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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2003–CE–47–AD; Amendment 39–13584; AD 2004–08–15]**

**RIN 2120–AA64**

## Airworthiness Directives; Goodrich Avionics Systems, Inc. TAWS8000 Terrain Awareness Warning System

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA supersedes Airworthiness Directive (AD) 2003–13–08, which currently applies to all Goodrich Avionics Systems, Inc. (Goodrich) TAWS8000 terrain awareness warning systems (TAWS) that are installed on airplanes. AD 2003–13–08 currently requires you to inspect the TAWS installation and remove any TAWS where both the TAWS and any other device are connected to the same baro set potentiometer. AD 2003–13–08 also prohibits future installation of any TAWS8000 TAWS that incorporates hardware "Mod None'', "Mod A'', or "Mod B''. This AD is the result of omitting from AD 2003–13–08 a provision that prohibits reconfiguring an installed TAWS8000 TAWS after it passes the inspection unless it incorporates hardware "Mod C''. This AD retains the actions of AD 2003–13–08 and prohibits future installation or reconfiguration of any TAWS8000 TAWS that does not incorporate hardware "Mod C''. We are issuing this AD to prevent the loading of the baro set potentiometer, which could result in an unacceptable altitude error. That condition could cause the pilot to make flight decisions that put the airplane in unsafe flight conditions.

**DATES:** This AD becomes effective on June 7, 2004.

On July 21, 2003 (68 FR 38586, June 30, 2003), the Director of the Federal Register approved the incorporation by reference of Goodrich Avionics Systems, Inc. Service Memo SM #134, dated May 2, 2003.

As of June 7, 2004, the Director of the Federal Register approved the incorporation by reference of Goodrich Avionics Systems, Inc. Service Memo SM #134, revised July 9, 2003; and Goodrich Avionics Systems, Inc. Alert Service Bulletin SB #A117, dated July 9, 2003.

**ADDRESSES:** You may get the service information identified in this AD from Goodrich Avionics Systems, Inc., 5353 52nd Street, SE., Grand Rapids, Michigan 49512–9704; telephone: (616) 949–6600; facsimile: (616) 977–6898.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–47–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Brenda S. Ocker, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–7126; facsimile: (847) 294–7834.

**SUPPLEMENTARY INFORMATION:**

### Discussion

*What events have caused this AD?* Reports that the Goodrich TAWS8000 TAWS causes altitude errors in other instruments when both the TAWS and any other device are connected to the same baro set potentiometer caused us to issue AD 2003–13–08, Amendment 39–13208.

The unsafe condition was discovered during the installation of a TAWS8000 TAWS in a Cessna 500 series airplane. The TAWS8000 TAWS was connected to the baro set potentiometer output of a Honeywell (Sperry) BA–141 altimeter that was also connected to a Honeywell AZ–241 Air Data Computer. The altimeter showed that the aircraft was 60 feet higher than the actual altitude. This unsafe condition was confirmed with the laboratory test of a TAWS8000 TAWS installation.

*What has happened since AD 2003–13–08 to initiate this action?* We omitted from AD 2003–13–08 a provision that prohibits reconfiguring an installed TAWS8000 TAWS after it passes the inspection unless it incorporates hardware "Mod C''.

Since we issued AD 2003–13–08, Goodrich Avionics System, Inc. has also developed a production improvement (Mod C) to eliminate the effect of loading on the baro set potentiometer. Goodrich has issued an alert service bulletin to implement this modification.

We received comments about the language in AD 2003–13–08. Owners/operators are restricted from installing any TAWS8000 TAWS (part number 805–18000–001 that incorporates hardware "Mod None'', "Mod A'', or "Mod B''). When the unit is modified to incorporate hardware "Mod C'', the unit will still have "Mod None'', "Mod A'', or "Mod B'' marked on it. The intent of the AD was to allow for hardware modifications other than "Mod None'', "Mod A'', or "Mod B'' to be installed.

*What is the potential impact if FAA took no action?* AD 2003–13–08, as currently written, could cause confusion as to how to incorporate the actions necessary in correcting the unsafe condition.

*Has FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Goodrich Avionics Systems, Inc. (Goodrich) TAWS8000 terrain awareness warning systems (TAWS) that are installed on airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 3, 2003 (68 FR 67611). The NPRM proposed to supersede AD 2003–13–08 with a new AD that proposes to require you to inspect the TAWS installation and modify any TAWS where both the TAWS and any other device are connected to the same baro set potentiometer. This NPRM also proposed to prohibit future installation or reconfiguration of any TAWS8000 TAWS that does not incorporate hardware "Mod C''.

### Comments

*Was the public invited to comment?* We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

## Conclusion

*What is FAA's final determination on this issue?* We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

## Changes to 14 CFR Part 39—Effect on the AD

*How does the revision to 14 CFR part 39 affect this AD?* On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

## Costs of Compliance

*How many airplanes does this AD impact?* We estimate that this AD affects 80 airplanes in the U.S. registry.

*What is the cost impact of this AD on owners/operators of the affected airplanes?* We estimate the following costs to accomplish the inspection:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 1 workhour × $65 = $65 | Not applicable | $65 | $65 × 80 = $5,200 |

We estimate the following costs to accomplish any necessary modifications that will be required based on the results of this inspection. We have no way of determining the number of airplanes that may need the modification:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 2 workhours × $65 = $130 (1 workhour to remove and 1 workhour to replace). | All units will be modified at the Goodrich Avionics Systems facility under warranty. | $130 |

## Regulatory Findings

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

*Will this AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action'' under Executive Order 12866;
2. Is not a "significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–47–AD'' in your request.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2003–13–08, Amendment 39–13208 (68 FR 38586, June 30, 2003), and by adding a new AD to read as follows:

**2004–08–15 Goodrich Avionics Systems, Inc.:** Amendment 39–13584; Docket No. 2003–CE–47–AD; Supersedes AD 2003–13–08, Amendment 39–13208.

**When Does This AD Become Effective?**

(a) This AD becomes effective on June 7, 2004.

**What Other ADs Are Affected By This Action?**

(b) This AD supersedes AD 2003–13–08.

**What Airplanes Are Affected by This AD?**

(c) This AD affects all airplane models and serial numbers, certificated in any category, that incorporate a Goodrich TAWS8000 terrain awareness warning system (TAWS), part number (P/N) 805–18000–001, with "Mod None'', "Mod A'', or "Mod B'' hardware installed. This list of airplanes that have the TAWS8000 TWAS installed includes, but is not limited to, the following airplanes. Airplanes that are not in this list and have the TAWS installed through field approval or other methods are still affected by this AD:

| Company | Models |
|---|---|
| Cessna Aircraft Company | 421, 500, 501, 525, 525A, 550, 551, 650, and S550 |
| DASSAULT AVIATION | Mystere-Falcon 20 series |
| Gulfstream Aerospace LP | 1125 Westwind Astra |
| Raytheon Aircraft Company | 100, 200, 300, 400A, and F90 |
| Sabreliner Corporation | NA–265 |
| The New Piper Aircraft Inc | PA–42–1000 |

**What Is the Unsafe Condition Presented in This AD?**

(d) The actions specified by this AD are intended to prevent the loading of the baro set potentiometer, which could result in an unacceptable altitude error. This condition could cause the pilot to make flight decisions that put the airplane in unsafe flight conditions.

**What Must I Do To Address This Problem?**

(e) To address this problem, you must do the following:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Inspect the TAWS8000 TAWS (part number 805–18000–001 that incorporates hardware "Mod None", "Mod A", or "Mod B") installation to determine if both the TAWS8000 TAWS and any other device are connected to the same baro set potentiometer. | Within the next 5 hours time-in-service (TIS) after July 21, 2003 (the effective date of AD 2003–13–08), unless already done. | Follow Goodrich Avionics Systems, Inc. Service Memo SM #134, dated May 2, 2003, or Goodrich Avionics Systems, Inc. Service Memo SM #134, revised July 9, 2003, and the applicable installation manual. |
| (2) If both the TAWS8000 TAWS and any other device are connected to the same baro set potentiometer, remove the TAWS8000 TAWS and cap and stow the connecting wires or replace the TAWS8000 TAWS unit with a unit that incorporates hardware "Mod C". | Before further flight after the inspection required in paragraph (d)(1) of this AD. | For removing the TAWS8000 TAWS, follow Goodrich Avionics Systems, Inc. Service Memo SM #134, dated May 2, 2003, or Goodrich Avionics Systems, Inc. Service Memo SM #134, revised July 9, 2003, and the applicable installation manual. For replacing the TAWS8000 TAWS, follow Goodrich Avionics Systems, Inc. Alert Service Bulletin SB #A117, dated July 9, 2003. |
| (3) Do not install or reconfigure any TAWS8000 TAWS (part number 805–18000–001) that does not incorporate hardware "Mod C". | As of June 7, 2004 (the effective date of this AD). | Not Applicable. |

**May I Request an Alternative Method of Compliance?**

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19.

(1) Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Chicago Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Brenda S. Ocker, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–7126; facsimile: (847) 294–7834.

(2) Alternative methods of compliance approved under AD 2003–13–08, which is superseded by this AD, are approved as alternative methods of compliance with this AD.

**Does This AD Incorporate Any Material by Reference?**

(g) You must do the actions required by this AD following the instructions in Goodrich Avionics Systems, Inc. Service Memo SM #134, dated May 2, 2003; Goodrich Avionics Systems, Inc. Service Memo SM #134, revised July 9, 2003; and Goodrich Avionics Systems, Inc. Alert Service Bulletin SB #A117, dated July 9, 2003.

(1) On July 21, 2003 (68 FR 38586, June 30, 2003), and in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, the Director of the Federal Register approved the incorporation by reference of Goodrich Avionics Systems, Inc. Service Memo SM #134, dated May 2, 2003.

(2) As of June 7, 2004, and in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, the Director of the Federal Register approved the incorporation by reference of Goodrich Avionics Systems, Inc. Service Memo SM #134, revised July 9, 2003; and Goodrich Avionics Systems, Inc. Alert Service Bulletin SB #A117, dated July 9, 2003.

(3) You may get a copy from Goodrich Avionics Systems, Inc., 5353 52nd Street, SE., Grand Rapids, Michigan 49512–9704; telephone: (616) 949–6600; facsimile: (616) 977–6898. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Issued in Kansas City, Missouri, on April 13, 2004.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–8792 Filed 4–20–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–CE–62–AD; Amendment 39–13583; AD 2004–08–14]**

**RIN 2120–AA64**

## Airworthiness Directives; Glasflugel Models Mosquito and Club Libelle 205 Sailplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA adopts a new airworthiness directive (AD) for all Glasflugel Models Mosquito and Club Libelle 205 sailplanes. This AD requires you to replace the rudder actuator arm with an improved design rudder actuator arm. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to prevent the rudder attachment actuator arm from failing due to ground handling damage. This failure could eventually result in reduced or loss of sailplane control.

**DATES:** This AD becomes effective on May 28, 2004.

As of May 28, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

**ADDRESSES:** You may get the service information identified in this AD from Glasflugel, Glasfaser-Flugzeug-Service GmbH, Hansjory Steifeneder, Hofener Weg, 72582 Grabenstetten, Germany; telephone: 011 49 7382 1032.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–62–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Discussion

*What events have caused this AD?* The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an

unsafe condition may exist on all Glasflugel Models Mosquito and Club Libelle 205 sailplanes. The LBA reports incidents of rudder actuator arm failure. This failure is occurring through lifting the fuselage by the rudder.

Glasflugel has manufactured a new improved design rudder actuator arm that is less susceptible to such damage.

*What is the potential impact if FAA took no action?* Rudder attachment actuator arm failure could eventually result in reduced or loss of sailplane control.

*Has FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Glasflugel Models Mosquito and Club Libelle 205 sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 17, 2004 (69 FR 7382). The NPRM proposed to require you to replace the rudder actuator arm with an improved design rudder actuator arm.

### Comments

*Was the public invited to comment?* We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

### Conclusion

*What is FAA's final determination on this issue?* We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

### Changes to 14 CFR Part 39—Effect on the AD

*How does the revision to 14 CFR part 39 affect this AD?* On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

### Costs of Compliance

*How many sailplanes does this AD impact?* We estimate that this AD affects 80 sailplanes in the U.S. registry.

*What is the cost impact of this AD on owners/operators of the affected sailplanes?* We estimate the following costs to do the replacement:

| Labor cost | Parts cost | Total cost per sailplane | Total cost on U.S. operators |
|---|---|---|---|
| 3 workhours × $65 per hour = $195 | $90 | $285 | $22,800 |

### Regulatory Findings

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

*Will this AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action'' under Executive Order 12866;

2. Is not a "significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–62–AD'' in your request.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. FAA amends § 39.13 by adding a new AD to read as follows:

**2004–08–14 Glasflugel:** Amendment 39–13583; Docket No. 2003–CE–62–AD.

**When Does This AD Become Effective?**

(a) This AD becomes effective on May 28, 2004.

**What Other ADs Are Affected by This Action?**

(b) None.

**What Sailplanes Are Affected by This AD?**

(c) This AD affects the Models Mosquito and Club Libelle 205 sailplanes, all serial numbers, that are certificated in any category.

**What Is the Unsafe Condition Presented in This AD?**

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions of this AD are intended to prevent the rudder attachment actuator arm from failing due to ground handling damage. This failure could eventually result in reduced or loss of sailplane control.

**What Must I Do To Address This Problem?**

(e) To address this problem, you must do the following:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Replace the rudder actuator arm (manufactured following drawing No. 203–45–10) with an improved design arm that is manufactured following drawing No. 203–45–10–2. | Within the next 25 hours time-in-service (TIS) after May 28, 2004 (the effective date of this AD), unless already done. | Follow Glasflugel Technical Note No. 205–22 and No. 206–21, dated October 14, 2002 (LBA-approved November 11, 2002); or Glasflugel Technical Note No. 303–23 and No. 304–10, dated October 14, 2002 (LBA-approved November 11, 202), as applicable. |
| (2) Do not install any rudder actuator arm that is not manufactured following drawing No. 203–45–10–2. | As of May 28, 2004 (the effective date of this AD). | Not Applicable. |

**May I Request an Alternative Method of Compliance?**

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA.

For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

**Does This AD Incorporate Any Material by Reference?**

(g) You must do the actions required by this AD following the instructions in Glasflugel Technical Note No. 205–22 and No. 206–21, dated October 14, 2002 (LBA-approved November 11, 2002); or Glasflugel Technical Note No. 303–23 and No. 304–10, dated October 14, 2002 (LBA-approved November 11, 2002), as applicable. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Glasflugel, Glasfaser-Flugzeug-Service GmbH, Hansjory Steifeneder, Hofener Weg, 72582 Grabenstetten, Germany; telephone: 011 49 7382 1032. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Is There Other Information That Relates to This Subject?**

(h) German AD No. 2003–004 and No. 2003–005, both effective date: January 9, 2003, also address the subject of this AD.

Issued in Kansas City, Missouri, on April 13, 2004.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–8790 Filed 4–20–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2001–NM–111–AD; Amendment 39–13574; AD 2004–08–05]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A300 B2 Series Airplanes; A300 B4 Series Airplanes; A300 B4–600, B4–600R, F4–600R, and C4–605R Variant F (Collectively Called A300–600) Series Airplanes; and A310 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes, that currently requires either a one-time ultrasonic inspection, or repetitive visual inspections and eventual ultrasonic inspection, to detect cracking of the longitudinal skin splice above the mid-passenger door panels, and corrective actions if necessary. This amendment requires repetitive ultrasonic inspections to detect cracking of certain skin lap joints in additional areas of the fuselage and repair if necessary. This amendment also expands the applicability of the existing AD to include additional airplanes. The actions specified by this AD are intended to detect and correct cracking of certain skin lap joints, which could result in reduced structural integrity and decompression of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective May 26, 2004.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of May 26, 2004.

The incorporation by reference of a certain other publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of February 22, 2000 (65 FR 5756, February 7, 2000).

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Anthony Jopling, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2190; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–02–39, amendment 39–11557 (65 FR 5756, February 7, 2000), which is applicable to certain Airbus Model A300 series airplanes, was published in the **Federal Register** on December 18, 2003 (68 FR 70464). The action proposed to continue to require either a one-time ultrasonic inspection, or repetitive visual inspections and eventual ultrasonic inspection, to detect cracking of the longitudinal skin splice above the mid-passenger door panels, and corrective actions if necessary. The action also proposed to require repetitive ultrasonic inspections to detect cracking of certain skin lap joints in additional areas of the fuselage and repair if necessary. In addition, the action proposed to expand the applicability of the existing AD to include additional airplanes.

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

**Request To Reference Latest Service Information**

The commenter requests that the proposed AD be revised to reference Revision 03, dated February 25, 2003, of Airbus Service Bulletin A300–53–6129 (for Model A300–600 series airplanes); and Revision 01, dated February 25, 2003, of Airbus Service Bulletin A310–53–2112 (for Model A310 series airplanes); for accomplishment of the applicable actions specified in the proposed AD. The commenter states that, because the repair kits have been identified with these latest revisions, adding them to the AD will eliminate requests for alternative methods of compliance in order to accomplish the latest kit installation.

The FAA concurs with the commenter's request. We have reviewed Airbus Service Bulletin A300–53–6129, Revision 03, dated February 25, 2003; and Airbus Service Bulletin A310–53–2112, Revision 01, dated February 25, 2003; and find them to be acceptable methods of compliance for accomplishment of the actions required by this AD. The final rule has been revised to require accomplishment of the applicable actions per either Revision 02 (which was referenced in the proposed AD as the applicable source of service information for the applicable actions) or Revision 03 of Airbus Service Bulletin A300–53–6129 (for Model A300–600 series airplanes); or the original issue (which was referenced in the proposed AD as the applicable source of service information for the applicable actions) or Revision 01 of Airbus Service Bulletin A310–53–2112 (for Model A310 series airplanes).

**Conclusion**

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

**Cost Impact**

There are approximately 128 airplanes of U.S. registry that will be affected by this AD.

The ultrasonic inspection that is currently required by AD 2000–02–39 takes approximately 4 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $260 per airplane.

The detailed inspection that is currently required by AD 2000–02–39 takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $130 per airplane.

The ultrasonic inspection required in this AD action will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $8,320, or $65 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 removing amendment 39–11557 (65 FR 5756, February 7, 2000), and by adding a new airworthiness directive (AD), amendment 39–13574, to read as follows:

**2004–08–05 Airbus:** Amendment 39–13574. Docket 2001–NM–111–AD. Supersedes AD 2000–02–39, Amendment 39–11557.

*Applicability:* Model A300 B2 series airplanes; A300 B4 series airplanes; A300 B4–600, B4–600R, F4–600R, and C4–605R Variant F (collectively called A300–600) series airplanes; and A310 series airplanes; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct cracking of certain skin lap joints, which could result in reduced structural integrity and decompression of the airplane, accomplish the following:

**Restatement of Certain Requirements of AD 2000–02–39**

*Ultrasonic or Detailed Visual Inspection*

(a) For Model A300 series airplanes having serial numbers (S/N) 0003 through 0156 inclusive: Within 14 days after January 31, 2000 (the effective date of AD 2000–02–39, amendment 39–11557), accomplish the requirements of either paragraph (a)(1) or (a)(2) of this AD, in accordance with Airbus All Operators Telex (AOT) A300–53A0352, dated January 4, 2000.

(1) Perform a one-time ultrasonic inspection to detect cracking of the longitudinal skin splice above the mid-passenger door panels below stringer 11 (left- and right-hand) and between frames 28A and 30A.

(i) If no cracking is detected: No further action is required by this paragraph.

(ii) If any cracking is detected: Before further flight, accomplish the requirements of paragraph (b) of this AD.

(2) Perform a detailed inspection to detect cracking of the longitudinal skin splice above the mid-passenger door panels below stringer 11 (left- and right-hand) and between frames 28A and 30A.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good

lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(i) If no cracking is detected: Accomplish the requirements of paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this AD.

(A) Repeat the detailed inspection thereafter at intervals not to exceed 80 flight cycles; and

(B) Within 90 days after January 31, 2000: Accomplish the requirements of paragraph (a)(1) of this AD.

(ii) If any cracking is detected: Before further flight, accomplish the requirements of paragraph (b) of this AD.

*Corrective Actions*

(b) For airplanes on which any cracking is detected during any inspection required by paragraph (a)(1) or (a)(2) of this AD: Before further flight, install either a temporary or final repair, in accordance with Airbus AOT A300–53A0352, dated January 4, 2000.

(1) If a temporary repair is installed: Prior to the accumulation of 2,000 flight cycles after the installation of the temporary repair, install the final repair.

(2) If a final repair is installed: No further action is required by paragraphs (a) and (b) of this AD.

**New Requirements of This AD**

*Inspections and Corrective Actions: Model A300 B2 and B4 Series Airplanes*

(c) For Model A300 B2 and A300 B4 series airplanes with S/Ns 0003 through 0305 inclusive: From the airplane interior, do an ultrasonic inspection to detect cracking of the skin lap joint located above the mid-passenger door panel below stringer 11, between frames 28A and 31, on the left and right sides of the airplane, as applicable, per the Accomplishment Instructions of Airbus Service Bulletin A300–53–0354, Revision 02, dated December 13, 2001. Do the inspection at the times specified in paragraph (c)(1) or (c)(2) of this AD, as applicable. Accomplishment of this inspection terminates the repetitive inspections required by paragraph (a)(2)(i)(A) of this AD.

(1) For airplanes with S/Ns 0003 through 0156 inclusive, except those airplanes on which the final repair in AOT A300–53A0352, dated January 4, 2000; or Airbus Service Bulletin A300–53–0354, Revision 02, dated December 13, 2001, has been accomplished: Do the inspection within 2,500 flight cycles after the inspection per paragraph (a) of this AD, or within 14 days after the effective date of this AD, whichever occurs later. If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 2,500 flight cycles.

(2) For airplanes with S/Ns 0157 through 0305 inclusive, except those airplanes on which the final repair in Airbus Service Bulletin A300–53-0354, Revision 02, dated December 13, 2001, has been accomplished: Do the initial inspection at the applicable time specified in paragraph (c)(2)(i) or (c)(2)(ii) of this AD. If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 6,500 flight cycles.

(i) For airplanes with less than 20,500 flight cycles as of the effective date of this AD: Inspect before the accumulation of 20,500 total flight cycles or within 19 months after the effective date of this AD, whichever occurs later.

(ii) For airplanes with 20,500 total flight cycles or more, but less than 26,500 total flight cycles as of the effective date of this AD: Inspect within 500 flight cycles after the effective date of this AD.

(d) Accomplishment of the actions specified in Airbus Service Bulletin A300–53–0354, Revision 01, dated December 26, 2000, before the effective date of this AD, is considered acceptable for compliance with the requirements of paragraph (c) of this AD.

(e) If any cracking is detected during any inspection per paragraph (c) of this AD: Do paragraphs (e)(1) and (e)(2) of this AD, as applicable.

(1) If any crack is detected in Area A as defined in Figure 1 of Airbus Service Bulletin A300–53–0354, Revision 02, dated December 13, 2001: Before further flight, repair per a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

(2) If any crack is detected in Area B as defined in Figure 1 of Airbus Service Bulletin A300–53–0354, Revision 02, dated December 13, 2001: Before further fight, do a temporary repair or final repair, as applicable, per the Accomplishment Instructions of the service bulletin.

(f) For Model A300 B2 and A300 B4 series airplanes with S/Ns 0003 through 0305 inclusive which have been repaired per paragraph (d)(2) of this AD: Do paragraph (f)(1) or (f)(2) of this AD, as applicable.

(1) If a temporary repair has been accomplished: Within 2,000 flight cycles after doing the temporary repair, do the final repair per the Accomplishment Instructions of Airbus Service Bulletin A300–53–0354, Revision 02, dated December 13, 2001.

(2) If a final repair has been accomplished: Perform repetitive inspections per a method and at intervals approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the DGAC (or its delegated agent).

(g) For Model A300 B2 and A300 B4 series airplanes, except those airplanes with Airbus Modification 2611 accomplished in production: Prior to the accumulation of 30,300 total flight cycles, or within 19 months after the effective date of this AD, whichever occurs later, do the inspections in paragraphs (g)(1) and (g)(2) of this AD.

(1) From the airplane interior: Do an ultrasonic inspection to detect cracking of the skin lap joint located below the mid-passenger door panel, below stringer 27, between frames 28A and 30A, on the left and right sides of the airplane, as applicable, per the Accomplishment Instructions of Airbus Service Bulletin A300–53–0356, dated December 26, 2000.

(i) If no cracking is detected: Repeat the inspection required by paragraph (g)(1) of this AD thereafter at intervals not to exceed 4,100 flight cycles.

(ii) If any cracking is detected in area A as defined in Figure 1 of Airbus Service Bulletin A300–53–0356: Before further flight, repair the affected area per a method approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent). Upon completion of the repair, do repetitive inspections of the affected area per a method and at intervals approved by one of the airworthiness authorities listed above.

(2) Do an external ultrasonic inspection to detect cracking of the skin lap joint located in the lower fuselage, aft of the wing, below the mid-passenger door panel, below stringer 52, between frames 56 and 58, on the left and right sides of the airplane, as applicable, per the Accomplishment Instructions of Airbus Service Bulletin A300–53–0356, dated December 26, 2000. If an internal or external repair doubler approved by the FAA or the DGAC (or its delegated agent), of Airbus design origin, has been installed in this area, the doubler does not need to be removed for inspection of this area.

(i) If no cracking is detected: Repeat the inspection required by paragraph (g)(2) of this AD thereafter at intervals not to exceed 4,100 flight cycles.

(ii) If any cracking is detected in Area B as defined in Figure 1 of Airbus Service Bulletin A300–53–0356: Before further flight, do a final repair per the Accomplishment Instructions of Airbus Service Bulletin A300–53–0356.

(h) For Model A300 B2 and A300 B4 series airplanes, except those on which Airbus Service Bulletin A300–53–0209 has been accomplished: From the airplane interior, do an ultrasonic inspection to detect cracking of the skin lap joint located below the aft-passenger door panel, below stringer 28, between frames 72 and 76 on the left and right sides of the airplane, as applicable, per the Accomplishment Instructions of Airbus Service Bulletin A300–53–0357, dated December 26, 2000. If an internal or external repair doubler is installed in this area, inspection of this area is not required. Perform the inspection at the later of the times specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Prior to the accumulation of 24,100 total flight cycles for S/Ns 0003 through 0156 inclusive, or 29,500 total flight cycles for S/Ns 0157 through 0305 inclusive.

(2) Within 2,000 flight cycles or 19 months after the effective date of this AD, whichever occurs first.

(i) If no cracking is detected during the inspection required by paragraph (h) of this AD: Repeat the inspection required by paragraph (h) of this AD at the intervals specified in paragraphs (i)(1) and (i)(2) of this AD, as applicable.

(1) For Model A300 B2 and A300 B4 series airplanes with S/Ns 0003 through 0156 inclusive: Repeat the inspection thereafter at intervals not to exceed 3,400 flight cycles.

(2) For Model A300 B2 and A300 B4 series airplanes with S/Ns 0157 through 0305 inclusive: Repeat the inspection thereafter at intervals not to exceed 5,400 flight cycles.

(j) For all Model A300 B2 and A300 B4 series airplanes; if any cracking is detected during the inspection required by paragraph (h) of this AD: Before further flight, repair the affected area, per a method approved by either the Manager, International Branch,

ANM–116, or the DGAC (or its delegated agent).

*Inspections and Corrective Actions: Model A310 Series Airplanes*

(k) For Model A310 series airplanes; prior to the accumulation of 29,500 total flight cycles, or within 19 months after the effective date of this AD, whichever occurs later: From the airplane interior, do an ultrasonic inspection to detect cracking of the skin lap joint located below the aft-passenger door panel, below stringer 28, between frame 72 and frame 76, on the right and left sides of the airplane, as applicable, per the Accomplishment Instructions of Airbus Service Bulletin A310–53–2112, dated December 26, 2000; or Airbus Service Bulletin A310–53–2112, Revision 01, dated February 25, 2003. If an internal or external repair doubler is installed in any inspection area, inspection of that specific area is not required.

(1) If no cracking is detected: Repeat the inspection thereafter at intervals not to exceed 5,400 flight cycles.

(2) If any cracking is detected: Before further flight, repair the affected area, per a method and at repetitive intervals approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

*Inspections and Corrective Actions: Model A300–600 Series Airplanes*

(l) For Model A300–600 series airplanes: From the airplane interior, do an ultrasonic inspection to detect cracking of the skin lap joint located above the mid-passenger door panel, below stringer 11, between frames 28A and 31, on the right and left sides of the airplane, as applicable, per the Accomplishment Instructions of Airbus Service Bulletin A300–53–6129, Revision 02, dated December 13, 2001; or Airbus Service Bulletin A300–53–6129, Revision 03, dated February 25, 2003. Do the inspection at the applicable time specified in paragraph (l)(1), (l)(2), or (l)(3) of this AD. If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 6,500 flight cycles.

(1) For airplanes with less than 20,500 flight cycles as of the effective date of this AD: Inspect before the accumulation of 20,500 total flight cycles or within 19 months after the effective date of this AD, whichever occurs later.

(2) For airplanes with 20,500 total flight cycles or more, but less than 26,500 total flight cycles as of the effective date of this AD: Inspect within 500 flight cycles after the effective date of this AD.

(3) For airplanes with 26,500 total flight cycles or more as of the effective date of this AD: Inspect within 200 flight cycles or 30 days after the effective date of this AD, whichever occurs later.

(m) If any cracking is detected during any inspection per paragraph (l) of this AD: Do paragraphs (m)(1) and (m)(2) of this AD, as applicable.

(1) If any crack is detected in Area A as defined in Figure 1 of Airbus Service Bulletin A300–53–6129, Revision 02, dated December 13, 2001; or Revision 03, dated February 25, 2003: Before further flight, repair per a method approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

(2) If any crack is detected in Area B as defined in Figure 1 of Airbus Service Bulletin A300–53–6129, Revision 02, dated December 13, 2001; or Revision 03, dated February 25, 2003: Before further fight, do a temporary repair or final repair, as applicable, per the Accomplishment Instructions of Airbus Service Bulletin A300–53–6129, Revision 02, dated December 13, 2001; or Revision 03, dated February 25, 2003.

(n) For airplanes which have been repaired per paragraph (m)(2) of this AD: Do paragraph (n)(1) or (n)(2) of this AD, as applicable.

(1) If a temporary repair has been accomplished: Within 2,000 flight cycles after doing the temporary repair, do the final repair per the Accomplishment Instructions of Airbus Service Bulletin A300–53–6129, Revision 02, dated December 13, 2001; or Airbus Service Bulletin A300–53–6129, Revision 03, dated February 25, 2003.

(2) If a final repair has been accomplished: Perform repetitive inspections per a method and at intervals approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

*Credit for Previous Service Bulletin Revision*

(o) Accomplishment of the actions specified in Airbus Service Bulletin A300–53–6129, Revision 01, dated December 26, 2000, before the effective date of this AD, is considered acceptable for compliance with the requirements of paragraph (l) of this AD.

*Submission of Inspection Results to Manufacturer Not Required*

(p) Although the service bulletins referenced in this AD specify to submit information to the manufacturer, this AD does not include such a requirement.

*Alternative Methods of Compliance*

(q)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–02–39, amendment 39–11557, are approved as alternative methods of compliance with the applicable actions in this AD.

*Incorporation by Reference*

(r) Unless otherwise specified in this AD, the actions shall be done in accordance with the Airbus documents listed in Table 1 of this AD, as applicable:

TABLE 1.—SERVICE DOCUMENTS INCORPORATED BY REFERENCE

| Airbus document number | Revision level | Date |
|---|---|---|
| All Operators Telex A300–53A0352 | Original | January 4, 2000. |
| Airbus Service Bulletin A300–53–0354, excluding Appendix 01 | 02 | December 13, 2001. |
| Airbus Service Bulletin A300–53–0356, excluding Appendix 01 | Original | December 26, 2000. |
| Airbus Service Bulletin A300–53–0357, excluding Appendix 01 | Original | December 26, 2000. |
| Airbus Service Bulletin A310–53–2112, excluding Appendix 01 | Original | December 26, 2000. |
| Airbus Service Bulletin A310–53–2112, excluding Appendix 01 | 01 | February 25, 2003. |
| Airbus Service Bulletin A300–53–6129, excluding Appendix 01 | 02 | December 13, 2001. |
| Airbus Service Bulletin A300–53–6129, excluding Appendix 01 | 03 | February 25, 2003. |

(1) The incorporation by reference of the Airbus documents listed in Table 2 of this AD is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51:

TABLE 2.—NEW SERVICE DOCUMENTS INCORPORATED BY REFERENCE

| Airbus document | Revision level | Date |
|---|---|---|
| Airbus Service Bulletin A300–53–0354, excluding Appendix 01 | 02 | December 13, 2001. |
| Airbus Service Bulletin A300–53–0356, excluding Appendix 01 | Original | December 26, 2000. |
| Airbus Service Bulletin A300–53–0357, excluding Appendix 01 | Original | December 26, 2000. |
| Airbus Service Bulletin A310–53–2112, excluding Appendix 01 | Original | December 26, 2000. |
| Airbus Service Bulletin A310–53–2112, excluding Appendix 01 | 01 | February 25, 2003. |
| Airbus Service Bulletin A300–53–6129, excluding Appendix 01 | 02 | December 13, 2001. |

TABLE 2.—NEW SERVICE DOCUMENTS INCORPORATED BY REFERENCE—Continued

| Airbus document | Revision level | Date |
|---|---|---|
| Airbus Service Bulletin A300–53–6129, excluding Appendix 01 | 03 | February 25, 2003. |

(2) The incorporation by reference of All Operators Telex A300–53A0352, dated January 4, 2000, was approved previously by the Director of the Federal Register as of February 22, 2000 (65 FR 5756, February 7, 2000).

(3) Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 2:** The subject of this AD is addressed in French airworthiness directive 2002–639(B), dated December 24, 2002.

*Effective Date*

(s) This amendment becomes effective on May 26, 2004.

Issued in Renton, Washington, on April 6, 2004.

**Kevin M. Mullin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–8540 Filed 4–20–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–288–AD; Amendment 39–13580; AD 2004–08–11]**

**RIN 2120–AA64**

## Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes, that requires a review of airplane maintenance records and an inspection of the nose landing gear (NLG) to determine the part number of the steering pinion, and follow-on/corrective actions as applicable. This action is necessary to prevent failure of the steering pinion in the NLG, which could result in loss of steering and possible damage to the airplane during takeoff and landing. This action is intended to address the identified unsafe condition.

**DATES:** Effective May 26, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 26, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes was published in the **Federal Register** on February 25, 2004 (69 FR 8576). That action proposed to require a review of airplane maintenance records and an inspection of the nose landing gear (NLG) to determine the part number (P/N) of the steering pinion, and follow-on/corrective actions as applicable.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

### Conclusion

We have determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

The FAA estimates that 57 airplanes of U.S. registry will be affected by this proposed AD, that it will take approximately 14 work hours per airplane to accomplish the identification of the P/N for the steering pinion in Part 1 of BAE Systems (Operations) Limited Service Bulletin J41–32–076, and that the average labor rate is $65 per work hour. The cost for a temporary placard, if required, would be minimal. Based on these figures, the cost impact of the P/N identification is estimated to be $51,870, or $910 per airplane.

Should an operator be required to replace a steering pinion per Part 2 of BAE Systems (Operations) Limited Service Bulletin J41–32–076, it will take approximately 16 work hours per airplane, at an average labor rate of $65 per work hour. The manufacturer of the NLG will provide parts to affected operators at no cost. Based on these figures, the cost impact of the replacement is estimated to be $1,040 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

**2004–08–11 Bae Systems (Operations) Limited** (Formerly British Aerospace Regional Aircraft): Amendment 39–13580. Docket 2001–NM–288–AD.

*Applicability:* All Model Jetstream 4101 airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the steering pinion in the nose landing gear (NLG), which could result in a loss of steering and possible damage to the airplane during takeoff and landing, accomplish the following:

**Identification of Steering Pinion Part Number and Follow-on/Corrective Actions**

(a) Within 60 days after the effective date of this AD: Do a review of the airplane maintenance records and a general visual inspection of the NLG to identify the part number (P/N) of the steering pinion, and to determine the total cycles since new and since overhaul of the NLG, by accomplishing all of the applicable actions in accordance with Part 1 of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–32–076, dated July 3, 2001.

**Note 1:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(b) If the steering pinion P/N is identified as AIR136088, and the NLG has more than 12,000 total landings since new or overhaul: Before further flight, after accomplishing the actions required by paragraph (a) of this AD, install a temporary placard prohibiting pushback with engines running in accordance with Part 1 of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–32–076, dated July 3, 2001.

(c) Based on the criteria in the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–32–076, dated July 3, 2001, if it is determined that the NLG must be replaced with a serviceable NLG, accomplish the replacement in accordance with the Accomplishment Instructions of the service bulletin. Do the replacement at the later of the times specified in paragraphs (c)(i) and (c)(ii) of this AD. After replacement of an existing NLG, the temporary placard required by paragraph (b) of this AD may be removed from the airplane.

(i) Prior to the accumulation of 12,000 total landings on the NLG since new or overhaul.

(ii) Within 1,000 landings or 16 months after the effective date of this AD, whichever occurs first.

**Repetitive Replacement**

(d) After the initial replacement of a NLG as required by paragraph (c) of this AD: Replace the NLG with a serviceable NLG thereafter at intervals not to exceed 12,000 landings on the NLG, until accomplishment of paragraph (f) of this AD.

(e) If P/N AIR131714 is installed on the airplane, or if an operator installs this P/N as a serviceable replacement part, this part must be replaced at or before the accumulation of 19,000 total landings on the part, and thereafter at intervals not to exceed 19,000 total landings on the part, until accomplishment of paragraph (f) of this AD.

(f) Replacement of a NLG with a new NLG having P/N AIR83586–18, or any P/N AIR83586–xx (where xx represents the "dash" number of the part) with "mod 19 strike-off" recorded on the nameplate, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–32–077, dated August 31, 2001, restores the life limits of the steering pinion to 60,000 landings on the NLG. Replace the NLG thereafter at intervals not to exceed 60,000 landings on the NLG.

**Submission of Information to Manufacturer Not Required**

(g) Although the service bulletins referenced in this AD specify to notify the manufacturer when the actions in the service bulletins have been accomplished, this AD does not include such a requirement.

**Alternative Methods of Compliance**

(h) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

**Incorporation by Reference**

(i) Unless otherwise specified in this AD, the actions shall be done in accordance with BAE Systems (Operations) Limited Service Bulletin J41–32–076, dated July 3, 2001; and BAE Systems (Operations) Limited Service Bulletin J41–32–077, dated August 31, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 2:** The subject of this AD is addressed in British airworthiness directive 001–07–2001.

**Effective Date**

(j) This amendment becomes effective on May 26, 2004.

Issued in Renton, Washington, on April 9, 2004.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–8761 Filed 4–20–04; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–CE–61–AD; Amendment 39–13582; AD 2004–08–13]**

**RIN 2120–AA64**

## Airworthiness Directives; BURKHARDT GROB LUFT-UND RAUMFAHRT GmbH & CO KG Models G103 Twin ASTIR, G103 TWIN II, G103 TWIN III ACRO, and G103 C Twin III SL Sailplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA adopts a new airworthiness directive (AD) for certain BURKHARDT GROB LUFT-UND RAUMFAHRT GmbH & CO KG (Grob) Models G103 Twin ASTIR, G103 TWIN II, G103 TWIN III ACRO, and G103 C Twin III SL sailplanes. This AD requires you to replace the center of gravity (CG) release hook attachment brackets with brackets of improved design. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to prevent abnormal or uncontrolled

sailplane release due to cracked CG release hook attachment brackets. This condition could result in reduced or loss of sailplane control.

**DATES:** This AD becomes effective on June 4, 2004.

As of June 4, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

**ADDRESSES:** You may get the service information identified in this AD from BURKHARDT GROB LUFT-UND RAUMFAHRT GmbH & CO KG, Letenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–61–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

## Discussion

*What events have caused this AD?* The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on certain Grob Models G103 Twin ASTIR, G103 TWIN II, G103 TWIN III ACRO, and G103 C Twin III SL sailplanes. The LBA reports incidents of cracks found in the center of gravity (CG) release hook attachment brackets.

Grob has manufactured new improved design CG release hook attachment brackets that are less susceptible to such cracking.

*What is the potential impact if FAA took no action?* A cracked CG release hook attachment bracket, if not prevented, could lead to abnormal or uncontrolled sailplane release. This condition could result in reduced or loss of sailplane control.

*Has FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Grob Models G103 Twin ASTIR, G103 TWIN II, G103 TWIN III ACRO, and G103 C Twin III SL sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 17, 2004 (69 FR 7378). The NPRM proposed to require you to replace the CG release hook attachment brackets with brackets of improved design.

## Comments

*Was the public invited to comment?* We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

## Conclusion

*What is FAA's final determination on this issue?* We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

## Changes to 14 CFR Part 39—Effect on the AD

*How does the revision to 14 CFR part 39 affect this AD?* On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

## Costs of Compliance

*How many sailplanes does this AD impact?* We estimate that this AD affects 105 sailplanes in the U.S. registry.

*What is the cost impact of this AD on owners/operators of the affected sailplanes?* We estimate the following costs to accomplish the replacement:

| Labor cost | Parts cost | Total cost per sailplane | Total cost on U.S. operators |
|---|---|---|---|
| 2 workhours × $65 per hour = $130 | $50 | $180 | $18,900 |

## Regulatory Findings

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

*Will this AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action'' under Executive Order 12866;

2. Is not a "significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003–CE–61–AD'' in your request.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. FAA amends § 39.13 by adding a new AD to read as follows:

**2004–08–13 BURKHARDT GROB LUFT-UND RAUMFAHRT GMBH CO & KG:** Amendment 39–13582; Docket No. 2003–CE–61–AD.

**When Does This AD Become Effective?**

(a) This AD becomes effective on June 4, 2004.

**What Other ADs Are Affected by This Action?**

(b) None.

**What Sailplanes Are Affected by This AD?**

(c) This AD affects the following model and serial number sailplanes that are certificated in any category:

| Models | Serial Numbers |
|---|---|
| (1) G103 Twin ASTIR | 3000 through 3291. |
| (2) G103 TWIN II ..... | 3501 through 3720. |
| (3) G103 TWIN III ACRO. | All serial numbers beginning with 34101. |
| (4) G103 C Twin III SL. | 35002 through 35051. |

**What Is the Unsafe Condition Presented in This AD?**

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions of this AD are intended to prevent abnormal or uncontrolled sailplane release due to cracked center of gravity (CG) release hook attachment brackets. This condition could result in reduced or loss of sailplane control.

**What Must I Do To Address This Problem?**

(e) To address this problem, you must do the following:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Replace the CG release hook attachment brackets with improved design brackets, as follows:<br>(i) *For the Models G103 Twin ASTIR, G103 TWIN II, and G103 TWIN III ACRO sailplanes:* part number (P/N) 103B–2360.01/1 and P/N 103B–2360.02/1; and<br>(ii) *For the Model G103 C Twin III SL sailplane:* P/N 103B–2360.01/2 and P/N 103B–2360.02/2. | Within the next 25 hours time-in-service (TIS) after June 4, 2004 (the effective date of this AD), unless already done. | Follow Grob Service Bulletin No. MSB869–22, dated January 22, 2002; and Grob Service Bulletin No. MSB315–62, dated January 21, 2002. |
| (2) Do not install any CG release hook attachment bracket that is not a part number referenced in paragraphs (e)(1)(i) and (e)(1)(ii) of this AD, as applicable. | As of June 4, 2004 (the effective date of this AD). | Not Applicable. |

**May I Request an Alternative Method of Compliance?**

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

**Does This AD Incorporate Any Material by Reference?**

(g) You must do the actions required by this AD following the instructions in Grob Service Bulletin No. MSB869–22, dated January 22, 2002; and Grob Service Bulletin No. MSB315–62, dated January 21, 2002. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from BURKHARDT GROB LUFT–UND RAUMFAHRT GmbH & CO KG, Letenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Is There Other Information That Relates to This Subject?**

(h) German AD No. 2002–066, effective date: March 21, 2002; and German AD No. 2002–067, effective date: March 21, 2002, also address the subject of this AD.

Issued in Kansas City, Missouri, on April 13, 2004.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–8794 Filed 4–20–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–16059; Airspace Docket No. 03–AGL–16]**

## Modification of Class E Airspace; Mount Comfort, IN; Revocation of Class E Airspace; Indianapolis-Brookside, IN; Modification of Legal Description; Indianapolis-Terry, IN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace at Mount Comfort, IN, revokes Class E airspace at Indianapolis-Brookside, IN, and modifies the legal description at Indianapolis-Terry, IN. The Indianapolis Brookside Airpark has been abandoned, and the Standard Instrument Approach Procedures (SIAPS) decommissioned. The Class E airspace area extending upward from 700 feet above the surface of the earth is no longer needed. Additionally, the airport name at Indianapolis-Terry, IN, has been changed. This action revokes the existing Class E airspace area for Indianapolis Brookside Airpark, IN, modifies the area of the existing Class E airspace for Mount Comfort Airport, IN, and modifies the legal description for Indianapolis Terry Airport.

**EFFECTIVE DATE:** 0901 UTC, August 5, 2004.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Graham, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

### History

On Wednesday, January 14, 2004, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Mount Comfort, IN, revoke Class E airspace at Indianapolis-Brookside, IN, and modify the legal description at Indianapolis-Terry, IN, (69 FR 2088). The proposal was to modify the existing Class E airspace area at Mount Comfort, IN, revoke the existing Class E airspace area at Indianapolis-Brookside, IN, and modify the legal description at Indianapolis-Terry, IN. The Indianapolis Brookside Airpark has been abandoned, and the existing area of Class E airspace

is no longer needed. Additionally, the name of the Indianapolis Terry Airport has changed.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

## The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Mount Comfort, IN, revokes Class E airspace at Indianapolis-Brookside, IN, and modifies the legal description at Indianapolis-Terry, IN. The area will be depicted on appropriate aeronautical charts.

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

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## Adoption of the Amendment

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

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

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

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

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

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

* * * * *

**AGL IN E5 Indianapolis Brookside Airpark, IN [Revoked]**

**AGL IN E5 Mount Comfort, IN [Revised]**

Mount Comfort Airport, IN
(Lat. 39°50′37″ N., long. 85°53′49″ W.)
Indianapolis Metropolitan Airport, IN
(Lat. 39°56′07″ N., long. 86°02′42″ W.)
Indianapolis Executive Airport, IN
(Lat. 40°01′50″ N., long. 86°15′05″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Mount Comfort Airport, and within a 6.3-mile radius of Indianapolis Metropolitan Airport, excluding that airspace within the Indianapolis Executive Airport, IN, Class E airspace area.

**AGL IN E5 Indianapolis Executive Airport, IN [Revised]**

Indianapolis Executive Airport, IN
(Lat. 40°01′50″ N., long. 86°15′05″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Indianapolis Executive Airport.

* * * * *

Issued in Des Plaines, Illinois on April 7, 2004.

**Nancy B. Shelton,**

*Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 04–9074 Filed 4–20–04; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 9121]**

**RIN 1545–BD11**

## Partner's Distributive Share: Foreign Tax Expenditures

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** The temporary regulations provide rules for the proper allocation of partnership expenditures for foreign taxes. The temporary regulations affect partnerships and their partners. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**. The final regulations consist of technical revisions to reflect the issuance of the temporary regulations.

**DATES:** *Effective Date:* These regulations are effective April 21, 2004.

*Applicability Date:* For dates of applicability, see § 1.704–1(b)(1)(ii).

**FOR FURTHER INFORMATION CONTACT:** Beverly Katz at 202–622–3050 (not a toll-free number.

**SUPPLEMENTARY INFORMATION:**

## Background

Subchapter K is intended to permit taxpayers to conduct joint business activities through a flexible economic arrangement without incurring an entity-level tax. To achieve this goal of a flexible economic arrangement, partners are generally permitted to decide among themselves how a partnership's items will be allocated. Section 704(a) of the Internal Revenue Code (Code) provides that a partner's distributive share of income, gain, loss, deduction, or credit shall, except as otherwise provided, be determined by the partnership agreement.

Section 704(b) places a significant limitation on the general flexibility of section 704(a). Specifically, section 704(b) provides that a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) shall be determined in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances) if the allocation to a partner under the partnership agreement of income, gain, loss, deduction, or credit (or item thereof) does not have substantial economic effect. Thus, the statute provides that partnership allocations either must have substantial economic effect or must be in accordance with the partners' interests in the partnership.

Section 1.704–1(b)(2)(i) provides that the determination of whether an allocation of income, gain, loss, or deduction to a partner has substantial economic effect involves a two-part analysis that is made as of the end of the partnership taxable year to which the allocation relates. First, the allocation must have economic effect within the meaning of § 1.704–1(b)(2)(ii). Second,

the economic effect of the allocation must be substantial within the meaning of § 1.704–1(b)(2)(iii).

For an allocation to have economic effect, it must be consistent with the underlying economic arrangement of the partners. This means that, in the event that there is an economic benefit or burden that corresponds to the allocation, the partner to whom the allocation is made must receive such economic benefit or bear such economic burden. § 1.704–1(b)(2)(ii). Generally, an allocation of income, gain, loss, or deduction (or item thereof) to a partner will have economic effect if, and only if, throughout the full term of the partnership, the partnership agreement provides: (1) For the determination and maintenance of the partners' capital accounts in accordance with § 1.704–1(b)(2)(iv); (2) for liquidating distributions to the partners to be made in accordance with the positive capital account balances of the partners; and (3) for each partner to be unconditionally obligated to restore the deficit balance in the partner's capital account following the liquidation of the partner's partnership interest. In lieu of satisfying the third criterion, the partnership may satisfy the qualified income offset rules set forth in § 1.704–1(b)(2)(ii)(*d*).

Section 1.704–1(b)(2)(iii)(*a*) provides as a general rule that the economic effect of an allocation (or allocations) is substantial if there is a reasonable possibility that the allocation (or allocations) will affect substantially the dollar amounts to be received by the partners from the partnership, independent of tax consequences. The section further provides that, even if the allocation affects substantially the dollar amounts, the economic effect of the allocation (or allocations) is not substantial if, at the time the allocation (or allocations) becomes part of the partnership agreement, (1) the after-tax economic consequences of at least one partner may, in present value terms, be enhanced compared to such consequences if the allocation (or allocations) were not contained in the partnership agreement, and (2) there is a strong likelihood that the after-tax economic consequences of no partner will, in present value terms, be substantially diminished compared to such consequences if the allocation (or allocations) were not contained in the partnership agreement.

The regulations under section 704(b) provide that the allocation of certain items cannot have substantial economic effect, and accordingly provide guidance on allocating those items in a manner that will be deemed to be in accordance with the partners' interests in the partnership. Items that cannot be allocated with substantial economic effect include tax credits, nonrecourse deductions, and recapture amounts. These items are addressed in §§ 1.704–1(b)(4) and 1.704–2.

