°C + 57.2°C) / 2, kJ/kg °C].

6.2.5 *Annual Energy Consumption.* The annual energy consumption for instantaneous type water heaters is computed as:

$E_{annual} = 365 \times Q_{dm}$

Where:

Q_{dm} = the modified daily energy consumption, Btu/day (kJ/day).
365 = the number of days in a year.

7. Ratings for Untested Models

In order to relieve the test burden on manufacturers who offer water heaters which differ only in fuel type or power input, ratings for untested models may be established in accordance with the following procedures. In lieu of the following procedures a manufacturer may elect to test the unit for which a rating is sought.

7.1 *Gas Water Heaters.* Ratings obtained for gas water heaters using natural gas can be used for an identical water heater which utilizes propane gas if the input ratings are within ± 10%.

7.2 *Electric Water Heaters*

7.2.1 *First-Hour Rating.* If an electric storage-type water heater is available with more than one input rating, the manufacturer shall designate the standard input rating, and the water heater need only be tested with heating elements at the designated standard input ratings. The first-hour ratings for units having power input rating less than the designated standard input rating shall be assigned a first-hour rating equivalent to the first draw of the first-hour rating for the electric water heater with the standard input rating. For units having power inputs greater than the designated standard input rating, the first-hour rating shall be equivalent to that measured for the water heater with the standard input rating.

7.2.2 *Energy Factor.* The energy factor for identical electric storage-type water heaters, with the exception of heating element wattage, may use the energy factor obtained during testing of the water heater with the designated standard input rating.

[FR Doc. 98–12296 Filed 5–8–98; 8:45 am]

BILLING CODE 6450–01–P

federal register

Monday
May 11, 1998

Part IV

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research: Actions Under the Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Actions Under the Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).

SUMMARY: This notice sets forth actions to be taken by the Director, National Institutes of Health, under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496, amended 59 FR 40170, 60 FR 20726, 61 FR 1482, 61 FR 10004, 62 FR 4782, 62 FR 53335, 62 FR 56196, 62 FR 59032, and 63 FR 8052).

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities (ORDA), National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839. The ORDA web site is located at http://www.nih.gov/od/orda/ for further information about the office.

SUPPLEMENTARY INFORMATION: Today's actions are being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines). The proposed actions were published for comment in the **Federal Register** on February 11, 1998 (63 FR 7054), and reviewed by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on March 10, 1998.

I. Amendment to Appendix M–I, Submission Requirements—Human Gene Transfer Experiments, Under the NIH Guidelines Regarding Electronic Submission of Protocols

I–A. Background Information and Decisions on Actions Under the NIH Guidelines

Appendix M–I, Submission Requirements—Human Gene Transfer Experiments, of the NIH Guidelines, stipulates requirements for submission of documents to ORDA. In January 1998, Dr. C. Estuardo Aguilar-Cordova, a member of the RAC, participated in a pilot test with ORDA staff regarding electronic submission of documents to ORDA. In this test, the documents submitted electronically included a human gene transfer protocol; responses to Appendices M–II through M–V, Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects (Points to Consider); and the ORDA registration document. The 82-page electronic submission, including tables, satisfactorily proved the efficiency and effectiveness of using this method for submission of protocols.

ORDA recognizes that electronic submission of documents is an accepted standard of practice within the scientific community; therefore, this practice is not novel. The practice of using this medium to submit formal protocols to ORDA, however, is novel and requires amendments to the NIH Guidelines. As a result, ORDA proposed to amend Appendix M–I of the NIH Guidelines to provide guidance to investigators regarding optional electronic submission procedures.

Electronic submission of human gene transfer protocols to ORDA offers several distinct advantages over the current practice of submitting protocols by printed matter, including: (1) ORDA can review protocols more expeditiously because they are received immediately; (2) electronic submission allows ORDA to search protocols electronically for keywords or phrases; (3) registration tasks performed at ORDA will be reduced substantially because the investigator has already completed most of the registration document as part of the electronic submission; and (4) ORDA can facilitate RAC review of the protocol by forwarding the complete protocol to RAC members electronically.

Appendix M–I is proposed to read:

"Appendix M–I. Submission Requirements—Human Gene Transfer Experiments

"Investigators must submit the following material (see exemption in Appendix M–VIII–A, Footnotes of Appendix M) to the Office of Recombinant DNA Activities, National Institutes of Health/MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839. Investigators may submit this material electronically and can obtain specific instructions from the ORDA home page (http://www.nih.gov/od/orda) regarding electronic submission requirements. For all submissions, whether printed or electronic, ORDA will confirm receipt within three working days after receiving the submission. Investigators should contact ORDA if they do not receive this confirmation.

"Proposals in printed form and/or in an electronic version shall be submitted to NIH/ORDA in the following order: (1) Scientific abstract; (2) non-technical abstract; (3) Responses to Appendix M–II through M–V, Description of the Proposed, Informed Consent, Privacy and Confidentiality, and Special Issues (the pertinent responses can be provided in the protocol or as an appendix to the protocol); (4) clinical protocol as approved by the local Institutional Biosafety Committee and Institutional Review Board; (5) Informed Consent document as approved by the Institutional Review Board (see Appendix M–III, Informed Consent); (6) appendices (including tables, figures, and manuscripts); and (7) curricula vitae—no more than two pages for each key professional person in biographical sketch format.

"All submissions must include Institutional Biosafety Committee (IBC) and Institutional Review Board (IRB) approvals and their deliberations pertaining to your protocol. IBC approval must be obtained from each institution at which recombinant DNA material will be administered to human subjects (as opposed to each institution involved in the production of vectors for human application and each institution at which there is *ex vivo* transduction of recombinant DNA material into target cells for human application). Because these written IBC and IRB approvals require appropriate signatures, investigators cannot submit them electronically. Investigators should submit these signed approvals either by mail or by facsimile trnasmission.

"Investigational New Drug (IND) applications shall be submitted to the FDA in the format described in 21 CFR, Chapter I, Subchapter D, Part 312, Subpart B, Section 23, IND Content and Format. Submissions to the FDA should be sent to the Division of Congressional and Public Affairs, Document Control Center, HFM–99, Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, Maryland 20852–1448.

"Note: NIH/ORDA will accept submission material at any time. However, if a protocol is submitted less than eight weeks before a scheduled RAC meeting and subsequently is recommended for public discussion by the full RAC, the public discussion of that protocol will be deferred until the next scheduled RAC meeting. This eight-week period is needed to ensure adequate time for review by the committee members."

During the March 10, 1998, RAC meeting, a motion was made that the RAC accept the proposed action published in the **Federal Register** of February 11, 1998 (63 FR 7054) to permit submission of human gene transfer protocols to ORDA for registration in an optional electronic format, as opposed to the printed materials. The motion passed by a vote of 9 in favor, 0 opposed, and 1 abstention.

The actions are detailed in Section I–B—Summary of Actions. I accept the RAC recommendations, and the NIH Guidelines will be amended accordingly.

I–B. Summary of Actions

I–B–1. Amendments to Appendix M–I. Submission Requirements—Human Gene Transfer Experiments

Appendix M–I is to be amended to read:

"Section M–I. Submission Requirements—Human Gene Transfer Experiments

"Investigators must submit the following material (see exemption in Appendix M–VIII–A, Footnotes of Appendix M) to the Office of Recombinant DNA Activities, National Institutes of Health/MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839. Investigators may submit this material electronically and can obtain specific instructions from the ORDA home page (http://www.nih.gov/od/or/orda) regarding electronic submission requirements. For all submissions, whether printed or electronic, ORDA will confirm receipt within three working days after receiving the submission. Investigators should contact ORDA if they do not receive this confirmation.

"Proposals in printed form and/or in an electronic version shall be submitted to NIH/ORDA in the following order: (1) Scientific abstract; (2) non-technical abstract; (3) Responses to Appendix M–II through M–V, Description of the Proposal, Informed Consent, Privacy and Confidentiality, and Special Issues (the pertinent responses can be provided in the protocol or as an appendix to the protocol); (4) clinical protocol as approved by the local Institutional Biosafety Committee and Institutional Review Board; (5) Informed Consent document as approved by the Institutional Review Board (see Appendix M–III, Informed Consent); (6) appendices (including tables, figures, and manuscripts); and (7) curricula vitae—no more than two pages for each key professional person in biographical sketch format.

"All submissions must include Institutional Biosafety Committee (IBC) and Institutional Review Board (IRB) approvals and their deliberations pertaining to your protocol. IBC approval must be obtained from each institution at which recombinant DNA material will be administered to human subjects (as opposed to each institution involved in the production of vectors for human application and each institution at which there is *ex vivo* transduction of recombinant DNA material into target cells for human application). Because these written IBC and IRB approvals require appropriate signatures, investigators cannot submit them electronically. Investigators should submit these signed approvals either by mail or by facsimile transmission.

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"**Note:** NIH/ORDA will accept submission material at any time. However, if a protocoal is submitted less than eight weeks before a scheduled RAC meeting and subsequently is recommended for public discussion by the full RAC, the public discussion of that protocol will be deferred until the next scheduled RAC meeting. This eight-week period is needed to ensure adequate time for review by the committee members."

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guideline. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: April 30, 1998.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 98–12327 Filed 5–8–98; 8:45 am]

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federal register

Monday
May 11, 1998

Part V

Department of Housing and Urban Development

24 CFR Parts 6, 180, 570

Nondiscrimination in Programs and Activities Receiving Assistance Under Title I of the Housing and Community Development Act of 1974; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 6, 180, 570

[Docket No. FR 4092–P–01]

RIN 2501–AC28

Nondiscrimination in Programs and Activities Receiving Assistance Under Title I of the Housing and Community Development Act of 1974

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish procedures to file a complaint for a claim of discrimination under HUD's community planning and development programs modeled on the Department's regulations implementing the prohibition against discrimination on the basis of disability and the regulations implementing the prohibition against discrimination on the basis of race, color, or national origin in Federal programs. The rule also would provide that hearings on complaints be conducted in accordance with HUD's consolidated hearing procedures for civil rights claims. This rule is needed to inform members of the public how to file complaints and how HUD will act on their complaints.

DATES: *Comments due date:* July 10, 1998.

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. 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 on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Betsy Ryan, Director, Program Compliance Division, Office of Program Compliance and Disability Rights, Office of Fair Housing and Equal Opportunity, Room 5240, Department of Housing and Urban Development, 451 Seventh Street SW., Washington DC 20410–5000, telephone (202) 708–0404. Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 109 of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5321) (Title I) provides as follows:

> No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity.

The original language in section 109 of Title I (hereafter ''Section 109'') was modeled on the language in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1) (Title VI). Title VI prohibits discrimination on the bases of race, color, and national origin in any program or activity for which federal financial assistance is authorized under a law administered by the Department. However, Section 109 also includes protection against discrimination on the basis of sex. Additionally, unlike Title VI, which excludes employment practices except where employment is a primary purpose of the program, Section 109 includes employment discrimination within its coverage.

The Housing and Community Development Act of 1981 (Pub. L. 97–335, approved August 13, 1981; 95 Stat. 392) amended Section 109 to reference the prohibitions against age and disability discrimination in Title I programs under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) (Age Discrimination Act) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504). The purpose of this amendment was to clarify that although Section 109 does not directly prohibit discrimination on the bases of age and disability, it directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 apply to Title I programs.

Section 912 of the National Affordable Housing Act of 1990 (Pub. L. 101–625, approved November 28, 1991; 104 Stat. 4079) also amended Section 109 to add protection against discrimination on the basis of religion. Age or disability discrimination actions in Title I programs may be brought under either the Age Discrimination Act or Section 504, as appropriate. Causes of action for race, color, and national origin discrimination may be brought under Title VI and/or Section 109. Causes of action for discrimination based on sex and religion may be brought under Section 109.

The Department's regulations governing the Community Development Block Grant Programs are set forth in 24 CFR part 570. Section 570.602 of these regulations incorporates the nondiscrimination provisions of Section 109, defining specific types of discrimination, and setting forth performance standards by which the Department judges whether a Recipient is complying with Section 109.

To date, Section 109 has been enforced by utilizing the provisions of § 570.602 and the procedures set forth in the Department's regulations at 24 CFR part 8, which implement Section 504 for HUD-assisted programs and activities. The purpose of this rule is to set forth, in a new 24 CFR part 6, the policies and procedures necessary to enforce Section 109.

In addition to proposing a new part 6, the Department also proposes to conform 24 CFR 570.602 to reflect the addition of the new part 6 to the Department's regulations. Specifically, the Department proposes to amend 24 CFR 570.602 to state the applicability of Section 109 to the Title I programs and to refer the reader to the new part 6 for the regulations governing Section 109. Additionally, the Department proposes to amend 24 CFR part 180 (Consolidated HUD Hearing Procedures for Civil Rights Matters) to include Section 109. The Department promulgated part 180 in an effort to promote uniformity and reduce confusion for HUD program participants who in the past were faced with separate hearing procedures for each civil rights statutory authority enforced by the Department. Part 180 consolidates HUD's hearing procedures for nondiscrimination and equal opportunity matters under the Fair Housing Act (42 U.S.C. 3601–3619), Title VI, the Age Discrimination Act, and Section 504. Amending part 180 to include Section 109 will further the Department's goals of promoting uniformity, avoiding redundancy, and reducing confusion for HUD program participants. The use of part 180 hearing procedures for Section 109 hearings in no way affects the applicability of the hearing procedures provided for at 24 CFR 570.496 and 570.913, which govern non-civil rights matters under Title I. Section 570.913 is proposed to be amended in this rule to cross reference the procedures in parts 6 and 180 with respect to discrimination prohibited under Section 109, as described in § 570.602.

The proposed new part 6 provides specific time frames and procedures for the acceptance and investigation of complaints, improving response time and benefit to both complainants and Recipients. The proposed new part 6 is divided into two subparts. Subpart A (General Provisions) outlines the purpose and applicability of part 6, defines the important terms that are used in the regulation, and states in general terms the discriminatory acts that are prohibited by Section 109. Subpart B (Enforcement) sets forth the administrative enforcement provisions and refers the reader to 24 CFR part 180 for the administrative hearing procedures.

II. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in § 6.6 of this proposed rule are already imposed on Recipients of Title I assistance under existing regulations at 24 CFR 91.105, 91.115, 570.491, and 570.506. These information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Numbers 2506–0117 and 2506–0077. This rule incorporates these recordkeeping requirements, but does not require duplication of this information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Coordination

The Department of Justice has reviewed and approved this proposed rule under Executive Order 12250. The Equal Employment Opportunity Commission has reviewed and approved this proposed rule under Executive Order 12067.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will 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.

Environmental Impact

In accordance with 24 CFR 50.19(c)(3) of the HUD regulations, the policies and procedures contained in this rule set out nondiscrimination standards and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act under 24 CFR 50.19(c)(3).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication, and by approving it certifies that this proposed rule would not have a significant economic impact on small entities. The purpose of this rule is to provide for the enforcement of Section 109 of the Housing and Community Development Act of 1974, as amended, as it applies to recipients of Federal financial assistance from the Department of Housing and Urban Development. The rule is needed to inform members of the public on how to file complaints on the basis of discrimination under Section 109 and how HUD will act on their complaints. The rule sets out the process so that all parties involved in complaints will have certainty as to what procedures will govern. The proposed rule would not have a significant economic impact on a substantial number of small entities. The Department is sensitive, however, to the fact that uniform application of requirements on entities of differing sizes often places a disproportionate burden on small business. Therefore, the Department is soliciting alternatives for compliance from small entities that might be less burdensome to them.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this proposed rule are directed to Title I programs and activities, and do not impinge upon the relationship between the Federal government and State and local governments. Accordingly, the proposed rule is not subject to review under the Order.

Catalog

The Catalog of Federal Domestic Assistance number for the program affected by this rule is 14.406.

List of Subjects

24 CFR Part 6

Administrative practice and procedure, Civil rights, Community development block grants, Equal employment opportunity, Grant programs—housing and community development, Investigations, Loan programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 180

Administrative practice and procedure, Aged, Civil rights, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

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, subtitle A and chapters I and V of title 24 of the Code of Federal Regulations are proposed to be amended as follows:

1. A new part 6 is added, to read as follows:

PART 6—NONDISCRIMINATION IN PROGRAMS AND ACTIVITIES RECEIVING ASSISTANCE UNDER TITLE I OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

Subpart A—General Provisions

Sec.
6.1 Purpose.
6.2 Applicability.
6.3 Definitions.
6.4 Discrimination prohibited.
6.5 Discrimination prohibited—employment.
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Subpart B—Enforcement

6.10 Compliance information.
6.11 Conduct of investigations.
6.12 Procedure for effecting compliance.
6.13 Hearings and appeals.

Authority: 42 U.S.C. 3535(d), 5309.

Subpart A—General Provisions

§ 6.1 Purpose.

The purpose of this part is to implement the provisions of Section 109 of Title I of the Housing and Community Development Act of 1974 (Title I) (42

U.S.C. 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance. Section 109 does not directly prohibit discrimination on the bases of age or disability, and the regulations set forth in this part 6 do not apply to age or disability discrimination in Title I programs. Instead, Section 109 directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504) apply to programs or activities funded in whole or in part with Federal financial assistance. Thus, the regulations of 24 CFR part 8, which implement Section 504 for HUD programs, and the regulations of 24 CFR part 146, which implement the Age Discrimination Act for HUD programs, apply to disability and age discrimination in Title I programs.

§ 6.2 Applicability.

(a) This part applies to any program or activity funded in whole or in part with funds under Title I of the Housing and Community Development Act of 1974, including Community Development Block Grants—Entitlement, State and HUD-Administered Small Cities, and Section 108 Loan Guarantees; Urban Development Action Grants; Economic Development Initiative Grants; and Special Purpose Grants.

(b) The provisions of this part and sections 104(b)(2) and 109 of Title I which relate to discrimination on the basis of race shall not apply to the provision of Federal financial assistance by grantees under this title to the Hawaiian Homelands (42 U.S.C. 5309).

§ 6.3 Definitions.

The terms *Department, HUD,* and *Secretary* are defined in 24 CFR part 5. Other terms used in this part 6 are defined as follows:

Act means the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301–5320).

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Award Official means the HUD official who has been delegated the Secretary's authority to implement a Title I funded program and to make grants thereunder.

Complete complaint means a written statement that contains the complainant's name and address, identifies the Recipient against which the complaint is made, and describes the Recipient's alleged discriminatory action in sufficient detail to inform HUD of the nature and date of the alleged violation of section 109. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Federal financial assistance means: (1) Any assistance made available under Title I of the Housing and Community Development Act of 1974, as amended, and includes income generated from such assistance, and any grant, loan, contract, or any other arrangement, in the form of:

(i) Funds;

(ii) Services of Federal personnel; or

(iii) Real or personal property or any interest in or use of such property, including:

(A) Transfers or leases of the property for less than fair market value or for reduced consideration; and

(B) Proceeds from a subsequent transfer or lease of the property if the Federal share of its fair market value is not returned to the Federal Government.

(2) Federal financial assistance includes assistance in the form of proceeds from loans guaranteed under section 108 of the Act, but does not include assistance made available through direct Federal procurement contracts or any other contract of insurance or guaranty.

Program or activity (funded in whole or in part) means all of the operations of —

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or local government; or

(ii) The entity of such State or local government that distributes such assistance, and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other post-secondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraphs (1), (2), or (3) of this definition, any part of which is extended Federal financial assistance.

Recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another Recipient, for any program or activity, or who otherwise participates in carrying out such program or activity, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program or activity.

Responsible Official means the Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee.

Section 109 means Section 109 of the Housing and Community Development Act of 1974, as amended.

Title I means Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5321).

§ 6.4 Discrimination prohibited.

(a) Section 109 requires that no person in the United States shall, on the grounds of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance.

(1) A Recipient under any program or activity to which this part applies may not, directly or through contractual, licensing, or other arrangements, on the grounds of race, color, national origin, religion, or sex:

(i) Deny any individual any facilities, services, financial aid, or other benefits provided under the program or activity;

(ii) Provide any facilities, services, financial aid, or other benefits which are different, or are provided in a different form, from that provided to others under the program or activity;

(iii) Subject an individual to segregated or separate treatment in any facility, or in any matter of process related to the receipt of any service or benefit under the program or activity;

(iv) Restrict an individual's access to, or enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity;

(v) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirements or conditions which the individual must meet in order to be provided any facilities, services, or other benefit provided under the program or activity;

(vi) Deny an individual an opportunity to participate in a program or activity as an employee;

(vii) Aid or otherwise perpetuate discrimination against an individual by providing Federal financial assistance to an agency, organization, or person that discriminates in providing any housing, aid, benefit, or service;

(viii) Otherwise limit an individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other individuals receiving the housing, aid, benefit, or service;

(ix) Use criteria or methods of administration which have the effect of subjecting persons to discrimination or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to persons of a particular race, color, national origin, religion, or sex; or

(x) Deny a person the opportunity to participate as a member of planning or advisory boards.

(2) In determining the site or location of housing, accommodations, or facilities, a Recipient may not make selections of such site or location which have the effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, national origin, religion, or sex; or which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of Section 109 and of this part 6.

(3)(i) In administering a program or activity in which the Recipient has discriminated on the grounds of race, color, national origin, religion or sex, the Recipient must take any necessary steps to overcome the effects of prior discrimination.

(ii) In the absence of discrimination, a Recipient, in administering a program or activity, may take any steps necessary to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, national origin, religion, or sex.

(iii) After a finding of noncompliance, or after a Recipient has reasonable cause to believe that discrimination has occurred, a Recipient shall not be prohibited by this section from taking any action eligible under 24 CFR part 570, subpart C, to ameliorate an imbalance in benefits, services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to remedy discriminatory practices or usage.

(iv)(A) Notwithstanding anything to the contrary in this part, nothing contained in this section shall be construed to prohibit any Recipient from maintaining or constructing separate living facilities or restroom facilities for the different sexes in order to protect personal privacy or modesty concerns. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can, in the interest of personal privacy or modesty, only be performed by a member of the same sex as those receiving the services.

(B) Section 109 of the Act does not directly prohibit discrimination on the basis of age or disability, but directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 apply to Title I programs and activities. Accordingly, for programs or activities receiving Federal financial assistance, the regulations set forth in this part 6 apply to discrimination on the bases of race, color, national origin, religion, or sex; the regulations at 24 CFR part 8 apply to discrimination on the basis of disability; and the regulations at 24 CFR part 146 apply to discrimination on the basis of age.

§ 6.5 Discrimination prohibited-employment.

(a) *General.* A Recipient may not, under any program or activity funded in whole or in part with Federal financial assistance, directly or through contractual agents or other arrangements including contracts and consultants, subject a person to discrimination in the terms and conditions of employment, including advertising, interviewing, selection, promotion, demotion, transfer, recruitment and advertising, layoff or termination, pay or other compensation, including benefits, and selection for training.

(b) *Determination of compliance status.* The Assistant Secretary will follow the procedures set forth in this part and 29 CFR part 1691 and look to the substantive guidelines and policy of the Equal Employment Opportunity Commission when reviewing employment practices under Section 109.

§ 6.6 Records to be maintained.

(a) *General.* Recipients shall maintain records and data as required by 24 CFR 91.105, 91.115, 570.490, and 570.506.

(b) *Employment.* Recipients shall maintain records and data as required by the Equal Employment Opportunity Commission at 29 CFR part 1600.

(c) Recipients shall make available such records and any supporting documentation upon request of the Responsible Official.

(Approved by the Office of Management and Budget under control numbers 2506–0117 and 2506–0077.)

Subpart B—Enforcement

§ 6.10 Compliance information.

(a) *Cooperation and assistance.* The Responsible Official and the Award Official, in obtaining compliance with this part, will provide assistance and guidance to Recipients to help them comply voluntarily with this part.

(b) *Access to data and other sources of information.* Each Recipient shall permit access by authorized representatives of HUD to its facilities, books, records, accounts, minutes and audio tapes of meetings, personnel, computer disks and tapes, and other sources of information as may be pertinent to a determination of whether the Recipient is complying with this part. Where information required of a Recipient is in the exclusive possession of any other agency, institution, or person, and this agency, institution, or person fails or refuses to furnish this information, the Recipient shall so certify in any requested report and shall set forth what efforts it has made to obtain the information. Failure or refusal to furnish pertinent information (whether maintained by the Recipient or some other agency, institution, or person) without a credible reason for the failure or refusal will be considered to be noncompliance under this part.

(c) *Compliance data.* Each Recipient shall keep records and submit to the

Responsible Official, timely, complete, and accurate data at such times and in such form as the Responsible Official may determine to be necessary to ascertain whether the Recipient has complied or is complying with this part.

(d) *Notification to employees, beneficiaries, and participants.* Each Recipient shall make available to employees, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the program or activity under which the Recipient receives Federal financial assistance and make such information available to them in such manner as the Responsible Official finds necessary to apprise such persons of the protections against discrimination assured them by Section 109 and this part.

§ 6.11 Conduct of investigations.

(a) *Filing a complaint*—(1) *Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this part may file, or may have an authorized representative file on his or her behalf, a complaint with the Responsible Official. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or who is the authorized representative of a member of that class may file a complaint with the Responsible Official.

(2) *Confidentiality.* The Responsible Official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination, unless the Responsible Official waives this time limit for good cause. For purposes of determining when a complaint is filed under this part, a complaint mailed to the Responsible Official via the U. S. Postal Service will be deemed filed on the date it is postmarked. A complaint delivered to the Responsible Official in any other manner will be deemed filed on the date it is received by the Responsible Official.

(4) *Where to file complaints.* Complaints must be in writing, signed, addressed to the Responsible Official and filed with (mailed to or otherwise delivered to) the Office of Fair Housing and Equal Opportunity at any HUD Office.

(5) *Content of complaints.* Each complaint should contain the complainant's name, address, and phone number; a description or name, if available, of the Recipient alleged to have violated this part; an address where the violation occurred; and a description of the Recipient's alleged discriminatory action in sufficient detail to inform the Responsible Official of the nature and date of the alleged violation of this part.

(6) *Amendments to complaints.* Amendments to complaints, such as clarification and amplification of allegations in a complaint or the addition of other Recipients, may be made by the complainant or the complainant's authorized representative at any time during the pendency of the complaint and any amendment shall be deemed to be made as of the original filing date.

(7) *Notification.* To the extent practicable, the Responsible Official will notify the complainant and the Recipient of the Responsible Official's receipt of a complaint within 10 calendar days of receipt of a complete complaint. If the Responsible Official receives a complaint that is not complete, the Responsible Official will notify the complainant and specify the additional information that is needed to make the complaint complete. If the complainant fails to complete the complaint, the Responsible Official will close the complaint without prejudice and notify the complainant. When a complete complaint has been received, the Responsible Official, or his or her designee, will review the complaint for acceptance, rejection, or referral to an appropriate Federal agency within 20 calendar days.

(8) *Resolution of complaints.* After the acceptance of a complete complaint, the Responsible Official will investigate the complaint, attempt informal resolution, and, if resolution is not achieved, the Responsible Official will notify the Recipient and complainant, to the extent practicable within 180 days of the receipt of the complete complaint, of the results of the investigation in a letter of findings sent by certified mail, return receipt requested, containing the following:

(i) Findings of fact and a finding of compliance or noncompliance;

(ii) A description of an appropriate remedy for each violation believed to exist; and

(iii) A notice of the right of the Recipient and the complainant to request a review of the letter of findings by the Responsible Official. A copy of the final investigative report will be made available upon request.

(9) *Right to a review of the letter of findings.* (i) Within 30 days of receipt of the letter of findings, a complainant or Recipient may request that a review be made of the letter of findings, by mailing or delivering to the Responsible Official, Room 5100, Office of Fair Housing and Equal Opportunity, HUD, Washington, DC 20410, a written statement of the reasons why the letter of findings should be modified.

(ii) The Responsible Official will send by certified mail, return receipt requested, a copy of the request for review to the other party. Such other party shall have 20 days from receipt to respond to the request for review.