**Explanation of Provisions**

*1. Clarifying the Allocation of Expenditures for Foreign Taxes*

Section 901(b)(5) provides that an individual who is a partner will, subject to certain limitations, qualify for the foreign tax credit for his proportionate share of taxes of the partnership paid or accrued during the taxable year to a foreign country or to any possession of the United States. Section 702(a)(6) provides that each partner shall take into account separately his distributive share of the partnership's taxes, described in section 901, paid or accrued to foreign countries and to possessions of the United States. Section 703(a)(2)(B) provides that the partnership is not entitled to the deduction for taxes provided in section 164(a) with respect to taxes, described in section 901, paid or accrued to foreign countries and to possessions of the United States. Section 703(b)(3) provides that elections affecting the computation of taxable income derived from a partnership shall be made by the partnership, except that any election under section 901 (relating to taxes of foreign countries and possessions of the United States), will be made by each partner separately.

These temporary regulations clarify the application of the regulations under section 704 to creditable foreign tax expenditures for which the partnership bears legal liability as described in § 1.901–2(f). Unlike most other trade or business expenses, foreign taxes described in section 901 or 903 are fully creditable against a partner's U.S. tax liability, subject to certain limitations, including primarily the foreign tax credit limitation under section 904. For this reason, the temporary regulations provide that partnership allocations of creditable foreign tax expenditures cannot have substantial economic effect and, therefore, must be allocated in accordance with the partners' interests in the partnership. A creditable foreign tax is a foreign tax paid or accrued for U.S. tax purposes by a partnership and that is eligible for a credit under section 901(a). A foreign tax is a creditable foreign tax for these purposes without regard to whether a partner receiving an allocation of such foreign tax elects to claim a credit for such amount.

The temporary regulations establish a safe harbor under which partnership allocations of foreign tax expenditures will be deemed to be in accordance with the partners' interests in the partnership. Under this safe harbor, if the partnership agreement satisfies the requirements of § 1.704–1(b)(2)(ii)(*b*) or (*d*) (i.e., capital account maintenance, liquidation according to capital accounts, and either deficit restoration obligations or qualified income offsets), then an allocation of a foreign tax expenditure that is proportionate to a partner's distributive share of the partnership income to which such taxes relate (including income allocated pursuant to section 704(c)) will be deemed to be in accordance with the partners' interests in the partnership. This rule is consistent with the underlying purposes of the foreign tax credit, which is to avoid double taxation of foreign source income, and the foreign tax credit limitation, which is to prevent foreign tax credits from offsetting tax liability on a taxpayer's U.S. source income. Also, this rule achieves greater parity between entities that are taxed under foreign law at the partner level and entities that are taxed under foreign law at the entity level. If a partnership were taxed under foreign law at the partner level, then the amount of foreign taxes imposed on a partner generally would be proportionate to the partner's share of the income subject to the foreign tax. The partner would take into account this amount of foreign tax in computing U.S. tax liability. Likewise, for partnerships that are taxed under foreign law at the entity level, the safe harbor provides that a partner is allowed to take into account in computing U.S. tax liability the share of the partnership's foreign tax expenditures that is proportionate to the partner's share of the income to which such taxes relate.

If the taxpayer does not satisfy this safe harbor, then the taxpayer's allocations will be tested under the partners' interests in the partnership standard set forth in § 1.704–1(b)(3). Under that standard, the determination of a partner's interest in a partnership is made by taking into account all facts and circumstances relating to the economic arrangement of the partners. Among the facts to be considered are: (a) The partners' relative contributions to the partnership; (b) the interests of the partners in economic profits and losses (if different than their interests in taxable income or loss); (c) the interests of the partners in cash flow and other non-liquidating distributions; and (d)

the rights of the partners to distributions of capital upon liquidation. Ultimately, the partners' interests in the partnership signify the manner in which the partners have agreed to share the economic benefit or burden (if any) corresponding to the income, gain, loss, deduction, or credit (or item thereof) that is allocated. The sharing arrangement with respect to a particular item may or may not correspond to the overall economic arrangement of the partners. Thus, a partnership's allocation of a foreign tax expenditure that does not satisfy the safe harbor contained in these temporary regulations, may, in unusual circumstances (such as where there is substantial certainty that U.S partners will deduct, rather than credit, foreign taxes) be in accordance with partners' interests in the partnership under § 1.704–1(b)(3).

*2. Application of § 1.704–1(b)(2)(iii) Substantiality Requirement Where Partnership Allocation Has Tax Effect on Owners of Partners*

As discussed above, in determining if the economic effect of a partnership allocation is substantial, the partnership must consider the after-tax economic consequences to the partners. The IRS and Treasury have become aware that some partnerships are taking the position that, in determining if the economic effect of a partnership allocation is substantial, they need not consider any tax consequences to an owner of the partner that result from the allocation. The IRS and Treasury believe that such a position is inconsistent with the policies underlying the substantial economic effect rules, because it would allow a partnership to make tax-advantaged allocations if the tax advantages of the allocations were to accrue to an owner of a partner, rather than to the partner itself. The IRS and Treasury are planning to issue guidance on the application of the section 704(b) regulations to these situations.

*3. Effective Date*

The provisions of these regulations generally apply for partnership taxable years beginning on or after the date that the temporary regulations are published in the **Federal Register**. A transition rule is also provided for existing partnerships. Under the transition rule, if a partnership agreement was entered into before April 21, 2004, then the partnership may apply the provisions of § 1.704–1(b), as if the amendments made by this temporary regulation had not occurred, until any subsequent material modification to the partnership agreement, which includes any change in ownership, occurs. This transition rule does not apply if, as of April 20, 2004, persons that are related to each other (within the meaning of section 267(b) and 707(b)) collectively have the power to amend the partnership agreement without the consent of any unrelated party. No inference regarding the treatment of allocations of foreign taxes under § 1.704–1(b) (prior to the amendments made by this temporary regulation) is intended.

**Special Analyses**

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the notice of proposed rulemaking on this subject published in the Proposed Rules section of this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, this notice of rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of this regulation is Beverly M. Katz, Office of the Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the IRS and Treasury Department participated in its development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

■ Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

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

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

■ 2. Section 1.704–1 is amended as follows:

■ 1. Paragraph (b)(0) is amended by adding entries for §§ 1.704–1(b)(1)(ii)(*a*), 1.704–1(b)(1)(ii)(*b*), 1.704–1(b)(4)(viii), 1.704–1(b)(4)(ix), 1.704–1(b)(4)(x), and 1.704–1(b)(4)(xi).

■ 2. The text of paragraph (b)(1)(ii) is redesignated as paragraph (b)(1)(ii)(*a*).

■ 3. A heading is added to newly designated paragraph (b)(1)(ii)(*a*).

■ 4. Paragraphs (b)(1)(ii)(*b*), (b)(4)(viii), (b)(4)(ix), (b)(4)(x), and (b)(4)(xi) are added.

■ 5. Paragraph (b)(5) is amended by adding *Example 20* through *Example 28.*

■ 6. The additions read as follows:

**§ 1.704–1 Partner's distributive share.**

* * * * *

(b) *Determination of partner's distributive share*—(0) *Cross-references.*

* * * * *

| | |
|---|---|
| Generally ..... | 1.704–1(b)(1)(ii)(*a*) |
| Foreign tax expenditures. | 1.704–1(b)(1)(ii)(*b*) |

* * * * *

| | |
|---|---|
| [Reserved] ..... | 1.704–1(b)(4)(viii) |
| [Reserved] ..... | 1.704–1(b)(4)(ix) |
| [Reserved] ..... | 1.704–1(b)(4)(x) |
| Allocation of creditable foreign taxes. | 1.704–1(b)(4)(xi) |

* * * * *

(1) * * *

(ii) * * * (*a*) *Generally.*

(*b*) *Foreign tax expenditures.* [Reserved]. For further guidance, *see* § 1.704–1T(b)(1)(ii)(*b*).

* * * * *

(4) * * *

(viii) [Reserved].

(ix) [Reserved].

(x) [Reserved].

(xi) *Allocation of creditable foreign taxes.* [Reserved]. For further guidance, *see* § 1.704–1T(b)(4)(xi).

(5) * * *

Examples (20) through (24). [Reserved].

Examples (25) through (28). [Reserved]. For further guidance, *see* § 1.704–1T(b)(5), Examples (25) through (28).

* * * * *

■ 3. Section 1.704–1T is added to read as follows:

**§ 1.704–1T Partner's distributive share (temporary).**

(a) through (b)(1)(ii)(*a*) [Reserved]. For further guidance, *see* § 1.704–1(a) through (b)(1)(ii)(*a*).

(b)(1)(ii)(*b*) *Rules relating to foreign tax expenditures*—(*1*) *In general.* The provisions of paragraphs (b)(4)(xi) (regarding the allocation of foreign tax expenditures) apply for partnership taxable years beginning on or after April 21, 2004.

(*2*) *Transition rule.* If a partnership agreement was entered into before April 21, 2004, then the partnership may apply the provisions of this paragraph (b) as if the amendments made by this temporary regulation had not occurred,

until any subsequent material modification to the partnership agreement, which includes any change in ownership, occurs. This transition rule does not apply if, as of April 20, 2004, persons that are related to each other (within the meaning of section 267(b) and 707(b)) collectively have the power to amend the partnership agreement without the consent of any unrelated party.

(b)(1)(iii) through (b)(4)(vii) [Reserved]. For further guidance, see § 1.704–1(b)(1)(iii) through (b)(4)(vii).

(b)(4)(viii) through (b)(4)(x) [Reserved].

(b)(4)(xi) *Allocations of creditable foreign taxes*—(*a*) *In general.* Allocations of creditable foreign taxes cannot have substantial economic effect and, accordingly, such expenditures must be allocated in accordance with the partners' interests in the partnership. An allocation of a creditable foreign tax will be deemed to be in accordance with the partners' interests in the partnership if—

(*1*) The requirements of either paragraph (b)(2)(ii)(*b*) or (b)(2)(ii)(*d*) of this section are satisfied (*i.e.*, capital accounts are maintained in accordance with paragraph (b)(2)(iv) of this section, liquidating distributions are required to be made in accordance with positive capital account balances, and each partner either has an unconditional deficit restoration obligation or agrees to a qualified income offset); and

(*2*) The partnership agreement provides for the allocation of the creditable foreign tax in proportion to the partners' distributive shares of income (including income allocated pursuant to section 704(c)) to which the creditable foreign tax relates.

(*b*) *Creditable foreign taxes.* A creditable foreign tax is a foreign tax paid or accrued for U.S. tax purposes by a partnership and that is eligible for a credit under section 901(a). A foreign tax is a creditable foreign tax for these purposes without regard to whether a partner receiving an allocation of such foreign tax elects to claim a credit for such amount.

(*c*) *Income related to foreign taxes.* A foreign tax is related to income if the income is included in the base upon which the taxes are imposed, which determination must be made in accordance with the principles of § 1.904–6. See *Examples* (25) through (28) of paragraph (b)(5) of this section.

(b)(5) * * *

*Examples* 1 through 19 [Reserved]. For further guidance, see § 1.704–1(b)(5), *Examples* 1 through 19.

*Examples* 20 through 24 [Reserved].

*Example 25.* (i) A and B form AB, an eligible entity (as defined in § 301.7701–3(a) of this chapter), treated as a partnership for U.S. tax purposes. AB's partnership agreement (within the meaning of paragraph (b)(2)(ii)(*j*) of this section) provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, that liquidation proceeds will be distributed in accordance with the partners' positive capital account balances, and that any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership. AB operates business M and earns income from passive investments in country X. Assume that country X imposes a 40 percent tax on business M income, which tax is a creditable foreign tax, but exempts from tax income from passive investments. In year 1, AB earns $100 of income from business M and $30 from passive investments and pays or accrues $40 of country X taxes. For purposes of section 904(d), the income from business M is general limitation income and the income from the passive investments is passive income. Pursuant to the partnership agreement, all partnership items, including creditable foreign taxes, from business M are allocated 60 percent to A and 40 percent to B, and all partnership items, including creditable foreign taxes, from passive investments are allocated 80 percent to A and 20 percent to B. Accordingly, A is allocated 60 percent of the business M income ($60) and 60 percent of the country X taxes ($24), and B is allocated 40 percent of the business M income ($40) and 40 percent of the country X taxes ($16).

(ii) Under paragraph (b)(4)(xi) of this section, the $40 of taxes is related to the $100 of general limitation income and no portion of the taxes is related to the passive income. Because AB's partnership agreement allocates the general limitation income 60/40 and the country X taxes 60/40, the allocations of the country X taxes are in proportion to the allocation of the income to which the foreign tax relates. Because AB satisfies the requirement of paragraph (b)(4)(xi) of this section, the allocations of the country X taxes are deemed to be in accordance with the partners' interests in the partnership.

*Example 26.* (i) A and B form AB, an eligible entity (as defined in § 301.7701–3(a) of this chapter), treated as a partnership for U.S. tax purposes. AB's partnership agreement (within the meaning paragraph (b)(2)(ii)(j) of this section) provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, that liquidation proceeds will be distributed in accordance with the partners' positive capital account balances, and that any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership. AB operates business M in country X and business N in country Y. Assume that country X imposes a 40 percent tax on business M income, country Y imposes a 20 percent tax on business N income, and the country X and country Y taxes are creditable foreign taxes. In year 1, AB has $100 of income from business M and $50 of income from business N. Country X imposes $40 of tax on the income from business M and country Y imposes $10 of tax on the income of business N. Pursuant to the partnership agreement, all partnership items, including creditable foreign taxes, from business M are allocated 75 percent to A and 25 percent to B, and all partnership items, including creditable foreign taxes, from business N are split evenly between A and B (50/50). Accordingly, A is allocated 75 percent of the income from business M ($75), 75 percent of the country X taxes ($30), 50 percent of the income from business N ($25), and 50 percent of the country Y taxes ($5). B is allocated 25 percent of the income from business M ($25), 25 percent of the country X taxes ($10), 50 percent of the income from business N ($25), and 50 percent of the country Y taxes ($5).

(ii) Because the income from business M and business N is general limitation income and the partnership agreement provides for different allocations with respect to such income, it is necessary to determine which foreign taxes are related to the business M income and which foreign taxes are related to the business N income. Under paragraph (b)(4)(xi) of this section, the $40 of country X taxes is related to business M and the $10 of country Y taxes is related to business N. Because AB's partnership agreement allocates the $40 of country X taxes in the same proportion as the general limitation income from business M, and the $10 of country Y taxes in the same proportion as the general limitation income from business N, the allocations of the country X taxes and the country Y taxes are in proportion to the allocation of the income to which the foreign taxes relate. Because AB satisfies the requirements of paragraph (b)(4)(xi), the allocations of the country X and country Y taxes are deemed to be in accordance with the partners' interests in the partnership.

*Example 27.* (i) The facts are the same as in *Example 26,* except that AB does not actually receive the $50 accrued with respect to business N until year 2. Also assume that A, B and AB each report taxable income on an accrual basis for U.S. tax purposes and AB reports taxable income on a cash basis for country X and country Y purposes. In year 1, AB pays country X taxes of $40. In year 2, AB pays country Y taxes of $10. Pursuant to the partnership agreement, in year 1, A is allocated 75 percent of business M income ($75) and country X taxes ($30) and 50 percent of business N income ($25). B is allocated 25 percent of business M income ($25) and country X taxes ($10) and 50 percent of business N income ($25). In year 2, A and B will each be allocated 50 percent of the country Y taxes ($5).

(ii) Because the income from business M and business N is general limitation income and the partnership agreement provides for different allocations with respect to such income, it is necessary to determine which foreign taxes are related to business M income and which foreign taxes are related to business N income. Under paragraph (b)(4)(xi) of this section, $40 of country X taxes is related to the $100 of general

limitation income from business M. Under paragraph (b)(4)(xi), the country Y tax imposed in year 2 is allocable to the $50 of business N income AB recognizes in year 2 under country Y law and is treated as paid in year 2 on the $50 of business N income recognized for U.S. tax purposes in year 1. See § 1.904–6(a)(1)(iv) and (c), *Example 5.* Accordingly, the $10 of country Y taxes is related to the $50 of general limitation income from business N. Because AB's partnership agreement allocates the $40 of country X taxes in proportion to the general limitation income from business M, and the $10 of country X taxes from business N in proportion to the year 1 general limitation income from business N, the allocations of the country X and country Y taxes are in proportion to the allocation of the income to which the foreign taxes relate. Therefore, AB's partnership agreement satisfies the requirement of paragraph (b)(4)(xi)(*a*)(*2*) of this section. Because AB also satisfies the requirements of paragraph (b)(4)(xi)(*a*)(*1*) of this section, the allocations of the country X and Y taxes are deemed to be in accordance with the partners' interests in the partnership under paragraph (b)(4)(xi) of this section.

*Example 28.* (i) A and B form AB, an eligible entity (as defined in § 301.7701–3(a) of this chapter), treated as a partnership for U.S. tax purposes. AB's partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, that liquidation proceeds will be distributed in accordance with the partners' positive capital account balances, and that any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership. AB operates business M in country X. Assume that country X imposes a 20 percent tax on the net income from business M, which tax is a creditable foreign tax. In year 1, AB earns $300 of gross income, has deductible expenses, exclusive of creditable foreign taxes, of $100, and pays or accrues $40 of country X tax. For purposes of section 904(d), all income from business M is general limitation income. Pursuant to the partnership agreement, the first $100 of gross income each year is allocated to A as a return on excess capital contributed by A. All remaining partnership items, including creditable foreign taxes, are split evenly (50/50) between A and B. Assume that the gross income allocation is not deductible for country X purposes.

(ii) Under paragraph (b)(4)(xi) of this section, the $40 of taxes is related to the $200 of general limitation net income. In year 1, AB's partnership agreement allocates $150 or 75 percent of the general limitation income to A ($100 attributable to the gross income allocation plus $50 of the remaining $100 of net income) and $50 or 25 percent of the net income to B. AB's partnership agreement allocates the country X taxes in accordance with the partners' shares of partnership items remaining after the $100 gross income allocation. Therefore, AB allocates the country X taxes 50 percent to A ($20) and 50 percent to B ($20). Under paragraph (b)(4)(xi) of this section, the allocation of country X taxes cannot have substantial economic effect and must be allocated in accordance with the partners' interests in the partnership. AB's allocations of country X taxes are not deemed to be in accordance with the partners' interests in the partnership under paragraph (b)(4)(xi) of this section, because they are not in proportion to the allocation of the income to which the country X taxes relate.

(c) through (e)(4)(ii)(*b*) [Reserved]. For further guidance, see § 1.704–1(c) through (e)(4)(ii)(*b*).

**John M. Dalrymple,**

*Acting Deputy Commissioner for Services and Enforcement.*

Approved: March 25, 2004.

**Gregory F. Jenner,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 04–8704 Filed 4–20–04; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 512

**[Docket No. NHTSA–02–12150; Notice 3]**

**RIN 2127–AJ24**

## Confidential Business Information

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule; response to petitions for reconsideration; correction.

**SUMMARY:** This document responds to petitions for reconsideration regarding amendments to NHTSA's regulation on Confidential Business Information. These petitions addressed the provisions relating to information submitted to NHTSA pursuant to the early warning reporting regulation. It also corrects a typographic error in the final rule.

**DATES:** This rule is effective on May 21, 2004. If you wish to submit a petition for reconsideration of this rule, your petition must be received by June 7, 2004.

**ADDRESSES:** Any further petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to the docket. They may also be submitted to the docket electronically. Documents may be filed electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on "Help & Information'' or "Help/Info'' to obtain instructions for filing the document electronically. You may also visit the Federal E-Rulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

You may call Docket Management at 202–366–9324. The Docket room hours are from 9 a.m. to 5 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** For questions contact Michael Kido or Lloyd Guerci. They can be reached in the Office of the Chief Counsel at the National Highway Traffic Safety Administration, 400 7th Street SW., Room 5219, Washington, DC 20590, or by telephone at (202) 366–5263.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. Background

### *A. The Notice of Proposed Rulemaking*

On April 30, 2002, NHTSA published a Notice of Proposed Rulemaking ("NPRM'') to amend 49 CFR Part 512, Confidential Business Information ("Part 512'' or "CBI''). 67 FR 21198 (April 30, 2002). The agency sought to simplify and update the regulation to reflect developments in the law. The NPRM also asked for comments on whether to

create class determinations covering portions of the data to be submitted under the early warning reporting (''EWR'') rule, (*see* Subpart C of 49 CFR Part 579), which NHTSA had proposed pursuant to the Transportation Recall Enhancement, Accountability and Documentation (''TREAD'') Act. The comment period closed on July 1, 2002.

The agency received timely comments from various sectors of the automotive industry, including vehicle manufacturers, tire manufacturers, supplier and equipment manufacturers, and other interested parties. Comments were received from the following trade associations: The Alliance of Automobile Manufacturers, the Association of International Automobile Manufacturers, the Rubber Manufacturers Association, the Tire Industry Association, the Motor and Equipment Manufacturers Association and the Original Equipment Suppliers Association, the Automotive Occupant Restraints Council, the Juvenile Products Manufacturers Association, the Truck Manufacturers Association and the Motorcycle Industry Council. Comments were received also from individual manufacturers: General Motors North America, Cooper Tire, Utilimaster, Blue Bird Body Company, Bendix, Harley-Davidson Motor Company, Hella North America, WABCO North America, Meritor-WABCO, and Workhorse Custom Chassis. Enterprise Rent-A-Car Company and the Washington Legal Foundation also filed comments. Individual requests for confidential treatment for all EWR submissions were also received by several trailer manufacturers and from the Truck Trailer Manufacturers Association. Public Citizen also filed comments on November 27, 2002, as well as supplemental comments thereafter. The agency considered all comments when promulgating the final CBI rule.

The vast majority of the comments addressed whether the various categories of EWR information should be treated confidentially. Public Citizen argued that all information should be disclosed. Business interests argued that some or all of the data should be withheld from disclosure, claiming either that Congress intended for the agency to withhold all early warning reporting information or that disclosure would cause substantial competitive harm or result in less information being available for the agency's early warning detection program.

*B. The Final Part 512 Rule*

The final CBI rule specifically addressed the disclosure or confidentiality of EWR data.[1] 68 FR 44209, 44216 *et seq.* (July 28, 2003). The agency determined that the TREAD Act's provision on disclosure of EWR information (49 U.S.C. 30166(m)(4)(c)) did not allow withholding all EWR information from disclosure under Exemption 3 of the Freedom of Information Act (''FOIA''), which incorporates nondisclosure provisions contained in other federal statutes. The agency concluded that Section 30166(m)(4)(c) was not intended to foreclose the application of FOIA Exemption 4 to determine whether certain data should be disclosed under FOIA, but rather was intended to make more stringent the showing necessary for the agency to disclose otherwise confidential information.

The agency determined that some, but not all, of the types of information required under the EWR rule would be withheld from disclosure pursuant to Exemption 4. This exemption is applicable to certain confidential business information that, if disclosed, would likely cause substantial competitive harm, impair the government's ability to obtain information in the future, or both. The agency created class determinations applicable to EWR information pertaining to production numbers (except those for light vehicles), warranty claims, field reports, and consumer complaints. Those class determinations were added as Appendix C to 49 CFR Part 512. Further, the agency concluded that the disclosure of certain categories of EWR data is likely neither to cause substantial competitive harm nor to impair the government's early warning detection program. Accordingly, the agency decided against creating class determinations covering EWR information relating to fatality and injury claims and notices and to property damage claims.

The agency retained the class determinations on confidentiality in Appendix B, which have been applied for years to blueprints and engineering drawings containing process of production data (under limited conditions), future specific model plans (until the first model is offered for sale), and future vehicle production or sales figures for specific models (until the applicable model year production period ends). The agency revised the language of Appendix B to provide that such materials are determined entitled to protection under FOIA Exemption 4, as opposed to the historical language providing that such materials were presumed to be entitled to such protection.

*C. Petitions for Reconsideration*

The agency received three timely Petitions for Reconsideration, one each from the Rubber Manufacturers Association (''RMA''), the Alliance of Automobile Manufacturers (''the Alliance''), and Public Citizen Litigation Group on behalf of the Trauma Foundation, the Consumer Federation of America, Advocates for Highway and Auto Safety and the Center for Auto Safety (''PCLG'').

The RMA asks the agency to hold all of the EWR information confidential. It reiterates its position that Section 30166(m)(4)(c) qualified as a FOIA Exemption 3 statute prohibiting the release of any EWR information submitted to the agency and argues further that the release of this information would violate the Data Quality Act, 44 U.S.C. 3516. The RMA also makes further arguments in support of its position that fatality, injury and property damage claim information should be accorded class treatment under FOIA Exemption 4 and sought clarification of the agency's intended treatment of EWR reports relating to common green tires.

PCLG, on the other hand, asks the agency to vacate all the EWR class determinations in Appendix C and to release all of the EWR information to the public. PCLG reiterates the view expressed previously by Public Citizen in its comments on the NPRM that the purposes of the TREAD Act can only be achieved if all of the EWR information is available to the public.[2] PCLG claims the NPRM did not provide sufficient notice that the agency would consider the creation of class determinations or change the language of the pre-existing class determinations. PCLG also argues that the agency lacks authority to create class determinations, and further that

[1] The agency also set out the procedures to follow in seeking confidential treatment for information generally. Section 512.21(c) of those procedures contained a typographical error. After referring to the Chief Counsel's denial of a petition for reconsideration of the denial of a request for confidentiality, the rule states that ''the information may make the information available.'' We are correcting this to state that once a petition for reconsideration under Part 512 has been denied, ''the agency'' may make the information publicly available.

[2] In the Final Rule, we explained that the agency and Public Citizen differed in their views of the purposes of the TREAD Act. Public Citizen, and now PCLG on behalf of the petitioning organizations, contends that the early warning provisions of the TREAD Act were intended to supply the public with vast amounts of information collected from manufacturers. NHTSA believes that the provisions were intended to enhance the information available to the agency from which it could promptly identify potential problems.

individualized showings are necessary before any data are withheld.

The Alliance requests that the agency reconsider its anticipated treatment of vehicle identification numbers ("VIN") in EWR reports relating to fatalities and injuries. According to the Alliance, information is readily available over the Internet from which personal identifiers can be discerned using the complete VIN information. On this basis, the Alliance requests that the agency withhold from public disclosure complete VIN information pursuant to FOIA Exemption 6. The Alliance also asks that the agency withhold from public disclosure information relating to the state in which a reportable incident occurred as well as information on the country if the incident relates to an event that occurred outside of the United States. Again, the Alliance claims that state and foreign country information, when combined with other data, can lead to the revelation of personal information.

## II. Consideration of the Issues Raised by the Petitions for Reconsideration

### *A. FOIA Exemption 3*

The RMA reasserts its comment on the NPRM that Section 30166(m)(4)(c) is a statutory prohibition against the disclosure of any early warning data unless and until a defect or noncompliance investigation has been opened by NHTSA. RMA adds no new information to support its position.

As set forth in the detailed analysis accompanying the final Part 512 rule, the agency has concluded that Section 30166(m)(4)(c) does not qualify as an Exemption 3 provision. The case law makes clear that to satisfy Exemption 3, a law must either require that matters be withheld from the public in such a manner as to leave no discretion on the issue or establish particular criteria for withholding information or refer to types of matters to be withheld. In either instance, the level of discretion afforded to the agency must be severely restricted, a situation that is not evidenced by the language of 49 U.S.C. 30166(m)(4)(c). This statutory provision instructs the Secretary to determine initially which of the early warning reporting information is entitled to confidential treatment as confidential business information and, if so, then to consider whether disclosure will assist in the agency's implementation of the defect and remedy provisions of the Act. *See* 68 FR at 44225–44226. Among other things, the Secretary's decision whether the disclosure of the information will assist in carrying out those other statutory provisions is highly discretionary.

### *B. NHTSA's Authority To Issue Class Determinations*

PCLG asks the agency to reconsider its use of the "class determination" device, arguing that the agency lacks the authority to issue regulations treating like information as categorically subject to a FOIA exemption. According to PCLG, where Congress wants to exempt a category of records without requiring submitters to satisfy FOIA Exemption 4, it has exempted the information by statute.

PCLG argues that the agency may not treat any submission as subject to a FOIA exemption unless the submitter has made an individual showing that disclosure of the particular data meets the requirements of FOIA Exemption 4. Under its approach, the agency would have to review each EWR submission from each manufacturer regarding each reported item of data for each reporting period individually.

The agency disagrees. PCLG would require individual reviews despite the long history of class determinations, and the facts that numerous EWR reports containing the same informational elements for each category of manufacturer under 49 CFR 579.21–579.26 are submitted pursuant to standardized electronic reporting templates and that the information elements do not change from reporting period to reporting period. Because each data submission contains the same elements of information, in the same format (as required by the regulation), decisions relating to the disclosure of the data will not vary. As a result, individualized determinations will merely impose an administrative burden on the agency and manufacturers that can be avoided through a class determination.

The agency first proposed class determinations in a 1978 NPRM and adopted them in a final rule issued in 1981. *See* 46 FR 2049 (Jan. 8, 1981). During this early rulemaking, NHTSA made clear that a key purpose of the class determination was to improve its efficiency in processing requests for confidential treatment with regard to sufficiently specific categories of information:

> Although making class determinations relating to business confidential information is a difficult undertaking (as evidenced by the fact that few agencies make such determinations), the agency believes that to the extent that such meaningful classes can be identified and described, class determinations will ease the burdens of both the agency and submitter of information in making and processing claims for confidential treatment of information.

43 FR 22412, 22414 (May 25, 1978).[3] NHTSA also stated that the process would benefit the public by making information not subject to a FOIA exemption available more quickly. 46 FR 2049.

Thus, since 1981, NHTSA's regulations have included a provision (49 CFR 512.10 (2002)) declaring the authority of the Chief Counsel to issue class determinations. Consistent with this authority, Appendix B to Part 512 has long included three class determinations that identify certain classes of information as presumptively resulting in substantial competitive harm to a submitter if disclosed.

Class determinations of confidentiality are not unique to NHTSA. Class determinations contained within Food and Drug Administration regulations cover certain information that the agency receives. *See, e.g.* 21 CFR 20.111(d). Similarly, the Environmental Protection Agency has established through regulation a process through which it creates class determinations, 40 CFR 2.207, and has created a number of class determinations that cover specified information. Like the EWR data received by NHTSA, the information covered by these regulatory regimes is not generally subject to a statutory prohibition on disclosure that satisfies FOIA Exemption 3.

In their interpretations of FOIA, courts have encouraged the development of categorical rules whenever a particular set of facts will lead to a generally predictable application of FOIA. *See, Critical Mass Energy Project* v. *NRC,* 975 F.2d 871, 879 (D.C. Cir. 1992) (en banc). In *Critical Mass,* the court noted that establishing a discrete category of exempt information will implement the

[3] The Freedom of Information Clearinghouse ("Clearinghouse"), a joint project between Public Citizen and the Center for Responsive Law, commented on the original CBI rule, noting that the group generally supported the proposed rulemaking but expressed reservations over the application of class determinations unless the determinations were rebuttable and did not act to limit the authority of the Administrator to release that information under limited conditions. Comments from the Freedom of Information Clearinghouse, Docket 78–10; Notice 1, No. 10, at 3 (July 28, 1978). NHTSA incorporated these suggestions into the final rule. The Clearinghouse raised similar concerns during a subsequent Part 512 rulemaking that addressed, among other things, the confidentiality of cost data as a class. Comments from the Freedom of Information Clearinghouse, Docket 78–10; Notice 9, No. 5, at 5 (Aug. 21, 1989). Provisions allowing the Administrator to make otherwise confidential information public remain today, and the disclosure provision in the TREAD Act addresses that process.

congressional intent to provide workable rules and that such categorical rules further FOIA's purpose of expediting disclosure. *Id.*

Courts have not questioned the authority of agencies to promulgate regulations involving confidentiality under FOIA. *See Neal-Cooper Grain Company* v. *Kissinger,* 385 F. Supp. 769 (D.D.C. 1974) (discussing agency regulation that protected certain categories of information from disclosure), and *EEOC* v. *Associated Dry Goods,* 449 U.S. 590 (1981) (upholding the validity of an agency's regulation that permitted limited disclosures of case information to the relevant parties, their attorneys, and witnesses as necessary for the agency to carry out its functions under Title VII of the Civil Rights Act).[4]

In adopting the final CBI rule, NHTSA made a decision to proceed by rule rather than individual determinations. The choice whether to employ rulemaking or individual adjudications to resolve an issue is one left primarily to the agency, *SEC* v. *Chenery,* 332 U.S. 194 (1947), and courts have consistently and favorably recognized the ability of agencies to promulgate regulations without having to resort to individual resolutions or orders. *See National Petroleum Refiners Ass'n* v. *FTC,* 482 F.2d 672 (D.C. Cir. 1973).

There are many valid reasons for proceeding by rule. To begin, the EWR regulation requires the submission of standardized reports, which are particularly well suited to the resolution of confidentiality claims by rule. Its provisions apply to manufacturers of certain types of motor vehicles and motor vehicle equipment. For each type of vehicle or equipment, the reporting elements are identical for all covered manufacturers. The reporting is performed utilizing standardized reporting templates. While the data reflect the individual experience of each manufacturer, the nature of the information reported is the same.

Whether particular information is entitled to confidential treatment under Exemption 4 depends on the nature of the information and the likely consequences of its release. EWR information from various manufacturers of motor vehicles, child restraints and tires (e.g., the number of warranty claims) should be treated the same way under the law, both because the impact of disclosure on the competitive environment is the same as applied to those manufacturers and because the possibility that releases of the information could lead to more restrictive policies applicable to warranties, field reports and customer complaints is the same. Proceeding by rule achieves consistent resolutions of confidentiality based on criteria under Exemption 4.

Second, mandating individual requests for confidential treatment would, taking into account in-house experience and capabilities, subject smaller businesses to a disadvantage. We expect that larger manufacturers would routinely seek confidential treatment for EWR submissions, but that many smaller manufacturers (who are less familiar with regulatory practice) would have difficulty in properly assembling and submitting the material that must accompany an individual request for confidential treatment under Part 512. As a result, it is likely that the data submitted by larger manufacturers would be accorded confidential treatment under Exemption 4, but that the same type of data submitted by relatively small businesses would not. The small business would then face the costs of obtaining outside support for an appeal under 49 CFR 512.9. These burdens and costs run against the grain of federal laws and executive orders that seek to reduce, as opposed to increase, the regulatory costs on small businesses. *See e.g.*, 5 U.S.C. 601 *note.* While we anticipate that, over time, smaller businesses will properly seek such treatment for their submissions and learn how to present a valid claim, in the interim, a small business would be unduly disadvantaged despite the fact that its submissions should be entitled to the same treatment as those of larger and more sophisticated manufacturers.

Third, the courts have long recognized that agencies have the ability to promulgate those regulations that are necessary for them to perform those tasks Congress has assigned them. *See Federal Power Comm'n* v. *Texaco,* 377 U.S. 33 (1964) and *In re Permian Basin Area Rate Cases,* 390 U.S. 747, 780 (1968). *See also Weinberger* v. *Bentex Pharmaceuticals,* 412 U.S. 645, 653 (1973); *Balelo* v. *Baldrige,* 724 F.2d 753, 760 (9th Cir. 1984). In establishing the early warning reporting program, Congress directed NHTSA to collect information from manufacturers to assist the agency in promptly identifying possible safety-related defects. 49 U.S.C. 30166(m). Congress recognized that much of the information would be statistical in nature, reporting of the information would be in electronic form, and computer database systems would be used to review and utilize the information.[5]

Consistent with the statute and to achieve the results Congress expects—the earlier identification of potential safety issues—in a manner that does not require unavailable staffing, NHTSA has required manufacturers to submit large volumes of data in a consistent format that a computer can manage and sort through using statistical analyses. *See* 67 FR 45865–66. The resolution of the confidentiality of EWR data by class determination rather than by individualized assessment is consistent with this approach. If individualized review of confidentiality requests were required, the limited capacity to review a large number of individual confidentiality requests,[6] rather than the ability to efficiently assess large volumes of early warning data by computer and make follow-up inquiries, would strongly and negatively influence the scope of the early warning data collection effort. If NHTSA were to tailor early warning reporting to its capacity to manually process confidentiality requests made by individual written requests as opposed to class determination by rule, the program would be constricted and the results contemplated by statute would be compromised.

Finally, we are concerned that requiring individual requests for confidential treatment would have an adverse effect on the public's ability to access the public portions of the EWR data expeditiously. Were we to require individual confidentiality claims, we expect that manufacturers would make claims for confidentiality covering various EWR submissions. We would need to review and analyze each claim separately. Under Part 512, information that is the subject of a confidentiality claim is withheld from disclosure to the public while the agency considers the claim. The result is likely to be a substantial "back-log'' of EWR

[4] *See also,* O'Reilly, *Fed. Info. Disclosure* 3d, section 10.10 (2000) (agencies which have frequent submissions of confidential business data may pre-designate specific classes as confidential.)

[5] *See* 49 U.S.C. 30166(m)(3)(A) (providing for the Secretary to collect warranty and claims data, including aggregate statistical data on property damage from alleged defects) and 49 U.S.C. 30166(m)(4)(A) (providing that the Secretary shall specify the form of reporting EWR data, including by "electronic form''). Congress also told the agency to identify the systems it would employ to review and utilize the information and to take into account the agency's ability to use the information in a meaningful manner to assist in the identification of safety related defects. 49 U.S.C. 30166(m)(4)(A)(ii) and (D).

[6] In the first reporting period, early warning reports were submitted by over 50 light vehicle manufacturers, over 70 bus and medium-heavy vehicle manufacturers, over 150 trailer manufacturers, 13 motorcycle manufacturers, 18 tire manufacturers, and 8 child restraint manufacturers.

information in the confidentiality review process. Data that ultimately will be determined to be public will not be identified and made public until the process is complete, on a claim-by-claim basis. Moreover, the data would not be public until manually transferred to the public portion of the agency's data system on an individualized basis, which would entail further delay. The diversion of effort to review confidentiality claims for EWR information would also slow the processing of confidentiality requests covering other sorts of information submitted to the agency and, similarly, it would delay determinations that some of that information is not public and the release of that information to the public.

This stands in contrast to the system being implemented based on class determinations, which enables the agency to transfer appropriate data directly to the public section of the EWR database promptly following its receipt. In short, consistent with the use of a computerized database contemplated by the TREAD Act, class determinations allow the agency to establish database protocols that automatically protect confidential data while allowing prompt access to non-confidential information. In contrast, a system requiring individual review of every confidentiality claim is likely to delay the public's access to information not protected by a FOIA exemption.

In sum, we believe that the agency has the authority to establish class determinations categorically covering similar information (as it has done for decades), and that the early warning reporting information (with its standardized reports) is particularly well suited to class determinations. Individual consideration of each early warning submission is not only infeasible, but also would seriously overwhelm agency resources.

*C. Scope of Notice*

PCLG asserts that the agency did not provide adequate notice that it might apply class determinations to EWR data. It asserts the NPRM did not propose the categorical exemptions for EWR information or identify them as an option that the agency was considering, but rather expressed the intent not to add class determinations and to create a presumption of disclosure. Accordingly, PCLG claims the class determinations should be vacated.

We disagree. The NPRM provided sufficient notice under the Administrative Procedure Act ("APA") of the agency's considerations with regard to the confidentiality of the EWR information. The APA is intended to ensure that the public has a meaningful opportunity to comment on potential agency action. The case law construing the APA makes clear that a final rule may differ from the proposed rule and that additional information received during the notice and comment period will play a role in shaping the terms of the final regulation.[7]

The NPRM expressly sought comment on whether to create class determinations with regard to the EWR data, while recognizing that the final EWR requirements had been proposed but not yet been promulgated. After discussing the possibility of creating class determinations applicable to information submitted in response to particular investigations,[8] the agency sought comments with regard to the treatment of EWR information:

> We are also interested in receiving comments regarding whether any of the proposed class determinations should be applicable to the material to be submitted under the agency's "early warning" regulations and whether any additional class determinations should be established. For example, the agency's "early warning" NPRM proposes that manufacturers submit to the agency reports on incidents involving deaths or injuries and copies of field reports. The agency seeks comments regarding whether the agency should presumptively determine that these (or a subset of these) types of documents would or would not cause competitive harm to the submitter if released. Any suggested changes or additions to the proposed list of class determinations should be justified. We recognize that a final rule has not yet been issued regarding the "early warning" requirements, but we ask commenters to provide as much information as possible within this comment period. If necessary, we will allow for additional comments prior to finalizing any class determinations covering the "early warning" submissions.

There can be no doubt that the public understood the potential scope of the rulemaking. We received numerous comments from a myriad of sources. The comments—including those of Public Citizen—addressed all parts of the EWR requirements and addressed in detail each category of EWR data as a class. This included both whether the various categories of EWR information should be accorded confidentiality and the nature of the determination.

Public Citizen's comments expressly addressed the possibility of creating additional class determinations, favoring those that would find data presumptively public and opposing those that would find information presumptively confidential. Public Citizen argued that no showings of substantial competitive harm were significant enough to justify the use of class determinations for any EWR information. This supports our conclusion that Public Citizen, as well as other interested members of the public, had adequate notice about the possible application of class determinations to EWR information.

*D. The "Presumptions" of Confidentiality in Appendix B*

In the final CBI Rule, the agency amended the preexisting class determinations—contained in Appendix B to Part 512—from determinations that information covered by those class determinations would be treated as presumptively confidential to determinations that the information is protected by FOIA Exemption 4. We did not change the scope of Appendix B, which applies to certain categories of information—blueprints and engineering drawings that contain process and production data, future specific model plans (until the vehicle model is offered for sale), and future vehicle production or sales figures (under limited circumstances) for specific models. PCLG objected to the amendment.

Upon reconsideration, we agree with PCLG that there is merit to the application of a presumption, as opposed to a determination, for the class determinations in Appendix B. Appendix B is typically invoked by a company in connection with the submission of specific information in response to an agency information request. The agency reviews the materials in light of the claim that the particular information falls within the category of information covered by Appendix B. The submitter also provides the certification required by 49 CFR 512.4, which requires the company to attest that it has in fact maintained the confidentiality of the material at issue.

[7] The question whether the initial notice is adequate sometimes is cast in terms of whether a second round of comment is necessary. The test for deciding whether a second round of comment is required is whether the final rule promulgated by an agency is a logical outgrowth of the proposed rule. *American Water Works Ass'n* v. *EPA,* 40 F.3d 1266, 1274 (D.C. Cir. 1994). That standard is applied functionally by asking whether the purposes of notice and comment have been adequately served—that is, whether a new round of notice and comment would provide the first opportunity for interested parties to offer comments that could persuade the agency to modify its rule. *Id. See also Environmental Defense Center* v. *EPA,* 344 F.3d 832, 851 (9th Cir. 2003) (restating logical outgrowth test).

[8] Many manufacturers pointed out the distinction between the comprehensive nature of the EWR data and submissions in response to information requests in individual defect investigations for which they generally do not seek confidential treatment.

While not common, it is possible that information a manufacturer claims to be covered by a class determination is not in fact covered by that class determination. For example, a sketch of a component may be claimed to be an "engineering drawing,'' but in fact may not be specific enough to enable another company to manufacture it. The dimensions and specifications of some commonly used automotive components (i.e. wheel studs, brake linings, suspension components, etc.) may already be in the public domain. A future product plan may have been announced, or may be announced between the time the claim is made and when we review the claim.

The presumption, coupled with the requirement for an individualized claim, strikes a balance consistent with the possibility that materials submitted may be outside the scope of Appendix B, and the possibility that materials may be in the public domain.

In light of their application, we have decided that the class determinations in Appendix B had properly provided that the agency has determined that disclosure of data within those categories "presumptively'' will cause substantial competitive harm. Appendix B is being revised to read as it had before the final rule became effective.[9]

*E. Determinations of Confidentiality in Appendix C*

The RMA and PCLG petitions ask the agency to change its treatment of EWR data, taking diametrically opposed positions. The RMA argues that Appendix C to Part 512 should be expanded to include all EWR data not already included in Appendix C, *i.e.*, information about claims and notices of fatalities and injuries, the number of property damage claims, and information about common green tires. In contrast, PCLG asks the agency to vacate all of Appendix C, asserting that the class determinations for certain production data, and information relating to warranty data, field reports and consumer complaints were not justified.

In addition, the Alliance petition seeks an expansion of the Appendix C class determinations of confidentiality to include two data elements in reports on incidents involving fatalities and injuries—vehicle identification numbers ("VINs'') and state or country of incident (if outside of the United States).

1. Claims and Notices Regarding Fatalities, Injuries, and Property Damage

In the final CBI rule, the agency concluded that the information about claims and notices of fatalities and injuries and the number of property damage claims ("claims information'') are not entitled to confidential treatment. We noted that information about such claims is often publicly available, either from court documents or from media reports about crashes. As we explained, this information is not likely to reveal business strategies or other data that can be used competitively. We also found there to be no likelihood that disclosing this information would impair the agency's defect investigation program.

The RMA petitions the agency to reconsider its treatment of these claims data, asserting that information about fatality, injury or property damage claims is similar in nature to that about warranty claims, field reports and consumer complaints, which are included in the Appendix C class determinations of confidentiality. The RMA also argues that the claims information amounts to unverified or unsubstantiated allegations, preliminary to the determination of a defect, and will be wrongly perceived by consumers and others. It contends that the data may be used in misleading cross-company comparisons, potentially affecting purchasing decisions by consumers, and that this could result in competitive harm. The RMA further asserts that the compilation of information about claims provides a more robust database than might otherwise be publicly available.

We have considered the RMA's petition, but continue to believe that early warning reporting information on fatality, personal injury and property damage claims does not fall within the purview of FOIA Exemption 4. Unlike the comprehensive disclosure of warranty, field report and consumer complaint information, release of EWR claims information will not reveal underlying business decisions, approaches and strategies. As explained in the final rule, the warranty, field report and complaint information reflect the business policies, practices and decisions (and, in some circumstances, cost structures) of each manufacturer. Disclosure of the comprehensive database of this information would provide competitors with information about how consumers view their products and corporate marketing efforts. They reflect what customers say, like or dislike and seek to have repaired, changed or replaced, providing considerable feedback, by system and component, on product performance and developmental issues.

In contrast, disclosure of information on fatality, injury and property damage claims does not reveal corporate strategies or intangibles such as consumer acceptance of product features or reaction to corporate programs, such as broader warranty coverage.[10] The claims data are far fewer in number. They reflect actual events (although the cause and nature of the event and the responsibility for any consequential injury or damage is often disputed) that are historical and do not reflect ongoing and typical customer experiences or product evaluations.[11] The remainder of RMA's petition appears to be premised primarily on two erroneous beliefs. First, the RMA seems to assume that early warning data will be treated as evidence of a safety-related defect. Second, the RMA argues that disclosure should be consistent with the general treatment of information exchanged during discovery in private litigation as opposed to the mandates of the Freedom of Information Act. Both premises are wrong.

The final rule made clear that the purpose of the early warning data is to provide the agency with information indicating possible safety-related problems in motor vehicles and equipment. The data will assist the agency in determining what issues should be investigated to ensure that safety related defects are addressed expeditiously. Early warning

[9] In contrast to Appendix B, we continue to believe it appropriate that the class determinations in Appendix C (applicable to EWR data) include a determination that the covered classes are exempt from disclosure, rather than a determination that they are "presumptively'' exempt from disclosure. Unlike particular submissions responding to specific questions in individual investigations, the EWR data will provide identical elements of information pursuant to the EWR regulation, electronically, at regular intervals. The EWR data do not give rise to the same concern leading us to reestablish the "presumption'' applicable to other class determinations. There is no issue as to whether it falls within or outside of the category of information covered by the class determination.

[10] Under Exemption 4, the information to be protected must be commercial or financial. Data relating to fatalities, injuries and property damage claims are based on certain information received involuntarily by the manufacturers, and do not constitute commercial or financial information. *See generally, National Ass'n of Home Builders* v. *Norton*, 309 F.3d 26, 38–39 (D.C. Cir. 2002).

[11] Under the early warning regulation, claim and notice information is different from customer complaint data. Customer complaints are communications received by manufacturers expressing dissatisfaction with a product (whether because of performance or the possible presence of a defect) and by definition do not include a claim or notice involving a fatality or injury. In general, claims involve written requests or demands for relief that a manufacturer receives, and notices refer to information received by a manufacturer (other than a media article), that do not include a demand for relief. Customer complaints reveal overall customer experience, while claims and notices reflect specific claims for relief premised on allegations of actual injury or damage.

information, coupled with other information in the agency's possession, will be used to identify appropriate issues for investigation, and will not, in themselves, demonstrate that a safety-related defect exists.

Like NHTSA, RMA is of the view that EWR data relating to fatalities, injuries and property damage are not defect data. RMA has not provided support for its premise that—contrary to its position—these EWR data will be perceived as defect data. In any event, RMA proceeds to assert that the data should be treated confidentially because there will be cross-company comparisons. Even assuming cross-company comparisons based on the death, injury and property damage claims data could be made, the comparisons themselves do not give rise to substantial competitive harm within the meaning of Exemption 4. Nor has the RMA demonstrated that the comparisons would substantially affect purchasing decisions.

The tire industry's market can be divided into two segments: sales of tires to vehicle manufacturers for new vehicles, which the RMA refers to as original equipment customers, and sales to the replacement market. Vehicle manufacturers are very sophisticated purchasers, and often are involved directly in the design of tires supplied by tire manufacturers. Vehicle manufacturers also have considerable experience with early warning data. The RMA has not shown that vehicle manufacturers would base tire purchases on the early warning death, injury and property damage claims information submitted by tire manufacturers, and the RMA's own statements that the information is not useful for comparisons (*e.g.*, because of the absence of production data from which normalized rates could be developed) support our view that a competing tire manufacturer would not use the early warning claims data in a competitively harmful way.[12]

Similarly, the RMA has not demonstrated that the release of these categories of early warning data likely would cause substantial competitive harm in the replacement tire market. As indicated by the RMA's petition, tire manufacturers themselves would not make, and would generally deny the validity of, any comparisons based on these data. This view of the validity of comparisons suggests that competitors would not go to the effort to develop comparisons and substantially undercuts their impact.

Even assuming that someone would attempt to make a comparison based on death, injury and property damage claims information, the publicly available information is limited and not useful for comparisons, as recognized by the RMA. Tire manufacturers must provide separate reports by tire line, tire size, stock keeping unit, manufacturing plant and production period. 49 CFR 579.26. As a result, their reports will include numerous rows of data. In contrast, the numbers of incidents of deaths and injuries in the claims information submitted by tire manufacturers on December 1, 2003 are not numerous, particularly when compared to the numbers of sizes and models of tires.[13] In addition, the absence of production data precludes the development of normalized rates (*e.g.*, claims per 100,000 tires) that would be needed for comparisons.

In any event, and perhaps because of these fundamental limitations, the RMA has not shown how the modest amount of data present in the submissions would be used in cross-company comparisons, who would perform them, or the competitive significance of those comparisons. Nor has the RMA addressed the fact that some smaller and lesser-known tire companies reported few to no death, injury, or property damage claims, which could readily prompt conclusions by potential consumers that it was not surprising that a small company received few claims and, therefore, that comparisons based on these early warning data do not substantially influence purchasing decisions.

Nor do we find persuasive the RMA's suggestion that because information like the early warning data is often—but not always—subject to protective orders in private litigation, it should be protected from disclosure under Exemption 4 of the Freedom of Information Act. Protective orders may be issued under a broad standard "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.'' *See* Fed. R. Civ. P. 26(c). Exemption 4 is narrower, and the courts have recognized that the standards applied to protective orders and under FOIA differ. *See Burka* v. *HHS*, 87 F.3d 508, 517 (D.C. Cir. 1996); *Anderson* v. *HHS*, 907 F.2d 936, 946 (10th Cir. 1990).[14]

Finally, the RMA contends that its members' claims information form compilations of information that are confidential. As noted in the final rule, the collection of specific information that, when assembled together, would reveal sensitive commercial information can be protected under Exemption 4. For example, in *Trans-Pacific Policing Agreement* v. *United States Customs Service*, 177 F.3d 1022 (D.C. Cir. 1999), the court recognized that a compilation of complete commercial shipping code information that would reveal competitively sensitive information could be protected under Exemption 4.

Not all compilations, however, meet these criteria. As noted above, the compilation of warranty, field report and consumer complaint data permits competitors to evaluate how consumers, suppliers and others in the market respond to various product-related decisions. Competitors may use the information (not otherwise available without substantial investment) to advance their own product offerings. The compilation of these categories of data reveals substantially more, both qualitatively and quantitatively, than the revelation of the various pieces of individual data.

In contrast, the fatality, injury and property damage claims information is a collection of data points. While we believe these data will be useful in identifying possible safety problems worthy of investigation, the compilation of those data points does not confer competitive value to the data elements themselves. Nor does the RMA explain how competitors could use the claims information, whether individually or collectively, to advance their competitive advantage. Since the RMA's petition does not establish that disclosure of this early warning information will cause substantial

[12] This stands in contrast to the manner in which competitors could readily use other EWR data such as warranty data. For example, GM explained that warranty data provide an index of manufacturer costs and reveal a manufacturer's field experience with a particular component and supplier, which would enable competitors to benefit from a submitter manufacturer's experience in selecting suppliers. Disclosing warranty data would also benefit suppliers vis-à-vis a manufacturer since suppliers would receive information that they do not receive under current information sharing efforts. Similarly, JPMA observed that warranty data provide "real time'' information concerning a company's production capacities, sales and market performance, which, if disclosed, would enable competitors to identify vulnerabilities and allow them to target production and marketing efforts accordingly. The effects of disclosure are discussed in greater detail in the section on warranties and in the final rule's preamble.

[13] At the time that the RMA submitted its petition for reconsideration almost a full quarter of reportable early warning data was in the hands of the RMA's members.

[14] Moreover, as a practical matter, protective orders often are submitted on consent by the parties in a civil action, and the court does not see the documents or independently assess the consequences of revealing them to non-parties. Thus, the fact that courts have issued protective orders is not particularly meaningful in determining the confidentiality of documents under Exemption 4.

competitive harm, the agency will not alter its decision to release this information.[15]

2. VIN and State (or Foreign Country) Information

The Alliance requests that the agency expand its early warning reporting class determinations in Appendix C to cover two items of information provided in reports of incidents involving fatalities or injuries. *See generally*, 49 CFR 579.21(b)(2). First, it asks that VIN information included in fatality and injury claims data be accorded confidentiality because the VIN could be used to trace the identity of the vehicle owner(s). The Alliance provided information showing that individuals can be easily identified by using VIN data as the starting point and coupling this information with information from commercially available databases.

Second, the Alliance requests that the identification of the state or foreign country where the incident occurred be treated as confidential. The Alliance argues, without providing separate justification, that in sparsely populated states, an individual could research local media outlets to determine the identity of the individuals involved in the incident.

We have decided to add to Appendix C the last six digits of the VIN data in the information on deaths and injuries. We have decided not to do so with regard to information relating to the state or foreign country in which incidents occurred.

*VIN Information*. Each VIN consists of 17 characters. In general, the first eight characterize the manufacturer and attributes of the vehicle including the make and type of vehicle (*e.g.*, the relevant line, series, body, type, model year, engine type and weight rating). The ninth digit is a check digit. In the last eight characters, the first two represent the vehicle model year and plant of production, and the last six are the number sequentially assigned by the manufacturer in the production process. *See* 49 CFR 565.6 (detailing elements of the VIN code), SAE Standards J218 (passenger car identification terminology) and J272 (vehicle identification number systems).

Under the final CBI rule, NHTSA's disclosure of fatality and injury data included the entire VIN. Based in part on our consideration of the Alliance's petition for reconsideration, we have decided to modify the rule to disclose the initial 11 characters of VINs and hold the remaining 6 characters confidential. The disclosure of the initial 11 characters provides information on the vehicle identified in the claim or notice, beyond make and model information that is already available. *See, e.g.* 49 CFR 579.21(b)(2); *see also* 68 FR 44221–22. The release of this VIN information is not accompanied by a risk of violating an owner's privacy.[16] However, based in part on the Alliance's petition for reconsideration, we will hold confidential the last six characters of the VIN because they can be used to obtain personal identifying information.

Following review of the Alliance's petition, the agency examined a widely available legal database—WESTLAW—and several websites that offered to provide personal information on individuals using the VIN of a vehicle for a nominal fee. The agency was readily able to determine the name, address, date of birth, and lien information of the vehicle owner using the full VIN. In view of this easy identification, the disclosure of full VIN information would jeopardize the personal privacy of individuals involved in EWR reports of fatalities and injuries arising from motor vehicle crashes.

NHTSA is according confidentiality to the last six digits of VINs under FOIA Exemption 6, which protects personal privacy interests. Under Exemption 6, an agency engages in a balancing process. The first step in the process is an assessment of the privacy interests at stake. In *Center for Auto Safety* v. *NHTSA*, 809 F. Supp. 148 (D.D.C. 1993), the court recognized the privacy interests in the names and addresses on consumer complaints received by NHTSA. The same interests exist here. The second step is an assessment of the public interest. Under Exemption 6 the concept of public interest is limited to shedding light on the government's performance of its statutory duties. We note that the public will be able to review EWR information on claims for fatalities and injuries, including identification of the make, model and model year of the vehicle and the component or system implicated in the claim. Disclosing additional VIN information that would enable someone to identify the owner of the vehicle does not serve a public purpose. If disclosed, it would not answer the question of "what the government is up to.'' *Dep't of Justice* v. *Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773 (1989). *See also National Ass'n of Retired Fed. Employees* v. *Horner*, 879 F.2d 873, 879 (DC Cir. 1989) (the sought information must enable "the public [to] learn something directly about the workings of the Government'') (emphasis in original). The final step in applying Exemption 6 is weighing the competing privacy and public interests against one another. As in *Center for Auto Safety*, the privacy of the persons who may be identified from the last six digits of VINs will be recognized and protected because there is no ascertainable public interest of sufficient significance or certainty to outweigh that right. 809 F. Supp. at 150.

*State and Foreign Country Information*. We are denying that portion of the Alliance petition requesting protection for information relating to the state or foreign country in which incidents occurred. According to the Alliance, information relating to the location of an incident may allow interested parties to discover personal information about victims by perusing local newspapers or other reports relating to the event. While it is possible for the EWR information to be linked to other publicly available information, we do not believe that privacy interests are sufficiently jeopardized to justify withholding such information. As pointed out by the Alliance petition, the incidents of concern have already received some public attention and, therefore, personal information about those involved is likely already known on a local or state level. The disclosure of this information in the EWR reports is unlikely to shed much additional information into the public domain.

3. Common Green Tires

The RMA asks the agency to clarify its position with regard to information submitted relating to "common green'' tires and to create a class determination covering that reporting requirement. It notes that this particular issue was not addressed in the final CBI rule.

The term "common green'' refers to a basic tire construction used as the foundation for an array of different tire models and/or brands. This basic tire envelope is placed into different tire molds in the tire production process and serves as the foundation for tires with different tread patterns and different brand names. The early warning final rule defines "common greens'' as tires "that are produced to the same internal specifications but that have, or may have, different external characteristics and may be sold under different tire line names.'' 49 CFR 579.4(c). The early warning regulations

[15] Nor has the RMA provided any new or convincing information suggesting that disclosure of claims information would impede the agency's defect program.

[16] This redaction policy is consistent with the one followed by our Office of Special Crash Investigations.

include a separate common green tire reporting requirement. As part of each quarterly report, each manufacturer of tires provides NHTSA with a list of common green tires and for each specific common green tire grouping, the listing includes relevant tire lines, tire type codes, stock keeping unit ("SKU'') numbers, brand names, and brand name owners. 49 CFR 579.26(d).

The RMA explains that the disclosure of common green tire listings is likely to cause competitive harm because common greens reveal the relationships between tire groupings, providing competitors with the ability to determine a tire manufacturer's marketing and business plans and potentially its cost structures. Because common green information would reveal the identities of tires that have the same internal specifications, as well as the relationships between manufacturers and private brand name owners, the RMA argues that the disclosure of this information would cause tire manufacturers substantial competitive harm.[17]

The agency did not specifically address "common greens'' in the final CBI rule. We agree with the RMA that disclosure of "common green'' information is likely to cause substantial competitive harm. The disclosure of "common green'' lists would reveal to competitors a tire manufacturer's production strategies, marketing strategies, future product plans, and its tire production and mold design approach.

In addition, "common green'' identifier data are appropriate for a class determination under Appendix C. The common green is the basic envelope of tire production. The type of "common green'' identifier information submitted under the EWR rule is the same for all manufacturers. The impact such information would have in the competitive market will not vary and individual consideration of each submission would result in identical determinations that disclosure is likely to lead to substantial competitive harm. Accordingly, we have added a class determination to Appendix C covering the submission of "common green'' identifier data pursuant to the early warning regulation.

4. Production, Warranty Claims and Adjustments, Field Reports and Consumer Complaints

PCLG takes issue with the agency's class determination of confidentiality of EWR production data (for all products other than light vehicles), warranty claims information, field reports and consumer complaints. After reviewing the comments and the applicable law, the agency determined that release of this information was likely to cause substantial competitive harm and to impede the agency's early warning program. PCLG argues that all of this information should be publicly available.

In reaching its determination, the agency balanced private and public interests consistent with Exemption 4. NHTSA considered the manufacturers' interest in legitimate protection from competitive harm as specified by Exemption 4 of FOIA and balanced the various public policy issues involved—the public's interest in disclosure and the extent of impairment that likely would follow from disclosure.

PCLG asserts that the agency improperly applied these policy considerations, arguing principally that the information collected under the early warning program should be disclosed to allow the public, as well as the agency, to assess whether potential safety related defects exist. PCLG also asserts that the agency should not hold early warning information confidential without individual consideration of each manufacturer's competitive situation and whether disclosure will likely cause substantial competitive harm to that manufacturer. Similarly, PCLG asserts that in such reviews the agency should segregate any portion of the early warning data that will not cause competitive harm or impair the government's program. Finally, PCLG takes issue with the agency's application of the impairment prong of Exemption 4.

PCLG's objection to the agency's approach closely parallels its argument that the agency lacks the legal authority to establish class determinations. PCLG advances the proposition that the agency must make individual decisions with regard to individual submissions of EWR data under FOIA.[18] It also observes that the agency makes some information submitted by manufacturers in individual investigations of alleged defects public and disagrees with the agency's determination that the comprehensive compilation of early warning information is quantitatively and qualitatively different from the specific data provided by manufacturers in response to NHTSA Office of Defects Investigation ("ODI'') information requests in particular defect investigations.

As noted above, the early warning program is a unique government program. The information is being collected and analyzed electronically. Unlike most government programs, much of the data will never be directly relevant to any particular agency investigation or regulatory activity. The agency is unaware of any similar government database. In this context, cases reviewing particular competitive assessments under particular facts in light of a particular submission to the government shed no light on whether the wholesale disclosure of business information is likely to cause substantial competitive harm.

Nor is this a situation, as with individual submissions like those in the course of defect investigations, that allows for the segregation of data beyond the categorizations the agency has already applied. The agency has already segregated the early warning data into the various categories of information to be provided and, as set forth in the final rule, considered each category separately. As a result, the agency determined that while some categories of early warning data were entitled to confidential treatment, other categories should not be. We do not believe it is possible to further segregate the data within each category, as each category contains from each manufacturer the same type of data presented in a required format. The early warning database is fundamentally different than individual submissions (such has those presented during defect investigations) in which confidential data is routinely redacted and the remainder of the submission is placed in the public file.

PCLG takes issue with the agency's consideration of the potential of the release of comprehensive early warning data to cause competitive harm. PCLG challenges the notion that cross-

[17] As explained in tire manufacturer letters seeking confidential status for common green lists submitted on December 1, 2003, the disclosure of EWR "common green'' information would allow competitors to assess a tire manufacturer's technical capabilities and marketing strategies, as well as tire production and mold design technology. In addition, competitors could use the "common green'' information to determine a tire manufacturer's future product plans.

A report submitted by Professor Michael D. Bradley that accompanied Cooper Tire's comments to the docket notes that common green tire information serves as the basis for tire line production and that the release of this type of information would provide a "complete and comprehensive'' picture of a tire company's production and marketing strategies. The report observes that the disclosure of this information would be equivalent to the release of a tire company's business plan.

[18] While PCLG offered several cases to support its view, the cases did not support this broad proposition. The cases fairly point out that there needs to be an adequate basis for withholding information. NHTSA believes that there is adequate support for Appendix C to the CBI rule.

company comparisons that may arise from disclosure are of a nature falling within the purview of Exemption 4. According to PCLG, such analyses merely reveal the performance of products and present the public with the same kind of information available through popular magazines and from other public sources.

PCLG submitted an Appendix to its petition for reconsideration containing numerous newspaper articles and other publicly available sources making cross-company comparisons or discussing vehicle performance issues. PCLG asserts that such information negates the agency's finding that disclosure of the compilation of data relating to raw warranty claim and consumer complaint information and field reports is likely to cause substantial competitive harm.

The Appendix is not persuasive. The types of reports included in the Appendix are the result of largely anecdotal reports or limited data collection efforts. The public sources of information do not appear to remotely resemble, in breadth, subcategorization or objective underpinnings, the EWR warranty data. Unlike EWR data, they do not carry the imprimatur of being a comprehensive set of data collected directly by the manufacturers and submitted to the government for analytic review. Nor does PCLG's position consider the agency's concern, based on the comments in the docket, that disclosure will lead manufacturers to provide less warranty coverage, conduct fewer internal investigations and put fewer resources towards the receipt and resolution of consumer complaints. The result will be less information available to the agency's early warning detection program.

While we do not find the general arguments persuasive, below we review each category of confidential information in response to the assertion that the agency lacked information from which it could make a determination whether disclosure likely would cause substantial competitive harm to the submitter of the EWR information or impair the government's program.

a. *Production Numbers.* The final rule created a class determination for reports of production numbers for medium-heavy vehicles including buses, motorcycles, trailers, child restraint systems and tires—*i.e.*, the manufacturers covered by the comprehensive EWR requirements, except for light vehicle manufacturers. Light vehicle production is reported publicly. As we explained:

> Many business interests discussed their efforts to maintain the confidentiality of their production figures. Harley-Davidson and MIC [the Motorcycle Industry Council] stated that production numbers by model have never been generally available in the motorcycle industry. Cooper Tire submitted an affidavit, further confirmed through RMA's comments, with regard to the competitive harm that disclosure of otherwise confidential production numbers would have in the tire industry. JPMA argued that disclosure of these data would provide new entrants and competitors in the child restraint industry with information about production capacities, sales and market performance not otherwise available in the absence of considerable investment in market research. Bluebird (busses, school buses and motor homes), Utilimaster (final stage walk-in vans and freight bodies for commercial use) and the AORC (occupant restraint systems and other components) also each stated that production numbers in their segment of the industry are confidential and likely to lead to substantial competitive harm if released.
>
> The comments substantiate that production numbers in many sectors of the automotive and equipment industries are competitively protected information, revealing otherwise unobtainable data relating to business practices and marketing strategies. [68 FR 44221]

The record amply supports the creation of a class determination on the production numbers for vehicles and equipment subject to EWR reporting, other than light vehicles. Production numbers from these other sectors are competitively sensitive data. For example, RMA explained that tire production numbers, which are reported by (among others) tire line, tire size, stock keeping unit and plant of production (49 CFR 579.26), were competitively sensitive and that their routine disclosure to the public through EWR submissions would, among other things, enable competitors to analyze their competitors' businesses. Cooper Tire, noting the competitively harmful effects that would accompany the disclosure of production data, emphasized that the intense level of competition within the tire industry and the size differences among competitors made the risk of substantial competitive harm high, particularly for smaller tire manufacturers that produce products for the replacement market. An accompanying economist's report noted that the tire industry is "highly concentrated'' and that the disclosure of production numbers would reveal substantial information related to company marketing plans and strategies.

PCLG's specific objections to the class determination for production levels rest on its broad assertions that the class determination is not supported by the factual record and is inconsistent with the agency's past practice to disclose production information. However, PCLG's petition neither addresses the record nor provides factual or expert rebuttal.

PCLG further asserts that the agency's past practice has been to treat production numbers as confidential and provided an example to support its assertion. PCLG's assertion is inaccurate and is not supported by its example. As stated in the final rule, production numbers for manufacturers other than light vehicle manufacturers have been treated confidentially in the past on the basis that their disclosure is likely to cause substantial competitive harm to businesses engaged in these industries. 68 FR at 44221. Such an example is found in the Closing Report in ODI's investigation of certain Goodyear tires (PE 00–046). PCLG's example of past disclosure practices amounts to the release of warranty data, rather than production data, during the course of one defect investigation. This is of no bearing because investigation information is not comparable to that submitted under the EWR rule and because the confidentiality of warranty data is not determinative of the confidentiality of production data.

PCLG's other and more generalized arguments do not require a different result. PCLG's arguments disputing the bases for the class determinations under Exemption 4—*i.e.*, unwarranted product disparagement and competitor usage of data—do not refer or apply to production numbers.

b. *Warranty Claims and Adjustments.* The final rule established a class determination for warranty claim numbers for vehicles and child restraint systems, and for warranty adjustments in the tire industry. As noted in the preamble, the disclosure of warranty data is likely to cause substantial competitive harm:

> [T]he warranty information required by the early warning reporting rule—that is, the number of claims associated with specific components and systems broken down by make, model and model year (with slightly different breakouts for tires and child restraint systems)—is likely to provide competing manufacturers with sufficient information about the field experience of those components and systems to provide commercial value to competitors who may be deciding whether to purchase similar components, the price at which to purchase those components and which suppliers to choose. * * *
>
> While manufacturers are likely to explore the practices and policies of their competitors when reviewing any publicly available warranty claims information, the public is more likely simply to rely on generic cross-company comparisons. The warranty claims information may be used as

part of vehicle comparisons, even though the warranty terms and conditions and corporate warranty practices may differ. As a result, the potential for the warranty claims information to give rise to misleading comparisons and cause substantial competitive harm is also strong.

* * * * *

[W]e have determined that the early warning reporting of warranty information . . . is entitled to confidential treatment because its disclosure is likely to cause substantial competitive harm.

The warranty data required by the early warning reporting regulation are also entitled to confidential treatment because their disclosure is likely to impair the agency's ability in the future to obtain and use reliable warranty information as part of its program to identify potential safety related defects. Warranty claims data—which begin to accumulate as soon as vehicles are sold and continue for the length of any given warranty policy—will be a significant indicant of potential defects. The quarterly warranty claims reports, combined initially with the historical seeding material, will help the agency to identify trends involving particular equipment and systems or components in a particular make, model and model year of a given product. [68 FR 44222–23]

The record supports NHTSA's conclusion that warranty data have a variety of direct competitive uses. For example, the Alliance, whose members produce light motor vehicles, medium-heavy motor vehicles and motorcycles, through a report prepared by AutoPacific, explained that:

Actual working experience at various automotive companies confirms that comparative component warranty experience, reliability experience, and durability experience strongly influences component pricing and sourcing decisions. . . . [I]f one original equipment manufacturer purchases a component and obtains field experience with that component, it can be expected to use that information to make decisions about future purchases and the price it will pay. Providing that field experience to other manufacturers effectively gives them a "free ride'' at the expense of the first manufacturer. [Comments, Attachment A, at 1]

The Alliance's comments further noted the particular value that EWR warranty data have by detailing the manner in which they may be employed both by current and potential competitors who may decide to enter into the U.S. market. In addition, GM explained that warranty data provide an index of manufacturer costs. An article referenced in the preamble to the final rule described the direct use of warranty data by manufacturers to help them analyze and identify problems encountered in their vehicle fleets. Gregory White, "GM Takes Advice from Disease Sleuths to Debug Cars,'' Wall Street J., April 8, 1999 at B1 (describing GM plan to use warranty data to detect vehicle problems and eliminate claims and noting statistical analysis employed by rival DaimlerChrysler to accomplish the same).

The TMA, representing medium and heavy truck manufacturers, explained that the disclosure of comprehensive warranty data such as that collected under the EWR rule would provide competitors with previously unavailable market intelligence that is of much greater breadth and depth than the information contained in typical information submissions to the agency. RMA expressed concerns that the disclosure of warranty adjustment data would reveal different policies among tire manufacturers. Similarly, JPMA explained that competing child restraint manufacturers could use this information to their advantage and to the detriment of the submitter and it stressed that the data would provide competitors with real time, ongoing competitive information on a company's production capacities, sales and marketing performance.

PCLG's petition does not rebut the factual premises in the record of NHTSA's class determination on warranty claims, which includes warranty adjustments in the tire industry. Instead, PCLG attempts to make a case in favor of disclosure by submitting information on the agency's determination that certain information supplied by a vehicle manufacturer within the context of a specific investigation by ODI was not confidential. That sample submission, however, does not involve or represent EWR information.

As discussed at length in the final CBI rule, there are substantial differences between data submitted pursuant to the EWR rule, which contain information about the entire product lines of a manufacturer, and the limited and narrow information submitted by a manufacturer in response to an agency information request issued during the course of an ODI investigation. PCLG does not address or deny these inherent differences.

More generally, PCLG advances a number of arguments to support its view that EWR warranty numbers are not confidential. As one broad theme, PCLG disputes that a competitor's use of EWR warranty data to assess field experience for purposes such as durability assessments, purchasing, pricing and supply decisions, which PCLG calls avoiding development costs, is an adequate basis for treating these warranty data as confidential. In support of its position, PCLG asserts in part that competitive harm cannot be based on possible competitor use of data that identify safety problems in vehicles on the market. Both the implicit factual premise for this assertion and the legal basis for it are unfounded. Factually, EWR data are not data on safety problems. EWR warranty data reflect payment of warranty claims involving various systems and components, such as the power train and seat, without the identification of any particular component or any problem. The fact that a manufacturer made warranty payments for vehicles, tires or child restraints does not mean that these products contain safety-related defects. NHTSA's consideration of the data in the early warning review process does not suggest otherwise. NHTSA is using raw EWR warranty claims data as a tool in assessing whether a defect potentially exists. *See* 67 FR 45852 (July 10, 2002). The agency is reviewing these data for trends. Most data are not likely to indicate a potentially problematic trend. As to data appearing to indicate possible trends, ODI may make inquiries to manufacturers. If the agency's assessment of all available information, including (where appropriate) the manufacturer's response to its inquiries, indicates that an investigation is warranted, the agency will open an investigation. 67 FR at 45865. Thus, contrary to PCLG's suggestion, EWR warranty data do not in themselves identify safety problems.

Legally, PCLG contends that the EWR warranty information is being withheld to protect the manufacturer's reputation or ability to continue to sell the equipment. PCLG argues that the harm resulting from such disclosures is not a cognizable competitive harm under Exemption 4 and that revealing safety problems does not result in an unfair advantage to competitors, citing *Public Citizen Health Research Group* v. *FDA,* 704 F.2d 1280 (D.C. Cir. 1983). In that case, the court remarked in a footnote that competitive harm in the FOIA context is limited to the harm flowing from the affirmative use of proprietary information by competitors and that competitive harm should not be taken to mean simply any injury to competitive position as might flow from embarrassing publicity attendant upon public revelations concerning, among others, violations of safety laws.

PCLG's reliance on that proposition is misplaced. The EWR warranty data are being withheld because of the competitive harm that likely would flow from their disclosure, as discussed above, and not because of concerns over the manufacturer's reputation or ability to continue to sell the equipment. *See* 68 FR 44222–23. In view of the

competitively sensitive nature of the data, under Exemption 4 the data are confidential notwithstanding that withholding them would, as viewed by PCLG, save the manufacturer from the noncognizable harm of embarrassment. This conclusion is fully supported by a case that specifically clarified *Public Citizen.* In *Occidental Petroleum* v. *SEC,* 873 F.2d 325, 341 (D.C. Cir. 1989), the court made clear that the possibility that some noncognizable harm would flow from disclosure is not dispositive under Exemption 4, since an agency's role is to determine whether non-public information contained in documents is competitively sensitive, for whatever reasons.

PCLG also asserts that the release of the EWR warranty claim counts would provide significant information about component performance only in extreme cases and concluded that competitive injury supporting a class determination would rarely arise. We disagree. As pointed out in the Alliance's comments, these data are competitively sensitive on concerns such as component and system performance and reliability. Competitors and potential consumers would utilize these data, regardless of whether they reflect potential problems, the likelihood of few problems or otherwise. The fact that consumers would use the information to make comparisons, as a supplement to other sources of comparative information in purchasing decisions, was recognized in PCLG's comments. It simply ignored the fact that manufacturers could use the same information to the disadvantage of a competitor in the manner described above.

In the alternative, PCLG observes that even if the data reveal competitively valuable and sensitive information on good or bad performance, they may be a matter of public knowledge, there may be no competition on a system or component and there must be a showing that the competitors could not obtain the information at a reasonable cost. Whatever public knowledge there may be about a problem (*e.g.*, press anecdotes), as discussed above it would not be comparable to the EWR warranty claim submissions. Moreover, the motor vehicle, equipment, tire and child restraint businesses are highly competitive, and the record shows that the EWR warranty data are not available and would not be available at a reasonable cost. PCLG does not show otherwise.

PCLG adds that the information must have commercial value and argues that information related to components uniquely suited to a particular vehicle could not have competitive value. However, the value of the information is not dependent on whether a specific component has a single or multiple vehicle applications. EWR information provides insight into a broad range of issues, including field experience, customer satisfaction and cost decisions made by companies in paying warranty claims. This is a type of information that Exemption 4 was designed to enable the government to protect.

In another broad theme, PCLG asserts that NHTSA based its class determination on the noncognizable harm of unwarranted product disparagement arising from misleading company comparisons of warranty claims information. In the preamble to the final CBI rule, we recognized that warranty claims information may be used as part of vehicle comparisons, even though warranty terms and corporate warranty policies may differ, resulting in a strong potential for warranty claims information to give rise to misleading comparisons and cause substantial competitive harm. *See* 68 FR 44222–23. PCLG requests reconsideration of NHTSA's conclusions that the use of cross-company comparisons could result in substantial competitive harm.

First, PCLG asserts that NHTSA ignored well-established data sources, such as *Consumer Reports,* which is available to consumers seeking to make cross-company comparisons. It contends that consumers would treat the EWR warranty data as another source of information and that professionals would recognize the limitations of the data and evaluate them in context. In light of these other sources of information, PCLG discounts the competitive effect of release of the information. However, PCLG does not identify the comparisons that would be made using existing publicly available information or establish the comparability of public data to EWR warranty data. As discussed above, it appears that the public sources of information do not remotely resemble the EWR warranty data. Accordingly, we do not accept PCLG's theory.

Second, PCLG asserts that insofar as the rule was based on competitors' use of their rivals' information to make misleading comparisons and engage in unwarranted product disparagement, these comparisons are not a proper ground for withholding EWR data under Exemption 4. PCLG notes that laws preclude misleading marketing and the impact from misleading marketing will not be so widespread as to result in significant competitive harm. We believe that PCLG misunderstood NHTSA's rationale. The agency based the rule in part on the competitive harm that flows from the use of EWR warranty data by competitors and by consumers. We did not base it on misleading and unlawful product disparagement by competitors.

Third, PCLG argues that the possibility that information may be misinterpreted has never been recognized as a justification for according confidentiality to information. It notes that virtually all data can be misinterpreted and data cannot be withheld on this basis. However, in *Worthington Compressors, Inc.* v. *Costle,* 662 F.2d 45, 53 (D.C. Cir. 1981), the court permitted the consideration of consumer misuse of commercial information that is otherwise unavailable. Accordingly, NHTSA was authorized to treat EWR warranty data as confidential on this alternative basis.

In its final assertion on unwarranted product disparagement, PCLG contends that the harm occurring from the disclosure of these data amounts to adverse public reaction, which is not a cognizable harm under Exemption 4. *See Public Citizen Health Research Group* v. *FDA,* 964 F. Supp. 413, 415 n.2 (D.D.C. 1997). Factually, we adhere to our views of the harm as stated in the preamble to the final rule and disagree with PCLG's attempt to recharacterize the harm and eliminate the harms we identified. Since the EWR warranty data are competitively sensitive for a valid reason under Exemption 4, other potential consequences such as adverse public reaction, do not dictate that we treat the information as non-confidential. *Occidental Petroleum* v. *SEC.* The final CBI rule is based on such valid determinations, as described in the preamble.

PCLG's third broad theme is that the agency did not satisfy the impairment prong of Exemption 4 in its assessment of the release of EWR warranty data. Under the impairment prong, an agency may withhold information that, if released, "would impair the effectiveness of a government program.'' *Public Citizen* v. *NIH,* 209 F. Supp. 2d 37, 52 (D.D.C. 2002). *See also 9 to 5 Organization for Women Office Workers* v. *Federal Reserve System,* 721 F.2d 1, 11 (1st Cir. 1983), and Appendix B to the final rule's preamble.

NHTSA carefully considered the value of warranty claim data to the defect identification program and the impact that disclosure would have on manufacturer policies and decided that EWR warranty data should not be disclosed. The importance of warranty information had been explained:

We have often found warranty claims to be more valuable than customer complaints because the customer has identified a problem, a repair facility . . . has performed a repair, and the manufacturer has paid for some of or all the repair. This information is valuable to NHTSA as an early warning tool in assessing whether a defect potentially exists. The principal limit on the value is that after the expiration of the warranty . . ., this information is no longer generated. However, at times these programs are extended when there are problems with the product and at times manufacturers also pay for repairs under "good will'' programs. We have found that "good will'' actions provide valuable information in that manufacturers may choose to address a perceived problem by extending or liberalizing the terms of a warranty rather than by conducting a full recall, or by formally extending the warranty period. In order to aid in the early discovery of potential defects, the agency believes that the number of good will claims should be reported along with the more "traditional'' warranty claims. [67 FR 45852 (July 10, 2002)]

Manufacturers with generous warranty or good will programs will have a higher number of warranty claims than they would have with less generous programs, and releasing these data would create the perception that these manufacturers' products have relatively more problems.[19] Disclosure would encourage manufacturers to restrict more generous warranty and good will programs in order to report lower warranty numbers data. The restriction of warranty programs and consequent reduced reporting will reduce the amount of warranty information that the agency may consider. This would impair the agency's ability to determine whether a defect trend in a particular line of vehicles, equipment or tires exists, as well as potentially increasing the inconvenience to consumers. 68 FR at 44222–23. These effects are supported by comments in the record, including those from the Alliance, the Tire Industry Association ("TIA''), the Association of International Automobile Manufacturers ("AIAM''), and Workhorse.

PCLG asserts that the TREAD Act requires the submission of EWR data, which makes NHTSA's claim of impairment difficult to justify. This comment misses a critical underpinning of EWR reporting. While the TREAD Act authorizes the agency to compel manufacturers to provide data that they already collect, it explicitly precludes NHTSA from requiring the submission of information not in the possession of the manufacturer. 49 U.S.C. 30166(m)(4)(B).[20] It also does not authorize NHTSA to require good will repairs and does not restrict a manufacturer's discretion to set or reduce warranty coverage or good will repairs.

PCLG contends that other factors may influence a manufacturer's decision to provide extensive warranties, making the likelihood of impairment remote. We recognize that customer-oriented factors have a significant influence on the scope and extent of warranty programs. However, we agree with the manufacturers that publication of the EWR data would give some manufacturers "black eyes'' and that to a notable degree it is likely they would alleviate this problem, and improve sales and profits, by limiting warranty coverage, including good will payments. This would reduce the numbers of claims in the EWR warranty database, particularly toward the end of a warranty period and beyond, when components often break. ODI's analysis of warranty data to identify possible defects, which is predicated on substantial numbers to detect trends, would be impaired, as would its use in defect investigations. The agency thus believes that the risk of impairment associated with the wholesale disclosure of information such as warranty data is sufficient to justify the agency's application of the impairment prong of Exemption 4. Information in the record adequately supports NHTSA's conclusion. *See, e.g.* Comments from the Alliance, TIA, AIAM, and Workhorse.

PCLG adds that under the impairment prong there must be a rough balancing of the importance of the information and the extent of the impairment against the public interest in disclosure. *See Washington Post* v. *HHS,* 690 F.2d 252, 269 (D.C. Cir. 1982); *Washington Post* v. *HHS,* 865 F.2d 320, 326–27 (D.C. Cir. 1989). It states that this balancing is not in the record.

The importance of warranty claims data is explained in the record. The customer has identified a problem, a repair facility has performed a repair, and the manufacturer has paid for some of or all the repair during or after the warranty period. Separately, by model and model year, the numbers of warranty claims, by system and component, are reported to NHTSA. The magnitude of the numbers is important to the agency, as in our screening we will look for trends based in part on relatively high numbers. We believe that if warranty data were disclosed, given manufacturers' ability to set warranty coverage and to authorize good will repairs, warranty and good will coverage would be reduced and our ability to detect potential problems would be diminished. The resulting impairment to NHTSA would be substantial.

On the other hand, the public interest in disclosure of warranty information is limited. Warranty data are simply payment data. Standing alone, the EWR data simply provide numbers of warranty claims payments, by system or component. They do not identify the particular part or a problem. Based on EWR warranty data alone, we believe it is not possible to accurately identify a safety-related defect in a particular product.

PCLG also argues that data pertaining to older products, and by extension older technology, cannot qualify for protection under Exemption 4. This argument, however, ignores the baseline, competitive value of older data. For example, older information forms useful baselines for comparisons, which can be valuable in evaluating whether new technology is more durable than older technology. PCLG's argument also ignores the impairment concerns we identified in the final rule. Consequently, the agency believes that applying the class determinations set forth in Appendix C to older data continues to have merit.

Finally, the competitive value of these data as a whole, for numerous separate reasons discussed above, also resolves the issues raised by PCLG on segregating EWR warranty data. The data cannot be segregated without revealing competitively sensitive information. PCLG offers no suggestions on how these or other EWR data could be segregated to avoid the concerns we identified in the preamble to the final rule and above.

c. *Field Reports.* The final rule created a class determination of confidentiality for EWR field reports. Under the EWR rule, certain vehicle and child restraint systems manufacturers must report the total number of field reports they receive from their employees and representatives, and from dealers and fleets, that are related to problems with certain specified components and systems. In addition, these manufacturers must submit copies of field reports, except those received from dealers.

[19] The term "good will'' refers to those repairs that are "paid for by the manufacturer, at least in part, when the repair or replacement is not covered under warranty, or under safety recall reported to NHTSA under part 573 of [Chapter 49].'' 49 CFR 579.4(c).

[20] This section provides that the EWR regulations "may not require a manufacturer of a motor vehicle or motor vehicle equipment to maintain or submit records respecting information not in the possession of the manufacturer.''

As explained in the preamble to the final CBI rule, field reports reflect the in-use experience of a manufacturer's product, identifying specific problems encountered in the field not otherwise available to competitors. This information allows manufacturers to conform future design and production to field experience. Because the disclosure of this information would enable a company to improve its products without the need to invest in market research, engineering development or actual market experience, these data have substantial commercial value. Release of this information would reveal to competitors product features, components and systems which have met with consumer acceptance (and which have not) as well as what problems may be associated with certain components and systems. Using field reporting data and reports themselves, a competitor may determine areas of importance to a manufacturer (whether potentially related to safety or not) and enable a competitor to note the expected experience from a particular component or system.

The record supports the confidentiality of field report information. For example, the Alliance stated that a wholesale disclosure of field report data would enable industry-wide comparisons of component performances. AIAM noted that field reports would provide useful information on the manufacturing processes and cost structures to competitors without having to conduct the research to develop the information independently. The Truck Manufacturers Association ("TMA'') stated that disclosing field report data would reveal unobtainable market intelligence about a manufacturer and the operational status of its customers' vehicle fleets. Blue Bird indicated that field report data would assist competitors in conducting market research and strategic planning. It emphasized that the disclosure of these reports could compromise customer fleet operations. Although it generally questions the sufficiency of the record, PCLG does not address this or other record information in its petition.

In addition to causing substantial competitive harm, it is likely that the disclosure of field report information would reduce the field report data received by NHTSA, both in terms of the number of reports and their depth of content. 68 FR 44224. Comments in the record bear this out. TMA stated that disclosure of field report information would likely lead to the creation of fewer and less informative field reports and a consequent reduction in the quality of information submitted to NHTSA. Similarly, the AIAM expressed concern about diminished thoroughness and candor if they are disclosed to the public. Blue Bird stated that NHTSA can reasonably anticipate that manufacturers would take measures to minimize field report information if disclosed. This record information supports NHTSA's conclusion that under the impairment prong of Exemption 4, the agency may hold field report information confidential to ensure the quantity and quality of information it receives during the EWR process.

In general, PCLG's petition mentions field reports along with warranty claims, without a particular discussion of field reports. *See* PCLG Petition for Reconsideration at 7, 9–10. Accordingly, in response, we refer the reader to the discussion pertaining to EWR warranty claims above. In addition, the following supplements the discussion above, with regard to field reports.

NHTSA's ODI has reviewed numerous field reports over the years. While they vary considerably in nature and quality, we often have found manufacturer field reports to be technically rich, although some, particularly by dealers, are less so. See 67 FR 45856. NHTSA also has held numerous field reports obtained in investigations confidential.

Like EWR warranty claim data, field report data are not safety data. Field reports include reports on possible problems. However, the problems may merely be alleged by an owner of a vehicle or may be real. The perceived or actual problems addressed may involve performance that does not meet the expectations of the owner, but may not be significant. They may or may not be safety-related.

NHTSA also balanced the importance of field reports and the extent of the impairment to the government against the public interest in disclosure. The importance of field reports is well established. By definition, an alleged failure, malfunction, lack of durability or other performance problem has been identified in a written communication to the manufacturer from one of its employees, representatives, dealers, or a fleet. 49 CFR 579.4(c). Under the EWR reporting program, the numbers of field reports, separately, by model and model year, and by system and component, are reported to NHTSA. The magnitude of the numbers of field reports is important to us, as in our screening we will look for trends based in part on relatively high numbers. These trend may result in inquiries to the manufacturers. We believe that, given manufacturers' substantial control over the direction of field activity and the preparation of field reports, if the numbers of field reports were disclosed to the public, the numbers of field reports would be reduced considerably and, as a consequence, our ability to detect potential problems would be highly diminished, causing a substantial impairment to the agency.

On the other hand, the public interest in disclosure of field report numbers is limited. Standing alone, the EWR field report numbers simply indicate that there was a reported problem, by system or component. They do not identify the particular part or a problem. Based on EWR data alone, it is not possible to accurately identify a safety problem. Given these limitations, the public interest in disclosure is small. Thus, the impairment prong balancing weighs in favor of nondisclosure of field report data.

The field reports themselves are very important to the government. They provide text that is not conveyed by the numerical reports. The views of manufacturers' engineers in reports are often helpful to us. If they were disclosed, manufacturers would react by decreasing the number of reports generated and the level of detail contained in these reports. Without them, we often would not gain a full understanding of the issue, at least not without a steep and time-consuming learning curve. We recognize that some of the field reports would be of interest to some members of the public. On balance, we are in a better position to address potential defects with as robust a set of field reports as possible, which benefits the public at large. Accordingly, NHTSA is justified in withholding EWR field reports under the impairment prong.

d. *Consumer Complaints.* The final CBI rule created a class determination of confidentiality covering EWR consumer complaints. These include communications from consumers that express dissatisfaction with a product, note any actual or potential defect or any event allegedly caused by an actual or potential defect, or that relate to that product's unsatisfactory performance but exclude claims or notices involving a fatality or injury. 49 CFR 579.4(c).

Consumer complaints provide information on the performance of products based on consumer feedback. They reveal which product features, components and systems have met with consumer acceptance (and which have not) and what perceived problems may be associated with particular components and systems. As noted in the preamble to the final CBI rule, the collection of consumer complaint data

is subject to company policies. For example, Harley-Davidson stated that it aggressively seeks consumer feedback while others may seek it but to a lesser degree. AIAM stated similarly that manufacturers may have consumer complaint processes that vary in efficiency.[21]

The disclosure of EWR consumer complaint information is likely to discourage companies from actively pursuing consumer complaints and to lead companies to limit their ability to receive consumer feedback. The fewer inputs that a company receives, the less reliable the information available to it and the less useful the data is to NHTSA to evaluate the field experience of a product. EWR consumer complaint data are particularly important to NHTSA in light of the fact that the agency commonly receives far fewer complaints than manufacturers, field report numbers are but a fraction of complaint numbers, and the warranty data are limited after warranties expire. The disclosure of consumer complaint data and attendant likely reduction in consumer complaint data would threaten the agency's ability to obtain robust complaint data.

Consumer complaint data are competitively sensitive as well. The data would provide competitors with information on the performance of not only a particular vehicle but also of key, individual components. The EWR complaint data would provide information on product acceptance, perceived problems and vehicle and equipment systems that a manufacturer deems important. In view of their commercial value on sensitive performance and market issues, the disclosure of EWR consumer complaint data would cause substantial competitive harm to the manufacturer. Moreover, as with warranty data, actual and potential consumers could make cross-company comparisons, which would further result in competitive harm.

The record supports maintaining the confidentiality of consumer complaint information. For example, the Alliance noted the value of EWR data, including complaints, in revealing customer satisfaction and manufacturer cost information. PCLG's petition provides no factual rebuttal.

While PCLG accurately noted that NHTSA releases consumer complaint data in individual investigations, these limited disclosures with respect to specific models and model years are not comparable to the wholesale, industry-wide information comprising EWR data. As such, disclosing EWR complaint data would provide a competitor with commercially valuable information without making the necessary investment in research ordinarily required if the information were not made readily available. This point was echoed by a number of manufacturers, including the Juvenile Products Manufacturers Association ("JPMA") (complaints reveal operational marketing strengths and weaknesses to expose company vulnerabilities) and AIAM (wholesale complaint disclosure eliminates the risks associated with producing and marketing a particular technology).

In general, PCLG's petition mentions consumer complaints along with warranty claims, without a particular discussion of consumer complaints. See PCLG Petition for Reconsideration at 7, 9–10. Accordingly, in response, we refer the reader to the discussion pertaining to EWR warranty claims above. In addition, the following supplements the discussion above, with regard to consumer complaints.

Like EWR warranty claim data, consumer complaints are not necessarily related to safety issues. Consumer complaints include expressions of dissatisfaction and claims of unsatisfactory performance of a product as well as assertions about an alleged defect. The problems may merely be alleged by an owner of a vehicle or may be real. The perceived problems addressed may involve performance that does not meet the expectations of the owner, but may not be significant. They may or may not be safety-related.

NHTSA also balanced the importance of consumer complaints and the extent of the impairment to the government against the public interest in disclosure. The importance of complaints is well-established. The magnitude of the numbers of complaints is important to us, as in our screening we will look for trends based in part on relatively high numbers. We believe that, given manufacturers' substantial control over information collection, if the numbers of consumer complaints were disclosed to the public, it is likely that the numbers of consumer complaints would be reduced considerably and, as a consequence, our ability to detect potential safety problems would be substantially diminished.

On the other hand, the public interest in disclosure of consumer complaints is limited. Standing alone, they simply indicate consumer dissatisfaction or perception of a potential or actual defect, by system or component. They do not identify the particular part or a problem. Based on complaint data alone, it is not possible to identify a safety defect in a particular product. Thus, the impairment prong balancing weighs in favor of nondisclosure of consumer complaint data.

Further, as indicated in our discussion on EWR warranty data, the legal framework established by *Worthington Compressors* permits the consideration of possible consumer misuse of commercial information in determining the confidentiality of information under Exemption 4. In this instance, the record supports our view that consumer misuse of EWR complaint data is likely to occur. Comments from the Alliance (disclosure would facilitate misleading comparisons), AIAM (misleadingly high numbers might be due to differences in collection policies), JPMA (data have a great potential to mislead consumers) and others describe the manner in which these data are subject to misuse.

*F. Data Quality Act*

The RMA asserts that the Data Quality Act provides an independent basis to prohibit the disclosure of the EWR data the agency determined is not within the purview of Exemption 4. The RMA believes that the agency's release of EWR data would reasonably suggest to the public that the agency agrees with the data and would be relied on by the public as official NHTSA information. The RMA asserts the EWR information is subject to the Data Quality Act because it is factual data prepared by third parties, and in the RMA's opinion, not covered by any of the 12 exceptions contained in the DOT guidelines. The RMA also argued that the final rule does not meet the Data Quality Act's "utility" requirement and as written would not present manufacturers' data in an accurate, clear, complete and unbiased manner and in a proper context.

We disagree. The early warning program is not subject to the requirements of the Data Quality Act because it falls within an express exemption. The OMB guidelines define the dissemination of information as agency initiated or sponsored

[21] The commercial value of consumer complaint data is well recognized. *See e.g.*, Edward Bond & Ross Fink, *Meeting the Customer Satisfaction Challenge,* 43 Industrial Management, Issue 4 (July 1, 2001) (noting the importance of measuring customer satisfaction, describing customer complaints as a data source to a company that can create a "big benefit" from small changes, and emphasizing the need for companies to make it convenient for consumers to complain) and John Goodman & Steve Newman, *Six Steps to Integrating Complaint Data into QA Decisions,* 36 Quality Progress, Issue 2 (Feb. 1, 2003) (stressing the importance of complaint data in helping to identify issues with products and the data's effectiveness in assisting companies with resource allocation decisions to address quality assurance issues).

distribution of information to the public, but does not include responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law. (67 FR 8460). Thus, the Data Quality Act does not apply to data that the agency is required to disclose under FOIA but only to information that the agency discloses as part of an agency-initiated or sponsored dissemination of information.

Consistent with OMB's guidance, the Department of Transportation developed a set of guidelines on information dissemination, which includes an exception for "responses to requests under FOIA, Privacy Act, the Federal Advisory Committee Act or other similar laws.'' [22] The information not covered by a class determination of confidentiality, or otherwise protected by a FOIA exemption, must be released under FOIA.

The process established by part 512 allows the agency to make available to the public information subject to FOIA by determining in advance which information is entitled to protection under a FOIA exemption. The FOIA provides the analytic foundation for the determination of which data will be publicly available and which will be protected from public disclosure. Accordingly, this information qualifies under the FOIA exception created by the OMB guidelines.[23]

## III. Regulatory Analyses and Notices

### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking action is not significant under E.O. 12866, "Regulatory Planning and Review'' or the Department's regulatory policies and procedures. There are no new significant burdens on information submitters or related costs that would require the development of a full cost/benefit evaluation. This rulemaking document will not change the impact of the final rule.

### *B. Regulatory Flexibility Act*

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This rule does not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. This final rule imposes no additional obligations on the submitters of information to NHTSA beyond those otherwise required by the Vehicle Safety Act and the early warning reporting regulation with respect to the submissions of requests for confidentiality. This final rule addresses the agency's treatment of early warning reporting data and simplifies procedures for all submitters, including small entities, when submitting information to the agency. The rule protects from disclosure early warning reporting information found likely to cause competitive harm. It permits the disclosure of that early warning information determined neither to cause competitive harm if released nor to impair the ability of the government to obtain the information in the future.

### *C. National Environmental Policy Act*

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act and determined that it does not have any significant impact on the quality of the human environment.

### *D. Executive Order 13132 (Federalism)*

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule has no substantial effects on the States, or on the current Federalism-State relationship, or on the current distribution of power and responsibilities among the various local officials.

### *E. Unfunded Mandate Reform Act*

The Unfunded Mandate Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This rule will not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

### *F. Executive Order 12778 (Civil Justice Reform)*

This rule will not have any preemptive or retroactive effect. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The rule does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

### *G. Paperwork Reduction Act*

The existing requirements of part 512 are considered to be information collection requirements as that term is defined by the Office of Budget and Management (OMB) in 5 CFR Part 1320. Accordingly, the existing Part 512 regulation was submitted to and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements were approved through February 28, 2005. This final rule does not revise the existing currently approved information collection under Part 512.

### *H. Executive Order 13045*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This regulatory action does not meet either of these criteria.

### *I. Data Quality Act*

Discussion of the impact of this rule and the Data Quality Act are discussed in the analysis contained in the preamble above. For the reasons discussed in that section, any dissemination of information pursuant to this regulation will not be subject to the Data Quality Act.

### *J. Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in

[22] DOT's Information Dissemination Quality Guidelines, at 12 (Effective Oct. 1, 2002). The DOT guidelines are available for public inspection at *http://dms.dot.gov* (click on the "Data Quality'' link and then "guidelines'').

[23] The FOIA mandates that the agency make broadly available information that has already been the subject of a FOIA request granted by the agency. An agency make available for public inspection and copying "records * * * which have been released to any person [under FOIA] and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subjet of subsequent requests for substantially the same records.'' 5 U.S.C. 552(a)(2)(D). In addition, under the the Electronic-FOIA Amendment of 1996, the information, if created after November 1, 1996, must be made available in an electronic format to the public. 5 U.S.C. 552(a)(2)(E).

the heading at the beginning of this document to find this action in the Unified Agenda.

**List of Subjects in 49 CFR Part 512**

Administrative practice and procedure, Confidential business information, Freedom of information, Motor vehicle safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, the National Highway Traffic Safety Administration amends 49 CFR Chapter V, Code of Federal Regulations, by amending part 512 as set forth below.

## PART 512—CONFIDENTIAL BUSINESS INFORMATION

■ 1. The authority for Part 512 continues to read as follows:

**Authority:** 49 U.S.C. 322; 5 U.S.C. 552; 49 U.S.C. 30166, 49 U.S.C. 30167; 49 U.S.C. 32307; 49 U.S.C. 32505; 49 U.S.C. 32708; 49 U.S.C. 32910; 49 U.S.C. 33116; delegation of authority at 49 CFR 1.50.

■ 2. Revise paragraph (c) of 49 CFR 512.21 to read as follows:

**§ 512.21 How is information submitted pursuant to this part treated once a confidentiality determination is made?**

* * * * *

(c) Should the Chief Counsel, after considering a petition for reconsideration, decide that information is not entitled to confidential treatment, the agency may make the information available after twenty (20) working days after the submitter has received notice of that decision from the Chief Counsel unless the agency receives direction from a court not to release the information.