(iii) The Responsible Official will either sustain or modify the letter of findings or require that further investigation be conducted, within 60 days of the request for review. The Responsible Official's decision shall constitute the formal determination of compliance or noncompliance.

(iv) If neither party requests that the letter of findings be reviewed, the Responsible Official, within 14 calendar days of the expiration of the time period in paragraph (a)(9)(i) of this section, will send a formal written determination of compliance or noncompliance to the complainant, the Recipient, and the Award Official.

(10) *Voluntary compliance time limits.* The Recipient will have 10 calendar days, or such other reasonable amount of time specified in the letter transmitting the findings of noncompliance, from receipt of a formal determination of noncompliance within which to agree, in writing, to come into voluntary compliance or to contact the Responsible Official for settlement discussions. If the Recipient fails to meet this deadline, HUD will proceed in accordance with §§ 6.12 and 6.13.

(11) *Informal resolution/voluntary compliance.* (i) *General.* It is the policy of HUD to encourage the informal resolution of matters. A complaint or a compliance review may be resolved by informal means at any time. If a letter of findings is issued, and the letter makes a finding of noncompliance, the Responsible Official will attempt to resolve the matter through a voluntary compliance agreement.

(ii) *Objectives of informal resolution/voluntary compliance.* In attempting informal resolution, the Responsible Official will attempt to achieve a just resolution of the matter and to obtain assurances, where appropriate, that the Recipient will satisfactorily remedy any violations of the rights of any complainant, and will take such action as will assure the elimination of any violation of this part or the prevention of the occurrence of such violation in the future. If a finding of noncompliance

has been made, the terms of such an informal resolution shall be reduced to a written voluntary compliance agreement, signed by the Recipient and the Responsible Official, and be made part of the file. Such voluntary compliance agreements shall seek to protect the interests of the complainant (if any), other persons similarly situated, and the public interest.

(iii) *Right to file a private civil action.* At any time in the process, the complainant has the right to file a private civil action. If the complainant does so, the Responsible Official has the discretion to administratively close the investigation or continue the investigation, if he or she decides that it is in the best interests of the Department to do so. If the Responsible Official makes a finding of noncompliance and an agreement to voluntarily comply is not obtained from the Recipient, the procedures at §§ 6.12 and 6.13 for effecting compliance shall be followed.

(12) *Intimidatory or retaliatory acts prohibited.* No Recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by this part, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, compliance review, proceeding, or hearing under this part.

(b) *Compliance reviews*—(1) *Periodic compliance reviews.* The Responsible Official may periodically review the practices of Recipients to determine whether they are complying with this part and may conduct on-site reviews. The Responsible Official will initiate an on-site review by sending to the Recipient a letter advising the Recipient of the practices to be reviewed; the programs affected by the review; and the opportunity, at any time prior to receipt of a final determination, to submit information that explains, validates, or otherwise addresses the practices under review. In addition, the Award Official will include, in normal program compliance reviews and monitoring procedures, appropriate actions to review and monitor compliance with general or specific program requirements designed to effectuate the requirements of this part.

(2) *Time period of the review.* (i) For the Entitlement program, compliance reviews will cover the three years prior to the date of the review.

(ii) For the Urban Development Action Grant (UDAG) program, the compliance review is applicable only to UDAG loan repayments or other payments or revenues classified as program income. UDAG repayments or other payments or revenues classified as miscellaneous revenue are not subject to compliance review under this part. (See 24 CFR 570.500(a).) The compliance review will cover the time period that program income is being repaid.

(iii) For the State and HUD-Administered Small Cities programs, the compliance review will cover the four years prior to the date of the review.

(iv) For all other programs, the time period covered by the review will be four years prior to the date of the review.

(v) On a case-by-case basis, at the discretion of the Responsible Official, the above time frames for review can be expanded where facts or allegations warrant further investigation.

(3) *Early compliance resolution.* On the last day of the on-site visit, after the compliance review, the Recipient will be given an opportunity to supplement the record. Additionally, a prefinding conference may be held and a summary of the proposed findings may be presented to the Recipient. In those instances where the issue(s) cannot be resolved at a prefinding conference or with the supplemental information, a meeting will be scheduled to attempt a voluntary settlement.

(4) *Notification of findings.* (i) The Assistant Secretary will notify the Recipient of Federal financial assistance of the results of the compliance review in a letter of findings sent by certified mail, return receipt requested.

(ii) *Letter of findings.* The letter of findings will include the findings of fact and the conclusions of law; a description of a remedy for each violation found; and a notice that a copy of HUD's final report concerning its investigation of the complaint allegations will be made available, upon request, to the Recipient.

(iii) *Response to the letter of findings of noncompliance.* Within a reasonable period of time not to exceed 30 days after receipt of the letter of findings, the Recipient may request the commencement of discussions to resolve the findings of noncompliance voluntarily.

§ 6.12 Procedure for effecting compliance.

(a) Whenever the Assistant Secretary determines that a Recipient of Federal financial assistance has failed to comply with Section 109(a) or this part and voluntary compliance efforts have failed, the Secretary shall notify the Governor of the State or the Chief Executive Officer of the unit of general local government of the findings of noncompliance and shall request that the Governor or the Chief Executive Officer secure compliance. If within a reasonable period of time, not to exceed 60 days, the Governor or the Chief Executive Officer fails or refuses to secure compliance, the Secretary shall:

(1) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) Exercise the powers and functions provided by Title VI;

(3) Terminate or reduce payments under Title I, or limit the availability of payments under Title I to programs or activities not affected by the failure to comply; or

(4) Take such other actions as may be provided by law, including but not limited to, the initiation of proceedings under 24 CFR part 24 or any applicable proceeding under State or local law.

(b) *Termination, reduction, or limitation of the availability of Title I payments.* No order terminating, reducing, or limiting the availability of Title I payments under this part shall become effective until:

(1) The Secretary has notified the Governor of the State or the Chief Executive Officer of the unit of general local government of the Recipient's failure to comply in accordance with paragraph (a) of this section and of the termination, reduction or limitation of the availability of Title I payments to be taken;

(2) The Secretary has determined that compliance cannot be secured by voluntary means; and

(3) The Recipient has been extended an opportunity for a hearing in accordance with § 6.13(a); and

(4) A final agency notice or decision has been rendered in accordance with paragraph (c) of this section or 24 CFR part 180.

(c) If a Recipient does not respond to the notice of opportunity for a hearing or does not elect to proceed with a hearing within 20 days of the issuance of the Secretary's actions listed in paragraphs (b)(1), (2) and (3) of this section, then the Secretary's approval of the termination, reduction or limitation of the availability of Title I payments is considered a final agency notice and the Recipient may seek judicial review in accordance with section 111(c) of the Act.

§ 6.13 Hearings and appeals.

(a) When a Recipient requests an opportunity for a hearing, in accordance with § 6.12(b)(3), the General Counsel shall follow the notification procedures set forth in 24 CFR 180.415. The hearing, and any petition for review, will be conducted in accordance with

the procedures set forth in 24 CFR part 180.

(b) After a hearing is held and a final agency decision is rendered under 24 CFR part 180, the Recipient may seek judicial review in accordance with section 111(c) of the Act.

PART 180—CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

2. The heading of part 180 is revised to read as set forth above.

2a. The authority citation for 24 CFR part 180 continues to read as follows:

Authority: 29 U.S.C. 794; 42 U.S.C. 2000d–1, 3535(d), 3601–3619, 5301–5320, and 6103.

3. In § 180.100, the paragraph (c) designation is removed and a new paragraph (c) is added immediately above the definition for Agency; and the definitions of *''Federal financial assistance,''* *''Non-Fair Housing Act Matters,''* and *''Recipient''* are revised to read as follows:

§ 180.100 Definitions.

* * * * *

(c) Other terms used in this part are defined as follows:

* * * * *

Federal financial assistance has the meaning provided in 24 CFR 1.2, 6.3, 8.3, or 146.7, as applicable.

* * * * *

Non-Fair Housing Act Matters refers to proceedings under this part pursuant to:

(1) Title VI of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000d–1) and the implementing regulations at 24 CFR part 1;

(2) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(3) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6103), and the implementing regulations at 24 CFR part 146; or

(4) Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301–5321), and the implementing regulations at 24 CFR part 6.

* * * * *

Recipient has the meaning provided in 24 CFR 1.2, 6.3, 8.3, or 146.7, as applicable.

* * * * *

4. Section 180.105 is amended by removing ''and'' at the end of paragraph (a)(3), by removing the period at the end of paragraph (a)(4) and adding ''; and'' in its place, and by adding a new paragraph (a)(5), to read as follows:

§ 180.105 Scope of rules.

(a) * * *

(5) Section 109 of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5321) and implementing regulations at 24 CFR part 6.

* * * * *

5. In § 180.310, paragraph (a) is revised to read as follows:

§ 180.310 Parties.

(a) Parties to proceedings under this part are HUD, the respondent(s), and any intervenors. Respondents include persons named as such in a charge issued under 24 CFR part 103 and Recipients/applicants named as respondents in hearing notices issued under 24 CFR parts 1, 6, 8 or 146 and notices of proposed adverse action under this part.

* * * * *

6. In § 180.415, the section heading and paragraph (a) are revised to read as follows:

§ 180.415 Notice of proposed adverse action regarding Federal financial assistance in non-Fair Housing Act matters.

(a) *Filing and service.* Within 10 days after a Recipient/applicant has requested a hearing, as provided for in 24 CFR parts 1, 6, 8, or 146, the General Counsel shall file a notice of proposed adverse action with the Chief Docket Clerk and serve copies (with the additional information required under paragraph (b) of this section) on all respondents and complainants.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

7. The authority for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

8. Section 570.602 is revised to read as follows:

§ 570.602 Section 109 of the Act.

Section 109 of the Act requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The policies and procedures necessary to ensure enforcement of Section 109 are codified in 24 CFR part 6.

9. In § 570.913, a heading is added to paragraph (a) and the introductory text of paragraph (a) is revised to read as follows:

§ 570.913 Other remedies for noncompliance.

(a) *Action to enforce compliance.* When the Secretary acts to enforce the civil rights provisions of Section 109, as described in § 570.602 and 24 CFR part 6, the procedures described in 24 CFR parts 6 and 180 apply. If the Secretary finds, after reasonable notice and opportunity for hearing, that a recipient has failed to comply substantially with any other provisions of this part, the provisions of this section apply. The Secretary, until he/she is satisfied that there is no longer any such failure to comply, shall:

* * * * *

Dated: March 27, 1998.

Andrew Cuomo,

Secretary.

[FR Doc. 98–11849 Filed 5–8–98; 8:45 am]

BILLING CODE 4210–32–P

federal register

Monday
May 11, 1998

Part VI

Department of Education

National Institute on Disability and Rehabilitation Research; Notice of Final Funding Priorities and Notice Inviting Applications for New Awards for Fiscal Years 1998–1999 for Certain Centers and Projects; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Final Funding Priorities for Fiscal Years 1998–1999 for Certain Centers and Projects

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal years 1998–1999 for certain centers and projects.

SUMMARY: The Secretary announces final funding priorities for four Rehabilitation Research and Training Centers (RRTCs) and two Disability and Rehabilitation Research Projects (DRRPs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1998–1999. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: This priority takes effect on June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains final priorities under the Disability and Rehabilitation Research Projects and Centers Program for four RRTCs related to secondary conditions of spinal cord injuries (SCI), neuromuscular diseases (NMD); multiple sclerosis (MS), and community integration for persons with traumatic brain injury (TBI). This notice also contains final priorities for two Disability and Rehabilitation Research Projects related to dissemination and utilization of research information to promote independent living, and supported living and choice for persons with mental retardation.

These final priorities support the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 761a(g) and 762).

Note: This notice of final priorities does *not* solicit applications. A notice inviting applications is published in this issue of the **Federal Register**.

Analysis of Comments and Changes

On December 22, 1997, the Secretary published a notice of proposed priorities in the **Federal Register** (62 FR 66922–66929). The Department of Education received seventeen letters commenting on the notice of proposed priority by the deadline date. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under statutory authority—are not addressed.

General

Comment: The ''Description of RRTCs'' indicates that ''RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services.'' RRTCs should be operated in collaboration with institutions of higher education and (emphasis added) providers of rehabilitation service providers.

Discussion: The collaboration requirement included in the ''Description of RRTCs'' is statutory. No further restrictions are permissible by law.

Changes: None.

Comment: An RRTC should be located in a region of high occurrence of the disorder being studied. In addition, in order to be more representative of other locations where services might be provided, an RRTC should be located in small or medium-sized community, and not in a densely populated urban area.

Discussion: The commenter's suggestion would have the effect of restricting eligibility in violation of the statute. In addition, an RRTC's access to the target population or the replicability of its findings are not necessarily limited by the physical location of the grantee.

Changes: None.

Comment: Applicants' previous dissemination efforts, including their publication record, should be used as an indicator of their future performance.

Discussion: The quality of an applicant's past performance in carrying out a grant is one of the factors used in the selection criteria for these RRTCs. An applicant's previous publication record on a grant would be considered in this evaluation. Placing too much emphasis on an applicant's previous publication record in evaluating an application may unfairly disadvantage excellent new researchers or prove an unreliable indicator of future dissemination efforts related specifically to an RRTC.

Changes: None.

Comment: Two commenters suggested that the requirements for conducting a state-of-the-science conference and publishing a final report should be more flexible. A second commenter suggested that the state-of-the-science conference should be held in the fourth year when more data will be available to present and discuss.

Discussion: The information from the state-of-the-science conference will be used, in conjunction with NIDRR's program reviews and other inputs in the determination of future research issues and as part of NIDRR's Government Performance and Results Act database. The budget planning process requires this information to be available during the fourth year of a five year grant. As long as the report is available in the fourth year of the grant, NIDRR agrees that grantees should have as much flexibility as possible in regard to the scheduling of the state-of-the-science conference.

Changes: The state-of-the-science conference requirement has been revised to allow grantees total discretion in scheduling the conference.

Comment: The training requirements of the RRTC should include ''non-traditional'' methods such as using the Internet and satellite video conferencing.