■ 3. Amend Appendix B to Part 512 by revising the first paragraph to read as follows:

**Appendix B to part 512—General Class Determinations**

The Chief Counsel has determined that the following types of information would presumptively be likely to result in substantial competitive harm if disclosed to the public:

* * * * *

■ 4. Amend Appendix C to Part 512 by revising paragraphs (a)(2) and (a)(3), by adding a new paragraph (a)(4), and by adding a new paragraph (c) to read as follows:

**Appendix C to Part 512—Early Warning Reporting Class Determinations**

(a) * * *

(1) * * *

(2) Reports and data relating to field reports, including dealer reports and hard copy reports;

(3) Reports and data relating to consumer complaints; and

(4) Lists of common green identifiers.

* * * * *

(c) The Chief Counsel has determined that the disclosure of the last six (6) characters, when disclosed along with the first eleven (11) characters, of vehicle identification numbers reported in information on incidents involving death or injury pursuant to the reporting of early warning information requirements of 49 CFR part 579 will constitute a clearly unwarranted invasion of personal privacy within the meaning of 5 U.S.C. 552(b)(6).

Issued on: April 16, 2004.

**Jeffrey W. Runge,**

*Administrator.*

[FR Doc. 04–9005 Filed 4–20–04; 8:45 am]

BILLING CODE 4910–59–P

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AI11**

## Endangered and Threatened Wildlife and Plants; Final Determination of Threatened Status for the Beluga Sturgeon (*Huso huso*)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), determine threatened status for the beluga sturgeon (*Huso huso*) under the authority of the Endangered Species Act of 1973 (Act; 16 U.S.C. 1531 *et seq.*). The beluga sturgeon is a large fish from which highly valued beluga caviar is produced. The species' range was reduced during the 20th century, and is now limited to the Caspian and Black Sea Basins. The species is threatened through habitat modification and degradation, over-exploitation for trade, limited natural reproduction, and agricultural and industrial pollution. A number of positive conservation measures have been taken for all sturgeon species since all previously unlisted Acipenseriformes species (sturgeons and paddlefishes) were added to Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in 1998. The regulatory mechanisms and consequent actions that have been implemented by CITES Parties, including the range countries for these species, have improved the status of the species and will be discussed later in this notice. We believe that additional conservation measures for sturgeon species that have been adopted by the CITES Standing Committee will afford further benefits to beluga sturgeon, and other sturgeon species, provided the measures are fully implemented and continue to be supported by the CITES community. This rule identifies the beluga sturgeon as a species in need of conservation; implements protective measures by extending the full protection of the Act to the species throughout its range; and complements current and future conservation measures to be undertaken by the species' range countries, as recommended by the CITES Standing Committee.

**DATES:** This rule is effective October 21, 2004.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours in the office of the Division of Scientific Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 750; Arlington, Virginia 22203.

Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to: Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, (telephone: (703) 358–2104; facsimile: (703) 358–2281).

**FOR FURTHER INFORMATION CONTACT:** Robert R. Gabel, Chief, Division of Scientific Authority, at the above address (phone: 703–358–1708). For permitting information, contact: Tim Van Norman, Chief; Branch of Permits-International; Division of Management Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 700; Arlington, Virginia 22203 (phone: 703–358–2104).

**SUPPLEMENTARY INFORMATION:**

### Background

The beluga sturgeon is the largest of all sturgeon species. Historic reports indicate that individual fish can reach 6 meters in length and more than one ton in weight. It is also considered the most economically valuable fish in the world, because the female beluga sturgeon is harvested to produce beluga caviar.

Beluga sturgeon are highly vulnerable to depletion, due to their unique life-history characteristics, and because the fishery for them targets the reproductive segment of the population. The species is long-lived and slow to mature.

Although estimates indicate that the oldest fish currently harvested are 50–55 years of age, with an average age of less than 35 years, during the early 20th century 100-year-old beluga sturgeon were commonly taken in the northern Caspian Sea (Khodorevskaya *et al.* 2000). On average, beluga sturgeon mature between 10 and 16 years of age for males, and between 14 and 20 years for females (Hochleithner and Gessner 1999). Male beluga sturgeon spawn only once every 4–7 years, whereas females reproduce once every 4–8 years (Raspopov 1993). Fecundity in adult female beluga sturgeon increases with age; individual fish will produce a greater number of eggs during each subsequent spawning run. On average, adult female *H. huso* can produce up to 12 percent of their body weight in roe (DeMeulenaer and Raymakers 1996).

The historic range of the beluga sturgeon formerly encompassed the Caspian Sea, Black Sea, Adriatic Sea, Sea of Azov, and all rivers within their watersheds (Khodorevskaya *et al.* 2000). Range countries currently include: Azerbaijan, Bulgaria, Croatia, the Czech Republic, Georgia, Hungary, the Islamic Republic of Iran, Kazakhstan, the Republic of Moldova, Romania, the Russian Federation, Turkey, Turkmenistan, Ukraine, and Yugoslavia. The Adriatic Sea population is considered extirpated, and the last record of a wild-caught specimen in the Sea of Azov is from the mid-1980s (TRAFFIC/Europe 1999). The species' current range is limited to the Caspian and Black Sea Basins.

Loss of spawning habitat has had the greatest impact on the survival of beluga sturgeon populations. Hydrographic modifications to major spawning rivers caused changes in river flow regimes that have had a negative impact on beluga sturgeon spawning behavior. Dam construction, for hydroelectric power generation and flood control, produced impassable barriers to migration. Spawning grounds have been flooded, and a large portion of the remaining rocky substrate that was previously utilized by the species for spawning has been blanketed by siltation. Observations during the 19th century indicated that the Black Sea *H. huso* population over-wintered and spawned as far north as the Austrian and Bavarian portions of the Danube River. Beluga sturgeon were once abundant in the Danube River. Harvest rates during the mid-1970s averaged 23 metric tons annually. After the construction of the Djerdap I and II dams during the 1980s, annual harvest assessments indicated that the Danube River populations were rapidly decreasing (Hensel and Holcik 1997). Within one decade, annual Danube River beluga sturgeon harvest declined to12.7 tons, indicative of the dams' effect on spawning sturgeon populations (Bacalbasa-Dobrovici 1997b).

The eradication of centralized control of the fishery in the northern Caspian Sea after the dissolution of the Soviet Union, and persistent high demand for beluga caviar, led to expansion of illegal harvest of the species and the growth of an illicit worldwide trade network to supply the demand. Enforcement has been difficult due to a lack of financial resources to supply adequate boats, equipment, and salaries for conservation officers.

On December 18, 2000, we received a petition to list the beluga sturgeon as endangered under the Act. On June 20, 2002, we published concurrent 90-day and 12-month findings on the petition (67 FR 41918). The 90-day finding stated that the petition presented substantial information indicating that the requested action may be warranted. The 12-month finding stated that the petitioned action is warranted. Subsequently, on July 31, 2002, we announced a proposal to list the beluga sturgeon (*Huso huso*) as endangered under the Act (67 FR 49657). The notice requested public comments and information by October 29, 2002. Requests for a public hearing were to be received by September 16, 2002. The Division of Scientific Authority (DSA) received four requests for a public hearing. To accommodate the requests, on November 6, 2002 (67 FR 67856), we gave notice of a public hearing to take place on December 5, 2002. With that notice, the public comment period was extended through December 28, 2002, to allow for submission of comments through, and 15 days after, the public hearing.

On March 11, 2003, we received a "Report on Results of Complex Interstate All-Caspian Sea Expedition on the Assess[ment] of Sturgeon Species Stocks'' from the CITES Secretariat. This report summarized the 2002 sturgeon stock-assessment survey for the Caspian Sea and provided new data that would enhance the accuracy of previous population data, while providing sufficient new data that detailed the current status of the Caspian Sea beluga sturgeon population. We believed the information contained in the report would address substantial disagreements regarding the status of the species, and would be relevant to our final determination. Therefore, on July 2, 2003, we published a notice to re-open the comment period on our proposal to list the species for 60 days, and we also extended the period to produce a final determination by 6 months, to January 31, 2004 (68 FR 39507). This extension was made for the purpose of soliciting additional population data and comments regarding the stock-assessment survey, as specified under section 4(b)(6)(B)(i) of the Act. We also submitted the report for independent peer review. The public comment period closed on September 2, 2003. All comments and information received during this and the previous two comment periods were considered in our final listing determination and are included in the administrative record.

**Summary of Comments and Recommendations**

On July 31, 2002, we announced a proposal to list beluga sturgeon (*Huso huso*) as endangered under the Endangered Species Act (67 FR 49657). All interested parties were requested to submit factual reports or information by October 29, 2002, so we could consider the information in the development of a final rule. Beluga sturgeon range countries, the CITES Secretariat, Federal and State agriculture and wildlife agencies, scientific organizations, the caviar and aquaculture industries, and other interested parties were contacted and supplied with a copy of the proposal. We received 31 substantive comments during the comment period, as well as 4,226 e-mail messages, postcards, and letters that were submitted as part of a letter-writing campaign. Four individuals submitted comments, but maintained a neutral position regarding listing. We received 14 written comments in opposition to listing the species as endangered. The opponents included members of the aquaculture, caviar, and fishing industries, State wildlife conservation and agriculture agencies, fisheries agencies representing three Caspian Sea range countries (the Islamic Republic of Iran, Kazakhstan, and the Russian Federation) and one Black Sea range country (Romania), two conservation organizations, and several private individuals. The proposal was not supported by the National Aquaculture Association; the Florida Department of Agriculture and Consumer Services, Division of Aquaculture; the World Conservation Union (IUCN) Sturgeon Specialist Group; and IWMC-World Conservation Trust.

We received 10 written comments in support of an endangered listing. Supporters included the original petitioners, Caviar Emptor, a consortium of non-government organizations that includes SeaWeb, the Wildlife

Conservation Society, and the Natural Resources Defense Council; Azerbaijan, a range country; a member of the caviar industry; and several private individuals. We also received a letter of support signed by 69 chefs and/or restaurant owners and another, similar letter signed by 57 members of academia and representatives of conservation organizations. A letter-writing campaign sponsored by Caviar Emptor produced an additional 4,226 comments in support of an endangered listing. Two letters were received from members of the caviar industry who supported an endangered listing, provided we would allow an exemption for beluga sturgeon products produced by commercial aquaculture.

Prior to the end of the comment period, we received four requests for a public hearing. Therefore, notice of a public hearing and extension of the comment period to accommodate comments received during, and 15 days after, the public hearing was published on November 6, 2002 (67 FR 67586). The public hearing took place December 5, 2002, and the public comment period was extended through December 28, 2002. During the public hearing, oral testimony was given by four individuals representing industry; the Florida Department of Agriculture and Consumer Services, Division of Aquaculture, and the Florida Sturgeon Production Working Group; Caviar Emptor; and The Seafood Choices Alliance. The representatives for industry and the State of Florida expressed their opposition to listing the species as endangered. Caviar Emptor and The Seafood Choices Alliance voiced their support for listing. In addition to the verbal testimony given during the public hearing, six additional written comments in support of the listing were received during the extended comment period. These comments were received from private individuals; The Seafood Choices Alliance (a letter signed by 191 chefs and other representatives of the seafood industry); academia; and the Management Authority of Bulgaria. We also received seven written comments, in addition to the verbal testimony given during the public hearing in opposition to listing the species as endangered. These comments were from a private individual, a member of the aquaculture industry, the IWMC-World Conservation Trust, and the Ministry of Waters and Environmental Protection of Romania. We received a total of 17 comments during the public hearing and extended comment period.

After receiving significant new information, which summarized the 2002 sturgeon stock-assessment survey for the Caspian Sea in the "Report on Results of Complex Interstate All-Caspian Sea Expedition on the Assess[ment] of Sturgeon Species Stocks,'' from the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), we re-opened a final comment period on July 3, 2003 (68 FR 39507). We notified the public that we would accept comments through September 2, 2003. The notice also extended the deadline for publication of our final decision by 6 months, from the original date of July 31, 2003, to January 31, 2004. During the final comment period, we received three comments. A detailed set of documents submitted by the CITES Secretariat, on behalf of the beluga sturgeon range countries, included new information about the status of beluga sturgeon stocks in the Caspian and Black Seas. We also received a letter from the petitioners, Caviar Emptor, in which they presented an analysis of the survey methodology used during the 2002 Caspian Sea sturgeon stock-assessment, and they also provided numerous articles about the status of beluga sturgeon collected from national and international grey literature.

**Peer Review**

In accordance with our policy published on July 1, 1994 (59 FR 34270), we have sought expert opinions of at least three appropriate independent specialists for our proposed rule and documents regarding Caspian Sea stock-assessment surveys that were considered as part of this final listing decision. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analysis. We considered and incorporated comments and information from the peer reviewers into this final rule.

Comments or questions about the rule, and our responses, are grouped into a number of general issues, depending on content, and are combined in the following discussion.

*Issue 1:* A number of commentors stated their belief that the beluga sturgeon is on the brink of extinction, and therefore, urgent action is necessary.

*Response:* We note that wild beluga sturgeon stocks have declined throughout the species' range during the past 40 years, particularly during the post-Soviet era in the Caspian Sea region. Population declines of several Caspian Sea sturgeon species were so severe during the 1990s that scientists and concerned nations supported the listing of all previously unlisted sturgeon species in Appendix II of CITES, effective April 1, 1998. The listing required all exports and re-exports of Appendix II sturgeons in international trade to be accompanied by a CITES export permit or re-export certificate. The permitting system has helped to deter illegal international trade by focusing enforcement attention on document forgery, misidentification of species in trade, and illegal trade routes and networks. Since the listing, conservation of sturgeons (including paddlefishes) has continued to be a prominent issue at meetings of the CITES Standing Committee, Animals Committee, and Conference of the Parties. Many resolutions, recommendations, and decisions have been adopted by the CITES Parties to address issues ranging from annual quotas to stock surveys and management plans, further indicating the continuing conservation needs of sturgeon species (for further information, *see* www.cites.org). Although all of the recommendations made by the CITES Parties have not been implemented, actions taken to date have made significant contributions to the conservation of sturgeon species, and will continue to address conservation and management needs in the future. A threatened listing will reinforce the need to continue the positive actions taken since the listing, and encourage range countries to further develop and implement conservation measures for all wild sturgeon populations, including the beluga sturgeon.

In 2001, based on recommendations from the CITES Animals Committee, the so-called "Paris Agreement'' was developed during the 45th meeting of the CITES Standing Committee (SC 45 Doc. 12.2). By accepting the conditions of the Paris Agreement, the Caspian Sea range countries of Azerbaijan, Kazakhstan, and the Russian Federation made commitments to further the conservation of Caspian Sea sturgeon stocks. All sturgeon harvest was suspended during the fall fishing season of 2001, proscribed under Stage 1 of the agreement. Further actions under Stage 1, to be completed before July 20, 2001, included declaration of all stocks of specimens intended for export, and restriction of exports in 2001 to the amounts of declared stocks, provided the 2001 export quotas were not exceeded. Under Stage 2 of the agreement, the range countries were required to undertake a comprehensive survey of sturgeon stocks, develop science-based catch and export quotas,

and assess illegal trade and fisheries enforcement needs in the region. Stage 2 was to be implemented prior to December 31, 2001. Stage 3 actions, to be implemented prior to June 20, 2002, included:

- Establishment of a long-term stock-assessment survey program to be used as the basis for future management of sturgeon stocks;
- A request to the Food and Agriculture Organization of the United Nations (FAO) for advice concerning operations of regional fisheries management organizations, management of shared fish resources, and dealing with unregulated fisheries;
- Adoption of a collaborative basin-level fisheries management plan for Caspian Sea sturgeon, as the basis for sustainable harvest for commercial exports;
- Significantly increased efforts to combat illegal harvest and trade;
- Regulation of domestic trade;
- Establishment of further research priorities;
- Making sturgeon samples available for DNA testing;
- Implementation of the caviar labeling system (Resolution Conf. 11.13, now repealed and replaced by Resolution Conf. 12.7); and
- Submission of a funding proposal to the Global Environmental Fund (GEF) or other donors for rehabilitation of sturgeon stocks, hatcheries, and restocking programs, including support for stock assessments, marking systems, identification of specimens in trade, public awareness, and enforcement.

Several significant goals of Stage 3 have yet to be achieved. Conservation actions taken under CITES to date, however, have focused needed attention on the problems facing sturgeon stocks, improved export documentation, helped to increase beluga sturgeon populations, concentrated attention on the need for sound hatchery and release programs in the range countries, and initiated the lengthy process necessary to improve the status of all sturgeon species, including the beluga sturgeon.

Stock-assessment surveys undertaken from 2001 through the present continue to indicate an increase in beluga sturgeon stocks in the Caspian Sea Basin since the 1990s. U.S. scientists have been unable to replicate the survey results given the data presented in the survey reports. It is uncertain whether this is the result of incomplete data, translation problems, or differences in the stock-assessment and analytical methodologies used by the Russian scientists. However, we have considered that the same survey methods that originally alerted the scientific community to the decline of sturgeon stocks are being used today to document increases in Caspian Sea sturgeon populations. According to the 2002 stock-assessment survey, the beluga sturgeon population in the Caspian Sea has increased from 7.6 million fish in 1998 to 11.6 million fish (Russian Federation *et al.* 2002). By comparison, the gulf sturgeon (*A. oxyrinchus desotoi*), a sturgeon species native to the United States, is listed as a threatened species under the Act, and population numbers for the gulf sturgeon are estimated in the tens of thousands, a much lower population threshold. The share of the annual spawning segment of the Caspian Sea beluga sturgeon population has increased from 14.8 percent in 2001 to 20.6 percent in 2002 (Armstrong and Karpyuk 2003).

Based on the best available scientific information, we do not believe the species is on the brink of extinction at this time and does not meet the definition of endangered under the Act. Many of the threats to the species remain, however, and will remain into the foreseeable future. Therefore, our final determination is to list the species as threatened under the Act. Under section 4(d) of the Act, regulations may be issued when necessary and advisable for the conservation of a threatened species. We intend to imminently publish a proposed 4(d) rule for beluga sturgeon, with conditions to further address the most significant threats to the species.

*Issue 2:* Nine commentors expressed the view that aquaculture promotes beluga sturgeon conservation, by reducing the pressure on wild stocks. However, one individual from the caviar industry stated that he did not believe aquaculture could ever replace harvest of beluga sturgeon from the wild, and "at best [aquaculture is] only a complement to wild harvest.'' Several members of the aquaculture industry and the Florida Department of Agriculture and Consumer Services, Division of Aquaculture, also suggested beluga sturgeon reared in aquaculture conditions should be exempt from our final listing determination.

*Response:* We cannot simply exempt captive specimens from the actual listing of a species, although we could consider such specimens as exempt under the provisions of a special rule under section 4(d) of the Act if the remaining protections afforded the species would be necessary and advisable for the conservation of the species. However, because demand for beluga caviar currently exceeds the amount available from legal sources, and this demand has resulted in over-exploitation of this resource, it is not clear that the limited amount of beluga caviar available from aquaculture sources would sufficiently reduce the demand on wild stocks to cause a direct conservation benefit to the species. It is also unclear as to whether the demand for broodstock to establish aquaculture operations would itself constitute a threat to the species. For American alligator (*Alligator mississipiensis*), we have determined that allowing the export of live alligators for the establishment of breeding facilities outside the United States could actually undermine conservation efforts for alligators in this country. We have taken similar approaches, in concert with the range countries and CITES, in disallowing imports of live animals, eggs, and gametes of yacare caiman (*Caiman yacare*) and vicuña (*Vicugna vicugna*). Therefore, we intend to evaluate aquaculture programs on a case-by-case basis through the permitting procedures of 50 CFR 17.32, to determine whether any aquaculture program contributes to the conservation of beluga sturgeon.

*Issue 3:* Five individuals expressed concern about potential economic effects of the listing, particularly with regard to hindering commercial aquaculture.

*Response:* Section 4(b)(1) of the Act does not allow the Service to consider economic effects when making decisions on the listing of species as endangered or threatened.

*Issue 4:* Six individuals were concerned that listing the species as endangered would have a negative impact on their ability to import beluga caviar, and therefore would have an adverse impact on their business.

*Response:* As noted for Issue 3, section 4(b) of the Act requires listing decisions to be made solely on the basis of the best available scientific and commercial data. Economic factors may not be considered. Therefore, we were prohibited from considering economic factors when making our final listing determination.

*Issue 5:* Three individuals suggested that they will be unable to conduct research on life-history parameters and improvements of sturgeon aquaculture techniques if commercial aquaculture of beluga sturgeon and trade in beluga sturgeon products derived from aquaculture become prohibited.

*Response:* Under section 10(a)(1)(A) of the Act, permits may be issued for scientific purposes or to enhance the propagation or survival of listed species. For information about permit issuance criteria, see 50 CFR 17.22. Listing the species as threatened does not negate

the ability to conduct scientific research, provided the permit issuance criteria are met. Furthermore, numerous research studies have been and continue to be conducted regarding sturgeon life-history parameters and sturgeon culture methodology and techniques. Optimization of growth and survival of sturgeons reared in culture conditions for release have been studied for years, particularly in the Caspian Sea region. Information and data from these studies are readily available in the scientific literature. Therefore, because permits may be issued provided the issuance criteria are met, we do not believe that listing beluga sturgeon under the Act will negatively affect the ability to conduct scientific investigation of beluga sturgeon life-history characteristics or methods to optimize captive culture of the species.

*Issue 6:* Several individuals expressed concerns about the problems associated with enforcing the provisions of the Act if the species were to be listed. One individual commented that it is impossible to visually distinguish between a farm-raised fish and a wild-caught fish. Another individual observed that it is impossible to determine the species composition and origin of caviar by visual inspection. Two commentors suggested a ban on sales of farm-raised beluga sturgeon products because of the potential to launder wild-caught sturgeon as farm-raised fish in trade. One individual commented that any controls the Service might institute will likely be easy to circumvent.

*Response:* We acknowledge that it is generally not possible to distinguish between a wild-caught sturgeon and a sturgeon that is produced in aquaculture by physical examination alone. Determining the species composition and origin of caviar in trade has long been recognized as a serious and confounding enforcement issue. Species identification of caviar and other products requires laboratory analysis of the specimen(s) in question. However, the Service, through the National Fish and Wildlife Forensics Laboratory has the capability to identify the species composition of caviar for enforcement purposes. Since the inclusion of all previously unlisted sturgeons and paddlefishes in the CITES Appendices, the Parties have been concerned about the need to regulate and identify legal caviar in trade. In 2000, at the 11th CITES Conference of the Parties (COP 11), CITES Resolution Conf. 11.13, Universal labeling system for the identification of caviar, was adopted to address this concern. The Resolution required range countries to implement a standardized caviar marking system, with particular specifications for the design of labels that would be applied consistently by all Party range countries. Resolution Conf. 11.13 was subsequently amended and superseded by Resolution Conf. 12.7, Conservation of and trade in sturgeons and paddlefish, at COP 12 in 2002. As a result of these resolutions, most caviar-exporting countries now label caviar tins destined for international trade. Each sturgeon-processing facility in each exporting country that is a CITES Party uses a label that is unique to each specific facility. Including the origin of caviar on tin labels could be used to identify the origin of legal caviar in trade. Periodically, the CITES Secretariat issues a Notification to the Parties to advise the Parties when a caviar-exporting country has issued a standardized label for caviar. The Notification includes a depiction of the label. Copies of caviar labels are kept on file by the Office of Law Enforcement (OLE) and are used to verify the product in a shipment upon export. Shipments that are found to be out of compliance with CITES documentation and labeling requirements are refused or seized at the port of entry.

The Service's OLE uses several methods to identify and track imports and exports of CITES-listed species and species listed under the Act. These methods, detailed below, are currently being used for shipments of beluga sturgeon because of its listing in Appendix II of CITES. These methods will continue to be used for beluga sturgeon as a threatened species under the Act.

The OLE uses a system of permits, declarations, and inspections to ensure compliance with regulations under CITES and the Act for imports and exports of listed wildlife and wildlife products. Shipments of sturgeon and paddlefish products entering or leaving the United States cannot be cleared by OLE unless they are accompanied by the appropriate CITES documentation. All wildlife shipments must be declared to OLE upon exit or entry by filing a "Declaration for Importation or Exportation of Fish or Wildlife'' (Form 3–177). This form is used to track and monitor all shipments of fish or wildlife arriving or departing from the United States. All shipments are subject to inspection at the port and must be cleared to ensure compliance with all applicable regulations. All wildlife products must be shipped from a designated port for wildlife, unless prior authorization has been granted to export from a non-authorized port.

*Issue 7:* Two members of the U.S. aquaculture industry suggested that we require that a portion of profits from commercial aquaculture sales be designated for hatchery upgrades in beluga sturgeon range countries. Four representatives from beluga sturgeon range countries also recommended using a portion of profits from the international trade in beluga sturgeon to rebuild aging hatcheries and construct new facilities. Several range countries already depend on the international sturgeon trade to fund hatchery programs, and the commentors consider it vital that additional funding be obtained to improve and rebuild the existing hatchery infrastructure for the conservation of beluga sturgeon populations. The Bulgarian Management Authority suggested that aquaculture should be used to return beluga sturgeon populations to historic population abundance levels. Specifically, they suggested a 7-year moratorium on harvest of beluga sturgeon to allow for development of aquaculture. The moratorium would be followed by an introduction of gradually declining catch quotas from the wild. Other measures suggested by the Bulgarian Management Authority included: investments for hatchery upgrades and establishment of new facilities, restocking of natural populations, development of improved artificial culture techniques, and more effective enforcement measures to protect wild populations.

*Response:* We cannot require members of the commercial aquaculture industry to invest or contribute funds for hatchery system upgrades and new construction in beluga sturgeon range countries. However, through the permitting system and under the 4(d) rule, we hope to encourage conservation actions for the species, by means of economic incentives, including hatchery production of fingerlings for restocking purposes.

Artificial sturgeon culture has been used to supplement wild sturgeon stocks in the former Soviet Union since 1959. The Soviet hatchery program successfully reared and released millions of sturgeon fingerlings using artificial culture techniques. Hatchery programs and restocking efforts were curbed during the early 1990s, however, due to changes in the region's political structure following the dissolution of the Soviet Union. The importance of hatchery programs to supplement Caspian Sea sturgeon stocks was quickly recognized, and some hatcheries are operating once again. An average of 11.7 million beluga sturgeon fingerlings have been released into the Caspian Sea

annually since 1996 (Armstrong and Karpyuk 2003). Secor *et al.* (2000) estimate that more than 90 percent of the current beluga sturgeon population in the Caspian Sea is of hatchery origin, whereas Armstrong and Karpyuk (2003) estimate a figure closer to 97 percent for the northern Caspian Sea. Armstrong (2003) notes that revenues for hatcheries and re-introduction programs are largely derived from the legal trade in sturgeons; therefore, maintenance of Caspian Sea sturgeon stocks is dependent on the existence of that trade.

*Issue 8:* Four individuals expressed the opinion that conservation measures undertaken under CITES and by the range countries should be sufficient to conserve Caspian Sea sturgeon populations.

*Response:* The response to Issue 1 provides a lengthy discussion of the actions taken under CITES since the Appendix II listing of beluga sturgeon became effective in 1998. The CITES listing has proven important as a deterrent to illegal international trade and has focused law enforcement attention on illegal trade routes and networks. Conservation of sturgeons remains a prominent issue within the CITES community, and many resolutions, recommendations, and decisions have been developed to address wide-ranging conservation issues. Actions taken to date have made significant contributions to the conservation of sturgeon species, and will continue to address conservation and management needs in the future.

While we recognize the important role CITES has played in the improvement of trade controls and other conservation measures for sturgeon conservation, a number of unresolved issues remain. As previously noted, the conditions of the Paris Agreement encouraged commitments between most of the Caspian Sea range countries to further the conservation of Caspian Sea sturgeon stocks. Stage 1 measures were completed by July 20, 2001, as required. Primary measures undertaken for the completion of Stage 2 were to be finished prior to December 31, 2001, and Stage 3 actions were to be implemented prior to June 20, 2002. Several significant goals of Stage 3 have not been accomplished, as of publication of this notice. Our listing determination will strengthen and promote complete implementation of the Paris Agreement recommendations, for the conservation of all Caspian Sea sturgeon species. As the largest importer of beluga sturgeon caviar, the United States can reinforce and increase the focus on conservation measures currently under way and influence the implementation of future management actions for the species.

*Issue 9:* Several individuals expressed concern regarding the high level of illegal harvest of and trade in beluga sturgeon within the Caspian Sea region.

*Response:* Actions taken by the CITES Parties to reduce illegal trade in sturgeon products have proven relatively successful to date. In the United States alone, over 135 shipments of beluga caviar have been refused since 1998, due to false documentation and other factors. Law enforcement agencies of the CITES Parties continue to detect and seize illegal shipments of caviar upon import. Adoption of the caviar labeling requirement in Resolution Conf. 12.7 instituted a method for tracking sturgeon products from the country of origin and the processor to ensure legal international trade in sturgeon products. The Resolution has been implemented by most beluga sturgeon range countries.

However, a report from an Environmental Prosecutor in Kazakhstan reveals the problems associated with illegal harvest in the region and notes that illegal harvest continues to be a serious problem in a specific region of the Caspian Sea. It is our understanding that illegal harvest and bycatch of sturgeon in other fisheries remains a significant problem for enforcement agencies. Provisions of our proposed 4(d) rule further address illegal harvest of beluga sturgeon.

*Issue 10:* One individual expressed concern that listing beluga sturgeon under the Act will not give the United States the authority required to address habitat loss, the most serious threat to beluga sturgeon populations, nor will we have the authority to remediate pollution problems.

*Response:* We agree that listing a species with a home range outside of U.S. borders does not provide some of the protections afforded a species by the Act. We are unable to designate critical habitat, nor do we have the authority to impose U.S. law within another sovereign nation. However, listing beluga sturgeon as threatened under the Act can positively affect international trade and management of the species by reinforcing conservation measures already in place. In a proposed 4(d) rule, which we intend to publish as soon as possible, we will attempt to address further actions that are appropriate and necessary to manage the species on a collaborative basin-wide level, enhance stock abundance, target illegal harvest and trade, and encourage the range countries to address problems with the hatchery infrastructure throughout the Caspian Sea region.

**Summary of Factors Affecting the Beluga Sturgeon**

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for determining whether any species is an endangered or threatened species. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to beluga sturgeon (*Huso huso*) are as follows:

*A. The Present or Threatened Destruction, Modification, or Curtailment of Beluga Sturgeon Habitat or Range*

Natural reproduction of beluga sturgeon is extremely limited and occurs in less than 15 percent of the species' historic spawning habitat. Approximately 85 percent (Secor *et al.* 2000) to 90 percent (Barannikova *et al.* 1995) of the species' former spawning grounds have been damaged by pollution or are no longer accessible to spawning sturgeon. Dams, river channelization, and other man-made alterations of flow regimes have significantly reduced the amount of available sturgeon spawning habitat throughout the species' range. Messier (1998) noted that the surface area of the Caspian Sea is some 169,000 square miles, yet all sturgeon species that spawn in the Volga River utilize an area no larger than 1,000 acres (405 hectares) near the mouth of the river.

Although the Volga River historically accounted for the largest number of spawning sturgeon in the Caspian Sea Basin, the Ural River in Kazakhstan now is believed to contain the most suitable spawning habitat for sturgeons (Semyon Khvan, pers. comm.). The Ural River is the only major river within the Caspian Sea Basin that has not been dammed or otherwise modified (Khodorevskaya *et al.* 1997). Recent reports indicate that habitat utilized by sturgeons for migration and spawning in this river system is threatened by siltation and river mouth occlusion. Armstrong (2003) notes that siltation and occlusion problems are natural phenomena resulting from sea-level fluctuations in the Caspian Sea Basin. The availability of sturgeon spawning habitat has ebbed and flowed throughout historic time as a result of these naturally occurring sea-level fluctuations (Armstrong 2003).

Spawning runs in the Kura River in Azerbaijan have also been limited by

siltation and occlusion of the river mouth. River mouth and channel dredging is under way in the Kura River, with the goal of increasing available spawning habitat (Armstrong 2003), and with the expectation that beluga sturgeon will once again reproduce in the Kura River system.

The Volga River represents the most extensive spawning habitat in the Russian Federation. It is believed that beluga sturgeon no longer spawn in the Terek River (Khodorevskaya *et al.* 1997). Extirpation of the species from the Sea of Azov resulted, in part, from dam construction on the Don and Kuban Rivers, which has blocked spawning migrations to historic spawning grounds (TRAFFIC 1998). In Iran, the Tajen and Gorganrud Rivers are available for spawning runs in the southern Caspian Sea. However, the Mangil Dam on the Sefidrud River blocks passage, and all spawning habitat has been destroyed because of pollution and water extraction (TRAFFIC 1998).

Previous studies have noted that some 85 percent of the Black Sea's Danube River delta has been diked and dammed, resulting in substantial losses of sturgeon spawning habitat (Bacalbasa-Dobrovici 1997b). Harvest rates of beluga sturgeon decreased substantially after construction of the Djerdap Dams I and II during the mid-1980s (Hensel and Holcik 1997). Annual estimates of Danube River beluga sturgeon harvest declined from an average of 23 tons during the mid-1970s to12.7 tons in 1994, indicative of the dams' effects on spawning sturgeon populations (Bacalbasa-Dobrovici 1997b).

A recent study, however, suggests that previous estimates of decline in the Black Sea Basin were inaccurate because "poor'' fisheries statistics were maintained by the Romanian fisheries administration (Suciu 2002). As part of a research program funded by the Global Environment Fund (GEF) and the World Bank, a Rapid Rural Assessment (RRA) was conducted to evaluate sturgeon harvest. The RRA discovered that estimates of previous beluga sturgeon harvest were much higher than originally reported, after determining that much of the catch was under-reported by local fishers. For instance, in 1997, nearly 106 tons of beluga sturgeon were harvested (Suciu 2002). The study also located five potentially intact spawning sites. While additional studies should be undertaken to confirm the findings of the RRA, the results are promising and indicate that a larger population of beluga sturgeon may exist in the Danube River and Black Sea Basin than was previously believed. Furthermore, whereas spawning habitat in the Danube River system has been compromised by man-made river alterations, suitable habitat remains for the species' spawning requirements.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The international demand for caviar is the primary factor driving overexploitation of beluga sturgeon. In 1995, the retail price for one pound of beluga caviar in the United States was US$1,000 (DeMeulenaer and Raymakers 1996); today beluga caviar sells for around US$1,500 per pound on the U.S. retail market (Petrossian 2003).

The beluga sturgeon was first listed as endangered by the IUCN in 1996 (IUCN 2000). In an assessment by TRAFFIC (1999), the state of all Russian sturgeon populations was considered "catastrophic.'' Information provided by the Natural Resources Defense Council, the Wildlife Conservation Society, and SeaWeb (Petitioners) in the original petition to list beluga sturgeon as endangered (Petitioners 2000), and in subsequent communications (Petitioners, *in litt.* July 9, 2003; September 1, 2003), indicates their belief that the species is on the brink of extinction. Overutilization, coupled with loss of spawning habitat, is considered one of the most significant factors precipitating the decline of beluga sturgeon populations (Petitioners 2000). Rapid expansion of legal and illegal sturgeon fisheries during the upheaval caused by the dissolution of the Soviet Union in 1991 (Secor *et al.* 2000) succeeded in further reducing beluga sturgeon populations. The absence of a central regulatory authority and persistent unrestricted harvest had swiftly placed beluga sturgeon stocks in imminent danger of collapse within a decade.

Formerly, Caspian Sea sturgeon populations were closely regulated and monitored by the Soviet Union and Iran, to ensure sustainable commercial sturgeon fisheries for the future. Caspian Sea management provisions included basin-specific harvest regulations and quotas, strict trade quotas, and stocking programs that have been in operation in the former Soviet republics continually since the late 1950s, albeit in much-reduced circumstances from the late 1980s to the present (Secor *et al.* 2000). In 1967, the Soviet Union banned open-sea harvest of all anadromous fish species in the Caspian Sea to eliminate bycatch mortality of juvenile sturgeons (Secor *et al.*, 2000). However, with the loss of the Soviet state sturgeon monopoly, bycatch of beluga sturgeon again increased with the resumption of open-sea Caspian Sea fisheries, particularly the anchovy fishery (TRAFFIC/Europe 1999). Open-sea harvest heightened the risk of injury and mortality of juvenile beluga sturgeon, significantly impacting future stock recruitment by adversely affecting entire year classes. In 1996, the Caspian Sea range countries signed an agreement prohibiting open-sea fishing, thereby protecting remaining and future immature sturgeon stocks.

Detrimental effects of the legal harvest were additionally compounded by the ever-increasing illegal harvest of the species (CITES 1997). Illegal harvest and trade quickly escalated during the 1990s, again a result of the turbulence that took place during the emergence of market economies in the former Soviet bloc nations. The disorder of the early and mid-1990s was also responsible for the lack of effective enforcement measures available in the newly emerging nations. DeMeulenaer and Raymakers (1996) originally estimated that the illegal harvest of Caspian Sea sturgeons was 6–10 times higher than legal harvest. More recent assessments, however, suggest the illegal trade may be some 11 times greater than the legal market (Volkov 2001).

International and domestic demand for sturgeon caviar and meat ensures traffickers of an extremely lucrative market for the illegal trade in sturgeon products. Processed caviar generates maximum prices and is packaged in small, easily smuggled containers. Organized teams of poachers use the most up-to-date equipment to efficiently harvest sturgeons. The British Broadcasting Company (BBC) has reported that poaching teams utilize modern satellite navigation equipment and regularly fish in prohibited open-sea waters. Detection of the fishing crews is difficult, and encounters between border guards and violators often end violently (BBC 2003).

As an example of the widespread nature of poaching networks in the region and the large volume of illegal harvest that has been detected, this year alone a Russian poaching investigation, dubbed Putina-2003, has been responsible for detaining more than 1,500 people for violating fishing regulations. However, many poachers continue to elude this poaching investigation and other enforcement actions under way daily in the region. During a recent broadcast of Moscow's Channel One TV, Vladimir Streltsov, Deputy of the Federal Security Service's North Caucasus Regional Border Directorate, stated that these arrests indicate a three-fold increase in Caspian

Sea poaching (BBC 2003). Over 500 km of sturgeon fishing nets have been confiscated during the Putina-2003 operation and were officially destroyed recently.

Hatchery programs were also impacted by the upheaval in the region during the last decade. Overharvest has reduced the availability of wild broodstock, which has consequently caused a decrease in hatchery production and restocking programs. Hatchery infrastructure has deteriorated in all countries except Iran, and most facilities do not have sufficient capability to over-winter sturgeon broodstock. As a result, after the broodstock is used for reproductive purposes, it may be released or, more commonly, sold for meat to obtain funds for hatchery operating costs.

The Caspian Sea range countries maintain that the historic decline in Caspian Sea beluga sturgeon populations has been arrested, and in fact, the population has increased. They further assert that the proportion of reproductively mature individuals has likewise increased (Armstrong and Karpyuk 2003). The data used to determine the status of sturgeon populations in the Caspian Sea are derived from annual stock monitoring, which involves collaborative trawl surveys and assessment of abundance and biomass of spawning stocks migrating into the Volga and Ural Rivers (Armstrong and Karpyuk 2003). According to the CITES Secretariat, this research has been continuously conducted in the Caspian Sea since 1962 (Armstrong and Karpyuk 2003).

The estimated number of beluga sturgeon in the Caspian Sea has exhibited a gradual increase since 1998, the year the beluga sturgeon was listed in Appendix II of CITES. The percentage of adults, based on summer trawl surveys, has likewise increased. Data obtained during summer trawl surveys are considered the most reliable indicators of population size because beluga sturgeon do not actively migrate during the summer. The population estimates in Table 1 (below) are viewed as conservative; they do not accurately reflect the number of beluga sturgeon present in shallow coastal waters. It is impossible to survey shallow depths using the trawl methods employed for the survey.

TABLE 1.—ESTIMATED CASPIAN SEA BELUGA STURGEON POPULATION AND PERCENTAGE OF ADULTS

| Year | 1998 | 1999 | 2000 | 2001 | 2002 |
|---|---|---|---|---|---|
| Total Population | 7.6 million | 9.3 million | 5 million* | 9.3 million | 11.6 million. |
| Percentage of adults in the northern Caspian Sea. | 0% | 8.7% | 5.5%* | 14.8% | 20.6% |
| Percentage of adults in the middle and southern Caspian Sea. | 17.4% | 10.0% | No data collected | 22.0% | 42.9% |

Source: Armstrong and Karpyuk 2003.
* Adult estimate data collected for the northern Caspian Sea population only in 2000.

The CITES Secretariat also reports that the summer index of beluga catch per unit effort (CPUE) has increased from 10 specimens per 100 trawls in 1994 to 18 specimens per 100 trawls in 2001, the highest value recorded in the past 7 years (Armstrong and Karpyuk 2003). The trend data indicate that the beluga sturgeon fishery is recovering under CITES regulation, according to the CITES Secretariat. Armstrong and Karpyuk (2003) make an emphatic distinction between the status of beluga sturgeon populations prior to CITES regulation and the same populations post-listing. They state that current data illustrate a population that "*has been/was* severely overfished'' rather than a population that "*is* currently severely overfished.''

Levels of beluga sturgeon harvest in tributary rivers since 1998 range from one-third to one-fifth of the total spawning fish entering the river system (see Table 2). Although Armstrong and Karpyuk (2003) contend that recent numbers of spawning beluga sturgeon are higher than those in the past, the historic data used for comparison are from the period from 1961 to 1965. The use of more recent data would be more meaningful. Significantly, the number of harvested specimens held for hatchery use is greater than 50 percent of the total harvest in 3 of the 5 years from which data are available. Transferring live beluga sturgeon that were captured as part of the annual harvest quotas allocated in 1999, 2001, and 2002 to hatcheries for fingerling production effectively reduced the number of adult fish that were being killed for caviar and meat production by more than 50 percent. Use of adult broodstock for hatchery production rather than caviar production further contributes to the future status of the species through the annual production and release of fingerlings to augment current population numbers in the Caspian Sea.

TABLE 2.—TOTAL HARVEST LEVELS IN CASPIAN SEA TRIBUTARY RIVERS AND PERCENT ALLOCATED FOR HATCHERY USE

| Year | Number of adults* | Number of adults entering rivers | Number of adults harvested | Percent of harvest held for hatchery use |
|---|---|---|---|---|
| 1998 | 0 | 6,090 | 2,118 | 41.1 |
| 1999 | 809,000 | 5,272 | 1,454 | 72.3 |
| 2000 | **275,000 | 5,355 | 1,182 | 48.4 |
| 2001 | 1,376,400 | 5,695 | 1,059 | 69.1 |
| 2002 | 2,389,600 | 5,524 | 1,121 | 61.9 |

Source: Armstrong and Karpyuk 2003.
*Numbers based on Table 1.
**Northern Caspian Sea only.

Analyses of long-term tributary monitoring data in the Volga River indicate that natural spawning still occurs and is on the increase, similar to the other population parameters presented by the Secretariat and the

Caspian Sea range nations (Armstrong *et al.* 2003). Annual larval sampling has revealed that, within the sampling sites of the lower Volga River, wild beluga sturgeon larval abundance has increased from 130,000 specimens in 1997 to 2 million specimens in 2002 (Armstrong and Karpyuk 2003).

The data presented by the Secretariat and the Caspian Sea range nations indicate an improvement in the status of beluga sturgeon populations. While concerns have been raised about the accuracy of the most recent population estimates (Petitioners, Secor, *in litt.* 2003), the same survey methods that originally alerted the scientific community to the decline of sturgeon stocks are currently being used to document increases in Caspian Sea sturgeon populations. The protections and improvements in management afforded the species since the CITES listing in 1998 have contributed to these improvements.

C. Disease or Predation

Decades of industrial pollution and centuries of sewage effluent have degraded water quality in the Caspian Sea region. The Volga River, formerly responsible for the largest amount of sturgeon production annually, is the single major source of pollutants draining into the Caspian Sea. Sewage produced by half the Russian population and most of the country's heavy industrial waste flow through the Volga River system (Anon. 2002). Disease and reproductive abnormalities associated with pollution have been observed in beluga sturgeon throughout their range. A contaminant study of the Volga River conducted in 1990 found abnormalities in 100 percent of the sturgeon eggs that were sampled (all sturgeon species sampled), and 100 percent of the embryos examined were found to be non-viable (Khodorevskaya *et al.* 1997). In a 3-year study (1999–2002) funded by the World Bank, organochlorines and heavy metals were identified as the predominant environmental contaminants in the Caspian Sea. The contaminants reside in sediments and are also found in living organisms, such as seals, bony fish, and sturgeons (Padeco 2002). The northeast section of the Caspian Sea, in and around Kazakhstan, has the lowest levels of contaminants in the basin. Beluga sturgeon were found to have the highest organochlorine levels of all sturgeon species, likely attributable to the species' longevity (Padeco 2002). Organochlorine contamination in sturgeons is at a level where reproductive effects may be expected (Padeco 2002). The study revealed that the major hotspot for contamination is Baku Bay in Azerbaijan.

Analysis of the contaminant data provided in the 2002 Sturgeon Stock Assessment Survey suggests that several of the Caspian Sea sturgeon sampled during the survey had mercury concentrations that approached or exceeded U.S. Environmental Protection Agency (EPA) criteria for human health protection (USFWS *in litt.* 2003). Although existing contaminant research indicates that pollution is a threat to all sturgeon species, and most particularly beluga sturgeon, we note that this threat is not uniform throughout its range. In addition, the actual impact of some contaminants on these fish is indeterminate, and although they are present, it is not clear what, if any, effect they are having or may have on beluga sturgeon. We are also aware that positive steps have been taken in the development and adoption of a new environmental treaty to protect the Caspian Sea. The Framework Convention for the Protection of the Marine Environment of the Caspian Sea is the first legally binding treaty ever developed by the Caspian Sea nations. The treaty provides a basis for regional coordination to promote conservation of the Caspian Sea and its bio-resources, and address problems with habitat destruction, pollution, and over-exploitation of fish and other marine life (UNEP 2003). The treaty must be ratified by all of the basin nations before it enters into force and becomes legally binding.

A ctenophore, the American comb jellyfish (*Mnemiopsis leidyi*), was introduced into the Black Sea in 1982 from the discharge of ship ballast water. There are no known Black Sea predators of the comb jellyfish, and the species' growth has been explosive. Within 7 years, the biomass of *M. leidyi* in the Black Sea grew to 800 million metric tons (Bacalbasa-Dobrovici N. 1997a). Comb jellyfish feed on zooplankton and pelagic fish eggs, embryos, and larvae, prey that are utilized by small marine fishes, such as anchovies. The small marine fishes are fed upon by the piscivorous beluga sturgeon. The feeding habits of the comb jellyfish resulted in the complete collapse of the Sea of Azov anchovy fishery in 1989. Changes in invertebrate distribution and faunal structure caused by *M. leidyi* have altered the prey base of Black Sea sturgeon populations (Kovalev *et al.* 1994, as cited in Bacalbasa-Dobrovici 1997a). The comb jellyfish has expanded its range and is believed to have infiltrated the Caspian Sea through the Lenin Canal that links the Don and Volga Rivers. The first certified record of *M. leidyi* was made in 1999 along the coast of Kazakhstan (UNISCI 2000). Expansion of the species was faster than that in the Black Sea; within one year the population exploded and *M. leidyi* was found throughout the Caspian Sea Basin. Introduction of the comb jellyfish has resulted in declines of kilka, a suite of sardine-like pelagic fishes. Declines in kilka populations have had a direct, negative impact on the species that feed upon them, including beluga sturgeon (UNISCI 2000).

D. The Inadequacy of Existing Regulatory Mechanisms

Under previous management regimes to protect immature sturgeon stocks in the Caspian Sea, open-sea fishing was prohibited from the 1950s through the early 1990s. After the collapse of the Soviet Union in 1991 and the subsequent absence of controls on commercial fisheries, a period of open-sea fishing was resumed during the mid-1990s. Impacts from harvest and bycatch of the mixed-stock sturgeon populations that occupy the open waters of the Caspian Sea were considered detrimental to the survival of sturgeon species. If the open-sea fishery was allowed to continue unregulated, extirpation of local stocks was a very real probability, because it was impossible to determine from which specific population individual fish were harvested. Additionally, harvest might have disproportionately affected specific populations that were already vulnerable to over-exploitation (D. Secor, personal communication). This period of unregulated harvest, with the bycatch of immature sturgeons, may have destroyed a major component of future sturgeon stocks (CITES 1997). In 1996, the Caspian Sea range countries signed an agreement prohibiting open-sea fishing, thereby protecting remaining and future immature sturgeon stocks.

Iran continued to apply strict management and enforcement measures to conserve beluga sturgeon, and persisted with a successful annual beluga sturgeon stocking program, while many profound changes were occurring in the former Soviet States. Despite decreases in harvest from Iranian waters from 1995 through 2001, the Iranian Government's fisheries management agency, SHILAT, maintains that harvest was not detrimental because of the large number of fingerlings that were stocked during those years (SHILAT, *in litt.* 2002). A total of 5,713,269 beluga sturgeon fingerlings were released into the Caspian Sea from 1995 to 2001 (SHILAT, *in litt.* 2002). On average, fingerlings released during that time

weighed 3–5 grams. Currently, however, fingerlings are given a "head start'' by increasing the age and weight at the time of stocking to 30 grams each. SHILAT estimates the total number of adult beluga sturgeon harvested in the Caspian Sea during 2001 was fewer than 3,000 specimens from an estimated total population of 9.35 million beluga sturgeon, and an estimated commercial stock (adult fish) of 1.383 million fish (SHILAT, *in litt.* 2002).

Khodorevskaya (2000) and TRAFFIC Europe-Russia (1999) have suggested that the failure of regulatory oversight in the Caspian Sea region since the dissolution of the Soviet Union has been an important factor contributing to the rapid decline of beluga sturgeon populations. Recognition of the inadequacy of existing regulatory mechanisms prompted conservation actions from the CITES community to address the regulatory deficiencies. A synopsis of significant actions taken by the CITES community follows.

To curtail trade in illegally obtained caviar, and to ensure sustainable use, conservation, and management of wild sturgeon populations, the first significant international regulatory action was undertaken during COP 10 in 1997. At that time, all previously unlisted species of Acipenseriformes (sturgeons and paddlefishes) were listed in Appendix II of CITES, effective April 1, 1998. Appendix II includes species that may become threatened with extinction if trade is not regulated. Occasionally, species that are not threatened by unregulated trade are listed in Appendix II because trade in these species may impact other species that were listed because they were likely to become threatened with extinction if trade was not regulated. As an example, species that are similar in appearance to a listed species may also be listed to ensure complete regulation of the species of concern. All specimens of Appendix II species in international trade, including parts and products, require an export permit from the country of origin. Permits are issued only when a positive finding can be made that the proposed export will not be detrimental to the survival of the species, and the specimens were legally acquired.

Under CITES, trade is regulated through a system of permits that requires wildlife inspections at ports of entry. The inspection process has been influential in the discovery of falsified documentation accompanying illegal shipments of sturgeon products. Through the inspection process, carried out by OLE, numerous illegal shipments of sturgeon products have been detected. Between June 1998 and June 2003, OLE refused clearance of more than 135 shipments of beluga sturgeon products into the United States. The shipments that were refused clearance by OLE were seized, re-exported, or destroyed. Recognition of falsified documentation, and other investigatory information gathered by enforcement agencies of the CITES Parties, was instrumental in the discovery of illicit trade networks that moved illegal caviar through several countries. As a result of the law enforcement investigations, CITES imposed trade sanctions against the countries involved.

The CITES listing also served to further engage and integrate international scientific attention on sturgeon conservation issues. Since the listing, a suite of sturgeon conservation measures have been recommended and undertaken by the CITES community. Sturgeons were included in the Review of Significant Trade shortly after the listing became effective and provided scientists and management authorities with recommendations to improve the basis for trade. If Appendix II species are being traded at significant levels, the Significant Trade Review process is the Convention's mechanism for evaluating if the provisions of CITES are being adequately implemented and non-detriment findings are being properly made. Remedial action can be taken, if deemed necessary. The review of all Acipenseriformes commenced in 2000, and the results showed a clear pattern of declining yields from Caspian and Black Sea sturgeon populations, necessitating prompt conservation action (Armstrong and Karpyuk 2003). The Significant Trade Review process was a catalyst for the development of numerous critical conservation actions for sturgeons. To address and implement the conservation requirements of all sturgeon species, intergovernmental sturgeon management commissions were established for the Amur River and Sea of Azov (Armstrong and Karpyuk 2003). The Black Sea sturgeon range countries established the Black Sea Sturgeon Action Group (BSSAG) in 2001, and in 2002, the Caspian Sea range countries created the Commission on Aquatic Bioresources of the Caspian Sea, also known as the Caspian Bioresources Commission (Armstrong and Karpyuk 2003).

The Caspian Bioresources Commission is composed of representatives of the Caspian Sea nations and is currently responsible for the allocation of sturgeon quotas to regulate and control harvest of and trade in sturgeons (Armstrong and Karpyuk 2003). CITES Decision 11.58, for the establishment of annual harvest and export quotas for shared sturgeon stocks, was adopted at the 11th meeting of the Conference of the Parties (COP 11; Nairobi 2000). This Decision was later rescinded and the recommendations previously found in the Decision became part of CITES Resolution Conf. 12.7, Conservation of and trade in sturgeons and paddlefish. Prior to the dissolution of the Soviet Union, and before the CITES listing, the Soviet Union and Iran set annual quotas for Caspian Sea sturgeon products and specimens. After 1991, the former Soviet Republics and Iran continued to set annual quotas for Caspian Sea sturgeon outside the bounds of a formal agreement. Since 1993, the annual share of sturgeon catch for each former Soviet republic has been allocated as a percentage of total harvest. The Russian Federation is allowed 70 percent of the total catch; Kazakhstan 17.6 percent; Turkmenistan 6.3 percent; and Azerbaijan 6.1 percent (TRAFFIC 2000).

The CITES community recognized that illegal trade was one of the major threats to the survival of certain sturgeon populations and continued to undermine range countries' efforts to manage their sturgeon resources on a sustainable basis. Therefore, Resolution Conf. 10.12 (Rev.), adopted at COP 10, directed the Secretariat, in consultation with the Animals Committee, to explore development of a uniform marking system for sturgeons to assist in identification of legal caviar in trade. The Resolution stated that a marking system should be standardized and specifications for label design were to be generally applied. CITES Resolution Conf. 11.13, a Universal labeling system for the identification of caviar, was adopted at COP 11 (Resolution Conf. 11.13 has been repealed and replaced with Resolution Conf. 12.7: Conservation of and trade in sturgeon and paddlefish). Resolution Conf. 12.7 recommended harmonization of each country's national legislation so that the personal-effects exemption, provided for in Article VII of CITES, would be limited to no more than 250 grams of caviar.

The original Resolution, and subsequent Notifications (No. 2001/075 and No. 2001/089) to clarify implementation of the Resolution, specify labeling requirements and details for primary and secondary containers. A non-reusable label is to be affixed to all primary containers and should contain, at a minimum, the following information, in the order presented: the standard three-letter CITES species code; the source code of

the caviar; the ISO two-letter code for the country of origin; the four-digit year of harvest; the caviar processing plant's unique code (assigned by each range country and/or processing company); and the lot identification number. CITES Notification 2001/089 noted that sufficient time had passed for range countries to implement the caviar labeling system, and recommended that importing countries should not accept caviar shipments from exporting countries after December 31, 2001, unless they were labeled in compliance with Resolution Conf. 11.13. The universal labeling system protects legal exporters, assists wildlife inspectors and customs officers globally in verifying the contents of caviar shipments, and aids in the detection of illegal trade.

A sturgeon conservation action plan approved during the 45th meeting of the CITES Standing Committee (SC 45 Doc. 12.2), the so-called Paris Agreement, included the most significant sturgeon conservation actions recommended to date. The agreement listed specific conservation measures that were to be implemented by each range country in three stages. Completion of each stage was to take place by a particular deadline. Stage 1 required declaration of stocks of specimens intended for export that were harvested in spring 2001 by the northern Caspian Sea range nations. The countries agreed to limit exports in 2001 to the declared stocks only, provided they did not exceed the existing quotas, and further agreed to suspend all commercial harvest for the remainder of the year. Declarations of stocks were submitted prior to the deadline of July 20, 2001, and the CITES Secretariat was satisfied with the declarations after completing missions to verify each country's stock declaration. The agreements under Stage 2 required completion of a comprehensive survey of sturgeon stocks; a request to Interpol to analyze the illegal sturgeon trade; a study of enforcement needs to combat illegal harvest and trade, in collaboration with Interpol, the World Customs Organization, and the CITES Secretariat; and on-site inspections of each country's sturgeon management activities. Preliminary to Stage 3 was the final condition: agreement on coordinated management of Caspian Sea resources, including the joint allocation of harvest and export quotas for 2002. Stage 2 requirements were to be completed by December 31, 2002; failure to implement the agreement was to result in zero quotas for 2002. It is not clear if all Stage 2 requirements were met prior to the deadline; however, 2002 harvest and export quotas were allocated for the range countries.

The final phase, Stage 3, imposed actions necessitating the highest level of cooperation between the range nations of all previous stages of the Paris Agreement. The Caspian Sea range countries (excepting Iran) were to establish a long-term survey program for sturgeons, incorporating up-to-date technology and techniques; request advice from the Food and Agriculture Organization of the United Nations (FAO) on managing regional fisheries; adopt a collaborative management system for Caspian Sea sturgeon fisheries; significantly increase efforts to combat illegal trade and regulate domestic trade; submit funding proposals to the Global Environment Fund (GEF) and other donors for rehabilitation of sturgeon stocks; and implement the caviar labeling system required by Resolution Conf. 11.13. The deadline for Stage 3 actions was June 20, 2002. Several actions of the final stage have not been completed. In particular, completion of what may be the most important action of the entire agreement, development and adoption of an inter-jurisdictional fisheries management plan for Caspian Sea sturgeons, has yet to occur.

The long-term stock survey plan to be used "as the basis for future management of sturgeon stocks'' has been established and undertaken, as recommended in SC 45 Doc. 12.2.1(e)(i). Unfortunately, the stock survey methodology and subsequent techniques utilized for analysis of the survey data have not been submitted for review by independent scientists. The annual surveys conducted since 2001 have shown increases in the Caspian Sea beluga sturgeon stock. However, when the survey results were reviewed by three U.S. scientists, they were unable to replicate the results using the data supplied in the 2002 sturgeon stock-assessment survey report. Questions regarding the accuracy and precision of the survey results could be allayed by subjecting the survey and analysis methodologies to independent scientific review, and applying rigorous statistical analysis to the process. The CITES Secretariat has informed us that FAO is currently reviewing the methodology used for the annual stock-assessment surveys, and recommendations to improve the techniques and methodology will be incorporated into subsequent surveys (Armstrong 2003). A completion date for the analysis by FAO is unknown at this time.

As previously noted, the first legally binding environmental treaty ever adopted by the Caspian Sea nations, the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (CPMECS), was recently agreed to and finalized by the range nations. The treaty will provide a basis for regional coordination on the conservation of the Caspian Sea and its biological resources. The intent of the framers is to reverse and mitigate the environmental damage brought about by habitat destruction, pollution, and over-exploitation of commercial fisheries (UNEP 2003). The treaty must first be ratified by all Caspian Sea range nations before its entry into force, thereby ensuring that the treaty becomes legally binding.

In our proposed rule of July 31, 2002 (67 FR 49657), we expressed concern that the regulatory mechanisms in place at the time were not sufficient to protect and conserve the species. Currently, the execution of conservation recommendations, decisions, and resolutions adopted by the CITES community as a result of the 1998 listing and the Significant Trade Review are beginning to yield practical results. According to the data collected and analyzed during the sturgeon stock-assessment surveys, populations are slowly beginning to increase, and the number of spawning adults has likewise improved. Stock-assessment surveys are conducted each year, adding to the pool of data available to make sound management decisions, such as the allocation of harvest and export quotas. Finally, the CPMECS has been finalized and is awaiting ratification by the Caspian Sea range nations, so that additional sturgeon conservation measures can be undertaken on a basin-wide level.

*E. Other Natural or Man-Made Factors Affecting the Continued Existence of Beluga Sturgeon*

Cyclic changes in sea level within the Caspian Sea have been common throughout geologic time (Ivanov, 2000). Reductions in sea level from 1970 through 1977 adversely affected sturgeon populations because of changes to biochemical regimes and faunal communities (Ivanov, 2000; DeMeulenaer and Raymakers, 1996).

Genetic alteration and hybridization of sturgeon stocks is also a serious concern. It is postulated that the Volga-Don Canal, linking the Black and Caspian Seas, allowed for an "avalanche'' of genetic alteration and hybridization between these sturgeon populations (DeMeulenaer and Raymakers, 1996). Although hybridization occurs naturally, when artificial connections are made between

previously isolated water bodies, the rapidity with which hybridization occurs is accelerated. This process can impact the homogeneity of populations and further hamper recovery efforts.

In developing this rule, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by beluga sturgeon. Based on this evaluation, the preferred action is to list the beluga sturgeon as a threatened species. Although documentation has revealed that the species has been in decline for several decades, conservation actions taken since the species' CITES Appendix-II listing have resulted in increases of total population numbers. Loss of habitat continues to be a threat to the species; however, actions are being taken in Azerbaijan and Kazakhstan to dredge waterways, thereby improving access to former spawning grounds during migration runs. Although pollution and other factors are impacting beluga sturgeon populations, the Ural River continues to support a population that is not impacted by dams and has free access to remaining spawning habitat. Important and beneficial results of the CITES listing that have had a major impact on the illegal trade of beluga sturgeon include the allocation of annual quotas for harvest and trade, issuance of CITES export permits and re-export certificates, caviar labeling requirements, and inspections of shipments by law enforcement agencies upon importation. However, illegal harvest persists and remains a serious threat to all sturgeon species. By its nature, it is impossible to accurately estimate the annual volume of illegal harvest. However, any reduction in this portion of the harvest will yield a positive impact to beluga sturgeon populations. Attention to this specific threat is vital and we intend to address it in the proposed 4(d) rule that we intend to publish as soon as possible following publication of this determination.

Finally, the conservation actions taken by the CITES Parties since the Appendix-II listing in 1998 have proven beneficial to the status of the species. Nevertheless, actions recommended under the Paris Agreement have not been completed, and other conservation measures, while in progress, also remain incomplete. Benefits to beluga sturgeon from current and future conservation actions may not be realized or quantifiable for years. At this time the beluga sturgeon is not in immediate danger of extinction because of ongoing conservation actions; however, listing the species as threatened is consistent with the intent of the Act. The listing also strengthens the measures taken by the CITES Parties to date, and affords the species the protections of the Act.

We will soon publish in the Proposed Rules section of the **Federal Register** a proposal outlining regulations we deem necessary and advisable to provide for the conservation of the species, as provided by section 4(d) of the Act. Our final determination to list the beluga sturgeon as threatened will become effective in 6 months. We are delaying the effective date of our final determination to allow for development of a final 4(d) rule, with specific conservation measures for beluga sturgeon, as part of this listing decision. We intend to publish a proposed 4(d) rule, as previously stated, as soon as possible following publication of this rule. After a public comment period, we will consider publishing a final 4(d) rule to implement the final conservation measures developed for beluga sturgeon, thereby increasing the effectiveness of the threatened listing.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments, private agencies and groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions within the United States or on the high seas with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. However, because the beluga sturgeon is not native to the United States, no critical habitat is being proposed for designation with this rule.

With respect to the beluga sturgeon, no Federal activities, other than the issuance of CITES export permits or re-export certificates, are known that would require conferral or consultation. According to CITES, Appendix-II species need only a CITES export permit or re-export certificate issued by the exporting country for their importation into another country. However, because of its listing as threatened under the Act, the importation and exportation of specimens of *Huso huso* presently require an Endangered Species Act permit issued by the Division of Management Authority. Consequently, a consultation with the Division of Scientific Authority is currently required before the Division of Management Authority can issue any import or export permit for beluga sturgeon. Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

Sections 4(d) and 9 of the Act, and implementing regulations found at 50 CFR 17.31, (which incorporate certain provisions of 50 CFR 17.21), set forth a series of prohibitions and exceptions that generally apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (within U.S. territory or on the high seas), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees or agents of the Service, other Federal land management agencies, the National Marine Fisheries Service, and State conservation agencies (50 CFR 17.21(c)(3) and part 17.31(b)). Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: scientific research, enhancement of propagation or survival, zoological exhibition or education, incidental taking, or special purposes consistent with the Act. All such permits must also be consistent with the purposes and policy of the Act as required by section 10(d). Such a permit will be governed by the provisions of 50 CFR 17.32 unless a special rule applicable to the wildlife (appearing in 50 CFR 17.40 to 50 CFR 17.48) provides otherwise. Threatened species are generally covered by all prohibitions applicable to endangered species, under 50 CFR 17.31. We may, however, develop special rules if deemed necessary and

advisable to provide for the conservation of the species.

## National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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## Author


The primary author of this final rule is Marie T. Maltese, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 750, Arlington, Virginia 22203; telephone, (703–358–1708).


## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

## PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | * | * | | * |
| FISHES | ..... | ..... | ..... | | ..... | ..... | NA |
| * | * | * | * | * | * | | * |
| Sturgeon, beluga ..... | *Huso huso* ..... | Azerbaijan, Bulgaria, Croatia, Czech Republic, Georgia, Hungary, Islamic Republic of Iran, Kazakhstan, Republic of Moldova, Romania, Russian Federation, Turkey, Turkmenistan, Ukraine, Yugoslavia (Caspian Sea, Black Sea, Adriatic Sea, Sea of Azov, and all rivers in their watersheds). | Entire ..... | T | ..... | NA | ..... |
| * | * | * | * | * | * | | * |

Dated: March 19, 2004.

**Marshall P. Jones, Jr.,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 04–8934 Filed 4–20–04; 8:45 am]

**BILLING CODE 4310–55–P**

# Proposed Rules

Federal Register
Vol. 69, No. 77
Wednesday, April 21, 2004

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1216

**[Docket No. FV–04–701]**

### Peanut Promotion, Research and Information Order; Continuance Referendum

**AGENCY:** Agricultural Marketing Service, Agriculture.

**ACTION:** Notice of a Continuance Referendum.

**SUMMARY:** This document directs that a referendum be conducted among the eligible producers of peanuts to determine whether they favor continuance of the Peanut Promotion, Research and Information Order (Order).

**DATES:** This referendum will be conducted from May 10, 2004 through June 11, 2004. To vote in this referendum, producers must have paid assessments on peanuts produced during the representative period from October 1, 2002 to April 30, 2004.

**ADDRESSES:** Copies of the Order may be obtained from: Referendum Agent, Research and Promotion Branch (RP), Fruit and Vegetable Programs (FV), AMS, USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244, telephone (888) 720–9917 (toll free), fax (202) 205–2800, e-mail *deborah.simmons@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to the Commodity Promotion, Research and Information Act of 1996 (7 U.S.C. 7411–7425) (Act), it is hereby directed that a referendum be conducted to ascertain whether continuance of the Order is favored by producers of peanuts. The Order is authorized under the Act.

The representative period for establishing voter eligibility for the referendum shall be the period from October 1, 2002 to April 30, 2004. Persons who are producers of peanuts and paid assessments at the time of the referendum and during the representative period are eligible to vote. Persons who received an exemption from assessments for the entire representative period are ineligible to vote. The referendum shall be conducted by mail from May 10, 2004 through June 11, 2004.

Section 518 of the Act authorizes continuance referenda. Under section 1216.82 of the order, the Department of Agriculture (Department) shall conduct a referendum every five years or when 10 percent or more of the eligible voters petition the Secretary of Agriculture to hold a referendum to determine if persons subject to assessment favor continuance of the Order. The Department would continue the Order if continuance of the Order is approved by a simple majority of the producers voting in the referendum.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the referendum ballot has been approved by the Office of Management and Budget (OMB) and assigned OMB NO. 0581–0093. It has been estimated that there are approximately 17,000 producers who will be eligible to vote in the referendum. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot.

#### Referendum Order

Deborah S. Simmons and Margaret B. Irby, RP, FV, AMS, USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244, are designated as the referendum agents to conduct this referendum. The referendum procedures 7 CFR 1216.100 through 1216.107, which were issued pursuant to the Act, shall be used to conduct the referendum.

The referendum agents will mail the ballots to be cast in the referendum and voting instructions to all known producers prior to the first day of the voting period. Persons who are producers and paid assessments at the time of the referendum and during the representative period are eligible to vote. Persons who received an exemption from assessments during the entire representative period are ineligible to vote. Any eligible producer who does not receive a ballot should contact the referendum agent no later than one week before the end of the voting period. Ballots must be received by the referendum agent after May 10, 2004 but before June 11, 2004, in order to be counted.

Dated: April 19, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04–9134 Filed 4–19–04; 1:01 pm]

BILLING CODE 3410–02–P

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Parts 701 and 742

### Federal Credit Union Ownership of Fixed Assets

**AGENCY:** National Credit Union Administration.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The National Credit Union Administration (NCUA) Board is proposing amendments to its fixed asset rule. The fixed asset rule governs federal credit union (FCU) ownership of fixed assets and, among other things, limits investment in fixed assets to five percent of an FCU's shares and retained earnings. Most of the proposed amendments clarify and reorganize the requirements of the current rule to make it easier to understand. The only substantive proposed changes are to: (1) Eliminate the requirement that an FCU, when calculating its investment in fixed assets, include its investments in any entity that holds fixed assets used by the FCU; and (2) establish a time frame for submission of requests for waiver of the requirement for partial occupation of premises acquired for future expansion.

**DATES:** Comments must be received on or before June 21, 2004.

**ADDRESSES:** You may submit comments by any of the following methods (Please send comments by one method only):

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- NCUA Web site: *http://www.ncua.gov/news/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- E-mail: Address to *regcomments@ncua.gov.* Include "[Your name] Comments on Proposed Rule 701.36, Federal Credit Union

Ownership of Fixed Assets'' in the e-mail subject line.

• Fax: (703) 518–6319. Use the subject line described above for e-mail.

• Mail: Address to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

• Hand Delivery/Courier: Same as mail address.

**FOR FURTHER INFORMATION CONTACT:** Paul Peterson, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

**SUPPLEMENTARY INFORMATION:**

## Background

The Federal Credit Union Act authorizes an FCU to purchase, hold, and dispose of property necessary or incidental to its operations. 12 U.S.C. 1757(4). Generally, an FCU may only invest in property it intends to use to transact credit union business, that is, to support its internal operations or serve its members. 12 CFR 721.3(d). NCUA's fixed asset rule limits an FCU's investment in fixed assets and imposes requirements on the planning for, use of, and disposal of real property acquired for future expansion. 12 CFR 701.36.

The NCUA Board has a policy of continually reviewing NCUA regulations to "update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' NCUA Interpretive Ruling and Policy Statement (IRPS) 87–2, Developing and Reviewing Government Regulations. As a result of the NCUA's 2003 review, the Board determined that the fixed asset rule should be updated.

## Summary of Proposed Changes

The only substantive proposed changes are to (1) Eliminate the requirement that an FCU, when calculating its investment in fixed assets, include its investments in any entity that holds fixed assets used by the FCU, and (2) Establish a time frame for submission of requests for waiver of the requirement for partial occupation of premises acquired for future expansion. The Board believes that neither of these proposals impose any new burden on FCUs.

The proposed rule reorganizes the paragraph structure. It retains the five percent limit on investment in fixed assets as a percentage of an FCU's shares and retained earnings, currently located in § 701.36(c), but makes it the lead paragraph, § 701.36(a). The current § 701.36(a), which states only that "[a] Federal credit union's ownership in fixed assets shall be limited as described in this chapter,'' is unnecessary and the proposed rule deletes it. The proposed rule moves the definitions paragraph, currently in § 701.36(b), to the end of the section. Sections 701.36(c) and (d) are renumbered as § 701.36(b) and (c), respectively.

In addition to reorganization of the paragraph structure, the proposed rule contains amendments clarifying the provisions governing an FCU's plans for future expansion into fixed assets and simplifying the rule's language to make it easier to read and understand. The proposed rule also adds a cross reference to NCUA's Regulatory Flexibility Program (RegFlex) rule. 12 CFR part 742. Federal credit unions that qualify for RegFlex treatment are currently exempt from the five percent limit on investment in fixed assets. 12 CFR 742.4(a), 701.36(c). In addition, the proposed rule contains a technical amendment to the RegFlex rule that reflects the proposed reorganization of the fixed asset rule.

## Discussion of Particular Proposed Amendments

*Proposed § 701.36(a)*

The current § 701.36(c), Investment in Fixed Assets, would become paragraph (a). The proposed rule retains the current requirement that FCUs with $1,000,000 or more in assets cannot invest in fixed assets if the investment would cause the aggregate of all the FCU's fixed assets to exceed five percent of the FCU's shares and retained earnings. The current rule provides a waiver process so that FCUs may apply for a waiver of the five percent limitation, and the proposed rule retains these waiver provisions but reorganizes them to simplify and make them easier to follow.

*Proposed § 701.36(b)*

The current § 701.36(d), Premises, would become paragraph (b). This paragraph contains provisions on real property owned by an FCU that is not currently used to transact credit union business. 12 CFR 701.36(d). The Board has several proposed amendments to this paragraph.

The Board proposes to change the title of this paragraph to "Premises Not Currently Used to Transact Credit Union Business'' to better indicate its scope.

The current subparagraph (d)(1) provides that an FCU must accomplish partial use of its real property within three years of acquisition unless the FCU obtains a waiver. 12 CFR 701.36(d)(1). The proposal clarifies that requests for waiver must be in writing and submitted to NCUA within 30 months of acquisition. The proposed amendments would also clarify that partial use occurs when FCU staff occupy some part of the space on a full-time basis.

The current rule states that "[a]fter real property acquired for future expansion has been held for one year, a board resolution with definitive plans for utilization must be available for inspection by an NCUA examiner.'' *Id.* Those plans must address full use since FCUs do not have the authority to own and lease out space indefinitely for purposes unrelated to FCU operations or member service. The proposed amendments clarify the full use planning requirement and that full use occurs when the premises are completely occupied by the FCU, or by some combination of the FCU, credit union service corporations (CUSOs), and credit union vendors, on a full-time basis. CUSO and vendor activities must be primarily to support the operations of the FCU or serve its members.

The Board also intends to clarify and simplify the current provisions on abandoned premises. 12 CFR 701.36(b)(5), 701.36(d)(2). The Board proposes to revise the provision in paragraph (d)(2) that an FCU "shall endeavor to dispose of 'abandoned premises' at a price sufficient to reimburse the FCU for its investment and costs of acquisition'' to state that an FCU must seek fair market value for the property. The Board recognizes that changing market conditions may affect an FCU's ability to recover its investment and costs of acquisition. The proposal retains the requirements that an FCU document its efforts to sell abandoned premises and complete the sale within five years.

*Proposed § 701.36(c)*

The current § 701.36(d), Prohibited Transactions, would become paragraph (c). The proposal retains the current prohibition on an FCU acquiring or leasing property from the FCU's insiders, their family members, or corporations and partnerships in which the insider has a significant ownership interest. As a clarification, the proposal revises the rule to include limited liability companies and other entities. The proposed rule also simplifies the paragraph's introductory language.

*Proposed § 701.36(d)*

FCUs that qualify for the RegFlex Program are exempt from the five percent limitation on investment in fixed assets. 12 CFR 701.36(c), part 742. Accordingly, the proposed rule adds a

new paragraph to § 701.36 with a cross-reference to the RegFlex Program. The proposed rule also states that FCUs that once qualified for the RegFlex Program and its associated exemptions but no longer qualify for RegFlex must comply with all the provisions of the fixed asset rule. For example, a RegFlex FCU that exceeds the five percent limitation on investment in fixed assets and subsequently loses its RegFlex qualification must either reduce its fixed asset holdings below five percent or obtain a waiver.

*Proposed § 701.36(e)*

The current § 701.36(b), Definitions, would become paragraph (e). The current rule defines "investment in fixed assets.'' 12 CFR 701.36(b)(4). As provided in subparagraph (iv), the definition includes any investments in, and loans to, a partnership or corporation, including a CUSO, that holds any fixed assets used by the FCU. 12 CFR 701.36(b)(4)(iv). The proposed rule deletes this subparagraph (iv) element of the definition as unnecessary and, in some cases, duplicative. Generally, FCUs may only invest in entities that are CUSOs, and FCUs are expected to pay the fair market value (FMV) for the use of CUSO assets. Lease payments are captured as part of the FCU's investment in fixed assets through the subparagraph (iii) provision on capital and operating lease payments. 12 CFR 701.36(b)(4)(iii). Accordingly, subparagraph (iv) could well cause an FCU to overstate its investment in fixed assets when it leases CUSO property. The Board also notes that the Federal Credit Union Act limits FCU investment in CUSOs to one percent of its paid in and unimpaired capital and surplus, and, even without subparagraph (iv), this restricts the use of CUSOs to invest in fixed assets. 12 U.S.C. 1757(7)(I).

The current rule also defines "retained earnings'' as "regular reserve, reserve for contingencies, supplemental reserves, reserve for losses and undivided earnings.'' 12 CFR 701.36(b)(7). The proposed rule updates this definition to include "and other appropriations of undivided earnings as designated by management or the Administration'' to recognize other reserve accounts that may be created out of undivided earnings consistent with generally accepted accounting principles. The proposed rule also separates the definitions of "shares'' and "retained earnings.''

Finally, the proposed rule alphabetizes all the definitions to make them easier to locate.

*Proposed § 742.4(a)*

The proposed rule includes a technical amendment to the RegFlex rule reflecting the proposed restructuring of the fixed asset rule.

**Regulatory Procedures**

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small entities (those credit unions under ten million dollars in assets). NCUA believes that, under the current rule, the only burden imposed on small credit unions is the requirement to submit a waiver request if investment in fixed assets exceed 5% of retained shares and earnings. There are presently about 4,540 small federally-insured credit unions. Each year, only about ten of these credit unions submit a waiver request, and NCUA estimates that each waiver request takes about ten hours to prepare. Accordingly, NCUA does not believe the current rule imposes a significant economic impact on a substantial number of small entities. Since the proposed rule does not change the burdens associated with the current rule, the proposed rule also does not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

*Paperwork Reduction Act*

Section 701.36 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the NCUA has submitted a copy of this section as part of an information collection package to the Office of Management and Budget (OMB) for its review and approval for reinstatement of Collection of Information, FCU Ownership of Fixed Assets, Control Number 3133–0040.

Section 701.36 protects the safety and soundness of FCUs by ensuring that FCUs do not over invest in unproductive fixed assets. The regulation also ensures that FCUs do not purchase and hold fixed assets for purposes other than the internal operations of the FCU or serving the FCU's members.

NCUA estimates the reporting and recordkeeping burden for this collection of information to be about 325 hours, calculated as follows:

(1) *Waiver of five percent limitation.* NCUA estimates the annual burden for preparation of an application for waivers to the limitation on investments in fixed assets as follows:

Respondents: 15
Responses × 1
Hours per respondent × 15
Annual reporting burden: 225

(2) *Plan for full occupation of premises.* NCUA estimates the annual burden associated with preparation of definitive plans for full occupation in connection with fixed asset acquired for future expansion but not fully occupied after one year as follows:

Respondents: 5
Responses × 1
Hours per respondent × 15
Annual reporting burden: 75

(3) *Waiver of requirement for partial occupation.* NCUA estimates the annual burden associated the acquisition of premises for future expansion and seeking NCUA approval for plans not to partially occupy the property within 3 years as follows:

Respondents: 5
Responses × 1
Hours per respondent × 5
Annual reporting burden: 25

*Total annual burden hours* = 325.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to Joseph F. Lackey, the Office of Information and Regulatory Affairs, OMB, Attn: Joseph F. Lackey, Room 10226, New Executive Office Building, Washington, DC 20503.

The NCUA considers comments by the public on this proposed collection of information in—

—Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the NCUA, including whether the information will have a practical use;
—Evaluating the accuracy of the NCUA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhancing the quality, usefulness, and clarity of the information to be collected; and
—Minimizing the burden of 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.

The Paperwork Reduction Act requires OMB to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the

**Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the NCUA on the proposed regulations.

*Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This proposed rule 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. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

*The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

*Agency Regulatory Goal*

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive.

**List of Subjects**

*12 CFR Part 701*

Credit unions.

*12 CFR Part 742*

Credit unions, Reporting and recordkeeping requirements

By the National Credit Union Administration Board on April 15, 2004.

**Becky Baker,**

*Secretary of the Board.*

Accordingly, the NCUA proposes to amend 12 CFR parts 701 and 742:

## PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Revise § 701.36 to read as follows:

### § 701.36 FCU Ownership of Fixed Assets.

(a) *Investment in Fixed Assets.* (1) No federal credit union with $1,000,000 or more in assets may invest in any fixed assets if the investment would cause the aggregate of all such investments to exceed five percent of the credit union's shares and retained earnings.

(2) The Administration may waive the prohibition in paragraph (a)(1) of this section.

(i) A federal credit union desiring a waiver must submit a written request to the NCUA regional office having jurisdiction over the geographical area in which the credit union's main office is located. The request must describe in detail the contemplated investment and the need for the investment. The request must also indicate the approximate aggregate amount of fixed assets, as a percentage of shares and retained earnings, that the credit union would hold after the investment.

(ii) The regional director will inform the requesting credit union, in writing, of the date the request was received and of any additional documentation that the regional director might require in support of the waiver request.

(iii) The regional director will approve or disapprove the waiver request in writing within 45 days after receipt of the request and all necessary supporting documentation. If the regional director approves the waiver, the regional director will establish an alternative limit on aggregate investments in fixed assets, either as a dollar limit or as a percentage of the credit union's shares and retained earnings. Unless otherwise specified by the regional director, the credit union may make future acquisition of fixed assets only if the aggregate all of such future investments in fixed assets does not exceed an additional one percent of the shares and retained earnings of the credit union over the amount approved by the regional director.

(iv) If the regional director does not notify the credit union of the action taken on its request within 45 calendar days of the receipt of the waiver request or the receipt of additional requested supporting information, whichever occurs later, the credit union may proceed with its proposed investment in fixed assets. The investment, and any future investments in fixed assets, must not cause the credit union to exceed the aggregate investment limit described in its waiver request.

(b) *Premises Not Currently Used to Transact Credit Union Business.* (1) When a federal credit union acquires premises for future expansion and does not fully occupy the space within one year the credit union must have a board resolution in place by the end of that year with definitive plans for full occupation. Premises are fully occupied when the credit union, or a combination of the credit union, CUSOs, or vendors, use the entire space on a full-time basis. CUSOs and vendors must be using the space primarily to support the credit union or to serve the credit union's members. The credit union must make any plans for full occupation available to an NCUA examiner upon request.

(2) When a federal credit union acquires premises for future expansion, the credit union must partially occupy the premises within a reasonable period, not to exceed three years. Premises are partially occupied when the credit union is using some part of the space on a full-time basis. The Administration may waive this partial occupation requirement in writing upon written request. The request must be made within 30 months after the property is acquired.

(3) A federal credit union must make diligent efforts to dispose of abandoned premises and any other real property not intended for use in the conduct of credit union business. The credit union must seek fair market value for the property, and record its efforts to dispose of abandoned premises. After premises have been abandoned for four years, the credit union must publicly advertise the property for sale. Unless otherwise approved in writing by the Administration, the credit union must complete the sale within five years of abandonment.

(c) *Prohibited Transactions.* (1) Without the prior written approval of the Administration, no federal credit union may invest in premises through an acquisition or a lease of one year or longer from any of the following:

(i) A director, member of the credit committee or supervisory committee, or senior management employee of the federal credit union, or immediate family member of any such individual.

(ii) A corporation in which any director, member of the credit committee or supervisory committee, official, or senior management employee, or immediate family members of any such individual, is an officer or director, or has a stock interest of 10 percent or more.

(iii) A partnership, limited liability company, or other entity in which any director, member of the credit committee or supervisory committee, or senior management employee, or immediate family members of any such individual, is a general partner, or a limited partner or entity member with an interest of 10 percent or more.

(2) The prohibition contained in paragraph (c)(1) of this section also applies to a lease from any other employee if the employee is directly involved in investments in fixed assets unless the board of directors determines that the employee's involvement does not present a conflict of interest.

(3) All transactions with business associates or family members not specifically prohibited by this paragraph (c) must be conducted at arm's length and in the interest of the credit union.

(d) *Regulatory Flexibility Program.* Federal credit unions that qualify for the Regulatory Flexibility Program provided for in part 742 of this chapter are exempt from the five percent limitation described in paragraph (a) of this section. Federal credit unions that lose their eligibility for the Regulatory Flexibility Program must comply with paragraph (a).

(e) *Definitions*—As used in this section:

(1) *Abandoned premises* means real property previously used to transact credit union business but no longer used for that purpose and real property originally acquired for future expansion for which the credit union no longer contemplates such use.

(2) *Fixed assets* means premises, furniture, fixtures and equipment.

(3) *Furniture, fixtures, and equipment* means all office furnishings, office machines, computer hardware and software, automated terminals, and heating and cooling equipment.

(4) *Investments in fixed assets* means:

(i) Any investment in improved or unimproved real property which is being used or is intended to be used as premises;

(ii) Any leasehold improvement on premises;

(iii) The aggregate of all capital and operating lease payments on fixed assets, without discounting commitments for future payments to present value; and

(iv) Any investment in furniture, fixtures and equipment.

(5) *Immediate family member* means a spouse or other family members living in the same household.

(6) *Premises* means any office, branch office, suboffice, service center, parking lot, other facility, or real estate where the credit union transacts or will transact business.

(7) *Senior management employee* means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (*e.g.,* Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller).

(8) *Shares* means regular shares, share drafts, share certificates, other savings.

(9) *Retained earnings* means undivided earnings, regular reserve, reserve for contingencies, supplemental reserves, reserve for losses, and other appropriations from undivided earnings as designated by management or the Administration.

## PART 742—REGULATORY FLEXIBILITY PROGAM

3. The authority citation for part 742 continues to read as follows:

**Authority:** 12 U.S.C 1756 and 1766.

4. Revise § 742.4(a) to read as follows:

### § 742.4 From what NCUA regulations will I be exempt?

(a) RegFlex credit unions are exempt from the provisions of the following NCUA regulations without restrictions or limitations: § 701.25, § 701.32(b) and (c), § 701.36(a), § 703.5(b)(1)(ii) and (2), § 703.12(c), § 703.16(b), and § 723.7(b) of this chapter.

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[FR Doc. 04–9002 Filed 4–20–04; 8:45 am]

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## NATIONAL CREDIT UNION ADMINISTRATION

## 12 CFR Part 705

## Community Development Revolving Loan Program for Credit Unions

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** NCUA proposes to revise its regulations pertaining to the Community Development Revolving Loan Program For Credit Unions (CDRLP) to permit student credit unions to participate in the program.

**DATES:** Comments must be received on or before May 21, 2004.

**ADDRESSES:** You may submit comments by any of the following methods (Please send comments by one method only):

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- NCUA Web site: *http://www.ncua.gov/news/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- E-mail: Address to *regcomments@ncua.gov.* Include "[Your name] Comments on Proposed Rule 705, Community Development Revolving Loan Program For Credit Unions'' in the e-mail subject line.
- Fax: (703) 518–6319. Use the subject line described above for e-mail.
- Mail: Address to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- Hand Delivery/Courier: Same as mail address.

**FOR FURTHER INFORMATION CONTACT:** Frank S. Kressman, Staff Attorney, at the above address, or telephone: (703) 518–6540.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Part 705 of NCUA's regulations implements the CDRLP. 12 CFR part 705. The purpose of the CDRLP is to support the community development activities of participating credit unions. 12 CFR 705.2. Participating credit unions are defined as those that are specifically involved in the stimulation of economic development and community revitalization activities in the communities they serve, whose membership consists of predominantly low-income members as reflected by a current low-income designation pursuant to § 701.34, § 741.204, or other applicable standards, and have submitted an application for participation and have been selected. 12 CFR 705.3(b); 12 CFR 701.34; 12 CFR 741.204. The CDRLP achieves its purpose by making low interest loans and providing technical assistance to those credit unions. A credit union that participates in the CDRLP increases economic and employment opportunities for its low-income members.

Historically, NCUA has taken the position that although student credit unions are designated as low-income credit unions for purposes of receiving nonmember deposits, they do not qualify to participate in the CDRLP because they are not specifically involved in the stimulation of economic development activities and community revitalization. 61 FR 50694 (September 27, 1996); 58 FR 21642 (April 23, 1993). The NCUA believes this historical perspective underestimates the importance of student credit unions and the impact they have on the economic

development and revitalization of the communities they serve. Student credit unions not only provide their members with valuable financial services generally not available but also a unique opportunity for financial education. NCUA believes that well run student credit unions would benefit greatly from participation in the CDRLP and, as a result, would be better able to serve their communities. Accordingly, NCUA proposes to amend the CDRLP regulations to allow student credit unions to participate in the program.

**B. 30-Day Comment Period**

As a matter of agency policy, NCUA generally allows interested persons a 60-day period to comment on a proposed rule. NCUA's Interpretive Ruling and Policy Statement 87–2. NCUA has determined that a 30-day comment period is sufficient in this instance. The simplicity of the rule change will allow meaningful public participation in the rulemaking process in a shorter time period. Additionally, the shorter comment period will enable student credit unions newly eligible to participate in the CDRLP to take advantage of current funding opportunities due to expire in a number of months.

**Regulatory Procedures**

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under ten million dollars in assets). The proposed rule permits student credit unions to participate in the CDRLP, without imposing any additional regulatory burden. The proposed rule would not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

*Paperwork Reduction Act*

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

*Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

*The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

**Agency Regulatory Goal**

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive.

**List of Subjects in 12 CFR Part 705**

Community development, Credit unions, Loan programs-housing and community development, Reporting and recordkeeping requirements, Technical assistance.

By the National Credit Union Administration Board on April 15, 2004.

**Becky Baker,**

*Secretary of the Board.*

For the reasons stated, NCUA proposes to amend 12 CFR part 705 as follows:

## PART 705—COMMUNITY DEVELOPMENT REVOLVING LOAN PROGRAM FOR CREDIT UNIONS

1. The authority citation for part 705 continues to read as follows:

**Authority:** 12 U.S.C. 1772c–1; 42 U.S.C. 9822 and 9822 note.

**§ 705.3 [Amended]**

2. Remove the parenthetical clause "(excluding student credit unions)'' from § 705.3(b).

[FR Doc. 04–9001 Filed 4–20–04; 8:45 am]

BILLING CODE 7535–01–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2003–CE–68–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa "PZL-Bielsko'' Model SZD–50–3 "Puchacz'' Sailplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa "PZL-Bielsko'' (PZL-Bielsko) Model SZD–50–3 "Puchacz'' sailplanes. This proposed AD would require you to repetitively inspect the front and back of the fuselage front bulkhead attachment fitting for cracks and replace the attachment fitting if any cracks are found. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Poland. We are issuing this proposed AD to detect and correct cracks in the fuselage front bulkhead attachment fitting, which could result in structural failure of the bulkhead. This failure could lead to loss of control of the sailplane.

**DATES:** We must receive any comments on this proposed AD by May 24, 2004.

**ADDRESSES:** Use one of the following to submit comments on this proposed AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–68–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE–7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2003–CE–68–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from Przedsiebiorstwo Doświadczalno-Produkcyjne Szybownictwa PZL-Bielsko, ul. Cieszyńska 325, 43–300 Bielsko-Biala: telephone: +48 033 812 50 21; facsimile: +48 033 812 37 39.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No.

2003–CE–68–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

*How do I comment on this proposed AD?* We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2003–CE–68–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

*Are there any specific portions of this proposed AD I should pay attention to?* We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

## Discussion

*What events have caused this proposed AD?* The General Inspectorate of Civil Aviation (GICA), which is the airworthiness authority for Poland recently notified FAA that an unsafe condition may exist on all PZL-Bielsko Model SZD–50–3 "Puchacz'' sailplanes. The GICA reports that cracks were detected in the front bracket console mounted on the fuselage front bulkhead.

*What are the consequences if the condition is not corrected?* This condition, if not detected and corrected, could cause the fuselage front bulkhead to fail. Failure of the fuselage front bulkhead could result in loss of control of the sailplane.

*Is there service information that applies to this subject?* Przedsiebiorstwo Doświadczalno-Produkcyjne Szybownictwa PZL-Bielsko (PDPS "PZL-Bielsko'') has issued Mandatory Bulletin No. BE–048/SZD–50–3/2000 "Puchacz,'' dated June 6, 2000, and Mandatory Bulletin No. BE–049/SZD–50–3/2000 "Puchacz,'' dated September 14, 2000.

*What are the provisions of this service information?* These service bulletins include procedures for:

—Repetitively inspecting the front and back of the fuselage front bulkhead attachment fitting for cracks; and
—Replacing the attachment fitting on the fuselage front bulkhead if any cracks are found.

*What action did the GICA take?* The GICA classified these service bulletins as mandatory and issued Republic of Poland AD Number SP–0059–2000–A, dated June 5, 2000, and AD Number SP–0094–2000–A, dated September 18, 2000, to ensure the continued airworthiness of these sailplanes in Poland.

*Did the GICA inform the United States under the bilateral airworthiness agreement?* These PZL-Bielsko Model SZD–50–3 "Puchacz'' sailplanes are manufactured in Poland and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the GICA has kept us informed of the situation described above.

## FAA's Determination and Requirements of This Proposed AD

*What has FAA decided?* We have examined the GICA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other PZL-Bielsko Model SZD–50–3 "Puchacz'' sailplanes of the same type design that are registered in the United States, we are proposing AD action to detect and correct cracks in the fuselage front bulkhead, which could result in structural failure of the bulkhead. This failure could lead to loss of control of the sailplane.

*Is there a modification I can incorporate instead of repetitively inspecting the front and back of the fuselage front bulkhead attachment fitting for cracks?* The FAA has determined that long-term continued operational safety would be better assured by design changes that remove the source of the problem rather than by repetitive inspections or other special procedures. With this in mind, FAA will continue to work with PZL-Bielsko in performing further tests to determine the cause of the cracking and to provide a corrective action that would terminate the need for repetitive inspections.

*What would this proposed AD require?* This proposed AD would require you to incorporate the actions in the previously-referenced service bulletins.

*What is the difference between this proposed AD and the service information?* The manufacturer's service information allows continued flight if cracks are found in the fuselage front bulkhead attachment fitting that do not exceed certain limits. The applicable service bulletin specifies replacement of the fuselage front bulkhead attachment fitting only if cracks are found exceeding this limit. This proposed AD would not allow continued flight if any crack is found. FAA policy is to disallow airplane operation when known cracks exist in primary structure, unless the ability to sustain ultimate load with these cracks is proven. The fuselage front bulkhead is considered primary structure, and the FAA has not received any analysis to prove that ultimate load can be sustained with cracks in this area.

*How does the revision to 14 CFR part 39 affect this proposed AD?* On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

## Costs of Compliance

*How many sailplanes would this proposed AD impact?* We estimate that this proposed AD affects 8 sailplanes in the U.S. registry.

*What would be the cost impact of this proposed AD on owners/operators of the affected sailplanes?* We estimate the following costs to accomplish this proposed inspection:

| Labor cost | Parts cost | Total cost per sailplane | Total cost on U.S. operators |
|---|---|---|---|
| 2 workhours × $65 per hour = $130 | Not applicable | $130 | $130 × 8 = $1,040 |

We estimate the following costs to accomplish any necessary replacement that would be required based on the results of this proposed inspection. We have no way of determining the number of sailplanes that may need such a replacement:

| Labor cost | Parts cost | Total cost per sailplane |
|---|---|---|
| 10 workhours × $65 per hour = $650 | $680 | $650 + $680 = $1,330 |

## Regulatory Findings

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

*Would this proposed AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this proposed AD:

1. Is not a "significant regulatory action'' under Executive Order 12866;
2. Is not a "significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003–CE–68–AD'' in your request.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa "PZL-Bielsko":** Docket No. 2003–CE–68–AD

**When Is the Last Date I Can Submit Comments on This Proposed AD?**

(a) We must receive comments on this proposed airworthiness directive (AD) by May 24, 2004.

**What Other ADs Are Affected by This Action?**

(b) None.

**What Sailplanes Are Affected by This AD?**

(c) This AD affects Model SZD–50–3 "Puchacz'' sailplanes, all serial numbers, that are certificated in any category.

**What Is the Unsafe Condition Presented in This AD?**

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Poland. We are issuing this proposed AD to detect and correct cracks in the fuselage front bulkhead attachment fitting, which could result in structural failure of the bulkhead. This failure could lead to loss of control of the sailplane.

**What Must I Do To Address This Problem?**

(e) To address this problem, you must do the following:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Using a fluorescent dye-penetrant or dye-check method, inspect the front and back of the fuselage front bulkhead attachment fitting for cracks. | Within the next 25 hours time-in-service (TIS) after the effective date of this AD. Repetitively inspect thereafter at intervals not to exceed 12 calendar months. | Follow Przedsiebiorstwo Doświadczalno-Produkcyjne Szybownictwa PZL-Bielsko (PDPS "PZL-Bielsko'') Mandatory Bulletin No. BE–048/SZD–50–3/2000 "Puchacz'', dated June 6, 2000. |
| (2) If cracks are found during any inspection required in paragraph (e)(1) of this AD, replace the fuselage front bulkhead attachment fitting. | Prior to further flight after any inspection required in paragraph (e)(1) of this AD in which cracks are found. | Follow Przedsiebiorstwo Doświadczalno-Produkcyjne Szybownictwa PZL-Bielsko (SZD "PZL-Bielsko'') Mandatory Bulletin No. BE–049/SZD–50–3/2000 "Puchacz'', dated September 14, 2000. |

**May I Request an Alternative Method of Compliance?**

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

**May I Get Copies of the Documents Referenced in This AD?**

(g) You may get copies of the documents referenced in this AD from Przedsiebiorstwo Doświadczalno-Produkcyjne Szybownictwa PZL-Bielsko, ul. Cieszyńska 325, 43–300 Bielsko-Biala: telephone: +48 033 812 50 21; facsimile: +48 033 812 37 39. You may view these documents at FAA, Central Region,

Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

**Is There Other Information That Relates to This Subject?**

(h) Republic of Poland AD Number SP–0059–2000–A, dated June 5, 2000, and AD Number SP–0094–2000–A, dated September 18, 2000, also address the subject of this AD.

Issued in Kansas City, Missouri, on April 15, 2004.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–9018 Filed 4–20–04; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2004–17136; Airspace Docket No. 04–AGL–08]**

## Proposed Modification of Class D Airspace; Camp Douglas, WI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to modify Class D airspace at Camp Douglas, WI. Instrument Flight Rules (IFR) Category E circling procedures are being used at Volk Field, WI. Increasing the current radius of the Class D airspace area will allow for a lower Circling Minimum Descent Altitude. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these approach procedures. This action would increase the area of the existing controlled airspace for Volk Field, Camp Douglas, WI.

**DATES:** Comments must be received on or before June 21, 2004.

**ADDRESSES:** Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2004–17136/ Airspace Docket No. 04–AGL–08, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Graham, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–17136/Airspace Docket No. 04–AGL–08.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D airspace at Camp Douglas, WI, for Volk Field. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace areas extending upward from the surface of the earth are published in paragraph 5000 of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the order.

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

*Paragraph 5000 Class D airspace*

**AGL WI D Camp Douglas, WI [Revised]**

Camp Douglas, Volk Field, WI
(Lat. 43°56′20″N., long. 90°15′13″W.)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 5.8-mile radius of Volk Field. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on April 7, 2004.

**Nancy B. Shelton,**

*Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 04–9075 Filed 4–20–04; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2004–17163; Airspace Docket No. 04–AGL–10]**

## Proposed Modification of Class D Airspace; Rochester, MN; Proposed Modification of Class E Airspace; Rochester, MN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to modify Class D airspace at Rochester, MN, and modify Class E airspace at Rochester, MN. Standard Instrument Approach Procedures (SIAPS) to several Runways have been developed for the Rochester International Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the existing radius of Class D airspace, and increase the existing area of Class E airspace for Rochester International Airport.

**DATES:** Comments must be received on or before June 21, 2004.

**ADDRESSES:** Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the Docket Number FAA–2004–17163/ Airspace Docket No. 04–AGL–10, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Graham, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–17163/Airspace Docket No. 04–AGL–10.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov.* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D airspace at Rochester, MN, and modify Class E airspace at Rochester, MN, by modifying Class D airspace and modifying class E airspace for the Rochester International Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, and Class E airspace areas Designated as surface areas are published in Paragraph 6002, of FAA Order 7400.9L dated September 2, 2003, and effective

September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 23 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

*Paragraph 5000 Class D airspace*

* * * * *

**AGL MN D Rochester, MN [Revised]**

Rochester International Airport, MN
(Lat. 45°32′48″ N., long. 94°03′36″ W.)
Rochester VOR/DME
(Lat. 45°32′58″ N., long. 94°03′31″ W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.3-mile radius of the Rochester International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published continuously in the Airport/Facility Directory.

* * * * *

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

* * * * *

**AGL MN E5 Rochester, MN [Revised]**

Rochester International Airport, MN
(Lat. 43°54′26″ N., long. 92°29′56″ W.)
Rochester VOR/DME
(Lat. 43°46′58″ N., long. 92°35′49″ W.)
St. Mary's Hospital Heliport, MN
(Lat. 44°01′11″ N., long. 92°28′59″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Rochester International Airport, and within 3.2 miles each side of the Rochester VOR/DME 028° radial extending from the 6.8-mile radius to 7.9 miles southwest of the airport, within 5.3 miles southwest and 4 miles northeast of the Rochester northwest localizer course extending from the 6.8-mile radius to 20 miles northwest of the airport, within 5.3 miles northeast and 4 miles southwest of the Rochester southeast localizer course extending from the 6.8-mile radius to 17.3 miles southeast of the airport and within a 6.4-mile radius of the St. Mary's Hospital Heliport.

* * * * *

*Paragraph 6002 Class E airspace designated as surface areas*

* * * * *

**AGL MN E2 St. Cloud, MN [Revised]**

St. Cloud Regional Airport, MN
(Lat. 45°32′48″ N., long. 94°03′36″ W.)
St. Cloud VOR/DME
(Lat. 45°32′58″ N., long. 94°03′31″ W.)