Discussion: Applicants have the discretion to propose the training methods that a project will use, and the peer review process will evaluate the merits of the methods. An applicant could propose to include training methods using the Internet and satellite video conferencing. However, requiring all projects to include training methods using the Internet and satellite video conferencing could exclude equally effective training methods.

Changes: None.

Comment: NIDRR received a comment in response to the proposed priority on Multiple Sclerosis that suggested that NIDRR require the RRTC to collaborate with a number of different entities.

Discussion: This comment prompted a general review of all of the collaboration and coordination requirements contained in the proposed RRTC priorities to determine their appropriateness and consistency. That review revealed some inconsistency in language requiring clarification.

Changes: The RRTC priorities have been revised to clarify that having met the stated collaboration or coordination requirements, each RRTC has the authority to collaborate or coordinate

with other entities carrying out related activities.

Priority 1: Secondary Conditions of Spinal Cord Injury

Comment: The wording in the first and second activities should be changed from ''prevent and treat'' to ''prevent or treat.'' Prevention and treatment protocols are very different, and requiring investigators to develop prevention as well as treatment protocols would require too many projects. In addition, rather than being required to address all five of the conditions, the RRTC should have the discretion to address four out of the five secondary conditions listed in the first activity.

Discussion: While NIDRR agrees that prevention and treatment protocols are very different, such protocols are needed. Similarly, the five secondary conditions listed are widespread and problematic. The funding provided to this project should enable a grantee to pursue both types of protocols as well as all of the five conditions included in the priority.

Changes: None.

Comment: The RRTC should be required to conduct training workshops to educate patients, families, service providers, and health care providers.

Discussion: In part, the RRTC must meet the general training requirement to provide ''* * * training on knowledge gained from the Center's research activities to persons with disabilities and their families, service providers, and other appropriate parties.'' Applicants have the discretion to approach this and other training requirements broadly, and can propose to ''educate'' target audiences on other information as long as it is in addition to the knowledge gained from the Center's research activities. The peer review process will evaluate the merits of each applicant's proposed training activities.

Changes: None.

Comment: One commenter indicated that a significant and growing number of persons who experience spinal cord injuries are from minority backgrounds and live in urban areas, and that many of those injuries are a result of violence, including gunshot wounds which present unique secondary complications. The same commenter indicated that women with spinal cord injuries experience different complications from those faced by men with spinal cord injuries, including problems related to sexuality, reproduction, and other genito-urinary problems. The commenter suggested that the RRTC should place a special emphasis on the unique needs of persons from minority backgrounds who live in urban areas, as well as on women, because of the unique rehabilitation management and community re-entry issues facing both groups.

Discussion: NIDRR agrees that both of these groups of persons with SCI face unique rehabilitation challenges that merit special emphasis.

Changes: The priority has been revised to place a special emphasis on the unique needs of persons with SCI from minority backgrounds who live in urban areas as well as women with SCI.

Priority 2: Neuromuscular Diseases

Comment: Is the RRTC expected to research the genetic discrimination that could become a problem, or to determine the ethical and psychosocial implications of this research? Is the RRTC intended to address how knowing the information made available through genetic testing may affect potential physical and pyschosocial outcomes?

Discussion: NIDRR prefers to provide applicants with the discretion to propose a line, or lines, of investigation on the issue of examining the risks and benefits related to the use of genetic testing. An applicant could propose to answer the questions that the commenter poses, and the peer review process will evaluate the merits of the approach.

Changes: None.

Priority 3: Multiple Sclerosis

Comment: The proposed priority solicited comments on whether the RRTC should investigate: (1) The unique needs of women with MS, and (2) alternative models of care for persons of different cultural, economic, minority, ethnic, or geographic backgrounds. For the most part, the commenters indicated that these were potentially important topics worthy of exploratory research activities. The commenters indicated that not enough is known about the differences between the needs of men and women with MS, or between the needs of persons from different cultural, economic, minority, ethnic, or geographic backgrounds. The commenters suggested that the first step in this research should be to determine if those differences exist. The one commenter who expressed support for an investigation of the unique needs of women, suggested that the RRTC investigate the extent to which MS affects women in relation to hormonally mediated events (e.g., pregnancy, menstruation, and menopause), and the programs and services that may be needed to promote effective functioning. In light of these comments, NIDRR believes that the first line of inquiry on these issues should be to determine if there are differences between the needs of men and women with MS, as well as between diverse groups of populations.

Changes: The priority has been revised to require the RRTC to investigate if differences exist between the needs of: (1) Men and women with MS; and (2) persons with MS from different cultural, economic, minority, ethnic, or geographic backgrounds.

Comment: Two commenters suggested that health promotion and wellness be addressed separately from substance abuse in the priority's first required activity.

Discussion: There are advantages to investigating substance abuse within the context of health promotion and wellness. However, an applicant could propose to investigate substance abuse in a separate project, and the peer review process will evaluate the merits of this proposal.

Changes: None.

Comment: Two commenters suggested that the RRTC address the educational needs of employers regarding reasonable accommodations.

Discussion: The fourth activity of the RRTC involves research on workplace accommodations. The RRTC is required to develop and disseminate informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and *other interested parties* (emphasis added). NIDRR expects employers to be included as ''other interested parties'' in regard to the fourth activity.

Changes: None.

Comment: The RRTC should address the impact of the Americans with Disabilities Act (ADA).

Discussion: The third activity of the RRTC requires the RRTC to investigate the employment status of the persons with MS. An applicant could propose to address the impact of the ADA as part of this investigation, and the peer review process will evaluate the merits of this research. However, requiring all applicants to carry out this line of investigation could exclude other equally meritorious lines of investigation on the employment status of person with MS.

Changes: None.

Comment: NIDRR should establish three RRTCs related to MS and: (1) Medical rehabilitation, (2) psychosocial and vocational rehabilitation; (3) health care delivery and policy.

Discussion: At this time, and in light of other priorities, devoting the

additional resources that would be necessary to support three RRTCs on these topics for persons with MS is not feasible.

Changes: None.

Comment: The RRTC should collaborate with the National Multiple Sclerosis Society, the American Academy of Neurology, the American Society of Neurorehabilitation, the Paralyzed Veterans of America, and the RRTC on Managed Care.

Discussion: When a priority requires collaboration or coordination with one or more entities, the rationale is that the RRTC could not carry out the purposes of the priority without the required collaboration or coordination. All of the entities listed in the comment are good candidates for collaboration, and an applicant could propose to collaborate with any or all of them. However, the RRTC could carry out its purposes without collaborating with these entities. Therefore, the priority has not been revised to require collaboration with the agencies listed in the comment.

Changes: None.

Comment: The state-of-the-science conference should be held in conjunction with the annual meeting of the Consortium of Multiple Sclerosis Centers.

Discussion: An applicant could propose to carry out the state-of-the-science conference in conjunction with the annual meeting of the Consortium of Multiple Sclerosis Centers (CMSCs). However, the conference could be successful even if it were not held in conjunction with the annual meeting of the CMSCs. Therefore, it is not necessary to require it.

Changes: None.

Priority 4: Community Integration for Persons With Traumatic Brain Injury

Comment: In addition to identifying and evaluating programs for successful community integration of persons with TBI, the RRTC should develop such programs. The RRTC should also investigate the factors that support or serve as barriers to community integration.

Discussion: It is feasible and necessary for the RRTC to not only identify and evaluate programs that support community integration, but also develop these programs. In the process of carrying out these development and evaluation activities, the RRTC will need to investigate the factors that support or serve as barriers to community integration. Therefore, it is unnecessary to specifically state it as a requirement.

Changes: The priority has been revised to require the RRTC to not only identify and evaluate, but also develop model programs and services that support community integration.

Comment: While there are a few assessment tools that are used to measure community integration and the quality of life of persons with TBI, better assessment tools are needed. The RRTC should develop outcome measures to delineate the full breadth of the community integration challenges faced by individuals with TBI.

Discussion: Development of improved assessment tools will make a significant contribution to other activities of the RRTC as well as to the field. NIDRR expects that the RRTC will fully consider the possibility of improving existing assessments before undertaking to develop a new assessment.

Changes: The priority has been revised to require the RRTC to either identify, improve, and evaluate, or develop and evaluate an assessment that measures the community integration of persons with TBI.

Comment: The requirement to investigate the impact of aging on community integration should be expanded to include persons who incur TBI at an advanced age.

Discussion: The requirement to investigate the impact of aging on community integration does not have to be revised in order for an applicant to include persons who incur TBI at an advanced age. NIDRR expects a wide range of ages of onset to be included among the sample population in order for the sample to be representative of the target population of persons with TBI. Therefore, it is unnecessary to require it.

Changes: None.

Comment: The RRTC should address the community integration of persons with TBI from minority backgrounds.

Discussion: NIDRR agrees that persons with TBI from minority backgrounds, particularly those from urban areas who are victims of violence, have unique community integration needs.

Changes: The priority has been revised to require the RRTC to address the unique community integration needs of persons from minority backgrounds.

Comment: NIDRR should be more specific in describing the nature and scope of the research that it expects the RRTC to carry out.

Discussion: NIDRR makes every effort to be as least prescriptive as possible when it establishes an RRTC's requirements in order to encourage innovation and in recognition of the expertise of potential applicants. NIDRR depends on its peer review process to ensure the appropriateness and quality of the nature and scope of the research that an RRTC carries out.

Changes: None.

Comment: NIDRR should clarify whether the research into the impact on aging on community integration should address aging support systems as well as aging of the human organism. These are two very different issues.

Discussion: NIDRR prefers to provide applicants with the discretion to propose a line, or lines, of investigation on the issue of the impact of aging on community integration. An applicant could propose either, or both, approaches that the commenter describes, and the peer review process will evaluate the merits of the approach.

Changes: None.

Priority 6: Supported Living and Choice for Persons With Mental Retardation

Comment: In addition to identifying and synthesizing research findings on state-of-the-art models of supported living, the project should develop descriptions of the nature of the organizations that approximate the ideals of supported living and the transformations that traditional community organizations are going through to adopt supported living approaches and ideals.

Discussion: An applicant could propose to develop descriptions of the nature of the organizations that approximate the ideals of supported living and the transformations that traditional community organizations are going through to adopt supported living approaches and ideals. The peer review process will evaluate the merits of these descriptions. NIDRR declines to require all applicants to develop these descriptions because it is not necessary in order to identify and synthesize research findings on state-of-the-art models of supported living.

Changes: None.

Comment: The project should be expanded to include all persons with developmental disabilities in addition to those with mental retardation.

Discussion: If persons with developmental disabilities who are not mentally retarded could benefit from the RRTC's materials and information, an applicant could propose to include them in the target population as long as it is in addition to persons with mental retardation. The peer review process will evaluate the merits of this proposal. NIDRR declines to require all applicants to include persons with developmental disabilities who are not mentally retarded out of concern that applicants will underserve persons with mental retardation.

Changes: None.

Comment: The third activity of the project should be revised: to require the project to: (1) Undertake public awareness activities to educate the public and policymakers on the importance of direct support workers; and (2) become familiar with existing training materials prior to development of new training materials in order to avoid duplication.

Discussion: An applicant could propose to undertake public awareness activities to educate the public and policymakers on the importance of direct support workers as part of the second activity required by the priority. The peer review process will evaluate the merits of these public awareness activities.

In regard to becoming familiar with existing training materials prior to development of new training materials in order to avoid duplication, NIDRR expects that all applicants would carry out such a review as a matter of routine. Therefore, it is unnecessary to require it.

Changes: None.

Comment: If agencies cannot find or keep qualified workers, the viability of supported living is at risk. The project should carry out research, training, and demonstration activities on strategies to address direct support worker recruitment, retention, and training.

Discussion: Research, training, and demonstration activities on strategies to address direct support worker recruitment, retention, and training is critically important to the success of supported living. These suggested activities are outside the scope of this project, however, NIDRR plans to establish an RRTC on Community Integration for Persons with Mental Retardation in FY 98 that will carry out these activities.

Changes: None.

Rehabilitation Research and Training Centers

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide that training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Description of Rehabilitation Research and Training Centers

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated, integrated, and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs disseminate materials in alternate formats to ensure that they are accessible to individuals with a range of disabling conditions.

NIDRR encourages all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical training.

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 Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

General Requirements

The following requirements apply to these RRTCs pursuant to these absolute priorities unless noted otherwise. An applicant's proposal to fulfill these proposed requirements will be assessed using applicable selection criteria in the peer review process.

The RRTC must provide: (1) Training on research methodology and applied research experience; and (2) training on knowledge gained from the Center's research activities to persons with disabilities and their families, service providers, and other appropriate parties.

The RRTC must develop and disseminate informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

The RRTC must involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, training, and dissemination activities, and in evaluating the Center.

The RRTC must conduct a state-of-the-science conference and publish a comprehensive report on the final outcomes of the conference. The report must be published in the fourth year of the grant.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary will fund under this competition only applications that meet one of these absolute priorities.

Priority 1: Secondary Conditions of Spinal Cord Injuries

Background

There are approximately 10,000 new cases of SCI each year and the prevalence of SCI is estimated between 183,000 and 230,000 persons (University of Alabama-Birmingham, ''Facts and Figures at a Glance,'' *Spinal Cord Injury Factsheet,* August, 1997). The etiology of SCI has been very well

documented and the medical characterization of this condition is well established (Maynard, F. M., *et al.*, ''International Standards for Neurological and Functional Classification of Spinal Cord Injury—American Spinal Cord Injury Association'' *Spinal Cord*, 35(5), pgs. 266–274, May, 1997). Past medical advances have improved the probability of surviving SCI, and ongoing developments and improvements in clinical care have increased the life expectancy and quality of life of persons with SCI (Ditunno, J. F. and Formal, C. S., ''Chronic Spinal Cord Injury,'' *New England Journal of Medicine*, 330(8), pgs. 550–556, February, 1994). However, the life expectancy of individuals with SCI is still lower than the general population, and people who are living with SCI continue to be at higher risk than the general population for a number of secondary conditions. For the purposes of this priority, a secondary condition is a condition that is causally related to a disabling condition (i.e., occurs as a result of the primary disabling condition) and that can be pathological, an impairment, a functional limitation, or an additional disability (Pope, A. M. and Tarlov, A. R., ''Prevention of Secondary Conditions,'' *Disability in America*, pgs. 214–241, 1991).