Within a 4.1-mile radius of the St. Cloud Regional Airport and within 2.4 miles each side of the St. Cloud VOR/DME 143° radial, extending from the 4.1-mile radius to 7.2 miles southeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published continuously in the Airport/Facility Directory.

* * * * *

*Paragraph 6004 Class E airspace designated as an extension to a Class D or Class E surface area*

* * * * *

**AGL MN E4 St. Cloud, MN [NEW]**

St. Cloud Regional Airport, MN
(Lat. 45°32′48″ N., long. 94°03′36″ W.)
St. Cloud VOR/DME
(Lat. 45°32′58″ N., long. 94°03′31″ W.)

That airspace extending upward from the surface within 2.4 miles each side of the St. Cloud VOR/DME 143° radial extending from the 4.1-mile radius of the St. Cloud Regional Airport to 7.2 miles southeast of the airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published continuously in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on April 7, 2004.

**Nancy B. Shelton,**

*Manager, Air Traffic Division.*

[FR Doc. 04–9076 Filed 4–20–04; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2004–17092; Airspace Docket No. 04–AGL–07]**

## Proposed Modification of Class E Airspace; Janesville, WI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to modify Class E airspace at Janesville, WI. Standard Instrument Approach Procedures (SIAPS) have been developed for Southern Wisconsin Regional Airport, Janesville, WI. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the area of the existing controlled airspace for Southern Wisconsin Regional Airport.

**DATES:** Comments must be received on or before June 21, 2004.

**ADDRESSES:** Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2004–17092/ Airspace Docket No. 04–AGL–07, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Graham, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–17092/Airspace Docket No. 04–AGL–07.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Janesville, WI, for Southern Wisconsin Regional Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment.

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

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

* * * * *

**AGL WI E5 Janesville, WI [Revised]**

Janesville, Southern Wisconsin Regional Airport, WI
(Lat. 42°37′13N″., long. 89°02′30″W.)
Beloit Airport, WI
(Lat. 42°29′52″N., long. 88°58′03″W.)

That airspace extending upward from 700 feet above the surface within an 8.9-mile radius of the Southern Wisconsin Regional Airport and within a 6.3-mile radius of the Beloit Airport, excluding that airspace within the Belvidere, IL Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on April 7, 2004.

**Nancy B. Shelton,**

*Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 04–9077 Filed 4–20–04; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 14 CFR Part 399

**[Dockets Nos. OST–97–2881, OST–97–3014, OST–98–4775, and OST–99–5888]**

**RIN 2105–AD37**

## Statements of General Policy: Price Advertising

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Withdrawal of proposed amendments to policy statement.

**SUMMARY:** The Department had proposed to amend its existing policy

statement on fare advertising, 14 CFR 399.84, which requires airlines and travel agents to disclose the full price for an airline ticket (including all airline surcharges and most government fees), by applying the policy statement to computer reservations systems ("CRSs'' or "systems'') and requiring travel agents to separately state the amount of any service fees charged by the travel agency. After considering the comments, the Department has decided to withdraw the proposals, because the record does not persuasively show that they are necessary or would be beneficial. The existing policy statement will remain in effect without change.

**FOR FURTHER INFORMATION CONTACT:** Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

You can view and download this document by going to the Web site of the Department's Docket Management System (*http://dms.dot.gov/*). On that page, click on "simple search.'' On the next page, type in the last four digits of the docket number shown on the first page of this document, 2881. Then click on "search.'' An electronic copy of this document also may be downloaded from *http://regulations.gov* and from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.archives.gov/federal_register/index.html* and the Government Printing Office's database at: *http://www.gpoaccess.gov/fr/index.html*.

*A. Summary*

We began this proceeding to reexamine whether the rules on computer reservations systems ("CRSs'' or "systems'') adopted by us in 1992, 14 CFR Part 255, remained necessary and should be readopted. We ultimately concluded, after reviewing the comments and the on-going changes in the airline distribution and CRS businesses reflected in those comments, that we should allow most of the rules to sunset on January 31, 2004, and should terminate the remaining rules on July 31, 2004. 69 FR 976 (January 7, 2004). As a result, after July 31, 2004, we will have no regulations prescribing how systems must display airline services.

While the proceeding focused on the CRS rulemaking issues, we also included two proposals that would modify our existing policy statement on price advertising, 14 CFR 399.84. 67 FR 69366, 69417–69418 (November 15, 2002). That policy statement has stated that we will consider an advertisement by an airline or travel agency to be an unfair or deceptive practice if it states a price that is not the complete price that must be paid by the consumer for the air transportation. We adopted the policy statement under 49 U.S.C. 41712, formerly section 411 of the Federal Aviation Act, which authorizes us to define and prohibit unfair and deceptive practices in the marketing of airline transportation (we will refer to the statute herein under its traditional name, section 411).

One of our two proposed amendments to this policy statement would have made it clear that each system has an obligation to ensure that its displays of fare information follow the standards set by § 399.84. The second proposal would have clarified the policy statement by expressly allowing travel agents to state service fees separately from the price of the air transportation, if they complied with conditions ensuring that their customers (i) would understand their obligation to pay a fee for the travel agency service and (ii) would know the total price for the transportation, including any travel agency service fee. We further proposed to require that advertised or quoted fares always include travel agency service fees if the fees exceed either $20 or ten percent of the fare or are *ad valorem* in nature.

Our final CRS rule stated that we would issue our final decision on the policy statement proposals in a separate document. 69 FR 978. This is our final decision on the proposals. We have decided to withdraw the proposals without adopting them, because the record in this proceeding does not adequately show that either proposal would provide significant benefits. The lack of amendments to the policy statement will not prevent us from taking enforcement action against systems and travel agencies if they display fares or service fee information in a manner that constitutes an unfair and deceptive practice in violation of section 411. We have determined that each system, whether or not owned or controlled by an airline, is a ticket agent and therefore subject to our jurisdiction under section 411 (Sabre, however, is seeking judicial review of our determination, *Sabre, Inc.* v. *Department of Transportation,* DC Cir. No. 04–1073 (filed March 1, 2004)). 69 FR 995–998.

*B. Our Proposals and the Comments*

Section 411 prohibits unfair or deceptive practices in the sale of air transportation. To provide guidance on the meaning of this statutory prohibition, our policy statement on fare advertisements, 14 CFR 399.84, states that we will consider an advertisement by an airline or travel agency to be an unfair or deceptive practice if it states a price that is not the complete price that must be paid by the traveler for the air transportation. Section 399.84 requires each airline and travel agency to include in any advertised or quoted fare any charge imposed by the airline, such as a fuel surcharge, and most governmental charges. As a matter of enforcement discretion, we have created limited exceptions to this policy. The stated fare amount need not include certain governmental taxes and fees collected by airlines and travel agencies, such as passenger facilities charges and departure taxes, as long as the charges are not *ad valorem* in nature and are collected on a per-passenger basis, and as long as their existence and amount are clearly stated in the advertisement so that the consumer can determine the full amount to be paid for the transportation. *See, e.g., Notice: Prohibition on Deceptive Practices in the Marketing of Airfares to the Public Using the Internet* (February 18, 2001), at *http://airconsumer.ost.dot.gov/rules.htm*.

As noted, our notice of proposed rulemaking proposed two amendments to this policy statement. We gave interested persons the opportunity to file comments and reply comments and to present their views at a public hearing. 69 FR 984.

The first proposed revision would have expressly applied the policy statement to the systems as well as to airlines and travel agencies. In proposing this amendment, we reasoned that a fare display that does not include items such as fuel surcharges and government fees could mislead consumers, since the display would suggest that some airlines are offering lower fares than other airlines when in fact the opposite may be true. *Cf.* Order 2002–3–12 (March 15, 2002) at 7. Our current policy statement on fare advertisements expressly covers airlines and each airline's agents and thus clearly applies to travel agents. By its terms, however, it may not apply to the systems' display of airline fares. *Cf.* 69 FR at 996. We therefore proposed to require the systems to include all charges in their displays of airline fares.

Our second proposal would have amended the policy statement by adding standards for the travel agencies' disclosure of their service fees to their customers. The policy statement bars airlines and travel agencies from

separately listing surcharges which would confuse consumers and keep them from making accurate fare comparisons. The Department's Enforcement Office has traditionally interpreted the policy statement as barring the separate listing of a travel agency's service fee and instead as requiring the agency to include the fee in the fare amount quoted the customer. *See* Order 2001–12–7 at 3. However, we granted a request by Orbitz, the on-line travel agency created by five of the major airlines, for a conditional exemption from the policy statement so that its initial display of available fares need not include Orbitz' planned $5 service fee. Order 2001–12–7 (December 7, 2001), *affirmed on reconsideration*, Order 2002–3–12 (March 15, 2002). The order allowed Orbitz to omit the fee from its first quotation of fares but required Orbitz to include the amount of the fee in the price whenever it presents an itinerary that can be purchased. The order imposed several other conditions, including requirements that Orbitz place a notice just above its display of possible itineraries that advises consumers that it charges a fee and that Orbitz provide a link to its fee schedule. We noted that we would further consider what disclosures should be required for travel agency fees in a rulemaking. Order 2001–12–7 at 5. The Enforcement Office thereafter stated that it would apply the Orbitz exemption order's standards to all Internet agencies. Notice of the Office of Aviation Enforcement and Proceedings (December 19, 2001), cited at Order 2002–3–12 at 1.

In proposing to modify our policy statement on the disclosure of travel agency service fees, we thought that consumers could benefit by requiring separate listings of the amount of service fees being charged by all sellers of air transportation, as long as standards were in place to prevent deception. The separate disclosure of the amount of any service fee could enable consumers to make better informed decisions on which booking channel to use, since consumers then could see whether they could save money by buying the ticket directly from the airline or from another agency that charges a lower service fee or no service fee. 67 FR 69417–69418.

Our proposal would also have required the travel agency to include any service fees in the total price displayed or quoted before the customer decided whether to purchase the ticket. Furthermore, we proposed to block travel agency service fees from being stated separately (i) if they were *ad valorem* in nature, since simply identifying percentage add-ons make price comparisons more difficult, or (ii) if they exceeded $20 or ten percent of the ticket price, since we wished to ensure that service fees were not used merely to make the advertised fare seem lower. 67 FR 69418. We were not proposing, however, to bar travel agencies from charging *ad valorem* fees or fees that exceeded $20 or more than ten percent of the ticket price. 68 FR 12622 (March 17, 2003). We also asked the parties to comment on an alternative proposal: a policy allowing travel agencies to choose between listing their fees separately and including the fees in the price quoted for air transportation. 67 FR 69418.

Southwest, the American Society of Travel Agents ("ASTA"), Expedia, Travelocity, and the Mercatus Center opposed the proposal to require travel agencies to unbundle the amount of the air transportation cost from the amount of any travel agency service fee. Galileo, Orbitz, Alaska, America West, and American Express supported the proposal in principle, but most of them contended that it required substantial modification. AAA argued that travel agencies should be able to choose whether to bundle or unbundle their service fees and that they should be required to disclose any such fees.

Amadeus, Worldspan, ASTA, and Travelocity opposed the proposal to apply the policy statement to the systems, while America West supported it and Galileo stated that a revised proposal would be acceptable. Some commenters, like Sabre, did not specifically comment on this proposed change in the policy statement but argued that we have no authority under section 411 to regulate systems that are not owned or controlled by one or more airlines, in which event the policy statement could not cover such non-airline systems.

Finally, section 542 of the Consolidated Appropriations Act, 2004, Public Law 108–199, states, "None of the funds [from this Act] may be used to adopt rules or regulations concerning travel agent service fees unless the Department of Transportation publishes in the **Federal Register** revisions to the proposed rule and provides a period for additional public comment on such proposed rule for a period not less than 60 days."

*C. Final Decision*

We continue to seek to prevent airlines and travel agencies from providing consumers with misleading or inaccurate information. To prevent such practices, we can use both our enforcement authority and our rulemaking authority. We may bring enforcement cases against airlines and travel agencies for engaging in conduct that violates section 411 even if there is no regulation or policy statement that states that the specific conduct at issue is unlawful as an unfair or deceptive practice.

As we stated in our final CRS rule, we should adopt rules regulating industry practices under section 411 only if those rules are reasonably necessary to prevent anti-competitive or deceptive practices that are likely to occur, and would cause significant consumer harm if they did occur, and only if market forces are unlikely to remedy the problem. 69 FR 977. Judged against that standard, the record in this proceeding does not justify the adoption of either proposed amendment to the policy statement.

With respect to the proposal on the disclosure of travel agency service fees, the record does not provide a factual basis for mandating a specific format for the disclosure of travel agency service fees. While consumers could benefit from a separate disclosure of any such fee, the record does not show that consumers have been harmed when travel agencies instead display a total price including such fees. *See*, *e.g.*, ASTA Comments at 36. Expedia, for example, represents that no consumer has ever complained that Expedia's practice of showing a total price for a trip without a separate disclosure of a service fee is misleading or hides necessary information. Expedia Comments at 25. Expedia further argues that its display of only a total price is not deceptive. Expedia Supp. Comments at 2. Given our decision in the CRS rulemaking that airline distribution should not be subject to industrywide regulations unless necessary, we have concluded that the comments do not show a basis for mandating one form of fee disclosure rather than another.

In addition, adopting the proposal seems unwise at this time due to potential difficulties discussed in the comments. First, the First Amendment, which protects commercial speech, would allow us to dictate how service fees must be disclosed only if we have a record demonstrating a substantial need for such a regulation. *See*, *e.g.*, *Edenfield* v. *Fane*, 507 U.S. 761, 770–771 (1993) (the burden of justifying a restriction on non-deceptive commercial speech "is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree").

Second, travel agencies charge a variety of fees, and some charge different fees for bookings on different airlines. *See*, *e.g.*, American Express Comments; Expedia Comments at 25. Our notice did not address how the proposed disclosure requirements would apply to these different practices. We note as well that Orbitz, which originally urged us to require the separate disclosure of service fees, is apparently not using the exemption authority granted by us and instead is displaying a total price for air transportation that includes the service fee. Tr. at 227. Finally, many of the commenters viewed the proposed provision requiring the bundling of service fees when they exceeded $20 or ten percent of the ticket price as unreasonable and counterproductive. *See*, *e.g.*, National Travel Comments.

Our decision to withdraw the rule proposals and end this rulemaking without changing the policy statement will not keep us from taking appropriate enforcement action or other action to prevent travel agencies and other firms selling airline tickets from engaging in price advertising that misleads the public. Section 411 authorizes us to prevent unfair and deceptive practices in the marketing of air transportation, and the First Amendment does not protect commercial speech that is deceptive or misleading. 69 FR 1003–1004.

At this time, we will also maintain the exemption granted by Order 2001–12–7. Giving travel agencies exemption authority to initially state the amount of any service fee separately from the ticket price, subject to adequate conditions designed to ensure that consumers will also know the total price including the fees, has not caused discernible harm. Several commenters contend that we should allow the market and consumer preferences to decide which method of disclosure is best. *See*, *e.g.*, Expedia Reply Comments at 10; ASTA Reply Comments at 23. Doing so would be consistent with our decisions that we should not adopt rules generally regulating the displays offered by on-line travel agencies. 69 FR 977, 1003, 1020.

Unlike the disclosure of travel agency service fees, the failure of an airline or travel agency to include fuel surcharges and similar airline charges in the initial display of a ticket price is likely to mislead consumers. *See*, *e.g.*, ASTA Comments at 36–37. A failure to include such charges in the price would violate our existing policy statement.

Because we are adopting no rule on the disclosure of travel agency service fees, the Congressional directive requiring us to issue an additional notice of proposed rulemaking is inapplicable. The statute requires us to use further procedures only if we were adopting a rule or regulation on service fees.

We have also decided not to adopt the other proposed amendment, which would make the policy statement expressly cover the systems as well as airlines and travel agencies. We determined in this rulemaking to deregulate the CRS industry by terminating the rules generally regulating CRS practices. Given that decision, at this time we prefer not to make the policy statement applicable to the systems when they have not been subject to it before. The systems, moreover, are situated somewhat differently than the firms now covered by the policy statement, airlines and travel agencies. The policy statement by its terms refers to "advertising'' and "solicitation,'' terms which more accurately describe the conduct of airlines and travel agents than the systems' conduct, despite the systems' important role in airline distribution. *See*, *e.g.*, Amadeus Comments at 106; ASTA Reply Comments at 22–23. In addition, although the systems necessarily rely on the information provided by the airlines, our deregulation of the CRS business will eliminate the rule expressly requiring airlines to provide complete and accurate information to the systems, 14 CFR 255.4(f) (2003 ed.). Finally, almost none of the commenters supported the proposal, and the systems' major users—the travel agencies—are not urging us to revise the policy statement.

However, as noted above, the systems are subject to our jurisdiction under section 411, and we will take action as appropriate if a system's displays of fare information (or other information) involve unfair and deceptive practices.

## Regulatory Process Matters

### *Regulatory Assessment and Unfunded Mandates Reform Act Assessment*

#### 1. Unfunded Mandates Reform Act Assessment

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

The decision to withdraw the rule proposals will not result in expenditures by State, local, or tribal governments because we are not adopting any new regulation. The Regulatory Assessment below discusses the costs and benefits for the withdrawal.

#### 2. The Department's Regulatory Assessment

Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), defines a significant regulatory action as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Regulatory actions are also considered significant if they are likely to create a serious inconsistency or interfere with the actions taken or planned by another agency or if they materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of the recipients of such programs.

The Department's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) outline similar definitions and requirements with the goal of simplifying and improving the quality of the Department's regulatory process. They state that a rule will be significant if it is likely to generate much public interest.

The Department has determined that the withdrawal of the proposals is not an economically significant regulatory action under the Executive Order. The Department is not making any regulatory change and so is taking no action that would likely have an annual impact on the economy of $100 million or more.

The Department's withdrawal is not significant under the Department's Regulatory Policies and Procedures because it will not change the existing regulations governing the disclosure of travel agency service fees. The Department's regulatory assessment for this withdrawal, which incorporates the earlier discussion in this document, is set forth below. This withdrawal has not been reviewed by the Office of Management and Budget under the Executive Order.

The notice of proposed rulemaking contained a preliminary regulatory impact analysis of the proposed rules. That analysis focused on the proposed changes in the CRS rules. We requested interested persons to provide detailed information on the potential consequences of the proposed rules. 67 FR 69419.

We are not adopting any rule modifying the policy statement's standards, because we cannot conclude from the record in this proceeding that the benefits of the proposed modifications would exceed their costs, as discussed above. The record does not demonstrate that the disclosure requirements for travel agency service fees established by the existing policy statement and the exemption granted Orbitz are causing any significant consumer harm. Some travel agencies, moreover, contend that the proposed change would unreasonably interfere with their business practices while not providing any significant consumer benefit. Therefore, we are not imposing any additional costs.

*Regulatory Flexibility Statement*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The act requires agencies to publish a final regulatory flexibility analysis for regulations that may have a significant economic impact on a substantial number of small entities.

Our notice of proposed rulemaking, which assumed that the relevant small entities included smaller U.S. airlines and travel agencies, included an initial regulatory flexibility analysis. That notice, which focused on the proposed amendments to the CRS rules, also set forth the reasons for our rule proposals and their objectives and legal basis. The notice's analysis relied in part on the factual, policy, and legal analysis set forth in the remainder of the notice, as allowed by 5 U.S.C. 605(a). We invited comments on our initial regulatory flexibility analysis. 67 FR 69424.

The Regulatory Flexibility Act requires us to publish a final regulatory flexibility analysis that considers such matters as the impact of a final rule on small entities if the rule will have "a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). Our proposed changes to the policy statement would have affected the systems and travel agencies. None of the systems is a small entity, but most travel agencies are small entities. 69 FR 1030–1031. Since we are not adopting any new rules regulating travel agency operations, I certify that our withdrawal will not have a significant economic impact on a substantial number of small entities. No final regulatory flexibility analysis is therefore required for this action.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding our decision so that they can better evaluate its effects on them and take it into account in operating their businesses. If the decision affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or requirements, please consult Thomas Ray at (202) 366–4731.

*Paperwork Reduction Act*

The withdrawal of the rule proposals will create no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law 96–511, 44 U.S.C. Chapter 35. *See* 57 FR at 43834.

*Federalism Implications*

The Department's withdrawal will have no 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 13132, dated August 4, 1999, we have determined that this decision does not present sufficient federalism implications to warrant consultations with State and local governments.

*Taking of Private Property*

Our withdrawal will not effect a taking or private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

*Civil Justice Reform*

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

*Protection of Children*

We have analyzed our withdrawal under Executive Order 13045, Protection of Children from Environmental Heath Risks and Safety Risks. The withdrawal does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

*Consultation and Coordination With Tribal Governments*

This withdrawal will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Therefore, it is exempt from the consultation requirements of Executive Order 13175. No tribal implications were identified.

*Energy Effects*

We have analyzed our withdrawal under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not classified as a "significant energy action'' under that order because it would not have a significant adverse effect on the supply, distribution, or use of energy.

*Environment*

Our withdrawal will have no significant impact on the environment. Therefore, an Environmental Impact Statement is not required under the National Environmental Policy Act of 1969.

Issued in Washington, DC on April 14, 2004, under authority delegated by 49 CFR 1.56a(h)2.

**Michael W. Reynolds,**

*Deputy Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 04–9058 Filed 4–20–04; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–139792–02]**

**RIN 1545–BB11**

## Partner's Distributive Share: Foreign Tax Expenditures

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rule making by cross-reference to temporary regulations and notice of public hearing.

**SUMMARY:** This document contains proposed regulations relating to the proper allocation of partnership expenditures for foreign taxes. The proposed regulations affect partnerships and their partners. In the rules and regulations portion of this issue of the **Federal Register**, the IRS is issuing temporary regulations that modify the rules relating to the proper allocation of creditable foreign taxes. The text of the temporary regulations also serves as the text of these proposed regulations. This document also contains a notice of public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by Tuesday, August 24, 2004. Outlines of topics to be discussed at the public hearing scheduled for Tuesday, September 14, 2004, at 10 a.m., must be received by Tuesday, August 24, 2004.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–139792–02), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–139792–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *http://www.irs.gov/regs* or *http://www.regulations.gov*. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Beverly M. Katz, (202) 622–3050; concerning submissions and the hearing, Treena Garrett, (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

## Background

The temporary regulations amend the rules in 26 CFR part 1 regarding the allocation of foreign taxes among partners under section 704(b). The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulation.

## Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, September 14, 2004, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** portion of this preamble. The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written or electronic comments by Tuesday, August 24, 2004, and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by Tuesday, August 24, 2004. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

## Drafting Information

The principal author of this regulation is Beverly M. Katz, Office of the Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the IRS and Treasury Department participated in its development.

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Proposed Amendments to the Regulations

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

## PART 1—INCOME TAXES

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

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

2. Section 1.704–1 is amended as follows:

1. Paragraphs (b)(1)(ii)(*b*) and (b)(4)(xi) are added.

2. Paragraph (b)(5) is amended by adding *Example 25* through *Example 28*.

The additions and revisions read as follows.

**§ 1.704–1 Partner's distributive share.**

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(*b*) [The text of this proposed amendment is the same as the text of § 1.704–1T(b)(1)(ii)(*b*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(4) * * *

(xi) [The text of this proposed amendment is the same as the text of § 1.704–1T(b)(4)(xi) published elsewhere in this issue of the **Federal Register**].

* * * * *

(5) [The text of this proposed amendment of § 1.704–1(b)(5) is the same as the text of § 1.704–1T(b)(5) published elsewhere in this issue of the **Federal Register**].

**John M. Dalrymple,**

*Acting Deputy Commissioner for Services and Enforcement.*

[FR Doc. 04–8705 Filed 4–20–04; 8:45 am]

**BILLING CODE 4830–01–P**

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## POSTAL SERVICE

## 39 CFR Part 111

## Standards Governing the Design of Wall-Mounted Centralized Mail Receptacles

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service™ is proposing to replace United States Postal Service® Standard 4B, *Receptacles, Apartment House, Mail*, which governs the design of wall-mounted centralized mail receptacles whether used in commercial, residential, mixed residential, or other types of structures. The proposed standard was developed through a consensus process and was agreed to by a committee of representatives from mailbox manufacturers; mailbox distributors; mailbox installers and servicers; Postal Service customers; multiunit residential and commercial property builders, owners, and managers; and the Postal Service. Proposed provisions in the *Domestic Mail Manual* would provide manufacturers and customers with notice of the specifications.

**DATES:** The Postal Service must receive written comments on or before May 21, 2004.

**ADDRESSES:** Written comments should be mailed or delivered to the Manager, Delivery Operations, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 7142, Washington, DC 20260–2802. Comments also may be sent electronically to *wallmountedreceptacles@usps.gov*. Copies of all written and e-mail comments will be available for public inspection and copying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jeffery W. Lewis, (202) 268–5233.

**SUPPLEMENTARY INFORMATION:** United States Postal Service Standard 4B, *Receptacles, Apartment House, Mail*, USPS–STD–4B, currently governs the design of apartment house mailboxes. This standard, adopted in 1975, prescribes design limitations in terms that are no longer consistent with the operational requirements of the Postal Service. The proposed revised standard is titled United States Postal Service Standard 4C, *Wall-Mounted Centralized Mail Receptacles*. The change in the title for the updated Standard, and the reference to the equipment as "wall-mounted centralized mail'' receptacles rather than "apartment house mail'' receptacles are made solely to reflect that the Standard applies to receptacles in a variety of residential and commercial buildings, and not only "apartments.'' Adoption of the proposal will not result in any change in Postal Service policies concerning the purchase of this delivery equipment or the provision of delivery equipment for Postal Service customers previously in effect under STD–4B.

Under the Postal Reorganization Act, the Postal Service is responsible for the maintenance of an efficient nationwide system for collecting, sorting, and delivering of mail. 39 U.S.C. 403(b)(1). Customer mail receptacles are an important consideration in this system. Receptacles should offer measurable protection for mail. This system benefits both senders and addressees who rely on the Postal Service to deliver intact mailpieces. In addition, the design of receptacles should not present any potential safety hazards to carriers. Finally, a well-designed receptacle can be accessed and serviced quickly by carriers, which helps to reduce Postal Service costs.

As noted above, the current standard for mail receptacles in apartment and commercial buildings was adopted more than a quarter century ago, in 1975. The Postal Service and its customers have changed considerably during that time. In particular, there have been significant changes in the volume and type of mail received by many customers, with the average customer receiving more pieces on a daily basis and often larger-sized pieces. Postal Service statistics indicate that, since 1985, flat-sized mail volume has increased by 47 percent and parcel-shaped mail volume has increased 42 percent. Receptacles that were adequate to support the daily volume of mail in earlier years cannot easily hold many customers' mail today. As a result, delivery is less efficient since carriers must take extra time to prepare (*i.e.*, fold or bend) the mail in order to insert it into customer receptacles. The mail may inadvertently be marred as a result of this effort. Accordingly, the proposed changes, as described more fully below, provide for larger receptacles than the minimum sizes in the current standard. The proposed sizes are intended as minimum standards. Buildings may provide larger sizes to accommodate the needs of their tenants, and it is expected that manufacturers will offer a wide range of products to meet customer needs

In addition, the proposed changes generally require the provision of some larger shared receptacles, usually referred to as parcel lockers, based on the number of units in the building. These receptacles will not be assigned to specific residents, but will be used for the delivery of mail matter that, due to size or quantity, cannot be placed in the receptacle assigned to the addressee. This system obviates the need for the Postal Service to redeliver the mail or for the addressee to pick it up at a Postal Service retail facility. Postmasters shall consider excusing buildings from the need to provide parcel lockers if they have an agreement in place, as is the case with some commercial and residential buildings, for an alternative type of parcel delivery (*e.g.,* concierge service or acceptance at the building management office), or if they provide receptacles for tenants that exceed the minimum size requirements and can accommodate parcels.

Additionally, mail security has become a growing concern of the Postal Service. Statistics collected by the Postal Inspection Service demonstrate that theft of the mail is a growing problem. From 2000 to 2002, Postal Inspection Service statistics indicate that reported attacks on wall-mounted boxes increased from 988 in FY 2000 to 2,819 in FY 2002. Moreover, it does not appear that these attacks are limited to a particular region of the country, but are occurring in different areas. In any event, even if the number of incidents had remained static, mail security would still be an area of concern since identity theft has become one of the motives for mail theft and this crime has potentially devastating financial impact on victims. The current generation of receptacles is not well suited to provide adequate physical security in this environment. According to a report issued by the Federal Trade Commission on September 3, 2003, a recent survey indicates that 27.3 million Americans have been victims of identity theft in the last 5 years, with 9.9 million victims in the last year alone. The reported cost of these crimes last year was $53 billion, affecting both businesses and individuals, with an average loss of approximately $5,000. Although stolen mail accounted for only 4 percent of these crimes, the Postal Service is seeking means to reduce the effectiveness of these attacks on our customers as much as possible. Accordingly, as explained below, the proposed revised Standard includes features to significantly improve the security of the receptacles.

Based on these concerns, the Postal Service determined to review the existing Standard for wall-mounted receptacles to determine if improvements were possible. It determined to use a consensus process in developing the proposed revised Standard. In a consensus process, representatives of interests that would be substantially affected by a new rule meet as an advisory committee and negotiate among themselves and with the agency to reach a consensus on a proposed new rule.

In this instance, the Postal Service retained the services of an independent, neutral third party to convene a Consensus Committee and facilitate discussions of committee members. Based on the convener's recommendation, the Postal Service invited interested parties that were expected to be substantially affected by the new rule to become Consensus Committee members. Further, committee members were responsible for representing other interested individuals and organizations that were not present at committee meetings and keeping them informed of the committee's proceedings.

As part of the ground rules agreed to by all members of the Consensus Committee, the Postal Service agreed to use a recommendation by the committee as the basis for the proposed rule. In addition, each private member of the committee stipulated that, if it agreed to a recommendation by the committee, it would support that recommendation

and the proposed rule except to the extent that it does not reflect the recommendation. As part of its process, the Consensus Committee held several meetings that were open to the public. The committee has also agreed to meet, either in person or by teleconference, approximately 6 and 12 months after publication of the Final Standard, to discuss any implementation or other issues that arise after adoption of the new Standard.

In all, twenty parties were members of the committee. The Committee members were as follows: Academy Mailbox Company, Inc.; American Eagle Mailbox Manufacturing Company; American Locker Security Systems; Associated Building and Contractors, Inc.; Auth-Florence Manufacturing Corp.; Bommer Industries, Inc.; Building Owners and Managers Association International; Compx Security Products; Direct Marketing Association; HSS Industries; Jensen Industries; Magazine Publishers Association; National Association of Home Builders; National Association of Housing and Redevelopment Officials; National Association of Realtors; National Multi Housing Council/National Apartment Association; Parcel Shippers Association; Postal Products Limited; Salsbury Industries; and the United States Postal Service.

Each member of the committee, except one, signed the final agreement and agreed to the Final Committee Standard that is the basis for this proposed rule. The other committee member, National Association of Home Builders, although not a signatory to the agreement, stated that it was in substantial agreement with the requirements except with respect to parcel lockers. The proposed standard defines the new delivery equipment design requirements and other approval process requirements that must be met in order to receive design approval from the Postal Service. It is not intended to provide a private right of action or otherwise serve any nonpostal purposes.

The following table compares requirements of the proposed standard, which shall be titled USPS-STD–4C, to the old standard, USPS-STD–4B, and the modified version of USPS-STD–4B, which shall be referred to as STD–4B+ (refer to the STD–4B+ description provided later in this section):

REQUIREMENTS COMPARISON

| USPS-STD–4C | USPS-STD–4B | USPS-STD–4B+ |
|---|---|---|
| New Minimum Std. Form Factor = 3″H × 12″W × 15″D | Horizontal Form Factor = 5″H × 6″W × 15″D | Same as STD–4B. |
| Vertical Form Factor Eliminated | Vertical Form Factor = 5″W × 6″D × 15H | Same as STD–4B. |
| Parcel Lockers—Integral & Stand Alone options with 1:10 PL to Tenant Compartment Ratio. | No Parcels Lockers | Same as STD–4B. |
| Stringent and Comprehensive Security Requirements for Entire Receptacle. | Minimal Security Requirements | Improved Arrow lock compartment security requirement. |
| Standard Patron Lock Design | Non-Standard Patron Locks | Same as STD–4B. |
| Engineered for Indoor & Outdoor Use | Engineered for Indoor Use Only | Same as STD–4B. |
| Independent Laboratories to Perform Most Testing; USPS to Perform Security Testing. | USPS Performed All Testing | Same as STD–4B. |
| Quality Management System Provisions | None | Same as STD–4B. |
| Enhanced Design Flexibility | Nominal Design Flexibility | Same as STD–4B. |
| Ergonomically Designed | Ergonomics Not Factored in | Same as STD–4B. |
| Americans with Disabilities Act (ADA) Compliant | Install Instructions Did Not Address ADA Requirements | Same as STD–4B. |

Although not included as part of the revised Standard, the Consensus Committee also considered other issues related to the implementation of the new Standard, if it is adopted. These concerns include the types of properties whose receptacles are subject to the new Standard, the dates by which affected buildings must comply with the new Standard, and the conditions under which existing buildings must replace receptacles with boxes meeting the new Standard. In considering these issues, particularly the latter two, the Postal Service and Committee members were mindful of conflicting concerns. That is, there is a need to weigh the benefits that would be realized from the installation of receptacles meeting the new Standard against the potential costs this would impose on building owners. Additionally, the effective date of the changes needs to be consistent with the ability of the construction industry to include the new receptacles in new structures.

The committee did not attempt to conduct a formal cost-benefit analysis in considering these questions. In many instances, the assignment of precise amounts to the benefits and costs was considered a difficult task. Nevertheless, throughout the meetings, committee members identified a number of benefits and costs that would occur from the promulgation of Standard 4C. Building owners/managers, their tenants, persons and firms corresponding with the tenants, and the Postal Service are expected to realize benefits from the installation of Standard 4C receptacles. The receptacles will accommodate larger volumes of mail and different size pieces, and minimize consequences incurred by pieces during delivery to smaller receptacles. Tenants will have more flexibility in using the boxes to hold mail, particularly during days when they may be away. The receptacles will also provide increased mail security. They will more easily be served by carriers, increase service efficiencies, and facilitate earlier delivery. The new receptacles should reduce maintenance costs incurred by building owners, and may result in cleaner, less cluttered lobbies. The provision of larger receptacles and parcel lockers will allow tenants to avoid the need for trips to their Post Office™ to pick up mail. It may also allow some building owners to reduce office staff, particularly in buildings that provide such staff to receive parcels addressed to tenants.

The costs are not necessarily limited to the costs of the receptacles and their installation, but could also include the costs of modifying buildings to accommodate the increased size of receptacles under STD–4C. These costs will be incurred by building owners and, indirectly, by their tenants. Although the committee did not develop a firm number for the cost of Standard 4C receptacles, two of the manufacturers on the committee estimated the cost would be 15 to 30 percent more than STD–4B receptacles.

Under the agreement reached by the Consensus Committee, the provisions of Standard 4C would apply to certain multiunit structures for residential and/or commercial use containing four or

more units. These include structures where the units are reached through a common entrance or entrances from the street. Structures where apartments or commercial units are accessed from individual entrances, such as townhouses, will not be subject to this Standard.

Only new structures and existing structures undergoing substantial renovation, as defined below, would be required to install receptacles meeting the requirements of Standard 4C. In addition, any owners seeking new service or the resumption of mail service shall be required to install receptacles meeting Standard 4C (for example, a warehouse that converts to a residential or multiunit use that qualifies for centralized delivery). The new STD–4C would be implemented 2 years from its publication. This period will be measured by the date that an application for a permit for the structure is submitted with the appropriate government officials. That is, if the permit documents are submitted less than 2 years after the publication of the new Standard in the **Federal Register**, the building owners will be encouraged, but not required, to install receptacles meeting the Standard 4C specifications. Instead, these buildings may install receptacles meeting the requirements of Standard 4B for up to 180 days after publication of the Final Standard in the **Federal Register**, or the security-enhanced Standard 4B+ (described below). If a permit application is submitted 2 or more years after publication of the Final Standard in the **Federal Register**, the receptacles in the building must meet the Standard 4C specifications.

The determination whether any building project is a "substantial renovation'' requiring the installation of new STD–4C receptacles is based upon the nature of the project. Projects involving structural alterations in the mailbox area that create the opportunity to accommodate wall-mounted mail receptacles meeting the Standard 4C requirements may be considered substantial renovations. In contrast, routine, intermittent maintenance; painting; replacement, repair, or upgrades of carpets, floors or furniture; and replacement or repair of mail receptacles will not be considered "substantial renovation'' when standing alone; a different conclusion may apply if such work is part of more substantial projects. For purposes of this determination, the term "mailbox area'' shall be broadly construed and is not limited to the precise space in which mailboxes are located. Rather, it will include the aggregate area in which the mailboxes are housed, such as the lobby area of the building if that is where the boxes are located.

A building project determined to be a "substantial renovation'' under this standard will not invariably require the installation of STD–4C receptacles. Postmasters may grant exceptions in appropriate circumstances from all or portions of the Standard 4C requirements (*e.g.,* a postmaster may grant an exception from the parcel locker requirement if the building management agrees to accept oversized mail and packages for tenants, while not excusing compliance with requirements for the new form factor in individual customer receptacles). Such circumstances include, but are not limited to, a finding that the changes required to install STD–4C receptacles will cause the building to violate local building codes or other laws (*e.g.*, by restricting access to or egress from the building), will create significant safety hazards (*e.g.*, disturbance of asbestos), or will impose unreasonable financial hardship on the owner. Building owners seeking an exception from the need to install STD–4C receptacles under these provisions should submit documentation substantiating the reason(s) for their request to the postmaster.

Building owners that replace receptacles more than 2 years after the publication of the Standard 4C, but that are not required to meet the requirements of that Standard (*i.e.*, because it is not a new or substantially renovated building or because the owner has received an exception from the Postal Service), will be required to install replacement receptacles that instead meet the requirements of a modified version of Standard 4B (referred to as Standard 4B+). In general, this modified version will maintain the size requirements of Standard 4B; however, more stringent security requirements will be required for certain critical features of the boxes.

Receptacles that are not approved under the requirements of either Standard 4C or 4B+ may not be installed in buildings more than 180 days after the publication of Standard 4C, even though those receptacles were approved receptacles under Standard 4B. Receptacles meeting the requirements of Standard 4B+ may be installed in new buildings if the permit application has been submitted less than 2 years after publication of the Final Standard in the **Federal Register**.

**Approval Process for Receptacles**

In order to be eligible for Postal Service carrier mail delivery, receptacles must be approved by the Postal Service. In order to receive approval under STD–4C, the manufacturer must submit the receptacle(s), along with the supporting materials listed in section 6 of the Standard, to the Postal Service at the following address: ATTN Delivery and Retail Systems, USPS Engineering, 8403 Lee Hwy, Merrifield VA 22082–8101.

In addition, manufacturers that are currently authorized to distribute delivery equipment under STD–4B will be required to upgrade the receptacles and seek recertification of those receptacles under STD–4B+. New manufacturers will not be permitted to submit STD–4B+ receptacles. If this proposal is adopted, the Postal Service will provide notice to manufacturers that manufacture receptacles that were approved under Standard 4B concerning the need for reapproval under Standard 4B+, the STD–4B+ specifications, and the timetable for obtaining recertification, which is shown below. Submissions should be sent to USPS Engineering at the above address.

| Event | Time after **Federal Register** Final Rule Date | Comment |
|---|---|---|
| Date of publication of USPS–STD–4C **Federal Register** final rule. | N/A. | |
| USPS Engineering notifies all currently approved STD–4B vendors that written notification required if intending to submit STD–4B+ boxes. | Up to 2 days | USPS to provide copy of USPS–STD–4B, Change 2, with letter to vendors; this has STD–4B+ requirements. |
| Written response to USPS Engineering letter from all currently approved STD–4B vendors only. | Up to 60 Days | To notify USPS of vendor's intent to submit STD–4B+ boxes for approval. |
| USPS acceptance of STD–4B boxes for installs (new or replacement). | Up to 180 Days | No Arrow locks installed in any STD–4B receptacle by USPS after this time period. |

| Event | Time after **Federal Register** Final Rule Date | Comment |
|---|---|---|
| Approval period for STD–4B+ designs for currently approved STD–4B vendors only. | Up to 365 Days | USPS must reply to each submittal within 45 days; no limit on number of submittals for any vendor. |
| STD–4C receptacles only (no STD–4B+) for all new construction permits and qualifying renovations. | After 2 years | Based on date of permit, not occupancy (start of mail delivery). |

The Postal service also proposes changing the *Domestic Mail Manual* (DMM) to ensure that manufacturers are aware of the specifications and procedures to obtain approval of their receptacles. Additional provisions would ensure that customers in structures in which delivery is to be provided through wall-mounted receptacles are aware of the need to provide approved equipment as a condition for such delivery.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the DMM incorporated by reference in the *Code of Federal Regulations* (CFR), *see* 39 CFR part 111, and Standard USPS–4C.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

Accordingly, as stated in the preamble, the Postal Service proposes to amend 39 CFR part 111 as follows:

## PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C 552 (a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the *Domestic Mail Manual* (DMM) as follows:

**Domestic Mail Manual (DMM)**

* * * * *

**D DEPOSIT, COLLECTION, AND DELIVERY**

**D000 Basic Information**

* * * * *

*D040 Delivery of Mail*

*D041 Customer Mail Receptacles*

* * * * *

[*Add new section 3.0, as follows*]

3.0 WALL–MOUNTED CENTRALIZED MAIL RECEPTACLES

**3.1 Manufacturer Requirements**

Manufacturers of wall-mounted centralized mail receptacles used for mail delivery must receive approval under the specifications and procedures set forth in USPS Standard 4. The specifications and other applicable information can be obtained by writing to USPS Engineering (*see* G043 for address) or *wallmountedreceptacles@usps.gov.*

**3.2 Customer Requirements**

The installation of proper equipment is required for the provision of delivery service. The type of equipment must be approved by the Postal Service under 3.1 and must be appropriate for the structure. Customers should discuss the types of approved equipment permitted for their structures with their postmaster before purchasing and installing delivery equipment. For more information, contact *wallmountedreceptacles@usps.gov.*

3. Revised USPS Standard 4 as follows:

**U.S. POSTAL SERVICE STANDARD**

*WALL–MOUNTED CENTRALIZED MAIL RECEPTACLES*

1. SCOPE

1.1 *Scope*—This standard covers the design, testing, and acceptance of wall-mounted, centralized mail receptacles. The use of this standard is mandatory and the receptacles shall conform to this standard in order to be approved by the Postal Service™.

1.2 *Suggested Design Types*—Wall-mounted, centralized mail receptacles may be of the general types as shown in figures 1 through 12. The depicted representations are only examples of possible compartment configurations. The intention of these figures is not to dictate specific designs and compartment arrangements, but to portray design examples that meet the requirements. In all cases, the units shall be designed for fully recessed wall mounting.

Type I, Front Loader—A family of mail receptacles in a single column configuration with a single master door design, a minimum of 3 and a maximum of 8 customer compartments, 1 mail collection compartment with separate outgoing mail slot and Arrow lock door, and 1 parcel compartment.

Type II, Front Loader—A family of mail receptacles in a double column configuration with a double master door design, a minimum of 3 and a maximum of 16 customer compartments, 1 mail collection compartment with separate outgoing mail slot and Arrow lock door, and 1 or 2 parcel compartments.

Type III, Front Loader—A family of mail receptacles in a double column configuration with a single master door design, a minimum of 3 and a maximum of 16 customer compartments, 1 mail collection compartment with separate outgoing mail slot and Arrow lock door, and 1 or 2 parcel compartments.

Type IV, Rear Loader—A family of mail receptacles in a single column configuration with a rear access cover design, a minimum of 3 and a maximum of 8 customer compartments, 1 mail collection compartment, and 1 parcel compartment.

Type V, Rear Loader—A family of mail receptacles in a double column configuration with a rear access cover design, a minimum of 3 and a maximum of 16 customer compartments, 1 mail collection compartment, and 1 or 2 parcel compartments.

Type VI, Front Loader (No Parcel Compartment)—A family of mail receptacles in a single column configuration with a single master door design, a minimum of 3 and a maximum of 9 customer compartments, and 1 mail collection compartment with separate outgoing mail slot and Arrow lock door.

Type VII, Rear Loader (No Parcel Compartment)—A family of mail receptacles in a single column configuration with a rear access cover design, a minimum of 3 and a maximum of 9 customer compartments, and 1 mail collection compartment.

Type VIII, Front Loader (No Parcel Compartment)—A family of mail receptacles in a double column configuration with a double master door design, a minimum of 3 and a maximum of 19 customer compartments, and 1 mail collection compartment with separate outgoing mail slot and Arrow lock door.

Type IX, Rear Loader (No Parcel Compartment)—A family of mail

receptacles in a double column configuration with a rear access cover design, a minimum of 3 and a maximum of 19 customer compartments, and 1 mail collection compartment.

Type X, Front Loader, Parcel Only (No Master Door)—A family of parcel receptacles in a single column configuration without a master door design. These units are designed to provide separate parcel delivery capability for wall-mounted centralized mail receptacles installed without integral parcel compartments.

Type XI, Front Loader, Parcel Only—A family of parcel receptacles in a single column configuration with a master door design. These units are designed to provide separate parcel delivery capability for wall-mounted, centralized mail receptacles installed without integral parcel compartments.

Type XII, Rear Loader, Parcel Only—A family of parcel receptacles in a single column configuration with a rear access cover design. These units are designed to provide separate parcel delivery capability for wall-mounted, centralized mail receptacles installed without integral parcel compartments.

1.3 *Approved Manufacturers*—A list of approved manufacturers is available upon request from: USPS Engineering, Delivery and Retail Systems, 8403 Lee Highway, Merrifield VA 22082–8101.

1.3.1 *Interested Manufacturers*—Manufacturers interested in selling wall-mounted, centralized mail receptacles to the public are required to obtain Postal Service approval. *See* section 6 for the application process.

2. APPLICABLE DOCUMENTS

2.1 *Specifications and Standards*—Except where specifically noted, the specifications set forth herein shall apply to all receptacle designs.

2.2 *Government Documents*—The following documents of the latest issue are incorporated by reference as part of this standard.

*United States Postal Service*

POM *Postal Operations Manual*

Copies of the applicable sections of the *Postal Operations Manual* can be obtained from USPS Delivery and Retail, 475 L'Enfant Plaza SW., Washington, DC 20260–6200.

USPS–L–1172 Locks, Compartment, Customer—PSIN O910

Copies of United States Postal Service specifications, standards and drawings may be obtained from USPS Delivery and Industrial Equipment CMC, Greensboro, NC 27498–0001.

2.3 *Non-Government Documents*—The following documents of the latest issue are incorporated by reference as part of this standard.

*STANDARDS*

*American Society for Testing and Materials (ASTM)*

ASTM G85 Standard Practice for Modified Salt Spray (Fog) Testing

ASTM D968 Standard Test Methods for Abrasion Resistance of Organic Coatings by Falling Sand

ASTM D3801 Standard Test Methods for Measuring the Comparative Burning Characteristics of Solid Plastics in a Vertical Position

Copies of the preceding documents may be obtained from the American Society for Testing and Materials, 100 Barr Harbor, West Conshohocken, PA 19428–2959. (*http://www.astm.org*)

*Underwriters Laboratories*

UL 771 Night Depositories (Rain Test Only)

Copies of the preceding document can be obtained from Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, IL 60062–2096. (*http://www.ul.com*)

3. REQUIREMENTS

3.1 *General Design and Construction*—The general configurations of the wall-mounted, centralized mail receptacles shall conform to the requirements as described in this standard. The receptacles shall be designed and constructed so that they can be serviced according to the intended method, front or rear access. The receptacles shall be designed to allow wall mounting in accordance with the installation requirements as stipulated in this document and the applicable sections of the current *Postal Operations Manual* (POM) as referenced in section 2.2. The receptacle design shall preclude access from one compartment to another and it shall provide the required level of security for all receptacle contents and resistance to vandalism. The clearance between shelving sides and interior sides or rear walls shall prevent the passage of a 3½-inch (height) by 5-inch (length) by .007-inch thick card from one compartment to another.

The design of all wall-mounted, centralized mail receptacles may be of the types specified in 1.2. The design of all receptacles shall be such that the unit can be installed either indoors or outdoors. Outdoor installations shall be in compliance with conditions as described in this document and the applicable sections of the POM without damage or deterioration to the materials of the receptacle or to its contents. Each unit shall be made of the exact materials, construction, coating, finish, etc., as shown on the manufacturer's drawings, which are identified and certified by the Postal Service. The overall height, width, and depth of any receptacle shall be such that all the applicable mounting requirements shall be met.

All front-loading receptacles shall have fixed solid backs.

3.2 *Materials*—Latitude shall be allowed in the materials used. The thickness, form, and mechanical and chemical properties of the material shall be adequate to meet the operational, structural, and performance requirements set forth in this standard. Materials must be compatible with each other; nontoxic and nonirritating to humans. Dissimilar metals shall be protected against galvanic corrosion. The material used in the fabrication of this equipment shall be new, suitable for the purpose used, free from all defects, and of the best commercial quality for this type of equipment.

3.3 *Colors, Coatings and Finishes*—Exterior colors and finishes of the receptacles, in general, shall be optional with the manufacturer. Any finish or coating selected should meet all the requirements of this document.

3.4 *Mounting and Hardware*—The hardware for attaching the receptacle to the wall shall be provided and packaged with the unit. All mounting hardware shall meet the corrosion resistance requirements of this document. Mounting hardware shall not protrude from any part of the unit to create a hazardous catch or bump point for customers or carriers. The mounting hardware shall be accessible for replacement in the event of damage to the unit and shall be hidden from public view while in service. The mounting technique and hardware selected shall allow the receptacle, when wall-mounted in accordance with the manufacturer's instructions, to meet the pull requirements of section 4.11.9.

3.5 *Customer and Parcel Compartment Doors*—All compartment doors shall meet the common requirements listed in this section. In addition, each type of compartment doors shall meet any unique door requirements as described in 3.5.1 through 3.5.4 below.

All compartments of front-loading receptacles shall have their own door and shall be hinged on the right. The door hinges shall be concealed or designed to prevent tampering. The doors shall be designed to open, close, and lock without binding or excessive play. All doors shall open a minimum of 90 degrees. The clearance between

door and door opening shall be evenly spaced, consistent in size, and minimized to preclude prying with such simple tools as knives, screwdrivers, thin metal strips, etc.

Optional compartment heights, requiring doors or blanking plates larger than the minimum, shall be allowable, except as stated in section 3.5.3. However, no offered compartment height shall preclude any of the critical installation requirements, or any other requirement, from being met. In addition, no compartment size shall be offered as "approved'' that is larger than any Postal Service-tested and approved size for that particular manufacturer.

3.5.1 *Customer Compartment Doors*—Once opened, a customer door shall remain in the opened position until closed and locked. Each door shall permit the mounting of a lock as required by 3.10.1.