Pressure ulcers, respiratory complications, urinary tract infections (UTIs), pain, and obesity are commonly reported secondary conditions of SCI (Lemons, V. R. and Wagner, F. C., Jr., ''Respiratory Complications After Cervical Spinal Cord Injury,'' *Spine*, 9(20), pgs. 2315–2320, 1994; Anson, C. A. and Shepherd, C., ''Incidence of Secondary Complication in Spinal Cord Injury,'' *International Journal of Rehabilitation Research*, 19(1), pgs. 55–66, March, 1996). Depression in SCI is also often identified as a secondary condition (Elliott, T. R. and Frank, R. G., ''Depression Following Spinal Cord Injury,'' *Archives of Physical Medicine and Rehabilitation*, Volume 77, pgs. 816–823, 1996). Continued research efforts directed toward the prevention and treatment of secondary conditions of persons with SCI will improve their health and well-being.

Despite past efforts, pressure ulcers remain a daunting problem with respect to both prevention and treatment. Most approaches to pressure ulcer management emphasize prevention (Ditunno, J. F. and Formal, C. S., op. cit.). There is little systematic evidence on how individuals with SCI manage a pressure ulcer once one develops (Fuhrer, M. J., *et al.*, ''Pressure Ulcers in Community-Resident Persons with Spinal Cord Injury: Prevalence and Risk Factors,'' *Archives of Physical Medicine and Rehabilitation*, 74, pgs. 1172–1177, 1993).

Respiratory-related conditions have now replaced UTIs as the major cause of death in the SCI population, particularly among individuals with cervical level injuries (University of Alabama-Birmingham, op. cit.). Pneumonia continues to be one of the most common secondary conditions. Secretion management is often problematic due to impaired cough (Ditunno, J. F. and Formal, C. S., op. cit.). The effectiveness of current therapeutic interventions to reduce the incidence of respiratory conditions appears to be marginal (Lemons, V. R. and Wagner, F. C., Jr., op. cit.).

Urinary tract infections are a common secondary condition in SCI. Antibiotic prophylaxis is not generally recommended. Other possible strategies, such as vaccination, immunotherapy, and the use of receptor analogs have been suggested, but there is not yet sufficient data on the effectiveness (Galloway, A., ''Prevention of Urinary Tract Infection in Patients with Spinal Cord Injury—A Microbiological Review,'' *Spinal Cord*, 35(4), pgs. 198–204, April, 1997). There are possible psycho-social-vocational factors that impact bladder management programs (NIDRR 1992 Consensus Statement, ''The Prevention and Management of Urinary Tract Infections Among People with Spinal Cord Injuries,'' *Journal of American Paraplegia Society*, 15(3), pgs. 194–204, July, 1992).

Pain is a secondary condition that affects a significant number of persons with SCI (Yezierski, R. P., ''Pain Following Spinal Cord Injury: the Clinical Problem and Experimental Studies,'' *Pain*, 68(2–3), pgs. 185–194, 1996). Previous research has resulted in a number of classification schemes for SCI pain; however, there is no standardized classification system, limiting comparability of findings from the literature. The numerous individual variations in pain as a secondary condition accompanying SCI impede research progress in the alleviation of pain (Stover, S. L., *et al.*, ''Management of Neuromusculoskeletal System,'' *Spinal Cord Injury: Clinical Outcomes from Model Systems*, Chapter 8, pgs. 154–155, 1995).

Obesity can contribute to health-related problems in the general population. Obesity in SCI, particularly morbid obesity, is more likely to contribute to health-related problems. This condition is closely tied to nutritional status and the ability to engage in physical activity or exercise. Limitations on the latter are likely to contribute significantly to the problems stemming from this secondary condition (Blackmer, J. and Marshall, S., ''Obesity and Spinal Cord Injury: An Observational Study,'' *Spinal Cord*, 35(4), pgs. 245–247, April, 1997).

Depression is more common among persons with SCI than among the general population. There is some evidence that depression is higher among persons whose SCI is of relatively short duration compared to others who have had a longer time to adjust (Steins, S. A., *et al.*, ''Spinal Cord Injury Rehabilitation: Individual Experience, Personal Adaptation, and Social Perspectives,'' *Archives of Physical Medicine and Rehabilitation*, Volume 78, March, 1997). Proper diagnosis and treatment of depression in persons with SCI has not yet been well established (Elliott, T. R. and Frank, R. G., op. cit.). Prevention and treatment for depression and other psychosocial adjustment problems may include increasing opportunities for social interactions through community participation (Rintala, D. H., *et al.*, ''The Relationship Between the Extent of Reciprocity with Social Supporters and Measures of Depressive Symptomatology, Impairment, Disability, and Handicap in Persons with Spinal Cord Injury,'' *Rehabilitation Psychology*, 39(1), pgs. 15–27, 1994).

There is a linkage between maintaining the health of persons with SCI and the prevention of secondary conditions. Health maintenance activities may include, but are not limited to, following accepted medical protocols, proper diet, weight control, and exercise. Persons with SCI are increasingly realizing the importance of and seeking access to health maintenance activities (Edwards, P., ''Health Promotion Through Fitness for Adolescents and Young Adults Following Spinal Cord Injury,'' *SCI Nursing*, 13(3), pgs. 69–73, September, 1996).

Because of the differences in exercise tolerance among different levels of SCI, one uniform exercise protocol can not be applied to all individuals. Exercise options for persons with SCI will be expanded when appropriate exercise protocols are developed for the different levels of injury (Rimmer, J. H., ''Fitness and Rehabilitation Programs for Special Populations,'' Brown and Benchmark, Madison, WI, Chapter 7, 1994). Little is known about the synergistic effects of exercise, diet, and nutrition. Questions remain as to whether and how these lifestyle factors work together to promote health and prevent secondary conditions.

The availability and dissemination of information about this injury tends to be concentrated in speciality areas. This problem can be frustrating to newly-injured individuals and their family members. Rapidly accessing the most up-to-date clinical information can also be problematic for non-specialty health professionals.

Priority 1

The Secretary will establish an RRTC on Secondary Conditions of Spinal Cord Injuries to improve general health, well-being, and community integration of persons with spinal cord injury. The RRTC shall:

(1) Investigate and evaluate interventions to prevent and treat secondary medical conditions, including but not necessarily limited to pressure ulcers, respiratory complications, UTIs, pain, and obesity;

(2) Investigate and evaluate interventions to prevent and treat depression; and

(3) Develop and evaluate exercise protocols, stress management techniques and diet and nutrition regimens.

In carrying out the purposes of the priority, the RRTC must:

- Address the unique needs of persons with SCI from minority backgrounds who live in urban areas as well as women with SCI; and
- Coordinate with the NIDRR-sponsored Model SCI Systems, the RRTCs on Aging with a Disability, Personal Assistance Services, and Managed Care, and related research or training activities sponsored by the National Center for Medical Rehabilitation Research, the Centers for Disease Control, and other entities.

Priority 2: Neuromuscular Diseases

Background

Neuromuscular disease is a taxonomic category that describes diseases of the peripheral neuromuscular system, both acquired and hereditary. This category encompasses diseases such as amyotrophic lateral sclerosis, post-polio, Guillan-Barre, muscular dystrophy, myasthenia gravis, and other muscular atrophies and myopathies. NMDs affect approximately 400,000 children and adults in the United States (LaPlante, M., *et al., Disability in the United States: Prevalence and Causes,* 1992). Conditions associated with these disorders include progressive weakness, limb contractures, spine deformity, and impaired pulmonary function. Cardiac involvement and intellectual impairment occur with some NMDs. The progression of these degenerative diseases takes three stages: ambulatory, wheelchair, and prolonged survival (Bach, J. R. and Lieberman, J.S., ''Rehabilitation of the Patient with Disease Affecting the Motor Unit,'' *Rehabilitation Medicine: Principles and Practice,* pg. 1099, 1993). Past research efforts have focused on documenting the impairment and disability profiles of neuromuscular disease as well as on mitigating the functional consequences of NMD. Functional independence and community integration continue to challenge persons with NMDs.

Among the functional independence issues that affect persons with NMD are preserving respiratory function, maintaining muscle strength, assuring good nutrition, and combating muscle fatigue. Respiratory insufficiency due to progressive muscle wasting is a one of the leading causes of illness and death among persons with NMDs (Bates, D., *Respiratory Function in Disease,* pgs. 371–379, 1989). For persons with NMDs, maintaining or improving muscle strength is a major functional concern. The relationships among conditioning exercise, functional strength, and fatigue is not well understood in this population. For example, exercise has been shown to be effective in improving strength and endurance at particular points in the disease progress, but many questions remain and the optimal use of exercise across different NMD categories is not known (Brinkmann, J. R., and Ringel, S. P., ''Effectiveness of Exercise in Progressive Neuromuscular Disease,'' *Journal of Neurological Rehabilitation,* Volume 5, pgs. 195–199, 1991). Finally, feeding problems in patients with NMDs are frequently underestimated and poorly analyzed (Willig, T. N., et al., ''Swallowing Problems in Neuromuscular Disorders,'' *Archives of Physical Medicine and Rehabilitation,* Volume 75, No. 11, pgs. 1175–1181, 1994).

Persons with NMDs must maintain functional independence to maximize their ability to participate in home, work, educational, recreational, and other community activities. For instance, respiratory problems often require mechanical ventilation. Home ventilation has been shown to be useful for a growing number of patients with NMDs (Winterholler, M., *et al.,* ''Recommendation of Bavarian Muscle Centers of the German Neuromuscular Disease Society for Home Ventilation of Neuromuscular Diseases of Adult Patients,'' *Nervenarzt,* Volume 68, No. 4, pgs. 351–357, 1997). Despite its technical simplicity, home ventilation leads to a number of social, medical and infrastructural problems (*Paraplegia,* Volume 31, pgs. 93–101, 1993).

Many persons with NMDs have had limited opportunity for educational and work experiences. Research has demonstrated the ''alteration of cognitive functions'' in some NMD diagnoses, creating special challenges to pursuing education (Fardeau-Gautier, M. and Fardeau, M., ''Socioeconomic Aspects of Neuromuscular Diseases,'' *Myology: Basic and Clinical,* 1994). Previous research found a significant relationship between psychosocial adjustment and unemployment for some persons with NMD (Fowler, W. M., Jr., ''Employment Profiles in Neuromuscular Diseases,'' *American Journal of Physical Medicine and Rehabilitation,* Volume 76, No. 1, pgs. 26–37, 1997).

In addition to issues of functional capacity and community integration, there is an emerging policy issue related to diagnosis of NMDs. Rapid development in genetic knowledge and technologies has increased the ability to test asymptomatic NMD individuals for late-onset diseases, disease susceptibilities, and carrier status. Genetic criteria may be replacing diagnostic and clinical classification systems as a method of identifying NMDs (Fowler, W. M., Jr., ''Impairment and Disability Profiles of Neuromuscular Diseases,'' *American Journal of Physical Medicine and Rehabilitation,* Volume 74, No. 5, pg. S61, 1995). These developments raise ethical, legal and financial issues related to appropriate timing for tests and communication of results (''American Society of Human Genetics and American College of Medical Genetics Report—Points to Consider: Ethical, Legal, and Psychosocial Implications of Genetic Testing in Children and Adolescents,'' *American Journal of Human Genetics,* Volume 57, pgs. 1233–1241, 1995).

Because of the number of very rare diseases that are included in the proposed World Federation of Neurology Classifications of NMD and the low incidence and prevalence of the more well-known NMDs, the availability and dissemination of information about these diseases is problematic. This difficulty is characteristic of cases where there is both a limited amount of information and a very small audience. This problem can be frustrating to newly-diagnosed individuals and their family members. Rapidly accessing the most up-to-date clinical information can also be problematic for the non-specialist physicians, as evidenced by the well-known difficulty in diagnosing these

diseases (Swash, M. and Schwartz, M. S., *Neuromuscular Diseases: A Practical Approach to Diagnosis and Management*, pg. 3, 1988).

Priority 2

The Secretary will establish an RRTC on NMDs to promote the functional independence and community integration of persons with NMDs. The RRTC shall:

(1) Investigate and evaluate interventions to preserve functional capacity;

(2) Investigate and evaluate techniques for enhancing community integration;

(3) Examine the risks and benefits related to the use of genetic testing; and

(4) Establish and maintain a clearinghouse on NMDs.

In carrying out the purposes of the priority, the RRTC must coordinate with related research or training activities sponsored by the National Institute on Neurological Disorders and Stroke, and other entities.

Priority 3: Multiple Sclerosis

Background

Multiple sclerosis is a disease capable of producing significant disability, particularly in the young adult population. The most frequent age of onset is between 20 and 45 years, with a mean onset age of 33. The female to male ratio is nearly 2:1 and the white to non-white ratio is also nearly 2:1. The total population of individuals with MS in the United States is estimated at 250,000—350,000. The causes of MS are unknown, although autoimmune, viral, genetic, and environmental factors are considered to have potential causal significance (Smith, C. and Schapiro, R., ''Neurology,'' *Multiple Sclerosis*, pg. 7, 1996).

Multiple Sclerosis randomly attacks the central nervous system and may manifest itself over several decades in a wide range of disabilities including, but not limited to, inability to walk, loss of bowel and bladder control, blindness, mild alteration of sensation, paralysis of limbs, impaired speech, sexual dysfunction, extreme fatigue, poor coordination, spasticity, and cognitive dysfunction. The course of MS is unpredictable. The disease may wax and wane. Significant manifestation can be brought on by heat, overwork, or a common cold and followed by return to a state with little evidence of active disease. Sometimes there are manifestations with no apparent trigger. A small group of those with the disease experience continued evolving neurological deficits. Generally, progression, severity and specific symptoms cannot be foreseen.

Various interventions may alleviate some of the manifestations. While medications may slow the disease course, there is no cure for MS. Coping and planning can be difficult and exhausting for those who make continual adjustments in daily activity. Work schedules or family plans may be disrupted by the sudden onset of fatigue. Driving and independent activity may be difficult due to MS-related impairments. Bladder difficulties may cause a person to avoid activities.

Maintaining healthy lifestyle habits can assist persons with MS to maintain maximum function despite the disease. Exercise can strengthen muscles when possible or can help maintain muscle tone for those that are affected, although the potential for overexercise must be understood. Adequate rest is critical for persons with MS and relaxation techniques can be aids as well (Chan, A., ''Physical Therapy,'' *Multiple Sclerosis*, pg. 87, 1996). Various diets have been suggested, as have vitamin and nutritional supplements. However, the evidence supporting the value of those measures is inconclusive. Alcohol or substance abuse can be problems for persons with the disease whose neurological deficits have caused decreased tolerance. Any substance that places extra strain on the already-impaired nervous system must be used with extreme caution. Drug interactions can be a danger if the person is on prescribed medication (Lechtenberg, R., *Multiple Sclerosis Fact Book*, pg. 171, 1989).

It is difficult to assess the employment status of persons with MS. This is due in part to the nature of the disease and its variable impact on individuals' ability to work. Information on the employment status of persons with MS may be available through a secondary analysis of databases such as the 1994–95 National Health Interview Survey Disability Supplement. Persons with MS may require unique work accommodations such as sustained cooler environments, rest breaks, and flexible work schedules.

Rehabilitation techniques are available to assist the person with MS in daily life, including at the workplace. Medications can be effective for treating fatigue, bladder, bowel, or sexual difficulties. Physical therapists commonly recommend mobility aids and devices to help with visual impairments or difficulties using the hands. At times, as when mobility impairments occur, there may be hesitation or unwillingness on the part of the person with MS, physicians, or health care coverage providers, to use assistive technologies, believing that the problem will go away (Iezzoni, L., ''When Walking Fails,'' *The Journal of the American Medical Association*, Volume 276, No. 19, pg. 1609, 1996).

While the life expectancy for persons with MS is nearly identical to that of healthy individuals, various manifestations of MS can be expected over the course of decades. As a person with MS ages, depression, cognitive dysfunction, and other emotional or physical health problems may play increasingly larger roles. Treatment and rehabilitation modalities may be different if a manifestation is caused by aging, as opposed to MS.

Priority 3

The Secretary will establish an RRTC on MS to promote the health and wellness, and improve the functioning and employment status of persons with MS. The RRTC shall:

(1) Identify, develop, and evaluate health promotion and wellness activities, including those that address substance abuse.

(2) Identify, develop, and evaluate rehabilitation techniques to manage and improve functioning, including those that address coping with the uncertain course of MS and depression, stress, and cognitive dysfunction;

(3) Investigate the employment status of persons with MS;

(4) Identify, develop, and evaluate workplace accommodations;

(5) Investigate the interaction between aging and MS;

(6) Investigate if differences exist between the needs of: (a) Men and women with MS; and (b) persons with MS from different cultural, economic, minority, ethnic, or geographic backgrounds.

In carrying out the purposes of the priority, the RRTC must collaborate with the Consortium of MS Centers, the RRTC on Substance Abuse, and other entities carrying out related research or training activities.

Priority 4: Community Integration for Persons With Traumatic Brain Injury

Background

Each year approximately 1.9 million Americans experience traumatic brain injuries (Collins, J. F., ''Types of Injuries by Selected Characteristics: US 1985–1987,'' National Center for Health Statistics, *Vital Health Stat*, 10 (175), 1990). Brain injury is frequently a childhood injury, and incidence is highest among youth and young adults, particularly males (NIDRR

Rehabilitation Research and Training Center, University of California, San Francisco, *Disability Statistics Abstract*, No. 14, November, 1995). The number of people surviving brain injuries has increased significantly over the last 25 years due to improved emergency medical services and advances in acute care.

Community integration is the primary aim of rehabilitation after serious trauma. For the purposes of this priority, community integration is defined as integration into home-like settings, social networks, and productive activities such as employment, school, or volunteer work (Willer, B., et al., ''Assessment of Community Integration for Traumatic Brain Injury,'' *Journal of Head Trauma Rehabilitation*, Volume 8, No. 2, pgs. 75–87, June, 1993). Living independently, pursuing avocational activities, volunteering, educational endeavors, employment, and participation in social activities outside the home are important community integration outcomes.

Sequelae to TBI include problems of cognition resulting in memory and learning difficulties and personality and behavior problems, including irritability and impulsivity, that impact on community integration outcomes. In addition, individuals with severe TBI often experience fatigue, limited attention span, information processing problems, visual perception difficulties, and depression. Furthermore, alcohol use at the time of injury, as well as pre- or post-injury heavy drinking, has been related to worse post-injury outcomes (Kreutzer, J. S., ''A Prospective Longitudinal Multi-center Analysis of Alcohol Use Patterns Among Persons with TBI,'' *The Journal of Head Trauma Rehabilitation*, Volume 11, No. 5, pg. 58, October, 1996).

Persons who experience the physical and mental consequences of TBI require a variety of programs and services to be successfully reintegrated in the community. These resources may include schools, libraries, recreation centers, health facilities, drug treatment programs, housing, transportation, and police and law enforcement services. Often these programs and services are not fully accessible to this population because their needs are not known or recognized.

The sequelae of TBI contribute to significant difficulties obtaining and retaining employment post-injury. Because of the demographics of head injury, some of the survivors may not have worked prior to the injury. Those who were employed face challenges in seeking to return to work. Despite increasing emphasis on vocational rehabilitation, investigation of long-term outcomes has indicated unemployment rates ranging from 34 percent to 75 percent at two to 15 years after injury. A recent longitudinal investigation revealed unemployment rates for rehabilitation patients as high as 76 percent during the first four years after injury (Sander, A. M., ''Neurobehavioral Functioning, Substance Abuse, and Employment after Brain Injury: Implications for Vocational Rehabilitation,'' *Journal of Head Trauma Rehabilitation*, 12 (5), pgs. 28–41, 1997). Past research has examined the efficacy of supported employment and other strategies for improving employment outcomes for individuals with TBI. Successful strategies consider the structure and culture of the workplace in linking these to the needs of individuals with TBI to succeed in employment settings (Wehman, P. H., et al., ''Return to Work for Persons with Severe Traumatic Brain Injury: A Data-based Approach to Program Development,'' *Journal of Head Trauma Rehabilitation*, 10 (1), pgs. 27–39, 1995).

The prevalence of TBI in children is documented by the National Pediatric Trauma Registry located at the RRTC on Rehabilitation and Childhood Trauma. Most injured children are one to 14 years of age. Children with disabilities face numerous problems transitioning from rehabilitation to educational settings. Educators may be unaware of the impact of TBIs on school performance and uncertain of effective educational programming. Establishing a stronger link between hospitals and school professionals is an essential step toward improving educational and functional outcomes (Farmer, J. E., et al., ''Educational Outcomes in Children with Disabilities; Linking Hospitals and Schools,'' *NeuroRehabilitation*, Volume 5, No. 1, pgs. 49–56, 1995).

Families of people with TBI exhibit high levels of distress, depression and anxiety. As a result, they may experience isolation and diminished social interaction and diminished ability to make decisions regarding medical, ethical, and financial issues. Even 15 years post-injury, family members of persons with TBI report tension, friction, and distress (Gervasio, A. H., ''Kinship and Family Members'' Psychological Distress after TBI: A Large Sample Study,'' *The Journal of Head Trauma Rehabilitation*, 12(3), pgs. 14–16, 1997).

Because of improved treatment and increased survival rates, many more people with TBI are living to middle age and beyond. For people with TBI who live with their families, both their aging and that of the caregivers may create problems. This is especially true for those people who live with their parents following head injury. Shortages of affordable and accessible housing, personal assistance services, and respite care may pose threats to community integration and require additional community resources.

Priority 4

The Secretary will establish an RRTC on Community Integration of Persons with TBI to assist families to cope, and to improve community resources, employment outcomes, and educational programming. The RRTC shall:

(1) Either identify, improve, and evaluate, or develop and evaluate an assessment that measures community integration.

(2) Identify, develop, and evaluate model programs and services that support community integration;

(3) Identify, develop, and evaluate strategies to improve employment outcomes, including obtaining initial employment and successful return-to-work;

(4) Identify and evaluate effective practices that link rehabilitation and education professionals to facilitate identification and appropriate educational programming for children;

(5) Identify and evaluate techniques to assist families to cope; and

(6) Investigate the impact of aging on community integration;

In carrying out the purposes of the priority, the RRTC must:

- Coordinate with the TBI Model Systems projects, the RRTC on Substance Abuse, other entities carrying out related research and training activities;
- Address the needs of persons with TBI who are substance abusers; and
- Address the unique community integration needs of persons from minority backgrounds.

Disability and Rehabilitation Research Projects

Authority for Disability and Rehabilitation Research Projects (DRRPs) is contained in section 202 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 761a). DRRPs carry out one or more of the following types of activities, as specified in 34 CFR 350.13—350.19: Research, development, demonstration, training, dissemination, utilization, and technical assistance. Disability and Rehabilitation Research Projects develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and

economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, DRRPs improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

Priority 5: Improving Research Information Dissemination and Utilization to Promote Independent Living

Background

One of the persistent concerns in the area of knowledge dissemination and utilization is the gap between information generated from disability and rehabilitation research and its utilization by persons with disabilities in their efforts to live independently in the community. Persons with disabilities can draw from a wealth of information derived from research, such as universal design concepts, consumer-directed personal assistance strategies, the availability of assistive technology, peer counseling techniques, housing options, and self-care techniques. This information can help provide persons with disabilities with the knowledge to exercise control over their lives, reduce their reliance on others in making decisions, perform everyday activities, and participate more fully in community life.

To generate baseline data on information dissemination related to independent living, the National Center for the Dissemination of Disability Research (NCDDR) conducted a nationwide survey asking persons with disabilities about their perceptions of the usefulness of research-based disability information, their knowledge of where to obtain that information, and their current modes of receiving information. Seventy-two percent of survey respondents affirmed that disability research information is useful to them. Twenty percent reported that they do not know if it is useful to them, and eight percent responded that the information is not useful. The survey also asked the respondents if they knew how to find information from disability research. Forty-eight percent responded they did, and 32 percent responded that they did not know how to find the information (NCDDR, ''Research Exchange,'' Volume 2, No. 4, 1997).

Even if research information is in the public domain, it may not be accessible to persons with disabilities. Highly technical language, obscure journal articles, and under-publicized or prohibitively expensive conference presentations exemplify some of the barriers that persons with disabilities face in their efforts to access research information. There may also be physical barriers when research information is not available in alternate formats (e.g., braille, large print, tape recording) for persons with sensory disabilities.

NIDRR has funded information dissemination and utilization efforts related to living independently in the community, using a variety of techniques, media, and dissemination strategies. NIDRR also disseminates information through national information databases and dissemination programs, such as the National Rehabilitation Information Center (NARIC) and ABLEDATA, a database that contains information on more than 22,000 assistive devices. Many Centers for Independent Living (CILs) provide information and referral activities both in person, in print, and electronically. In addition, there are fully established consumer-run publications, television networks, electronic bulletin boards, and world wide web pages that provide independent living information.

The Internet is a primary medium for the dissemination of disability information. The Internet allows this information to be available to persons with disabilities in daily life settings, rather than requiring travel to workshops and conferences. The NCDDR survey showed that over 50 percent of the persons with disabilities living independently indicated that they have never used the Internet to obtain information, 25 percent reported using it often or very often.

Although many persons with disabilities do not currently own computers or contract with Internet provider services themselves, many institutions, such as public libraries, churches, or places other than employment or educational sites are increasingly providing alternate points of free access. Also, the decreasing costs of web TV and other accessing equipment are expected to make this resource more universally available in the future.

Priority 5

The Secretary will establish a DRRP on Improving Research Information Dissemination and Utilization to Promote Independent Living. The DRRP shall:

(1) Using the NCDDR survey results as baseline information, further assess the use of research information to promote independent living;

(2) Identify the barriers to increased use of research information by persons with disabilities;

(3) Based on the input of persons with disabilities, identify research that promotes independent living;

(4) Develop and implement strategies to disseminate research information to promote independent living, using a variety of innovative methods and media;

(5) Develop and disseminate strategies that other information providers, such as CILs, NIDRR-funded grantees, and consumer publications, can use to increase the utilization of research to promote independent living, and provide technical assistance to those entities to increase the dissemination and utilization of this information; and

(6) Develop and implement strategies to assist persons with disabilities to increase their use of existing and future information technologies such as the Internet.

In carrying out the purposes of the priority, the DRRP must:

- Include information and activities that feature concepts of consumer choice, independence, personal autonomy and self-direction; and
- Coordinate activities with the NCDDR.

Priority 6: Supported Living and Choice for Persons With Mental Retardation

Background

Personal autonomy and choice are primary rehabilitation goals for persons with mental retardation. Supported living has emerged as a viable approach toward achieving these goals. In order for the potential impact of supported living to be realized, information on supported living must be provided to a wide array of parties involved with promoting choice and community living for persons with mental retardation.

Based on the National Health Interview Survey on adults living in the general household population and surveys of people in formal residential support programs, about .78 percent or 1,250,000 of the adult population of the U.S. can be identified as being limited in a major life activity and having a primary or secondary condition of mental retardation.

NIDRR has supported research and demonstrations in the area of mental retardation and developmental disabilities since 1965. Throughout this time, researchers have addressed issues involving deinstitutionalization, mainstreaming, transition from school to work, supported employment and the overall supports persons with mental retardation and developmental disabilities need to live as independently as possible in the community.

Supported living refers to the development and provision of assistance, including natural supports, to enable persons with mental retardation to live in settings and participate in activities that contribute to their personal goals and quality of life (Abery, B. H., *et al.*, ''Research on Community Integration of Persons with Mental Retardation and Related Conditions: Current Knowledge, Emerging Challenges and Recommended Future Directions,'' Prepared for the NIDRR Long Range Planning Process, pg. 4, May, 1996). Supported living intends to increase control and choice of services and supports that persons with mental retardation receive.