3.5.2 *Parcel Compartment Doors*—The doors shall be spring loaded to return the doors to the fully closed position. The spring shall be of sufficient strength to close the door from any opened position. The strength of the spring shall not be excessive as to create the potential for injury or cause the doors to "slam'' shut. Each door shall permit the mounting of locks as required by 3.10.2.

3.5.3 *Carrier Access (Arrow Lock) Door (Front Loader Designs)*—The carrier access door shall have accommodations for mounting either Arrow lock shown in figure 13 in such a manner that the modified Arrow lock cylinder is flush with the front of the compartment door and the standard Arrow lock is slightly recessed. This door shall be designed to accommodate the mounting of the Arrow lock and the securing of a minimum-sized (3 inches high by 12 inches wide by 15 inches deep) compartment, which typically shall be used for retrieval of collection mail. For security reasons, under no circumstances shall this door be offered in any larger sizes. Once opened, the carrier access door shall remain in the opened position until closed and locked. This door shall not be numbered or lettered.

3.5.4 *Collection Mail Compartment Blanking Plate (Rear Loader Designs)*—Rear loader receptacles shall have a blanking plate, sized to cover a minimum 3 inches high by 12 inches wide compartment, directly beneath the collection mail slot. This plate ensures a minimally acceptable compartment volume for the customer outgoing mail on rear loaders.

3.6 *Master Loading Door(s)*

3.6.1 *Front Loader Designs*—These units shall be equipped with a master loading door(s) on the same side as the individual compartment and parcel doors. The master loading door(s) shall allow access to all the unit's customer compartments and parcel compartments for the deposit of letter mail and parcels and the collection of customer outgoing mail. The master loading doors shall be designed not to interfere with the loading of customer and parcel compartments. These doors shall be designed so the withdrawal of mail through the individual customer doors allows the mail to slide smoothly over any parts of the master, customer, or parcel doors. The master loading door(s) shall be easy to open and close. For any double master loading door design, the doors shall be hinged on opposite sides and latched at the center of the unit. The door hinges shall be continuous or concealed and designed to prevent tampering. The doors shall lock in the open position by an automatic self-locking device until the delivery employee completes loading. The doors shall be held open at an angle of 90 degrees (+5, −0). The delivery employee shall be able to easily release the hold open device to close the door when loading has been completed. The door hold-open device shall withstand an inward or outward pull of 50 (+5, −0) pounds when applied to the master door edge farthest from the master door hinge and in a direction perpendicular to the door. (Note: For any nonparcel compartment design, disregard parcel compartment references.)

The master loading door for any single door receptacle design and the right master loading door for any double master door design shall, as a minimum, have provisions and accommodations for a three-point (top, middle, bottom) latching mechanism, exclusive of the hinges, in conjunction with either a standard or modified Arrow lock to secure the door. Unless used solely as an actuator for locking pin(s), the Arrow lock shall lock the master loading door latch mechanism to ensure that the master loading doors are securely latched and that the latch mechanism cannot be moved. A limited loading shall be permitted on the end of the Arrow lock bolt only when the Arrow lock is used as an actuator to engage locking pins. In this case, the locking pin(s) shall secure the Arrow lock door to the master loading door frame. Only Arrow locks dimensioned in figure 13 shall be acceptable. The latching mechanism shall be rigid in design to avoid distortion. Locknuts shall be included for installing the Arrow lock. The master loading door(s) shall be easy to open, close, and lock. The carrier access shall not have pinch points or sharp edges. Clearance between the door and door opening shall be evenly spaced and consistent in size. The master loading doors shall be easily unlatched and opened using one hand. The latch mechanism may be mounted either on the unit frame or the master loading door. Clearance below the latch handle in either case shall be a minimum of 1.25 inches. When the carrier activates a master loading door latch mechanism mounted on the unit frame, the outer edge of the master loading door shall be automatically opened a minimum of 1 inch outside the door frame, enabling the carrier to easily grasp the door. When the latch mechanism is mounted on the unit frame, the handle must provide between 1.25 and 1.50 inches of grip length and a minimum of 1 square inch of surface area. When the carrier activates a master loading door latch mounted on the door, the latch handle may be used to pull the door open. When the latch mechanism is mounted on the door, the handle must provide a minimum of 1.75 inches of grip length. In any double master door design, when the master loading door with the Arrow lock traps, or locks the left master loading door, a push-out device shall not be required if the carrier can easily grasp and open the left door.

3.6.2 *Rear Loader Designs*—The master loading door for any rear loading units shall be in the form of a rear cover or door, which can be opened or removed and closed or replaced by the mail carrier, which will permit delivery of mail to each compartment. The cover or door shall prevent the mail from falling out between the cover or door and shelves, and be strong enough to prevent theft of the contents of adjoining receptacles by manually forcing the rear door or cover from the front of the receptacle through a compartment. The cover or door shall be capable of being latched or secured; locking is not required.

3.7 *Customer and Parcel Compartment Sizes*—Customer and parcel compartment size requirements shall be as specified below.

3.7.1 *Customer Compartment Sizes*—The minimum interior dimensions of each customer delivery compartment shall be 3 inches high by 12 inches wide by 15 inches deep. Optional compartment heights, greater than the 3 inch minimum, shall be allowable, and mixed size customer compartments may be offered in any one unit. However, no combination shall preclude any of the critical installation requirements, or any other requirement, from being met. In

addition, no compartment size shall be offered as "approved'' that is larger than any Postal Service-tested and approved size for that particular manufacturer.

3.7.2 *Parcel Compartment Sizes*—The minimum interior dimensions of the parcel compartments shall be as follows:

(a) Standard Parcel Locker—15 inches high by 12 inches wide by 15 inches deep

(b) Large Parcel Locker—18 inches high by 12 inches wide x 15 inches deep

3.7.2.1 *Parcel Locker to Customer Compartment Ratio*—A minimum of one standard parcel locker shall be provided for every ten customer compartments. For installation sites with less then ten customer compartments, there shall be no mandatory parcel locker requirement, however, it shall be the intent of the Postal Service to strongly encourage the inclusion of a parcel locker.

3.8 *Collection Mail and Carrier Access (front-loading designs only) Compartment*—All units shall have one reinforced collection mail compartment. A mail deposit slot 10.75 inches wide by .75 inches high shall be provided with a weather shield and a security shield to protect the deposited mail from the rain and snow and to prevent removal of the mail by fishing and pilfering techniques through the deposit slot. This compartment shall not be numbered or lettered. The phrase "OUTGOING MAIL'' shall be marked on the deposit slot shield in black, recessed lettering. Marking shall be permanent and lettering size shall be ⅜ to ½ inch high.

3.8.1 *Front-Loading Designs*—For front-loading designs, the front of the minimum-sized collection compartment shall consist of the carrier access (Arrow lock) door, as described in section 3.5.3, and the mail collection/deposit slot, which is framed by separate elements providing the weather and security shielding. The mail deposit slot frame design shall be hard mounted to the master door structure. Optional outgoing mail compartment heights shall be allowable. Hard-mounted front blanking plates shall be used as required under the Arrow lock door for any larger collection mail compartment offerings. In addition, no offered outgoing mail compartment height shall preclude any of the critical installation requirements, or any other requirement, from being met, and no compartment size shall be offered that is larger than any fully tested size.

3.8.2 *Rear-Loading Designs*—For rear-loading designs, the front of the minimum-sized collection compartment shall consist of a blanking plate hard mounted to the master door structure and the mail collection/deposit slot, which is framed by separate elements providing the weather and security shielding. Optional outgoing mail compartment heights, requiring blanking plates larger than the minimum, shall be allowable. However, no offered outgoing mail compartment height shall preclude any of the critical installation requirements, or any other requirement, from being met. In addition, no compartment size shall be offered that is larger than any fully tested size.

3.9 *Identification*—Customer and compartment identifications shall be in the following manner.

3.9.1 *Customer Compartment Identification*—Customer compartment doors shall be identified using either numbers or letters, optionally, in sequence from top to bottom. For any double master door designs, the numbers or letters shall start from the upper left corner compartment. In addition, they shall be ¾ to 1 inch high, sequential, black, and recessed. They may be engraved or stamped. Brushed aluminum decals with black numbering may be used, provided the decals are recessed in the door or a raised rib is provided around the decal to enhance the decal's location and limit removal. Decals shall be secured using a permanent type of adhesive. Numbers shall be made with one decal and not a combination of two single letter or number decals. In the horizontal direction, the centerline of the numbers shall be to the right of the customer lock (top lock) centerline. In the vertical direction, the customer lock and the numbers shall be the same centerline.

3.9.2 *Parcel Compartment Identification*—Parcel compartment doors shall be provided with ¾ to 1 inch high, sequential, black, recessed numbers. Numbers may be engraved or stamped. Brushed aluminum decals with black numbering may be used, provided they are recessed in the door or a raised rib is provided around the decal to enhance decal location and limit removal. Decals shall be secured using a permanent type of adhesive. Numbers shall be made with one decal and not a combination of two single letter or number decals. Raised lettering shall not be acceptable. Parcel compartment doors shall be numbered (typically, 1P, 2P, etc). In the horizontal direction, the centerline of the letters shall be to the right of the customer lock (top lock) centerline. In the vertical direction, the customer lock and the numbers shall be the same centerline.

3.9.3 *Customer Identification*—A minimum ½ inch wide surface shall be located below the front of each delivery compartment shelf. The surface shall be concealed by the master door(s) and shall be visible only by the carrier once the master door(s) is opened. The surface provided shall be smooth and will allow for the optional attachment of self-adhesive labels. Alternatively, each compartment may be equipped with either a clasp or holder to accommodate a name card, or supplied with a designated flat surface for a permanent-type pressure-sensitive label for identifying the customer using the compartment. The holder or clasp shall be located on the frame above each compartment or inside of the compartment where the customer's name will be easily visible to the carrier when the box is opened for loading. The holder shall be of sufficient size to hold a name card of .75 inch by 2.50 inches or as large as space permits.

3.10 *Locks*—Locks and cams shall be provided as specified below.

3.10.1 *Customer Compartment Locks*—Each customer compartment door shall use a PSIN O910 lock, as specified in USPS-L–1172, or equivalent. The hole pattern for the lock is shown in figure 14. The hole shall be able to withstand 100 foot pounds of rotational torque, preventing the lock from being turned in the door allowing unauthorized entry into the compartment. The locks shall be oriented so that the locking cam rotates 90 degrees from the locked to the unlocked position. The key shall be removable only in the locked position. Individual customer locks shall be located in the compartment doors on the left side. Each lock shall be provided with three keys as specified in section 3.11.1. Key numbers shall not be placed on any exterior exposed surface. Cams shall be designed by the manufacturer to allow a secure grip of the lock to the compartment side wall. Each compartment lock shall be keyed differently in each receptacle. The locks must be securely fastened to the door to preclude punching out and twisting off. All customer compartment doors shall be locked for shipment.

3.10.2 *Parcel Compartment Locks*—Each parcel compartment door shall be configured to accept a combination 910/Arrow lock arrangement. The 910 lock shall serve as the customer access lock. Any parcel compartment provided as an integral part of a receptacle design shall have a 910 lock that is keyed differently than any customer compartment lock in the receptacle. The lock may itself provide the locking cam to secure the parcel door or it may be used as an

actuator in such a way as its cam moves locking pins into place to secure the parcel door. The locking pins would withstand the pry attack loads. The Arrow lock "captures'' the 910 lock after its key has been inserted and the lock turned to allow the customer to remove their parcel. The Arrow lock and the 910 lock shall be located in a partitioned compartment and, for ease of maintenance reasons, shall not share the same compartment cover. The 910 lock cover shall be secured with standard hardware while the Arrow lock compartment cover shall be secured with tamper resistant screws. All parcel compartment doors shall be locked for shipment.

3.10.3 *Master Loading Door Lock (Front-Loading Designs)*—Front-loader receptacles shall be secured with an Arrow lock, in accordance with figure 13, to lock the master loading door(s) as defined in section 3.6.1. These units shall be configured so that the Arrow lock is always located directly beneath the collection mail slot. The mail slot and the Arrow lock door (carrier access door) shall share the same compartment but be separate items for security reasons. The Arrow lock shall be furnished and installed by the local postmaster or his representative. In addition, the Postal Service will provide dummy Arrow locks for test purposes upon request.

3.11 *Keys and Key Identification*—All compartment keys for locks in accordance with USPS–L–1172 or equivalent shall be identified and perform in the following manner to allow for efficient control, security, and operation. No two compartments in the same receptacle shall be keyed alike. In addition, the full complement of required key codes shall be utilized in sequential order prior to repeating any individual key code within a production lot of receptacles. All keys shall have any burrs removed and shall move freely in and out of the lock. When the lock is installed and the key is inserted, the locks must be positioned so that the key is free to turn without binding or contacting/scraping any adjoining surface.

3.11.1 *Compartment Keys*—Three keys shall be provided for each customer compartment and shall be delivered on a single key ring. All keys shall be temporarily identified for their respective compartment, bagged, and securely taped inside the collection compartment for shipping.

3.11.2 *Parcel Keys and Tags*—Heavy-duty, rigid, clear plastic tags with card inserts containing instructions to the Postal Service customer on the use of the key, shall be furnished with each key for an individual parcel receptacle. The plastic tags shall be 1½ ±1/16 inches wide by 3 ±1/16 inches long by 3/16 (+1/16, −0) inches thick, and shall have an opening at one end for a key ring. All holes or openings shall be reinforced. The tags shall also have a swivel device for key ring mounting. Heavy-duty rings for attaching the holder to the individual key shall be provided for parcel receptacle keys. The key shall not be easy to remove from the key ring. Each insert card shall be identified with a serial number that is the same as the mail receptacle unit's serial number. The cards shall be numbered (*e.g.*, 1P, 2P, etc) to correspond with their respective parcel receptacles. Card insert lettering shall be legible and of sufficient size and contrast to be easily read. All keys shall move freely in and out of the lock. Three keys shall be provided for each receptacle lock, tagged with the clear plastic holder for their respective receptacle, and placed in the same bag with compartment keys.

The card insert shall be as follows:

Clear Plastic Holder YOU HAVE MAIL IN RECEPTACLE # *_____ with card insert (side UNLOCK *TOP LOCK* AND REMOVE MAIL. A & B) KEY REMAINS IN LOCK.

*__NOTE:__ The manufacturer shall provide the numbers and names as specified above.

3.12 *Marking*—For front-loading designs, there must be two inscriptions centered on the carrier access door: "U.S. MAIL'' in a minimum of .50 inch high letters and "APPROVED BY THE POSTMASTER GENERAL'' in a minimum of .18 inch high letters. For rear-loading designs, these inscriptions must be centered on the blank panel of the outgoing mail compartment. These inscriptions shall be positioned in a vertical stack with "U.S. Mail'' appearing above "APPROVED BY THE POSTMASTER GENERAL.'' Markings must be permanent and may be accomplished by applying a decal, embossing on sheet metal, applying raised lettering on plastic, or using other methods that are suitable. In addition, a legible and permanently marked decal with "USPS–STD–4C,'' the manufacturer's name, address, date of manufacture (month and year), unit serial number, and model number or nomenclature must be affixed to the receptacle in a location that is readily visible to carriers.

3.13 *Assembly and Installation Instructions*—A complete set of instructions including illustrations for assembling and installing the receptacle shall be prepared and provided with each receptacle. Both front- and rear-loading receptacles shall be mounted in accordance with the installation requirements as stipulated in this document and the applicable sections of the current Postal Operations Manual (POM) as referenced in section 2.2. The installation described shall be tested in accordance with the testing of section 4.11.9. These instructions shall completely convey all recess wall-mounting details, including equipment installation height restrictions as provided in the figures and the parcel locker ratio information. In addition, the instruction sheet shall carry a notice that the receptacle met all requirements of the Postal Service standard.

3.14 *Workmanship*—Workmanship shall be of the highest quality throughout. All parts shall be clean, straight, accurately formed and assembled, properly fitted, and uniform in size and shape. Parts shall be free from delaminations, cracks, warpage, bulges, kinks, dents, porosity, voids, lumps, foreign matter, and other defects. Finished or coated surfaces shall be smooth and uniform, and free from soft areas, stain, chips, crazing, and cracks. Seams and connections shall be tight. Welding, riveting, and other joining shall be done in a neat and approved manner. The receptacle shall be free from sharp edges, sharp corners, protruding rivets, and operational features, which might injure or hamper the carrier or customer.

3.15 *Bolted Connections*—Bolts or screws that can be removed in any exposed area shall not be used for joining parts of the receptacle. Sheet metal screws shall not be used in the assembly of the receptacle.

3.16 *Riveted Joints*—Hollow-type eyelets or grommets shall not be used in the fabrication of the receptacle.

3.17 *Welding*—Any type of weld (electric-arc, resistance, gas, etc.) may be used in the fabrication of the receptacle, providing it produces a satisfactory and safe joint and is performed in accordance with applicable best commercial practices.

3.18 *Fabrication and Assembly*—All components and parts shall be fabricated and assembled to be permanently square and rigid to preclude binding, warping, or misalignment, which may reduce or prevent proper equipment operation or maintenance or may result in a premature failure of any part or component.

## 4. TESTING REQUIREMENTS

4.1 *Testing Requirements*—Units will be subjected to all applicable testing described herein. A unit that fails to pass any test will be rejected.

Testing will be conducted in sequence as listed herein and in table III.

4.2 *Capacity*

4.2.1 *Customer Compartments*—Customer compartments must meet minimum capacity requirements tested by insertion and removal of a standard test gauge which measures 2–15/16 inches high by 11–15/16 inches wide by 14–15/16 inches deep. The test gauge will be inserted with its 2–15/16-inch dimension aligned in the vertical axis (perpendicular to the compartment floor). The gauge must be capable of easy insertion and removal, and while inserted, allow for the door(s) to be completely closed without interference.

4.2.2 *Collection Mail Compartment*—The collection mail compartment must meet minimum capacity requirements tested by insertion through the mail deposit slot of 48 standard letters (4.00 inches high by 9.50 inches long by .12 inch thick) and 4 Express Mail or Priority Mail envelopes (9.50 inches high by 12.50 inches long by .50 inch thick). Letter and envelope thicknesses shall be achieved by inserting 8.5 inch by 11 inch paper.

4.2.3 *Parcel Compartment*—Parcel compartments must meet minimum capacity requirements tested by insertion and removal of a standard test gauge which measures 14–15/16 inches high by 11–15/16 inches wide by 14–15/16 inches deep. The test gauge will be inserted with a 14–15/16 inch dimension aligned on the vertical axis (perpendicular to the compartment floor). The gauge must be capable of easy insertion and removal; and while inserted, allow for the door(s) to be completely closed without interference.

4.3 *Operational Requirements*—The carrier access (Arrow lock) door, customer doors, parcel doors, master loading door(s), and hold open device(s) must be capable of operating 10,000 normal operating cycles (1 cycle = open/close) at room temperature, continuously and correctly, without any failures such as breakage of parts. The cycle rate for carrier access (Arrow lock), customer and parcel doors shall not exceed 3 seconds per cycle. The cycle rate for the master loading door(s) and hold open device(s) shall not exceed 10 seconds per cycle. Testing may be performed either manually or by means of an automated, mechanically driven test fixture that replicates a manual operation.

4.4 *Water-Tightness*—A rain test in accordance with UL 771, section 47.7 shall be performed to determine a receptacle's ability to protect mail from water. Prior to the test, the unit shall be prepared by shielding the body of the receptacle so that only the master door, customer doors, and front frame elements shall be directly exposed to rain during the test. The rain test shall be operated for a period of 15 minutes on the customer compartment door (front) side of the mail receptacle. At the conclusion of the test, the outside of the unit is wiped dry and all doors are opened. The inside of the compartments must contain no water other than that produced by high moisture condensation.

4.5 *Salt Fog Resistance*—A salt fog test shall be conducted in accordance with method A5 of ASTM G85, Standard Practice for Modified Salt Spray (Fog) Testing. The salt test shall be operated for 25 continuous cycles with each cycle consisting of 1-hour fog and 1-hour dry-off. The unit shall be tested in a finished condition, including all protective coating, paint, and mounting hardware and shall be thoroughly washed when submitted to remove all oil, grease, and other nonpermanent coatings. No part of the receptacle may show finish corrosion, blistering, or peeling, or other destructive reaction upon conclusion of test. Corrosion is defined as any form of property change such as rust, oxidation, color changes, perforation, accelerated erosion, or disintegration. The buildup of salt deposits upon the surface shall not be cause for rejection. However, any corrosion, paint blistering, or paint peeling is cause for rejection. It is also valid for units made of plastic that employ metal hardware.

4.6 *Abrasion Resistance*—The unit's coating/finish shall be tested for resistance to abrasion in accordance with method A of ASTM D968. The rate of sand flow shall be 2 liters of sand in 22 ±3 seconds. The receptacle will have failed the sand abrasion test if less than 15 liters of sand penetrates its coating or if less than 75 liters of sand penetrates its plating. This test is applicable to metal receptacle designs only.

4.7 *Temperature Stress Test*—The unit under test shall be placed in a cold chamber at −40° Fahrenheit (F) for 24 hours. The chamber shall first be stabilized at the test temperature. After remaining in the −40°F environment for the 24-hour period, the unit shall be quickly removed from the cold chamber into room ambient and tested for normal operation. The removal from the chamber and the testing for normal operation shall be accomplished in less than 3 minutes. The room ambient shall be between 65° and 75° F. Normal operation is defined as operation required and defined by this document. The unit under test shall undergo a similar temperature test, as described above, at a temperature of 140° F.

4.8 *Structural Rigidity Requirements*—Pull loads of the specified magnitudes (*see* table II) shall be slowly applied at any point of the specific item of the unit under test. These forces shall be held for a time not to exceed one minute and then released. Supplemental bracing may be used to isolate the loading on the specific item to be tested. After the release of the load, the permanent deformation caused by the forces shall be measured. If the deformation exceeds the limit specified in table II, the unit under test has failed to meet the structural rigidity requirement.

TABLE II.—PULL LOAD PERMANENT DEFORMATION LIMITS

| Item | Permanent deformation (inches) | Pull load (pounds) |
|---|---|---|
| Carrier access (Arrow lock) door (front-loading designs) | ⅛ | 1400 |
| Collection comp. front blanking plate (rear-loading designs) | ⅛ | 1400 |
| Collection mail slot frame (all designs except parcel-only) | ⅛ | 1400 |
| Master door(s) at hinge side—top & bottom (front-loading designs) | ⅛ | 1000 |
| Master door at center along Arrow lock side—(front-loading designs) | ⅛ | 1000 |
| Rear cover (rear-loading designs) | ⅛ | 250 |
| Customer compartment door (all designs except parcel-only) | ⅛ | 250 |
| Parcel compartment door (all designs except nonparcel versions) | ⅛ | 250 |
| Master door hold-open device (front-loading designs) | 0 | 50 |

4.9 *Impact Test*—The front exposed surfaces of the receptacles and any coatings applied to them shall not be cracked, chipped, broken, dented (more than 1/16 inch in depth), or visibly permanently deformed by a hard steel 2-pound ball with a 1/2-inch spherical radius dropped from a height of 6 inches.

4.10 *Flammability*—A flammability test shall be conducted on all potentially flammable materials used in the unit. The test shall be conducted in accordance with ASTM D3801. The ASTM D3801 standard flame test shall achieve a rating of V–1 or better. (Note: It is the building owner's responsibility to make sure that the installation of any receptacle is in compliance with local building and fire codes.)

4.11 *Security Test*—Receptacles shall be tested, as described below, for resistance to tampering and unauthorized entry through the use of tools such as screwdrivers, flat plates, knives, pry bars, vise grips, pliers, chisels, and punches for a period not to exceed 3 minutes for each feature tested. No pry tools shall exceed 18 inches in length. Because of the critical nature of the master-loading door and Arrow lock (outgoing mail) compartment, a hammer shall be used in tandem with the other tools during tests of these items. The head weight of any hammer used shall not exceed 3 pounds. In addition, the Arrow lock compartment door will also be subjected to a 2-minute torch test using commonly available microtorch kits.

4.11.1 *Customer Compartment and Parcel Compartment Customer Access Locks*—Customer lock plugs shall withstand a minimum of 70 pounds of force slowly applied inward. Load forces shall be applied to the key entrance side of the lock. The lock and door shall remain closed and locked after each test. In addition, the locks shall be tested using vise grips and other tools in an attempt to turn the lock with the customer or parcel door in the closed position. These tests shall not allow access to the customer or parcel compartment.

4.11.2 *Customer Compartment Doors*—Gaps and seams around the perimeter of the customer compartment doors shall be tested using pry tools listed in 4.11 for a period not to exceed 3 minutes to ensure that access to the compartment cannot be gained. The lock-mounting hole in the door shall be able to withstand 100 foot-pounds of torque applied in the plane of the door, preventing the lock from being turned in the door allowing unauthorized entry into the compartment.

4.11.3 *Parcel Compartment Door*—Gaps and seams around the perimeter of the parcel compartment door(s) shall be tested using pry tools listed in 4.11 for a period not to exceed 3 minutes to ensure that access to the compartment cannot be gained.

4.11.4 *Master Loading Door* (Front-Loading Designs Only)—Seams around the perimeter of the master loading door(s) shall not allow access to the interior of the receptacle when tested using pry tools listed in 4.11 for a period not to exceed 3 minutes. A 3-pound hammer shall be used for a time period not to exceed 1 minute in tandem with these other tools during the tests of the master-loading door(s).

4.11.5 *Arrow Lock Compartment Door* (Front-Loading Designs Only)—The Arrow lock compartment door shall be tested using the pry tools in 4.11 for a period not to exceed 3 minutes. A 3-pound hammer shall be used for a time period not to exceed 1 minute in tandem with these other tools during the tests of various features of the Arrow lock compartment. Seams and gaps around the perimeter of the Arrow lock compartment door and the structural integrity of the door itself shall not allow access to the receptacle under test conditions. In addition, the Arrow lock compartment door will also be subjected to a 2-minute torch test using commonly available microtorch kits. (**Note:** These tests shall not be performed on the same test door.)

4.11.6 *Outgoing Mail Slot*—The mail slot and security shield design shall be tested using the pry tools in 4.11 for a period not to exceed 3 minutes. A 3-pound hammer shall be used for a time period not to exceed 1 minute in tandem with these other tools during the tests of the seams and gaps around the perimeter of the mail slot. In addition, as part of the test, a pry bar not exceeding 18 inches in length shall be inserted into the mail slot in an attempt to gain access to deposited mail in the compartment.

4.11.7 *Outgoing Mail Compartment Front-Blanking Plate*—Gaps and seams around the perimeter of any outgoing mail compartment front-blanking plate shall be tested using pry tools listed in 4.11 for a period not to exceed 3 minutes to ensure that access to the compartment cannot be gained. A 3-pound hammer shall be used for a time period not to exceed 1 minute in tandem with these other tools during the tests of the seams and gaps around the perimeter of this item.

4.11.8 *Rear Door/Panel (Rear-Loading Designs Only)*—The rear cover shall be tested for a period not to exceed 3 minutes by attempting to force it to unseat. No access to the backside of the unit or to any adjacent compartments shall be gained as a result of this test. All customer compartment and parcel locker doors shall be open for this test.

4.11.9 *Receptacle Installation (All Designs)*—Receptacles will be installed in a representative wall fixture in accordance with the installation instructions provided by the manufacturer. The receptacle's mounting hardware will be subjected to a uniform pull load of 500 pounds. This load will be applied by placing a bolster plate to the backside area of the receptacle and attaching it to one or more cables that are passed through drill holes added to the rear wall of the actual receptacle. Any front doors of customer compartments in alignment with the cables may be opened or removed for the test. All bolster plate cables will be tied together at a minimum distance of 3 feet from the front surface of the unit with a single cable fitted with a shackle, hook, etc. A maximum horizontal pull load of 500 pounds will be applied and the receptacle will have met this requirement if its mounting hardware is not loosened from its wall mount. Supplemental bracing of the wall may be used to isolate the loading on the receptacle's mounting hardware.

5. QUALITY MANAGEMENT SYSTEM PROVISIONS

5.1 *Quality System*—The approved source shall ensure and be able to substantiate that manufactured units conform to requirements and match the approved design.

5.2 *Inspection*—The USPS reserves the right to inspect units for conformance at any stage of manufacture. Inspection by the USPS does not relieve the approved source of the responsibility to provide conforming product. The USPS, may, at its discretion, revoke the approval status of any product that does not meet the requirements of this standard.

5.3 *System*—The approved source shall use a documented quality management system acceptable to the USPS. The USPS has the right to evaluate the acceptability and effectiveness of the approved source's quality management system prior to approval, and during tenure as an approved source. As a minimum, the quality management system shall include controls and record keeping in the following areas:

5.3.1 *Document Control*—Documents used in the manufacture of product shall be controlled. The control process for documents shall ensure the following:

• Documents are identified, reviewed, and approved prior to use.
• Revision status is identified.
• Documents of external origin are identified and controlled.

5.3.2 *Supplier Oversight*—A documented process shall ensure the following:
• Material requirements and specifications are clearly described in procurement documents.
• Inspection or other verification methods are established and implemented for validation of purchased materials.

5.3.3 *Inspection and Testing*—The approved source shall monitor and verify that product characteristics match approved design. This activity shall be carried out at appropriate stages of manufacture to ensure that only acceptable products are delivered.

5.3.4 *Control of Nonconforming Product*—The control method and disposition process shall be defined and ensure that any product or material that does not conform to the approved design is identified and controlled to prevent its unintended use or delivery.

5.3.5 *Control of Inspection, Measuring, and Test Equipment*—The approved source shall ensure that all equipment used to verify product conformance is controlled, identified, and calibrated at prescribed intervals traceable to nationally recognized standards in accordance with documented procedures.

5.3.6 *Corrective Action*—The approved source shall maintain a documented complaint process. This process shall ensure that all complaints are reviewed and that appropriate action is taken to determine cause and prevent reoccurrence. Action shall be taken in a timely manner and be based on the severity of the nonconformance.

**Note:** It is recognized that each approved source functions individually and consequently, the quality system of each approved source may differ in the specific methods of accomplishment. It is not the intent of this standard to attempt to standardize these systems, but to present the basic functional concepts that when conscientiously implemented will provide assurance that the approved source's product meets the requirements and fully matches the approved design.

In addition to outlining the approved source's approach to quality, the documentation should specify the methodology used to accomplish the interlinked processes and describe how they are controlled. The approved source shall submit its quality documentation to the Postal Service for review along with the preliminary design review.

5.3.7 *Documentation Retention*—All of the approved source's documentation pertaining to the approved product shall be kept for a minimum of three (3) years after shipment of product.

5.3.8 *Documentation Submittal*—The approved source shall submit a copy of their quality system documentation relevant to the manufacture of wall-mounted, centralized mail receptacles for review as requested during the approval process and tenure as an approved source.

6. APPLICATION REQUIREMENTS

6.1 *Application Requirements*—All correspondence and inquiries shall be directed to the address in 1.3. The application process consists of the following:

6.1.1 *Preliminary Review*—Manufacturers must first satisfy requirements of a preliminary review prior to submitting samples of any receptacles. The preliminary review consists of a review of the manufacturer's conceptual design drawings for each receptacle type for which the manufacturer is seeking approval. Computer-generated drawings are preferred, but hand-drawn sketches are acceptable provided they adequately depict the important design aspects of the proposed receptacle design. In particular, drawings should include overall unit with standard and optional compartment size information plus details on the design of such critical features as the carrier access, customer, parcel, and master load door(s) designs, hinge designs, all lock-mounting techniques and cam engagements, material selections, the 3-point latching and handle designs, the wall-mounting concept, and outgoing mail slot design. If drawings show that the proposed receptacle design appears likely to comply with the requirements of this standard, manufacturers will be notified in writing and may then continue with the application requirements described in 6.1.2. Do NOT submit any sample units to the USPS prior to complying with the requirements of 6.1.2. Notification that a manufacturer's drawings satisfy the requirements of the preliminary review does NOT constitute USPS approval of a design, and shall not be relied upon as an assurance that a design will ultimately be approved.

6.1.2 *Independent Lab Testing*—Upon receiving written notification from the USPS that their design(s) satisfies requirements of the preliminary review, manufacturers shall at their own expense submit at least one representative sample of the highest total-compartment version of each type of apartment receptacle for which the vendor seeks USPS approval to an independent laboratory for testing along with a copy of the preliminary review letter from the USPS. If the vendor plans to offer optional compartment sizes, the submitted samples shall include at least one of the largest compartment size. All tests shall be performed by an approved independent test lab, except for the security tests which shall be performed by the Postal Service. See Appendix A for a list of USPS-approved independent test labs.

6.1.3 *Final Review*—Manufacturers shall submit two representative samples of the largest (typically, the highest total-compartment) version to the USPS for security testing, final review, and approval. If the vendor plans to offer optional compartment sizes, the submitted samples shall include at least one of the largest compartment size. The sample shall be accompanied with a certificate of compliance and a copy of the laboratory test results (see 6.1.3.3). Receptacles submitted to the USPS (see 1.3) for final evaluation must be identical in every way to the receptacles to be marketed, and must be marked as specified in 3.11. Manufacturers may be subject to a verification of their quality system prior to approval. This may consist of a review of the manufacturer's quality manual (see 6.1.3.4) and an onsite quality system evaluation (see 5.2).

6.1.3.1 *Installation Instructions*—Manufacturers shall furnish a written copy of their installation instructions for review. These instructions shall contain all information as detailed in section 3.13.

6.1.3.2 *Documentation*—Units submitted for approval shall be accompanied by two complete sets of manufacturing drawings consisting of black on white prints (blueprints or sepia are unacceptable). The drawings shall be dated and signed by a manufacturer's representative(s). The drawings must completely document and represent the design of the unit tested. If other versions of the approved type unit are to be offered, the drawings must include the unique or differing design items of these versions. The drawings must include sufficient details to allow the USPS to inspect all materials, construction methods, processes, coatings, treatments, finishes (including paint types), control specifications, parts, and assemblies used in the construction of the unit. Additionally, the drawings must fully describe any purchased materials, components, and hardware including their respective finishes. The USPS may

request individual piece parts to verify drawings.

6.1.3.3 *Certification of Compliance & Test Results*—Manufacturers shall furnish a written certificate of compliance indicating that their design fully complies with the requirements of this standard. In addition, the manufacturer shall submit the lab's original report which clearly shows results of each test conducted (see Table IV). The manufacturer bears all responsibility for their unit(s) meeting these requirements, and the USPS reserves the right to retest any and all units submitted including those which are available to the general public.

TABLE IV.—TEST REQUIREMENTS

| Test | Requirement | Reference | Industry specifications |
|---|---|---|---|
| Capacity | Insertion of test gauges | 4.2 | |
| Operational Requirements | 10,000 cycles | 4.3 | |
| Water-Tightness | No appreciable moisture | 4.4 | UL 771, section 47.7. |
| Salt Fog Resistance | 25 cycles | 4.5 | ASTM G85. |
| Abrasion Resistance | 75 liters | 4.6 | ASTM D968. |
| Temperature Stress Test | Shall function between −40° F and 140° F | 4.7 | |
| Structural Rigidity Requirements | Refer to Table I for loads and points, maximum ⅛ inch permanent deformation. | 4.8 | |
| Impact | 2 lbs. dropped from 6 inches | 4.9 | |
| Flammability | V–1 or better | | ASTM D 3801. |

6.1.3.4 *Quality Policy Manual*—Manufacturer shall submit its quality policy manual to the address listed in section 1.3.

7. APPROVAL OR DISAPPROVAL

7.1 *Disapproval*—Written notification, including reasons for disapproval, will be sent to the manufacturer within 30 days of completion of the final review of all submitted units. All correspondence and inquiries shall be directed to the address listed in 1.3

7.1.1 *Disapproved Receptacles*—Units disapproved will be disposed of in 30 calendar days from the date of the written notification of disapproval or returned to the manufacturer, if requested, provided the manufacturer pays shipping costs.

7.2 *Approval*—One set of manufacturing drawings with written notification of approval will be returned to the manufacturer. The drawings will be stamped and identified as representing each unit.

7.2.1 *Approved Receptacles*—Units that are approved will be retained by the USPS.

7.2.2. *Rescission*—Manufacturer's production units shall be constructed in accordance with the USPS-certified drawings and the provisions of this specification and be of the same materials, construction, coating, workmanship, finish, etc., as the approved units. The USPS reserves the right at any time to examine and retest units obtained either in the general marketplace or from the manufacturer. If the USPS determines that a receptacle model is not in compliance with this standard or is out of conformance with approved drawings, the USPS may, at its discretion, rescind approval of the receptacle as follows:

7.2.2.1 *Written Notification*—The USPS shall provide written notification to the manufacturer that a receptacle is not in compliance with this standard or is out of conformance with approved drawings. This notification shall include the specific reasons that the unit is noncompliant or out of conformance and shall be sent via Registered Mail™.

7.2.2.1.1 *Health and Safety*—If the USPS determines that the noncompliance or nonconformity constitutes a danger to the health or safety of customers and/or letter carriers, the USPS may, at its discretion, immediately rescind approval of the unit. In addition, the USPS may, at its discretion, order that production of the receptacle cease immediately and that any existing inventory not be sold for receipt of U.S. mail.

7.2.2.2 *Manufacturer's Response*—In all cases of noncompliance or nonconformity other than those determined to constitute a danger to the health or safety of customers and/or letter carriers, the manufacturer shall confer with the USPS and shall submit one sample of a corrected receptacle to the USPS for approval no later than 45 calendar days after receipt of the notification described in 7.2.2.1. Failure to confer or submit a corrected receptacle within the prescribed period shall constitute grounds for immediate rescission.

7.2.2.3 *Second Written Notification*—The USPS shall respond to the manufacturer in writing, via Registered Mail, no later than 30 calendar days after receipt of the corrected receptacle with a determination of whether the manufacturer's submission is accepted or rejected and with specific reasons for the determination.

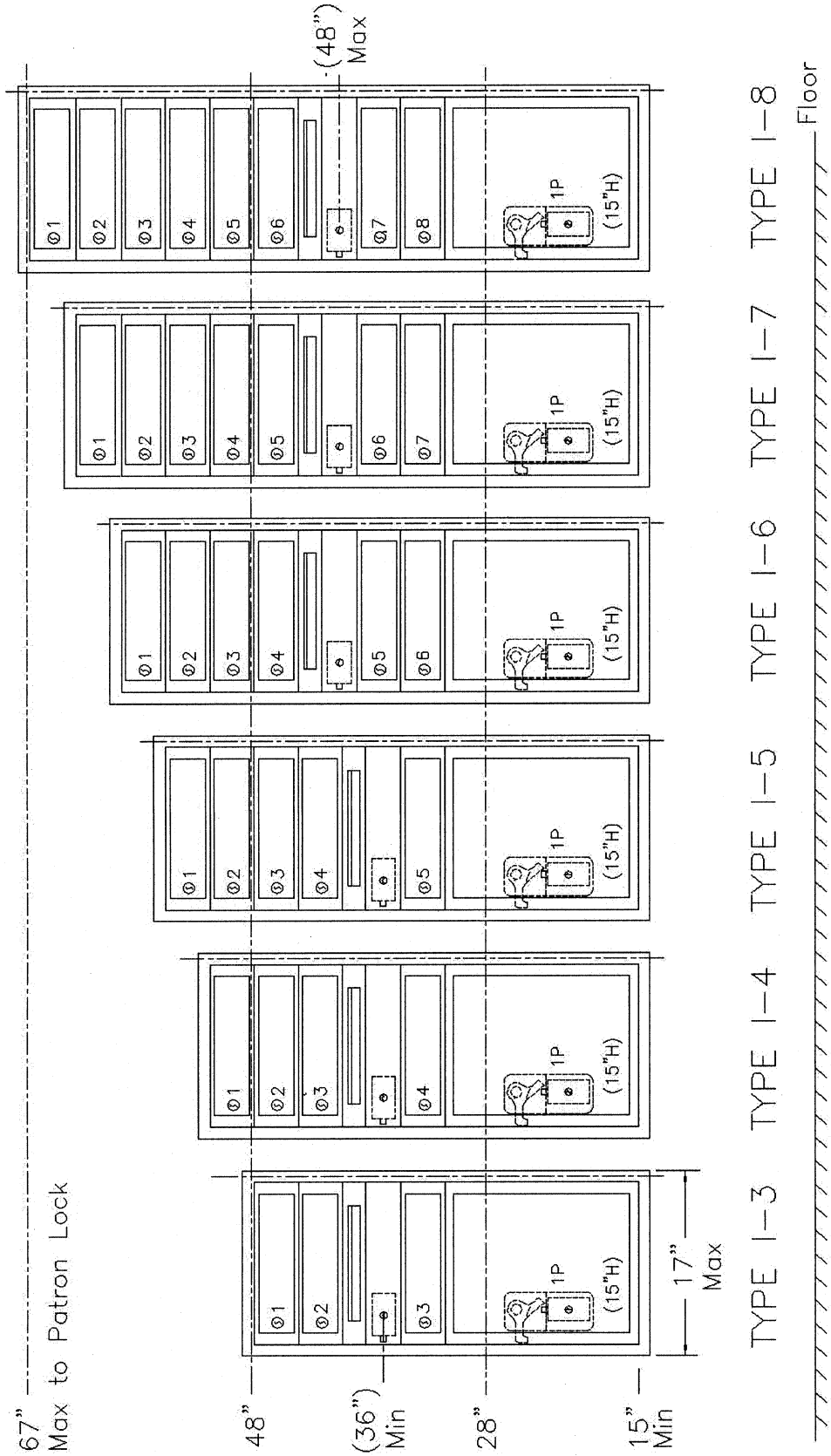
7.2.2.4 *Manufacturer's Second Response*—If the USPS rejects the corrected receptacle, the manufacturer may submit a second sample of the corrected receptacle to the USPS for approval no later than 45 calendar days after receipt of the notification described in 7.2.2.3. Failure to confer or submit a corrected receptacle within the prescribed period shall constitute grounds for immediate rescission.

7.2.2.5 *Final USPS Rescission Notification*—The USPS shall provide a final response to the manufacturer in writing no later than 30 calendar days after receipt of the second sample corrected receptacle with a determination of whether the manufacturer's submission is accepted or rejected and with specific reasons for the determination. If the second submission is rejected, the USPS may, at its discretion, rescind approval of the receptacle. In addition, the USPS may, at its discretion, order that production of the receptacle cease immediately, and that any existing inventory not be sold or used for receipt of U.S. mail. If the USPS rescinds approval, the manufacturer is not prohibited from applying for a new approval pursuant to the provisions of section 6.

7.2.3 *Revisions, Product or Drawings*—Changes that affect the form, fit, and/or function (*i.e.*, dimensions, material, finish, etc.) of approved products or drawings shall not be made without written USPS approval. Any proposed changes shall be submitted with the affected documentation reflecting the changes (including a notation in the revision area), and a written explanation of the changes. One unit, incorporating the changes, may be required to be resubmitted for testing and evaluation for approval.

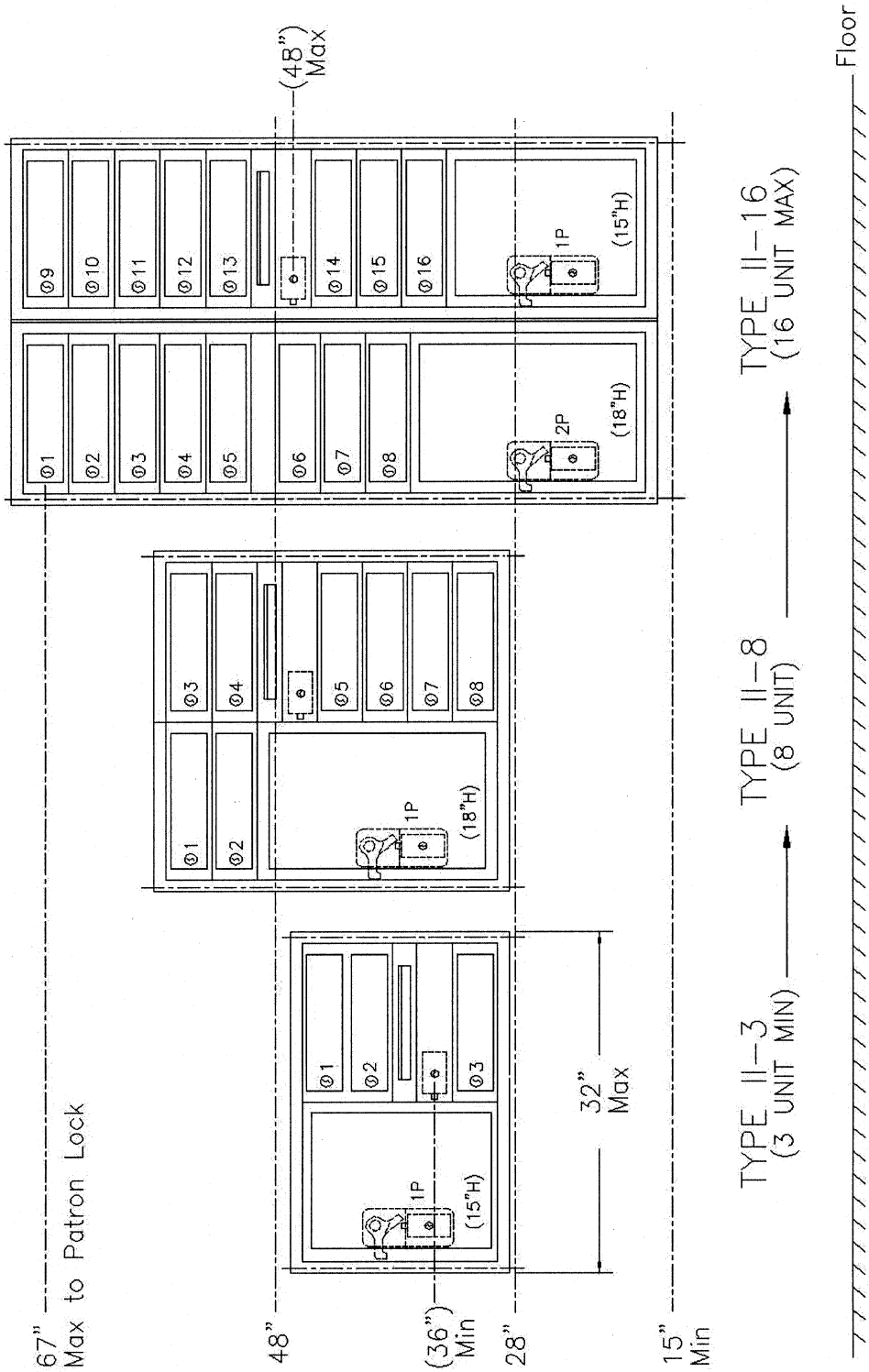
7.2.3.1 *Corporate or Organizational Changes*—If any substantive part of the approved manufacturer's structure changes from what existed when the manufacturer became approved, the manufacturer shall promptly notify the USPS and will be subject to a reevaluation of their approved product(s) and/or quality system. Examples of substantive structural changes include the following: change in ownership, executive or quality management; major change in quality policy or procedures; relocation of manufacturing facilities; major equipment or manufacturing process change (*e.g.*, outsourcing vs. inplant fabrication); etc. Notification of such changes must be sent to the address in section 1.3.

BILLING CODE 7710–12–P



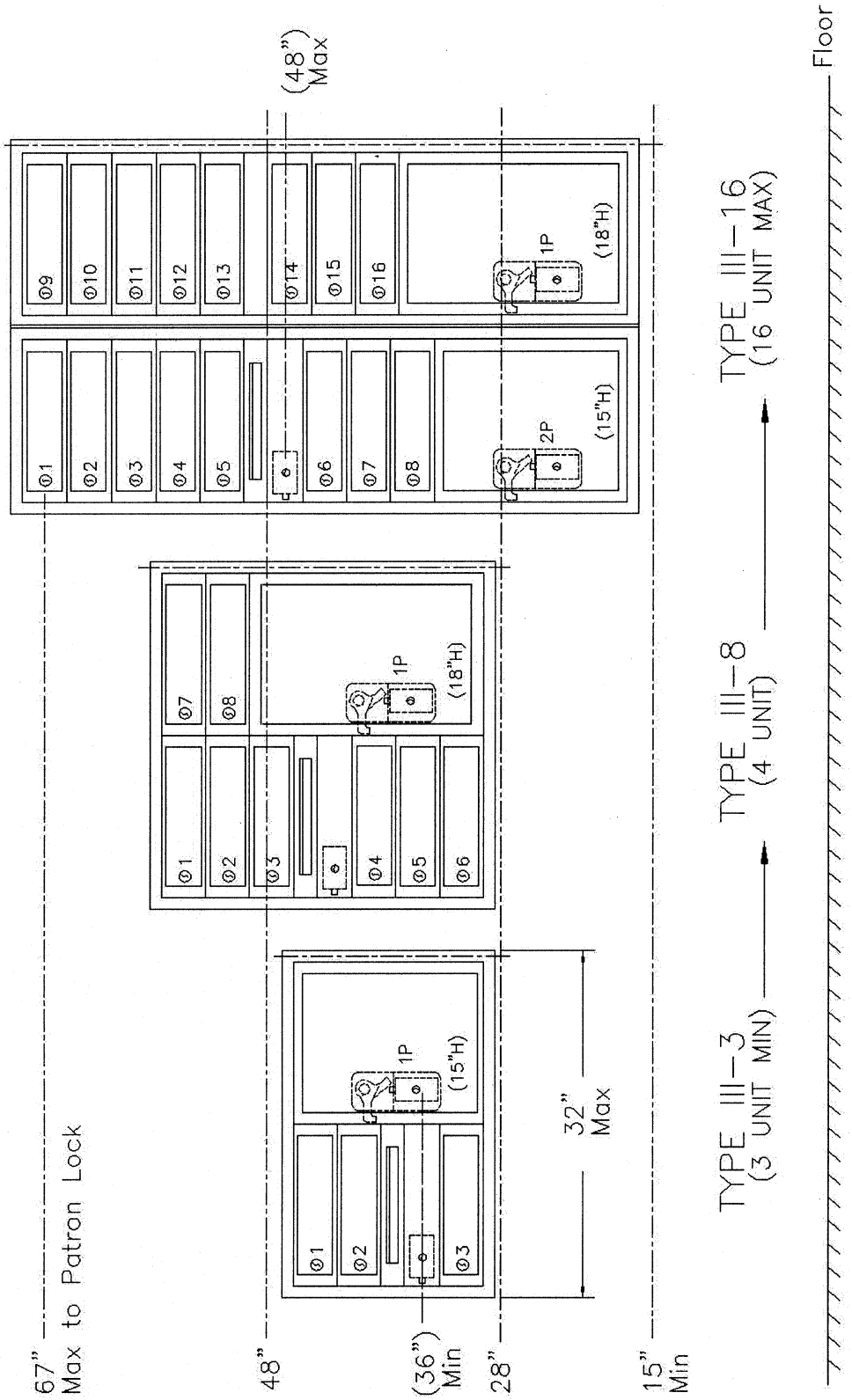

Notes – All units shall be designed such that they are in compliance with the following installation requirements:
1. At least one customer compartment shall be positioned less than 48 inches from the finished floor.
2. No parcel locker compartment (interior bottom shelf) shall be positioned less than 15 inches from the finished floor.
3. No patron lock shall be located more than 67 inches above the finished floor.
4. No customer compartment (interior bottom shelf) shall be positioned less than 28 inches from the finished floor.
5. The USPS Arrow lock shall be located between 36 and 48 inches above the finished floor.