Access to community services and community supports varies greatly by State. Information on trends in supported community living and innovative models of successful community living can assist States to initiate and improve effective services. In addition to parents and family members, direct service personnel such as group home staff, foster family members and job coaches, are primary sources of support and services for persons with mental retardation living in the community.

In the past decade, there has been growing concern about recruitment and retention of direct service personnel. Research has shown high turnover rates of between 55 percent and 73 percent annually (Braddock, D., and Mitchell, D., ''Residential Services and Developmental Disabilities in the United States: A National Survey of Staff Compensation, Turnover, and Related Issues,'' American Association on Mental Retardation, Washington, DC, 1992). In order to attract and retain competent direct service personnel, service providers must provide staff with information and training on effective and innovative approaches to promote independence. Agency trainers and managers require information about effective training techniques that teach support providers how to encourage self advocacy and choice making to persons with mental retardation. In addition, public awareness activities that educate both the public and policymakers on the importance of direct service workers can enhance the image of community workers and the individuals with developmental disabilities they assist (Larson, S. A., *et al.*, ''Residential Services Personnel: Recruitment, Training and Retention,'' *Challenges for a Service System in Transition*, pg. 321, 1994).

Recent developments in two major Federal programs significantly affect the nature and extent of community-based services for persons with mental retardation: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (welfare reform) and Medicaid. Recent welfare reforms provide States with increased flexibility in the delivery of community-based public services. The Medicaid program is the primary source of payment for both health care and community-based long term care services for persons with mental retardation and their families. Providing training and technical assistance on supported living to policymakers and services providers involved in the administration of welfare and Medicaid programs will enable them to take advantage of new opportunities to shape integrated and flexible programs for persons with mental retardation.

Priority 6

The Secretary will establish a Dissemination, Training, and Technical Assistance Project to promote supported living and choice for persons with mental retardation. The Project shall:

(1) Identify and synthesize research findings on state-of-the-art models of supported living;

(2) Develop and disseminate materials based on the synthesis and provide training and technical assistance to consumers, families, service providers, State policy makers and State agencies; and

(3) Develop and disseminate training materials for direct service staff with input from consumers and family members.

In carrying out the purposes of the priority, the Project must disseminate materials and coordinate training activities with relevant units of the Department of Health and Human Services, State public and private managed care representatives, individuals with disabilities and other NIDRR Centers addressing related issues.

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Note: The official version of this document is the document published in the **Federal Register**.

APPLICABLE PROGRAM REGULATIONS: 34 CFR Parts 350 and 353.

Program Authority: 29 U.S.C. 760–762.

Dated: May 5, 1998.

(Catalog of Federal Domestic Assistance Number 84.133A, Disability and Rehabilitation Research Projects, and 84.133B, Rehabilitation Research and Training Centers)

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

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DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133A and 84.133B]

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under the Disability and Rehabilitation Research Project and Centers Program for Fiscal Year (FY) 1998

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

This program supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, 86, and 350.

Program Title: Disability and Rehabilitation Research Project and Centers Program

CFDA Numbers: 84.133A and 84.133B

Purpose of Program: The purpose of the Disability and Rehabilitation Research Project and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, the purpose of the Disability and Rehabilitation Research Project and Centers Program is to improve the effectiveness of services authorized under the Act.

Eligible Applicants: Parties eligible to apply for grants under this program are 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.

Program Authority: 29 U.S.C. 762.

APPLICATION NOTICE FOR FISCAL YEAR 1998—DISABILITY AND REHABILITATION RESEARCH PROJECTS, CFDA NO. 84–133A

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Improving Research Information Dissemination and Utilization to Promote Independent Living.	July 10, 1998	1	$400,000	60
Supported Living and Choice for Persons with Mental Retardation	July 10, 1998	1	400,000	60

*Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Improving Research Information Dissemination and Utilization to Promote Independent Living Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for a project on improving research information dissemination and utilization to promote independent living under the Disability and Rehabilitation Research Project and Centers Program.

(a) *Importance of the problem* (9 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of one or more disabled populations (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total).

(1) The Secretary considers the responsiveness of the application to the absolute or competitive priority published in the **Federal Register**.

(2) In determining the responsiveness of the application to the absolute or competitive priority, the Secretary considers the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of research activities* (8 points).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (4 points).

(ii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (4 points).

(d) *Design of demonstration activities* (13 points total).

(1) The Secretary considers the extent to which the design of demonstration activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the proposed demonstration activities build on previous research, testing, or practices (3 points).

(ii) The extent to which the proposed demonstration activities include the use of proper methodological tools and theoretically sound procedures to determine the effectiveness of the strategy or approach (2 points).

(iii) The extent to which the proposed demonstration activities include innovative and effective strategies or approaches (4 points).

(iv) The extent to which the proposed demonstration activities are likely to contribute to current knowledge and practice and be a substantial addition to the state-of-the-art (2 points).

(v) The extent to which the proposed demonstration activities can be applied and replicated in other settings (2 points).

(e) *Design of dissemination activities* (13 points total).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter (2 points); and

(B) If appropriate, is based on new knowledge derived from research activities of the project (2 points).

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including

consideration of their quality, clarity, variety, and format (2 points).

(iii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration (2 points).

(iv) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (3 points).

(v) The extent to which the information to be disseminated will be accessible to individuals with disabilities (2 points).

(f) *Design of utilization activities* (12 points total).

(1) The Secretary considers the extent to which the design of utilization activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the potential new users of the information or technology have a practical use for the information and are likely to adopt the practices or use the information or technology, including new devices (4 points).

(ii) The extent to which the utilization strategies are likely to be effective (4 points).

(iii) The extent to which the information or technology is likely to be of use in other settings (4 points).

(g) *Design of technical assistance activities* (8 points total).

(1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (2 points).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (2 points).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (2 points).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (2 points).

(h) *Plan of operation* (6 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (3 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (3 points).

(i) *Collaboration* (3 points total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (1 point).

(iii) The extent to which agencies, organizations, or institutions that commit to collaborate with the applicant have the capacity to carry out collaborative activities (1 point).

(j) *Adequacy and reasonableness of the budget* (4 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (2 points).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(k) *Plan of evaluation* (7 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(l) *Project staff* (9 points total).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(iv) The extent to which key personnel have up-to-date knowledge from research or effective practice in the subject area covered in the priority (1 point).

(m) *Adequacy and accessibility of resources* (4 points total).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (2 points).

(ii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the

facilities, equipment, and other resources of the project (2 points total).

Supported Living and Choice for Persons With Mental Retardation Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for a project on supported living and choice for persons with mental retardation under the Disability and Rehabilitation Research Project and Centers Program.

(a) *Importance of the problem* (9 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total).

(1) The Secretary considers the responsiveness of the application to the absolute or competitive priority published in the **Federal Register**.

(2) In determining the responsiveness of the application to the absolute or competitive priority, the Secretary considers the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of training activities* (13 points total).

(1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety (4 points).

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (3 points).

(iii) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials (4 points).

(iv) The extent to which the proposed training materials and methods are accessible to individuals with disabilities (2 points).

(d) *Design of dissemination activities* (24 points total).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (7 points).

(ii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration (7 points).

(iii) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (7 points).

(iv) The extent to which the information to be disseminated will be accessible to individuals with disabilities (3 points).

(e) *Design of utilization activities* (8 points total).

(1) The Secretary considers the extent to which the design of utilization activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the utilization strategies are likely to be effective (8 points).

(f) *Design of technical assistance activities* (10 points total).

(1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (3 points).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (2 points).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (3 points).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (2 points).

(g) *Plan of operation* (6 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (3 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (3 points).

(h) *Collaboration* (2 points total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (1 point).

(i) *Adequacy and reasonableness of the budget* (4 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (2 points).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(j) *Plan of evaluation* (7 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(k) *Project staff* (9 points total).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(iv) The extent to which key personnel have up-to-date knowledge from research or effective practice in the subject area covered in the priority (1 point).

(l) *Adequacy and accessibility of resources* (4 points total).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (2 points).

(ii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (2 points).

APPLICATION NOTICE FOR FISCAL YEAR 1998—REHABILITATION RESEARCH AND TRAINING CENTERS, CFDA NO. 84–133B

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Secondary Conditions of Spinal Cord Injuries	July 10, 1998	1	$800,000	60
Neuromuscular Diseases	July 10, 1998	1	650,000	60
Multiple Sclerosis	July 10, 1998	1	700,000	60
Community Integration for Persons with Traumatic Brain Injury	July 10, 1998	1	800,000	60

*Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

RRTC Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for RRTCs on secondary conditions of spinal cord injuries, neuromuscular diseases, multiple sclerosis, and community integration for persons with traumatic brain injury under the Disability and Rehabilitation Research Project and Centers Program.

(a) *Importance of the problem* (9 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total).

(1) The Secretary considers the responsiveness of the application to the absolute or competitive priority published in the **Federal Register**.

(2) In determining the responsiveness of the application to the absolute or competitive priority, the Secretary considers the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of research activities* (35 points total).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (5 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (5 points); and

(E) The data analysis methods are appropriate (5 points).

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (5 points).

(d) *Design of training activities* (11 points total).

(1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety (2 points).

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (2 points).

(iii) The extent to which the proposed training content—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If relevant, is based on new knowledge derived from research activities of the proposed project (1 point).

(iv) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials (2 points).

(v) The extent to which the proposed training materials and methods are accessible to individuals with disabilities (1 point).

(vi) The extent to which the applicant is able to carry out the training activities, either directly or through another entity (2 points).

(e) *Design of dissemination activities* (8 points total).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If appropriate, is based on new knowledge derived from research activities of the project (1 point).

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(iii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration (2 points).

(iv) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (1 point).

(v) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(f) *Design of technical assistance activities* (4 points total).

(1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (1 point).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (1 point).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (1 point).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (1 point).

(g) *Plan of operation* (4 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (2 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (2 points).

(h) *Collaboration* (2 points total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (1 point).

(g) *Adequacy and reasonableness of the budget* (3 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (1 point).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(h) *Plan of evaluation* (7 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(i) *Project staff* (9 points total).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (1 point).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(iv) The extent to which the project staff includes outstanding scientists in the field (2 points).

(j) *Adequacy and accessibility of resources* (4 points).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (1 point).

(ii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research (2 points).

(iii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (1 point).

Instructions for Application Narrative

The Secretary strongly recommends the following:

(1) A one-page abstract;

(2) An Application Narrative (i.e., Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more than 125 pages for RRTC applications and 75 pages for Project applications, double-spaced (no more than 3 lines per vertical inch) 8½ x 11″ pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(3) A font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, D.C. 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, D.C. time] on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

Part III: Additional Materials.

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (NOTE: ED Form 80–0014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 600 Independence Avenue S.W., Switzer Building, 3317, Washington, D.C. 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Further Information Contact: Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device

for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 760–762.

Dated: May 4, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Applications Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What Is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application.

An applicant for an RRTC is limited to an indirect rate of 15%.

An applicant for a Disability and Rehabilitation Research Project should limit indirect charges to the organization's approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for grants under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise Me Whether my Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure that my Application Will be referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting my Application Can I find Out if it Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR To Find Out If My Application Is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

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:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications 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:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: —"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.
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.
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.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
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.
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.
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.
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.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the 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 this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the 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 this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, D.C. 20503. *Disability and Rehabilitation Research Projects* (CFDA No. 84.133A) 34 CFR Part 350 Subpart B. *Rehabilitation Research and Training Center* (CFDA No. 84.133B) 34 CFR Part 350 Subpart C.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the 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 this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

Disability and Rehabilitation Research Projects (CFDA No. 84.133A) 34 CFR Part 350 Subpart B.

Rehabilitation Research and Training Center (CFDA No. 84.133B) 34 CFR Part 350 Subpart C.

NOTICE TO ALL APPLICANTS

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and

succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801-0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain 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, DC 20202-4651.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

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 costs) 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 nineteen 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 with the 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.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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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 andto 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 (Clear Air) Implementation Plans under Section 176(c) of the Clear 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 of 1984.

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

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant,' " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change

For Material Change Only:
year _____ quarter ____
date of last report

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*:

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*

$

10. a. Name and Address of Lobbying Entity Registrant *(if individual, last name, first name, MI):*

b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

~~11. Amount of Payment *(check all that apply):*~~

~~$ _____ ☐ actual ☐ planned~~

~~12. Form of Payment *(check all that apply):*~~

~~☐ a. cash~~
~~☐ b. in-kind; specify: nature _____~~
~~value _____~~

~~13. Type of Payment *(Check all that apply):*~~

~~☐ a. retainer~~
~~☐ b. one-time fee~~
~~☐ c. commission~~
~~☐ d. contingent fee~~
~~☐ e. deferred~~
~~☐ f. other; specify: _____~~

~~14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:~~

~~*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*~~

~~15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No~~

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date:

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 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

[FR Doc. 98–12379 Filed 5–8–98; 8:45 am]
BILLING CODE 4000–01–C

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Monday, May 11, 1998

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H.R. 3579/P.L. 105–174

1998 Supplemental Appropriations and Rescissions Act (May 1, 1998; 112 Stat. 58)

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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***3** (1997 Compilation and Parts 100 and 101)	(869–034–00002–9)	19.00	[1] Jan. 1, 1998
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700–1199	(869–034–00005–3)	26.00	Jan. 1, 1998
1200–End, 6 (6 Reserved)	(869–034–00006–1)	39.00	Jan. 1, 1998
7 Parts:			
1–26	(869–034–00007–0)	24.00	Jan. 1, 1998
27–52	(869–034–00008–8)	30.00	Jan. 1, 1998
53–209	(869–034–00009–6)	20.00	Jan. 1, 1998
210–299	(869–034–00010–0)	44.00	Jan. 1, 1998
300–399	(869–034–00011–8)	24.00	Jan. 1, 1998
400–699	(869–034–00012–6)	33.00	Jan. 1, 1998
700–899	(869–032–00013–1)	31.00	Jan. 1, 1997
900–999	(869–034–00014–2)	39.00	Jan. 1, 1998
1000–1199	(869–034–00015–1)	44.00	Jan. 1, 1998
1200–1599	(869–034–00016–9)	34.00	Jan. 1, 1998
1500–1899	(869–032–00017–4)	53.00	Jan. 1, 1997
1900–1939	(869–034–00018–5)	18.00	Jan. 1, 1998
1940–1949	(869–034–00019–3)	33.00	Jan. 1, 1998
1950–1999	(869–034–00020–7)	40.00	Jan. 1, 1998
2000–End	(869–034–00021–5)	24.00	Jan. 1, 1998
8	(869–034–00022–3)	33.00	Jan. 1, 1998
9 Parts:			
1–199	(869–032–00023–9)	39.00	Jan. 1, 1997
200–End	(869–034–00024–0)	33.00	Jan. 1, 1998
10 Parts:			
0–50	(869–034–00025–8)	39.00	Jan. 1, 1998
51–199	(869–034–00026–6)	32.00	Jan. 1, 1998
200–499	(869–032–00027–1)	30.00	Jan. 1, 1997
500–End	(869–034–00028–2)	43.00	Jan. 1, 1998
11	(869–034–00029–1)	19.00	Jan. 1, 1998
12 Parts:			
1–199	(869–034–00030–4)	17.00	Jan. 1, 1998
200–219	(869–034–00031–2)	21.00	Jan. 1, 1998
*220–299	(869–034–00032–1)	39.00	Jan. 1, 1998
300–499	(869–034–00033–9)	23.00	Jan. 1, 1998
500–599	(869–034–00034–7)	24.00	Jan. 1, 1998
600–End	(869–032–00035–2)	40.00	Jan. 1, 1997
13	(869–034–00036–3)	23.00	Jan. 1, 1998
14 Parts:			
1–59	(869–034–00037–1)	47.00	Jan. 1, 1998
60–139	(869–034–00038–0)	40.00	Jan. 1, 1998
140–199	(869–034–00039–8)	16.00	Jan. 1, 1998
200–1199	(869–034–00040–1)	29.00	Jan. 1, 1998
1200–End	(869–034–00041–0)	23.00	Jan. 1, 1998
15 Parts:			
0–299	(869–034–00042–8)	22.00	Jan. 1, 1998
300–799	(869–032–00043–3)	32.00	Jan. 1, 1997
800–End	(869–034–00044–4)	23.00	Jan. 1, 1998
16 Parts:			
0–999	(869–034–00045–2)	30.00	Jan. 1, 1998
1000–End	(869–034–00046–1)	33.00	Jan. 1, 1998
17 Parts:			
1–199	(869–032–00048–4)	21.00	Apr. 1, 1997
200–239	(869–032–00049–2)	32.00	Apr. 1, 1997
240–End	(869–032–00050–6)	40.00	Apr. 1, 1997
18 Parts:			
1–399	(869–032–00051–4)	46.00	Apr. 1, 1997
400–End	(869–032–00052–2)	14.00	Apr. 1, 1997
19 Parts:			
1–140	(869–032–00053–1)	33.00	Apr. 1, 1997
141–199	(869–032–00054–9)	30.00	Apr. 1, 1997
200–End	(869–032–00055–7)	16.00	Apr. 1, 1997
20 Parts:			
1–399	(869–032–00056–5)	26.00	Apr. 1, 1997
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21 Parts:			
1–99	(869–032–00059–0)	21.00	Apr. 1, 1997
100–169	(869–032–00060–3)	27.00	Apr. 1, 1997
170–199	(869–032–00061–1)	28.00	Apr. 1, 1997
200–299	(869–032–00062–0)	9.00	Apr. 1, 1997
300–499	(869–032–00063–8)	50.00	Apr. 1, 1997
500–599	(869–032–00064–6)	28.00	Apr. 1, 1997
600–799	(869–032–00065–4)	9.00	Apr. 1, 1997
800–1299	(869–032–00066–2)	31.00	Apr. 1, 1997
1300–End	(869–032–00067–1)	13.00	Apr. 1, 1997
22 Parts:			
1–299	(869–032–00068–9)	42.00	Apr. 1, 1997
300–End	(869–032–00069–7)	31.00	Apr. 1, 1997
23	(869–032–00070–1)	26.00	Apr. 1, 1997
24 Parts:			
0–199	(869–032–00071–9)	32.00	Apr. 1, 1997
200–499	(869–032–00072–7)	29.00	Apr. 1, 1997
500–699	(869–032–00073–5)	18.00	Apr. 1, 1997
700–1699	(869–032–00074–3)	42.00	Apr.1, 1997
1700–End	(869–032–00075–1)	18.00	Apr. 1, 1997
25	(869–032–00076–0)	42.00	Apr. 1, 1997
26 Parts:			
§§ 1.0-1–1.60	(869–032–00077–8)	21.00	Apr. 1, 1997
§§ 1.61–1.169	(869–032–00078–6)	44.00	Apr. 1, 1997
§§ 1.170–1.300	(869–032–00079–4)	31.00	Apr. 1, 1997
§§ 1.301–1.400	(869–032–00080–8)	22.00	Apr. 1, 1997
§§ 1.401–1.440	(869–032–00081–6)	39.00	Apr. 1, 1997
§§ 1.441-1.500	(869-032-00082-4)	22.00	Apr. 1, 1997
§§ 1.501–1.640	(869–032–00083–2)	28.00	Apr. 1, 1997
§§ 1.641–1.850	(869–032–00084–1)	33.00	Apr. 1, 1997
§§ 1.851–1.907	(869–032–00085–9)	34.00	Apr. 1, 1997
§§ 1.908–1.1000	(869–032–00086–7)	34.00	Apr. 1, 1997
§§ 1.1001–1.1400	(869–032–00087–5)	35.00	Apr. 1, 1997
§§ 1.1401–End	(869–032–00088–3)	45.00	Apr. 1, 1997
2–29	(869–032–00089–1)	36.00	Apr. 1, 1997
30–39	(869–032–00090–5)	25.00	Apr. 1, 1997
40–49	(869–032–00091–3)	17.00	Apr. 1, 1997
50–299	(869–032–00092–1)	18.00	Apr. 1, 1997
300–499	(869–032–00093–0)	33.00	Apr. 1, 1997
500–599	(869–032–00094–8)	6.00	[4] Apr. 1, 1990
600–End	(869–032–00095–3)	9.50	Apr. 1, 1997
27 Parts:			
1–199	(869–032–00096–4)	48.00	Apr. 1, 1997

Title	Stock Number	Price	Revision Date
200–End	(869–032–00097–2)	17.00	Apr. 1, 1997
28 Parts:			
1-42	(869–032–00098–1)	36.00	July 1, 1997
43-end	(869-032-00099-9)	30.00	July 1, 1997
29 Parts:			
0–99	(869–032–00100–5)	27.00	July 1, 1997
100–499	(869–032–00101–4)	12.00	July 1, 1997
500–899	(869–032–00102–2)	41.00	July 1, 1997
900–1899	(869–032–00103–1)	21.00	July 1, 1997
1900–1910 (§§ 1900 to 1910.999)	(869–032–00104–9)	43.00	July 1, 1997
1910 (§§ 1910.1000 to end)	(869–032–00105–7)	29.00	July 1, 1997
1911–1925	(869–032–00106–5)	19.00	July 1, 1997
1926	(869–032–00107–3)	31.00	July 1, 1997
1927–End	(869–032–00108–1)	40.00	July 1, 1997
30 Parts:			
1–199	(869–032–00109–0)	33.00	July 1, 1997
200–699	(869–032–00110–3)	28.00	July 1, 1997
700–End	(869–032–00111–1)	32.00	July 1, 1997
31 Parts:			
0–199	(869–032–00112–0)	20.00	July 1, 1997
200–End	(869–032–00113–8)	42.00	July 1, 1997
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–032–00114–6)	42.00	July 1, 1997
191–399	(869–032–00115–4)	51.00	July 1, 1997
400–629	(869–032–00116–2)	33.00	July 1, 1997
630–699	(869–032–00117–1)	22.00	July 1, 1997
700–799	(869–032–00118–9)	28.00	July 1, 1997
800–End	(869–032–00119–7)	27.00	July 1, 1997
33 Parts:			
1–124	(869–032–00120–1)	27.00	July 1, 1997
125–199	(869–032–00121–9)	36.00	July 1, 1997
200–End	(869–032–00122–7)	31.00	July 1, 1997
34 Parts:			
1–299	(869–032–00123–5)	28.00	July 1, 1997
300–399	(869–032–00124–3)	27.00	July 1, 1997
400–End	(869–032–00125–1)	44.00	July 1, 1997
35	(869–032–00126–0)	15.00	July 1, 1997
36 Parts			
1–199	(869–032–00127–8)	20.00	July 1, 1997
200–299	(869–032–00128–6)	21.00	July 1, 1997
300–End	(869–032–00129–4)	34.00	July 1, 1997
37	(869–032–00130–8)	27.00	July 1, 1997
38 Parts:			
0–17	(869–032–00131–6)	34.00	July 1, 1997
18–End	(869–032–00132–4)	38.00	July 1, 1997
39	(869–032–00133–2)	23.00	July 1, 1997
40 Parts:			
1–49	(869–032–00134–1)	31.00	July 1, 1997
50–51	(869–032–00135–9)	23.00	July 1, 1997
52 (52.01–52.1018)	(869–032–00136–7)	27.00	July 1, 1997
52 (52.1019–End)	(869–032–00137–5)	32.00	July 1, 1997
53–59	(869–032–00138–3)	14.00	July 1, 1997
60	(869–032–00139–1)	52.00	July 1, 1997
61–62	(869–032–00140–5)	19.00	July 1, 1997
63–71	(869–032–00141–3)	57.00	July 1, 1997
72–80	(869–032–00142–1)	35.00	July 1, 1997
81–85	(869–032–00143–0)	32.00	July 1, 1997
86	(869–032–00144–8)	50.00	July 1, 1997
87-135	(869–032–00145–6)	40.00	July 1, 1997
136–149	(869–032–00146–4)	35.00	July 1, 1997
150–189	(869–032–00147–2)	32.00	July 1, 1997
190–259	(869–032–00148–1)	22.00	July 1, 1997
260–265	(869–032–00149–9)	29.00	July 1, 1997
266–299	(869–032–00150–2)	24.00	July 1, 1997
300–399	(869–032–00151–1)	27.00	July 1, 1997
400–424	(869–032–00152–9)	33.00	[5] July 1, 1996
425–699	(869–032–00153–7)	40.00	July 1, 1997
700–789	(869–032–00154–5)	38.00	July 1, 1997
790–End	(869–032–00155–3)	19.00	July 1, 1997
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–032–00156–1)	14.00	July 1, 1997
101	(869–032–00157–0)	36.00	July 1, 1997
102–200	(869–032–00158–8)	17.00	July 1, 1997
201–End	(869–032–00159–6)	15.00	July 1, 1997
42 Parts:			
1–399	(869–032–00160–0)	32.00	Oct. 1, 1997
400–429	(869–032–00161–8)	35.00	Oct. 1, 1997
430–End	(869–032–00162–6)	50.00	Oct. 1, 1997
43 Parts:			
1–999	(869–032–00163–4)	31.00	Oct. 1, 1997
1000–end	(869–032–00164–2)	50.00	Oct. 1, 1997
44	(869–032–00165–1)	31.00	Oct. 1, 1997
45 Parts:			
1–199	(869–032–00166–9)	30.00	Oct. 1, 1997
200–499	(869–032–00167–7)	18.00	Oct. 1, 1997
500–1199	(869–032–00168–5)	29.00	Oct. 1, 1997
1200–End	(869–032–00169–3)	39.00	Oct. 1, 1997
46 Parts:			
1–40	(869–032–00170–7)	26.00	Oct. 1, 1997
41–69	(869–032–00171–5)	22.00	Oct. 1, 1997
70–89	(869–032–00172–3)	11.00	Oct. 1, 1997
90–139	(869–032–00173–1)	27.00	Oct. 1, 1997
140–155	(869–032–00174–0)	15.00	Oct. 1, 1997
156–165	(869–032–00175–8)	20.00	Oct. 1, 1997
166–199	(869–032–00176–6)	26.00	Oct. 1, 1997
200–499	(869–032–00177–4)	21.00	Oct. 1, 1997
500–End	(869–032–00178–2)	17.00	Oct. 1, 1997
47 Parts:			
0–19	(869–032–00179–1)	34.00	Oct. 1, 1997
20–39	(869–032–00180–4)	27.00	Oct. 1, 1997
40–69	(869–032–00181–2)	23.00	Oct. 1, 1997
70–79	(869–032–00182–1)	33.00	Oct. 1, 1997
80–End	(869–032–00183–9)	43.00	Oct. 1, 1997
48 Chapters:			
1 (Parts 1–51)	(869–032–00184–7)	53.00	Oct. 1, 1997
1 (Parts 52–99)	(869–032–00185–5)	29.00	Oct. 1, 1997
2 (Parts 201–299)	(869–032–00186–3)	35.00	Oct. 1, 1997
3–6	(869–032–00187–1)	29.00	Oct. 1, 1997
7–14	(869–032–00188–0)	32.00	Oct. 1, 1997
15–28	(869–032–00189–8)	33.00	Oct. 1, 1997
29–End	(869–032–00190–1)	25.00	Oct. 1, 1997
49 Parts:			
1–99	(869–032–00191–0)	31.00	Oct. 1, 1997
100–185	(869–032–00192–8)	50.00	Oct. 1, 1997
186–199	(869–032–00193–6)	11.00	Oct. 1, 1997
200–399	(869–032–00194–4)	43.00	Oct. 1, 1997
400–999	(869–032–00195–2)	49.00	Oct. 1, 1997
1000–1199	(869–032–00196–1)	19.00	Oct. 1, 1997
1200–End	(869–032–00197–9)	14.00	Oct. 1, 1997
50 Parts:			
1–199	(869–032–00198–7)	41.00	Oct. 1, 1997
200–599	(869–032–00199–5)	22.00	Oct. 1, 1997
600–End	(869–032–00200–2)	29.00	Oct. 1, 1997
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.