**Figure 1 – Front Loader**




Notes – All units shall be designed such that they are in compliance with the following installation requirements:
1. At least one customer compartment shall be positioned less than 48 inches from the finished floor.
2. No parcel locker compartment (interior bottom shelf) shall be positioned less than 15 inches from the finished floor.
3. No patron lock shall be located more than 67 inches above the finished floor.
4. No customer compartment (interior bottom shelf) shall be positioned less than 28 inches from the finished floor.
5. The USPS Arrow lock shall be located between 36 and 48 inches above the finished floor.

**Figure 2 – Front Loader, Double Column & Master Door**




Notes – All units shall be designed such that they are in compliance with the following installation requirements:
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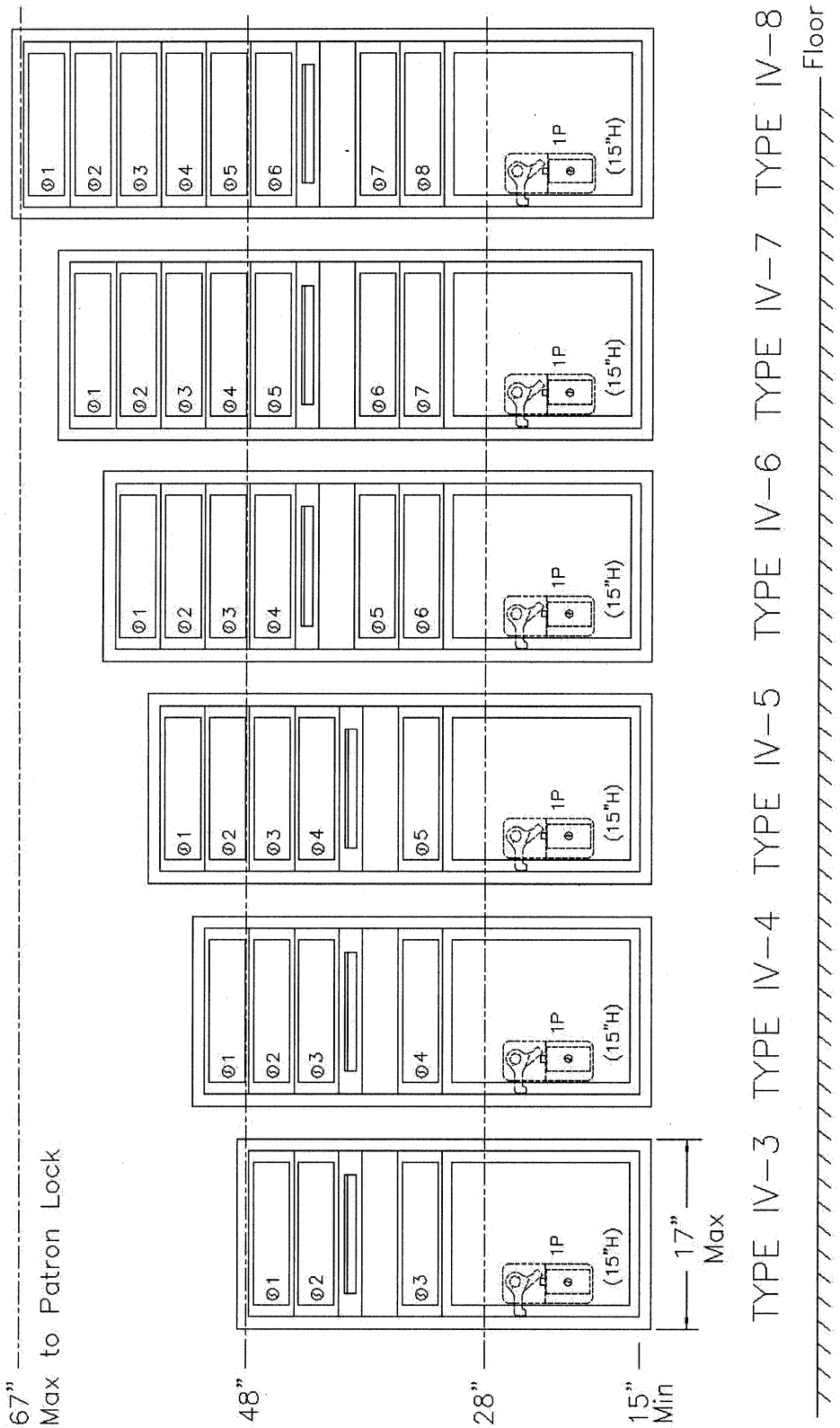
2. No parcel locker compartment (interior bottom shelf) shall be positioned less than 15 inches from the finished floor.
3. No patron lock shall be located more than 67 inches above the finished floor.
4. No customer compartment (interior bottom shelf) shall be positioned less than 28 inches from the finished floor.
5. The USPS Arrow lock shall be located between 36 and 48 inches above the finished floor.

**Figure 3 – Front Loader, Double Column Single Master Door**




Notes – All units shall be designed such that they are in compliance with the following installation requirements:
1. At least one customer compartment shall be positioned less than 48 inches from the finished floor.
2. No parcel locker compartment (interior bottom shelf) shall be positioned less than 15 inches from the finished floor.
3. No patron lock shall be located more than 67 inches above the finished floor.
4. No customer compartment (interior bottom shelf) shall be positioned less than 28 inches from the finished floor.
5. The USPS Arrow lock shall be located between 36 and 48 inches above the finished floor.

**Figure 4 – Rear Loader, Single Column**

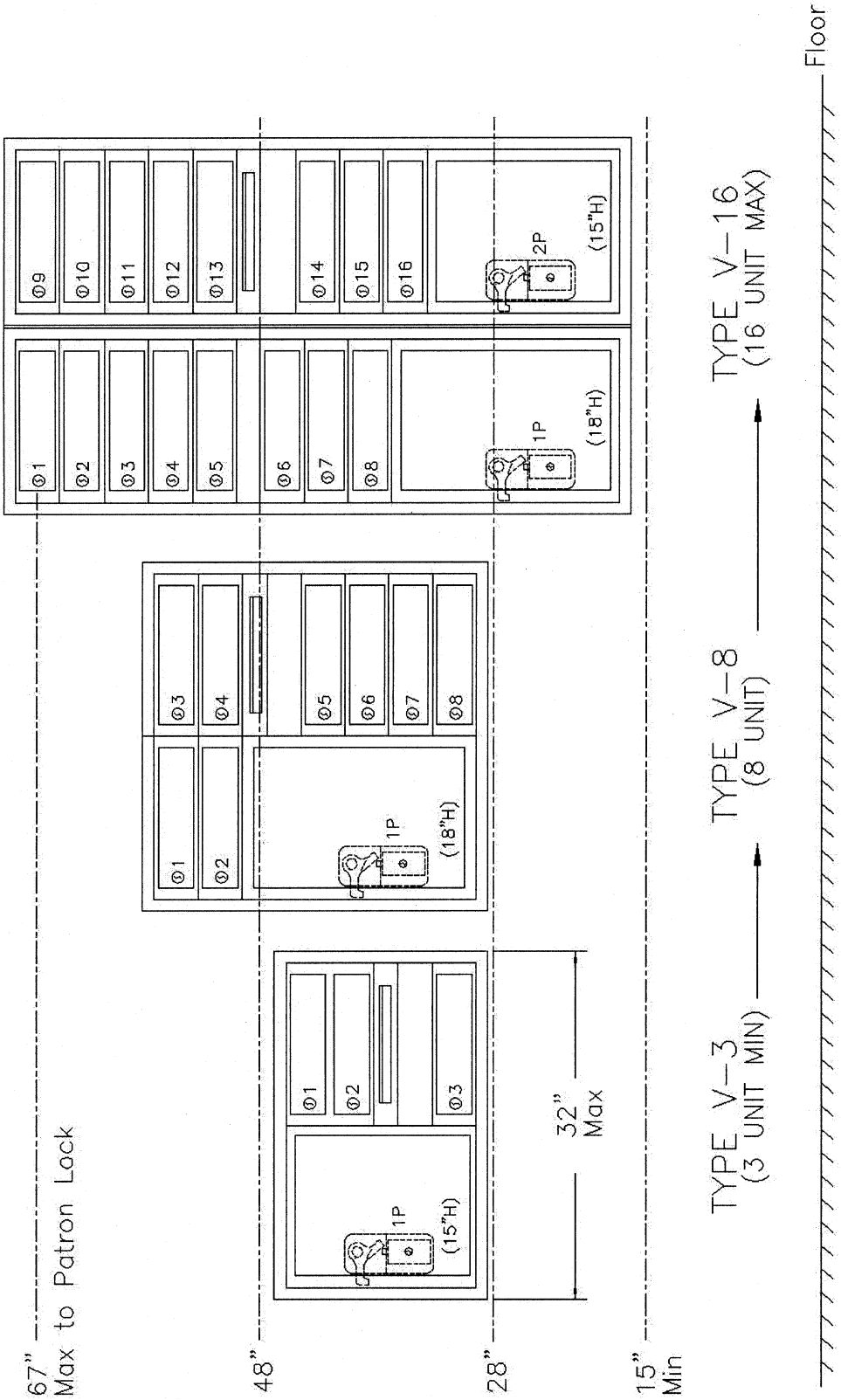
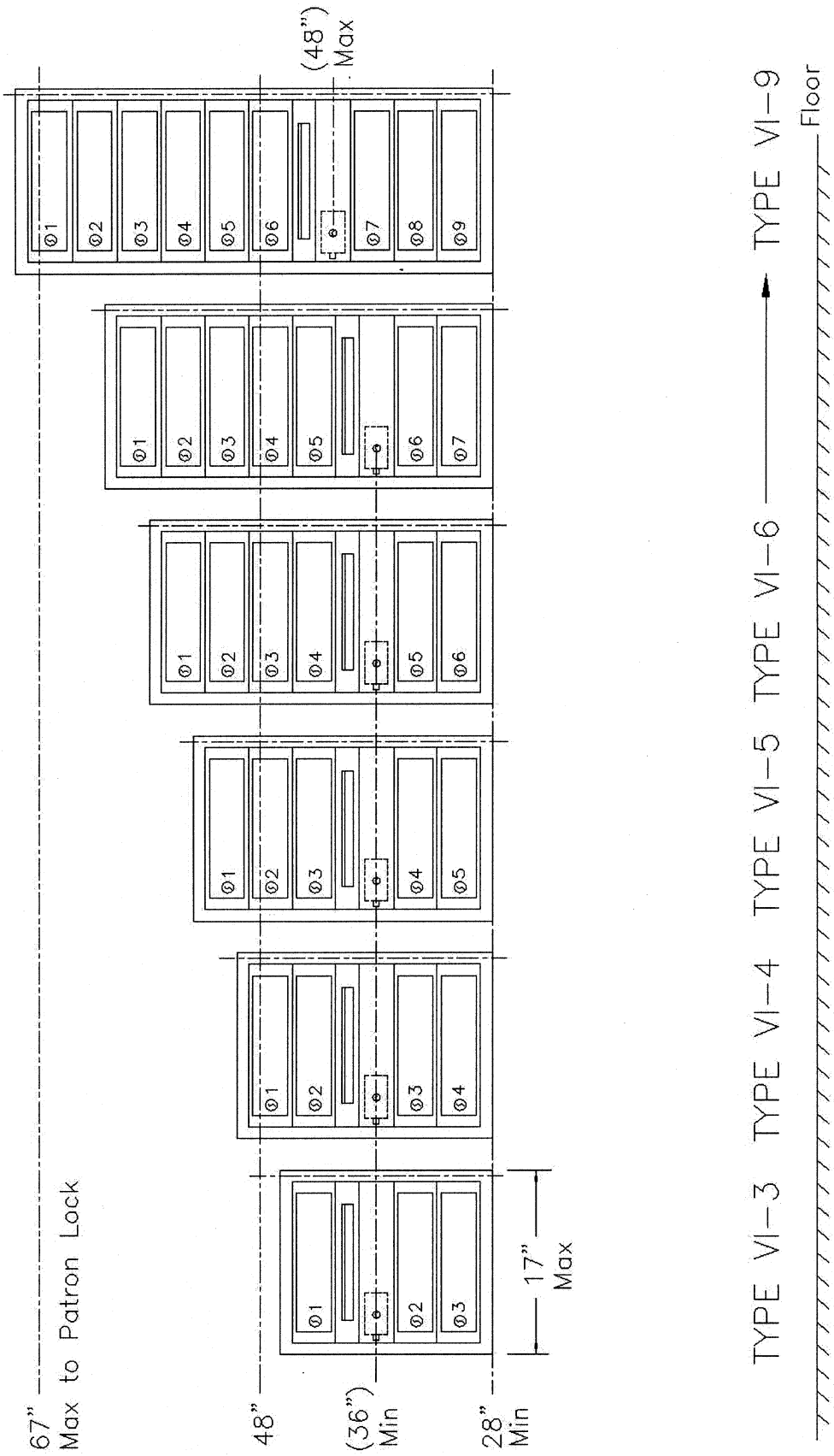
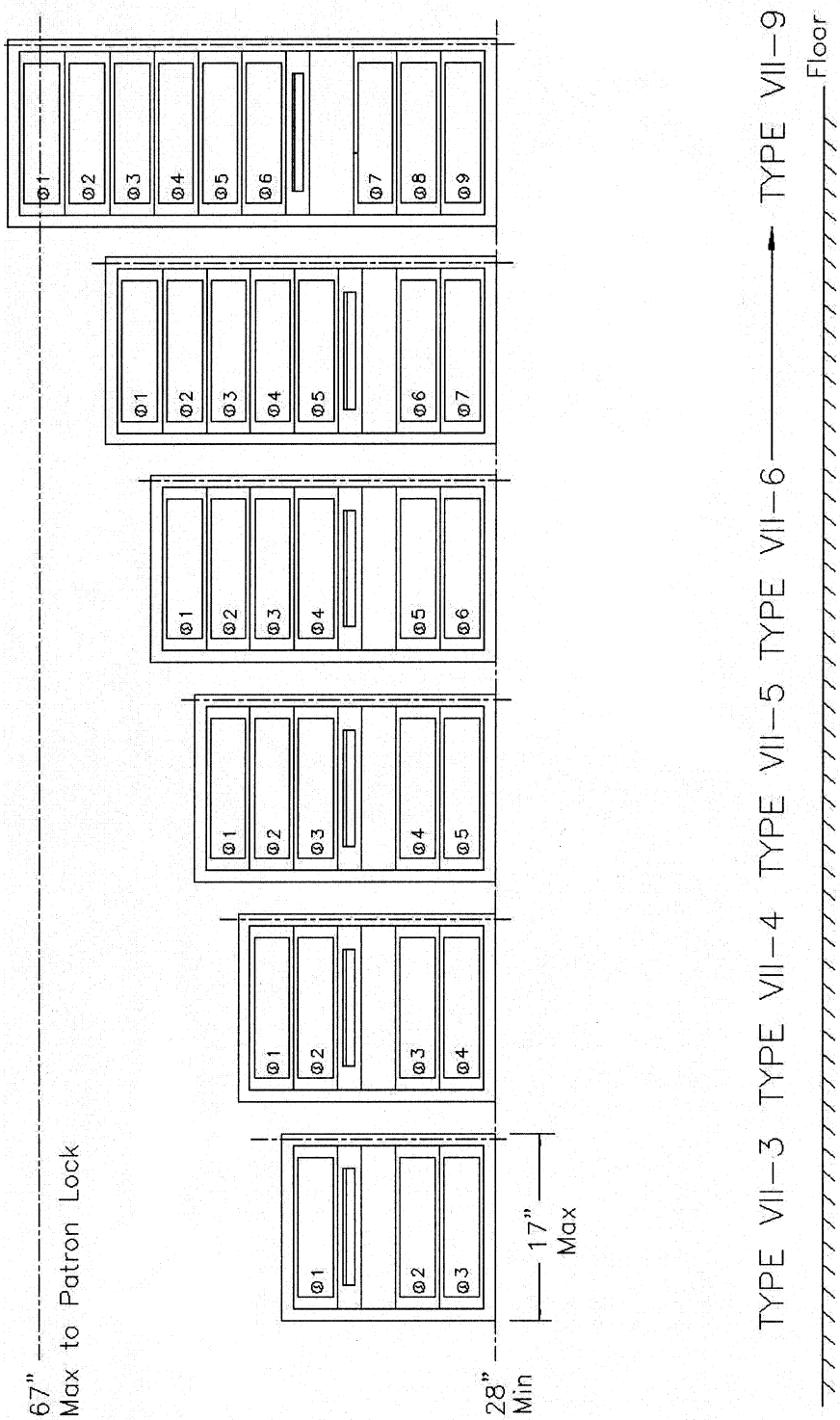



**Figure 5 – Rear Loader, Double Column**




Notes – All units shall be designed such that they are in compliance with the following installation requirements:
1. At least one customer compartment shall be positioned less than 48 inches from the finished floor.
2. No parcel locker compartment (interior bottom shelf) shall be positioned less than 15 inches from the finished floor.
3. No patron lock shall be located more than 67 inches above the finished floor.
4. No customer compartment (interior bottom shelf) shall be positioned less than 28 inches from the finished floor.
5. The USPS Arrow lock shall be located between 36 and 48 inches above the finished floor.

**Figure 6 – Front Loader, Single Column (No Parcel Compartment)**




Notes – All units shall be designed such that they are in compliance with the following installation requirements:
1. At least one customer compartment shall be positioned less than 48 inches from the finished floor.
2. No parcel locker compartment (interior bottom shelf) shall be positioned less than 15 inches from the finished floor.
3. No patron lock shall be located more than 67 inches above the finished floor.
4. No customer compartment (interior bottom shelf) shall be positioned less than 28 inches from the finished floor.

**Figure 7 - Rear Loader, Single Column (No Parcel Compartment)**

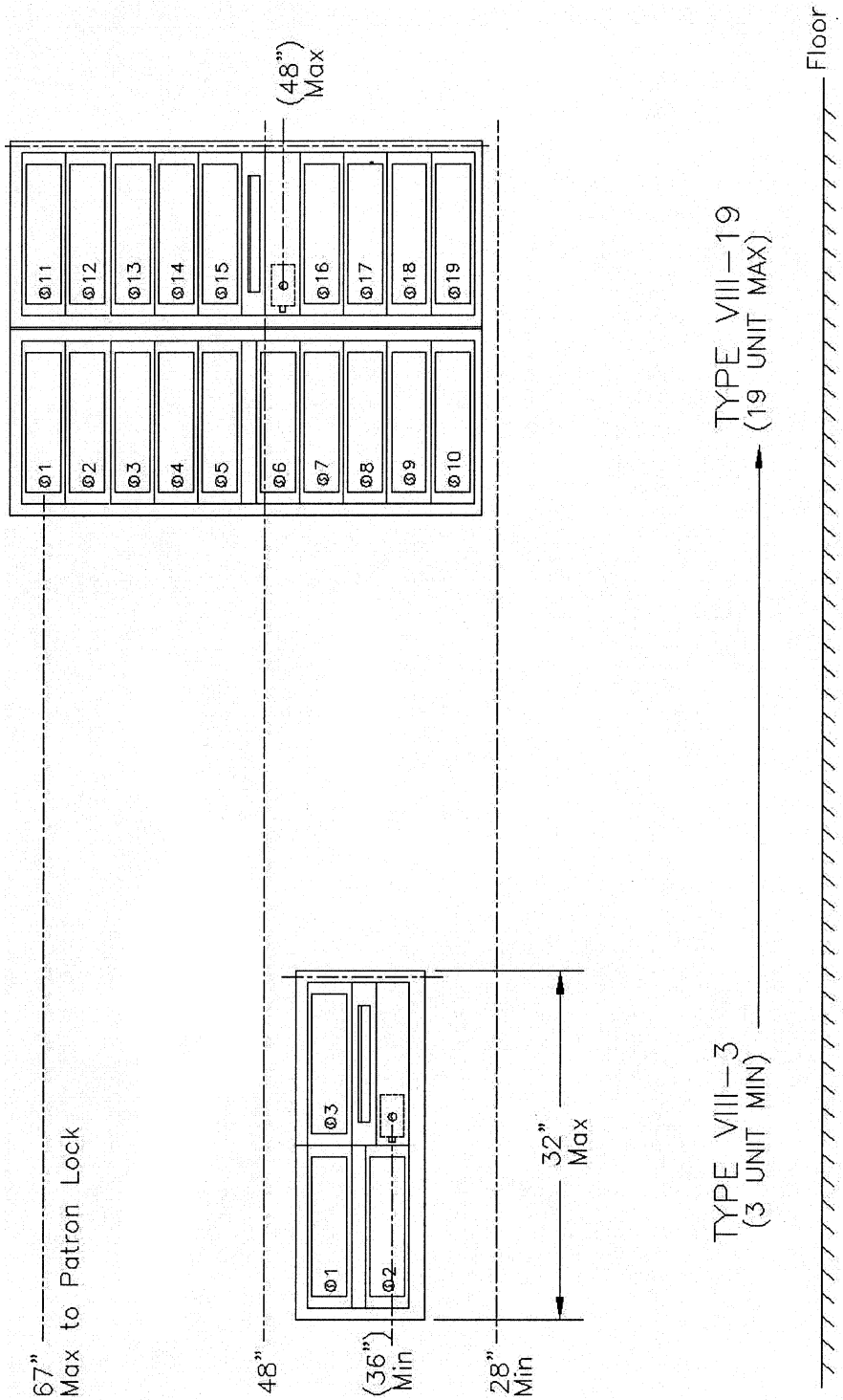
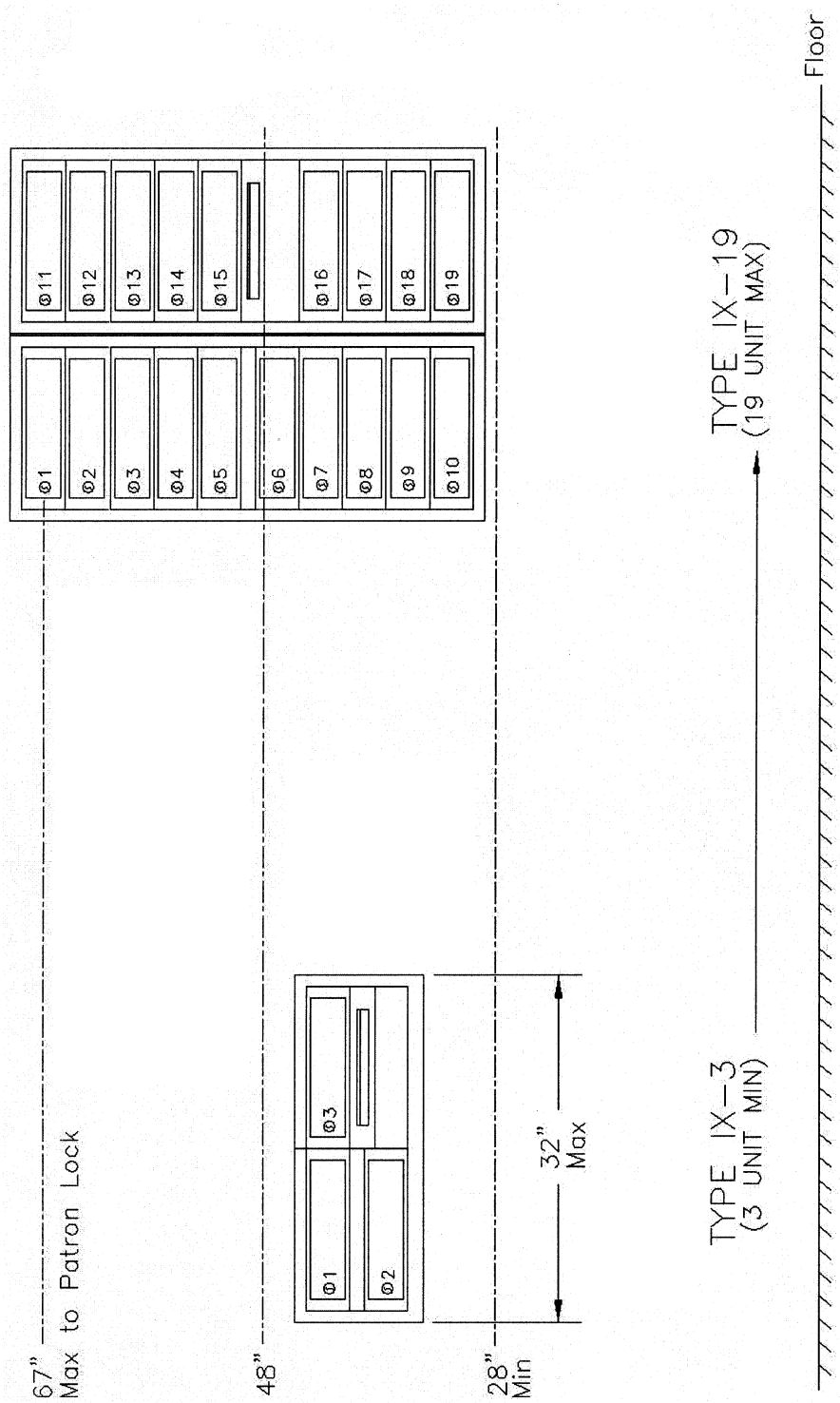
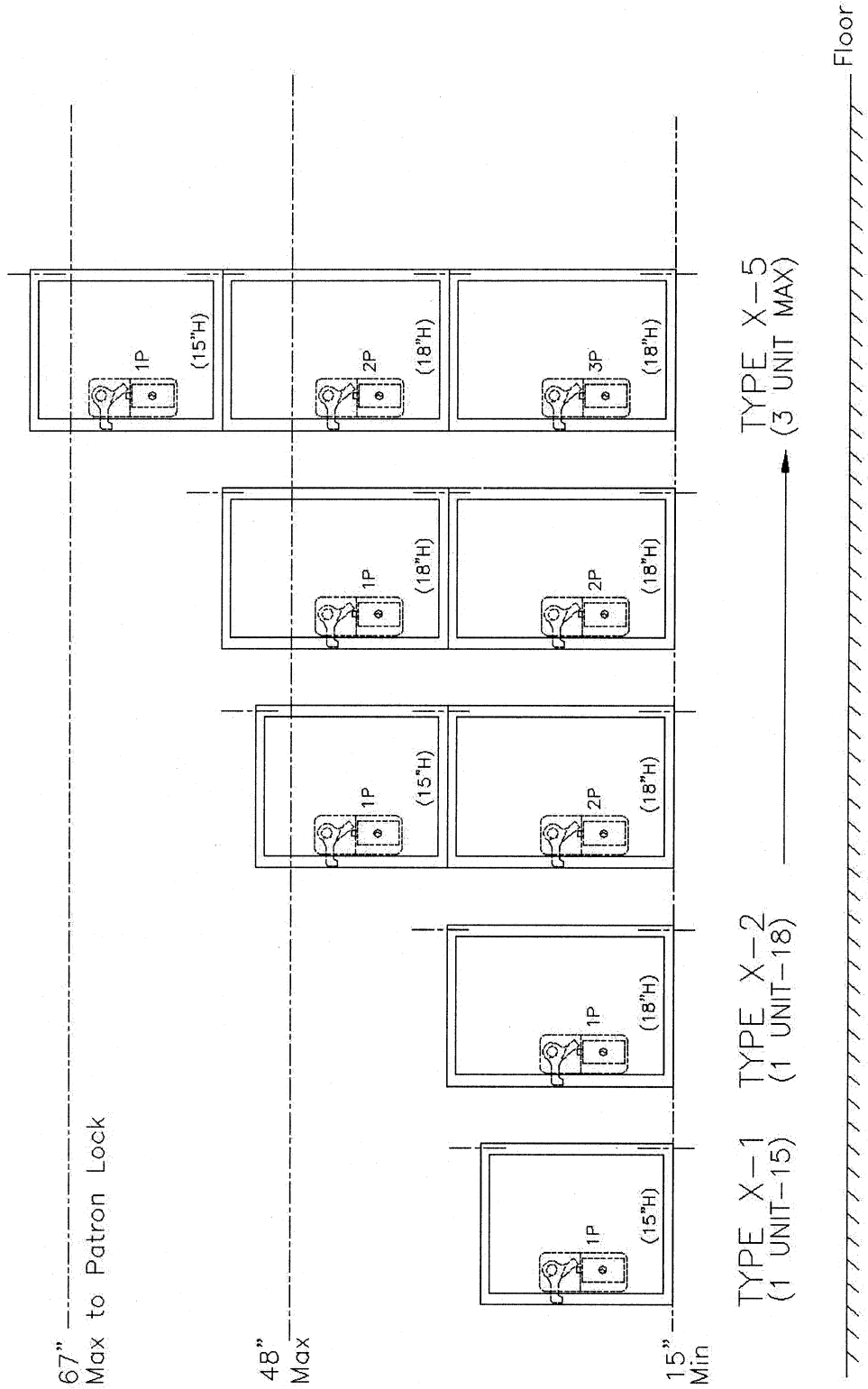



**Figure 8 – Front Loader, Double Column & Master Door (No Parcel Compartment)**



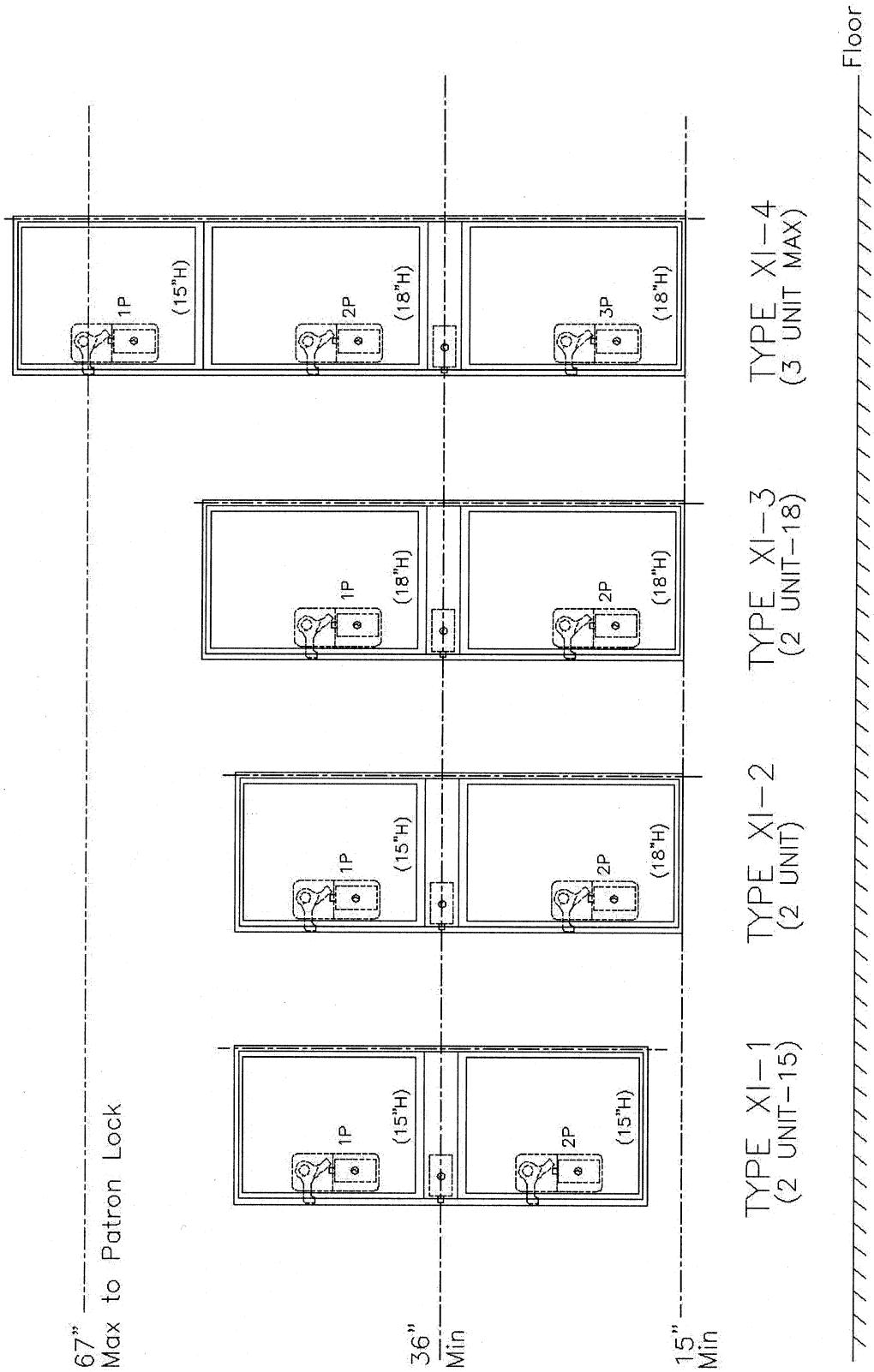

Notes – All units shall be designed such that they are in compliance with the following installation requirements:
1. At least one customer compartment shall be positioned less than 48 inches from the finished floor.
2. No parcel locker compartment (interior bottom shelf) shall be positioned less than 15 inches from the finished floor.
3. No patron lock shall be located more than 67 inches above the finished floor.
4. No customer compartment (interior bottom shelf) shall be positioned less than 28 inches from the finished floor.
5. The USPS Arrow lock shall be located between 36 and 48 inches above the finished floor.

**Figure 9 – Rear Loader, Double Column (No Parcel Compartment)**




Notes – All units shall be designed such that they are in compliance with the following installation requirements:
1. No parcel locker compartment (interior bottom shelf) shall be positioned less than 15 inches from the finished floor.
2. No patron lock shall be located more than 67 inches above the finished floor.
3. The USPS Arrow lock shall be located between 36 and 48 inches above the finished floor.

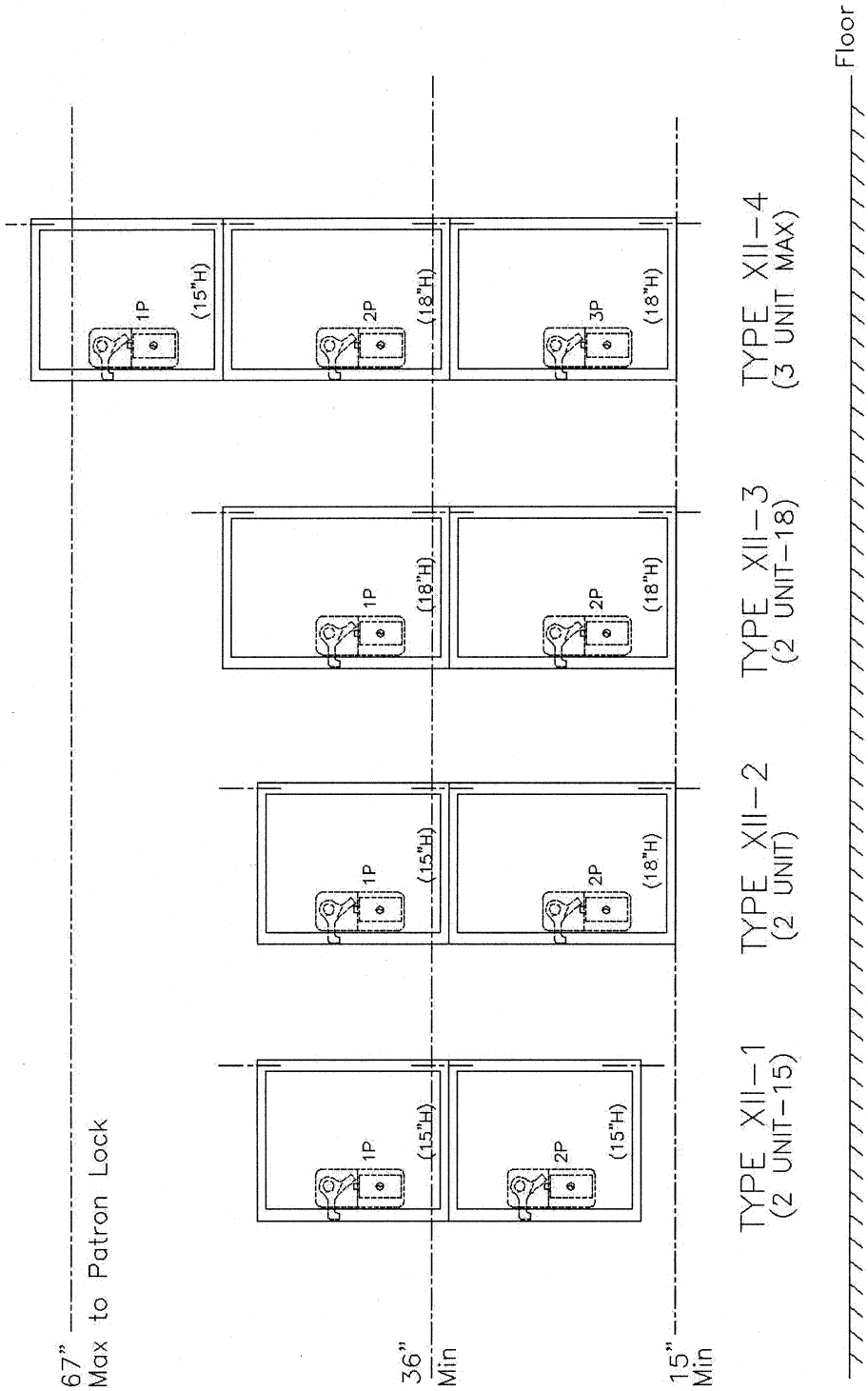
**Figure 10 – Front Loader, Parcel Only (No Master Door)**




Notes – All units shall be designed such that they are in compliance with the following installation requirements:

1. No parcel locker compartment (interior bottom shelf) shall be positioned less than 15 inches from the finished floor.
2. No patron lock shall be located more than 67 inches above the finished floor.
3. The USPS Arrow lock shall be located between 36 and 48 inches above the finished floor.

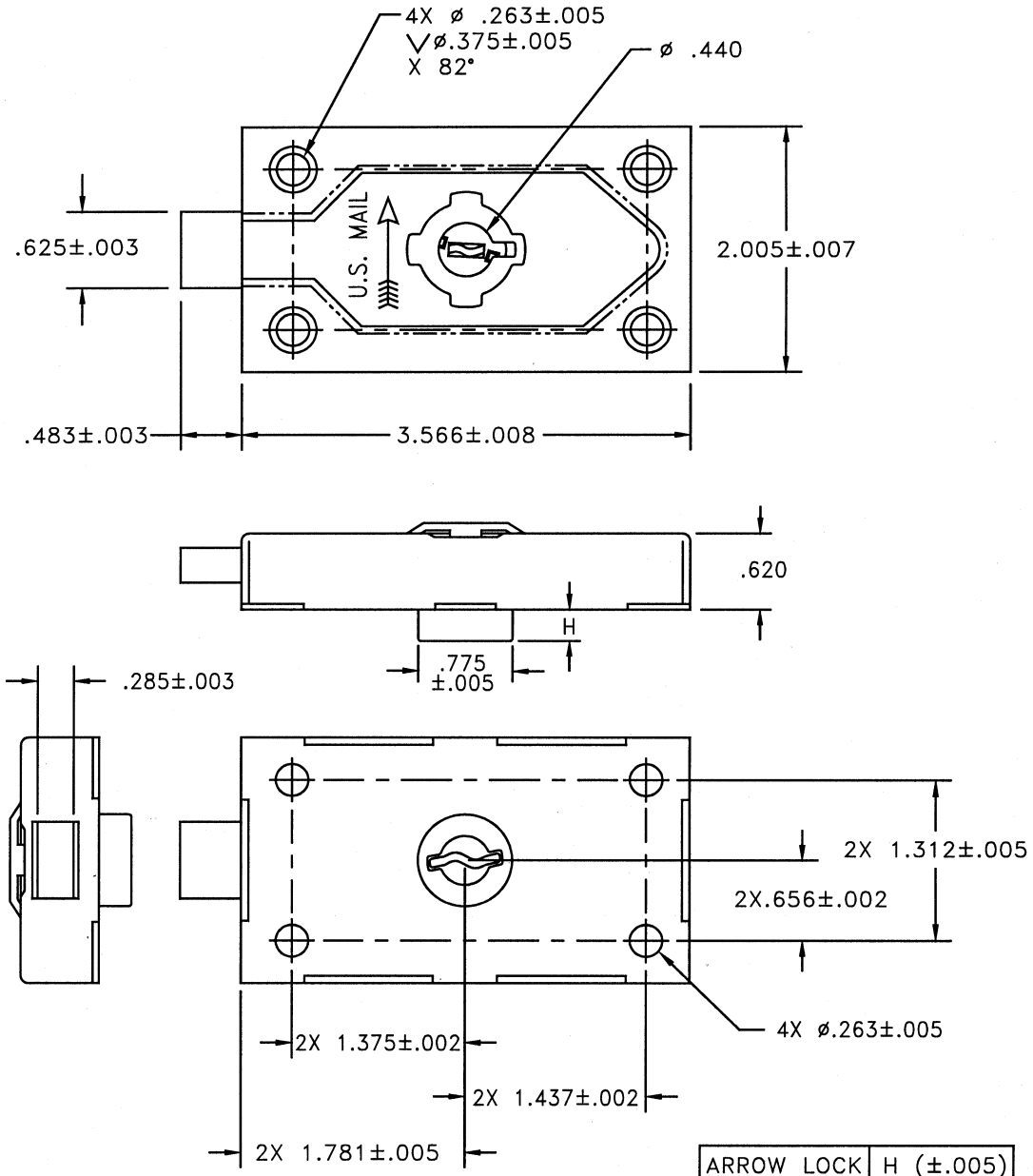
**Figure 11 - Front Loader, Parcel Only (Master Door)**




Notes – All units shall be designed such that they are in compliance with the following installation requirements:

1. No parcel locker compartment (interior bottom shelf) shall be positioned less than 15 inches from the finished floor.
2. No patron lock shall be located more than 67 inches above the finished floor.
3. The USPS Arrow lock shall be located between 36 and 48 inches above the finished floor.

**Figure 12 – Rear Loader, Parcel Only**




| ARROW LOCK | H (±.005) |
|---|---|
| STANDARD | .275 |
| MODIFIED | .375 |

**Figure 13.** Arrow Lock Assembly

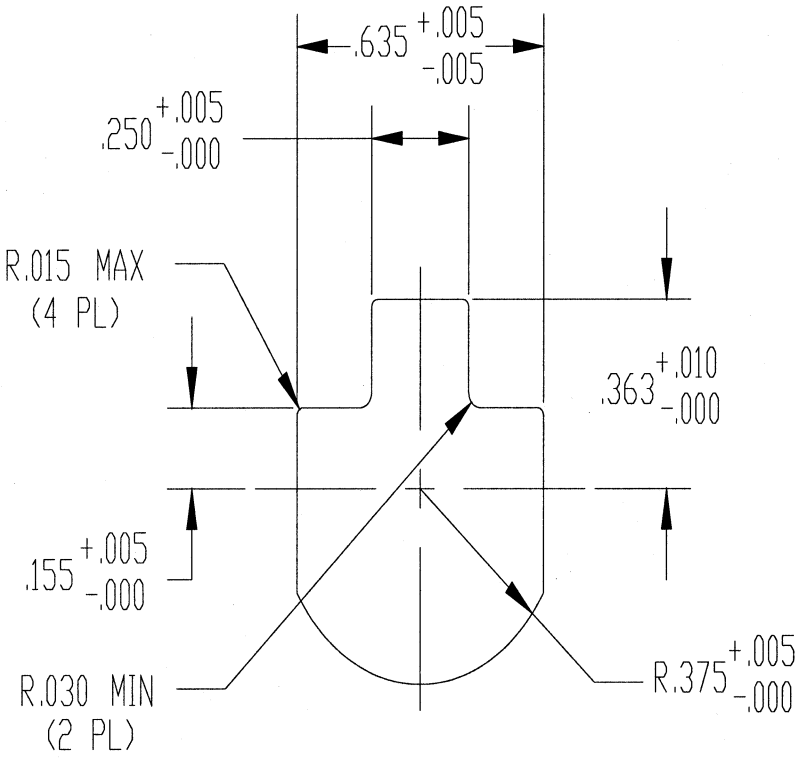



**Figure 14.** Mounting Hole, PSIN 0910 Customer Lock

## Appendix A—USPS-Approved Independent Test Laboratories

(1) ACTS Test Labs, Contact: Dennis Maclaughlin, Phone: 716–505–3547, Fax: 716–505–3301, 100 Northpointe Parkway, Buffalo, NY 14228–1884.

(2) The Coatings Lab, Contact: Tom Schwerdt, Phone: 713–981–9368, Fax: 713–776–9634, 10175 Harwin Drive, Suite 110, Houston, TX 77036.

(3) Ithaca Materials Research & Testing, Inc. (IMR), Contact: Jeff Zerilli, Vice President, Phone: 607–533–7000, Lansing Business and Technology Park, 31 Woodsedge Drive, Lansing, NY 14882.

(4) Independent Test Laboratories, Inc., Contact: Robet Bouvier, Phone: 800–962–Test, Fax: 714–641–3836, 1127B Baker Street, Costa Mesa, CA 92626.

(5) Midwest Testing Laboratories, Inc., Contact: Cherie Ulatowski, Phone: 248–689–9262, Fax: 248–689–7637, 1072 Wheaton, Troy, MI 48083.

**Note:** Additional test laboratories may be added provided they satisfy USPS certification criteria. Interested laboratories should contact: USPS Engineering, Test Evaluation and Quality, 8403 Lee Highway, Merrifield, VA 22082–8101.

**Neva R. Watson,**

*Attorney, Legislative.*

[FR Doc. 04–8972 Filed 4–20–04; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA 284–0443; FRL–7650–1]**

## Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a limited approval and limited disapproval of revisions to the Antelope Valley Air Quality Management District (AVAQMD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen ($NO_X$) emissions from internal combustion engines. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by May 21, 2004.

**ADDRESSES:** Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov.*

You can inspect copies of the submitted SIP revisions, EPA's technical support document (TSD), and public

comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Antelope Valley AQMD, 43301 Division St., Ste. 206, Lancaster, CA 93535–4649.

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

**FOR FURTHER INFORMATION CONTACT:** Thomas C. Canaday, EPA Region IX, (415) 947–4121, *canaday.tom@epa.gov.*

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

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B. Does the Rule Meet the Evaluation Criteria?
C. What are the Rule Deficiencies?
D. EPA Recommendations to Further Improve the Rule.
E. Proposed Action and Public Comment.
III. Statutory and Executive Order Reviews

## I. The State's Submittal

### *A. What Rule Did the State Submit?*

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

| Local agency | Rule # | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| AVAQMD | 1110.2 | Emissions From Stationary, Non-road & Portable Internal Combustion Engines. | 01/21/03 | 04/01/03 |

On May 13, 2003, this rule submittal was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

### *B. Are There Other Versions of this Rule?*

There is no previous version of Rule 1110.2 in the SIP, although the AVAQMD adopted an earlier version of this rule on November 15, 2000, and CARB submitted it to us on March 14, 2001. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

### *C. What is the Purpose of the Submitted Rule?*

$NO_X$ helps produce ground-level ozone, smog and particulate matter which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control $NO_X$ emissions. Rule 1110.2 regulates $NO_X$ emissions from stationary internal combustion engines over 50 brake horsepower (bhp) and portable internal combustion engines over 100 bhp. The TSD has more information about this rule.

## II. EPA's Evaluation and Action

### *A. How is EPA Evaluating the Rule?*

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources of $NO_X$ and volatile organic compounds in ozone nonattainment areas (see section 182(b)(2) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The AVAQMD regulates a "severe" ozone nonattainment area (see 40 CFR 81), so Rule 1110.2 must fulfill RACT.[1]

Guidance and policy documents that we used to help evaluate enforceability and RACT requirements consistently include the following:

1. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the $NO_X$ Supplement), 57 FR 55620, November 25, 1992.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001.

4. Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Spark-Ignited Internal Combustion Engines, State of California Air Resources Board, November, 2001.

5. "Nitrogen Oxides ($NO_X$) Questions from Ohio EPA," EPA memorandum, Tom Helms, Chief, Ozone/Carbon Monoxide Programs Branch, to Air Enforcement Branch, EPA Region V, March 30, 1994.

[1] AVAQMD has jurisdiction over stationary sources in Antelope Valley, which is the Los Angeles County portion of the "Southeast Desert Modified Air Quality Maintenance Area," which also includes portions of Riverside and San Bernardino Counties.

### *B. Does the Rule Meet the Evaluation Criteria?*

AVAQMD Rule 1110.2 improves the SIP by establishing emission limits for stationary and portable internal combustion engines and by specifying monitoring, reporting and recordkeeping provisions. This rule is largely consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

### *C. What are the Rule Deficiencies?*

Rule 1110.2 exempts internal combustion engines used in agriculture. These engines are typically used for irrigation purposes. The AVAQMD regulates an ozone nonattainment area so Rule 1110.2 must fulfill RACT for all engines located at major sources. Therefore this agricultural exemption conflicts with section 110 and part D of the Act and prevents full approval of the SIP revision. Rule 1110.2 also exempts from most regulation those internal combustion engines used for snow manufacture and ski lifts during seasonal operations from November 1 through April 15 each year. It is unclear whether this exemption, as stated, is consistent with section 110 and part D of the Act. Justification for this exemption must be provided when a revised rule is submitted or the exemption should be removed.

*D. EPA Recommendations to Further Improve the Rule*

AVAQMD should correct the reference in subsection (C)(2)(b) to subsection (C)(1)(c). The correct reference is to (C)(1)(a)(iii). Subsections (E)(3) and (G)(2) should be revised to require record retention for five years, rather than two.

*E. Proposed Action and Public Comment*

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rule to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiency within 18 months. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rule has been adopted by the AVAQMD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

**III. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

**List of Subjects in 40 CFR Part 52**

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

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

Dated: March 30, 2004.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 04–9043 Filed 4–20–04; 8:45 am]

**BILLING CODE 6560–50–P**

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

## Endangered and Threatened Wildlife and Plants; 90-day Finding for Petitions To List the Greater Sage-grouse as Threatened or Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for three petitions to list the greater sage-grouse (Centrocercus urophasianus) as threatened or endangered, under the Endangered Species Act of 1973, as amended. We find that these petitions and additional information available in our files present substantial information indicating that listing the greater sage-grouse may be warranted. As a result of this finding, we are initiating a status review. We ask the public to submit to us any pertinent information concerning the status of or threats to this species.

**DATES:** The finding announced in this document was made on April 5, 2004. You may submit new information concerning this species for our consideration by June 21, 2004.

**ADDRESSES:** Data, information, comments, or questions concerning this finding should be submitted to the U.S. Fish and Wildlife Service, 4000 Airport Parkway, Cheyenne, Wyoming 82001. The petitions, finding, and supporting information are available for public inspection, by appointment, during normal business hours, at the above address. Submit new information, materials, comments, or questions concerning this species to the Service at the above address.

**FOR FURTHER INFORMATION CONTACT:** Dr. Pat Deibert, at the address given in the **ADDRESSES** section (telephone 307–772–2374; facsimile 307–772–2358).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a

petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on all information available to us at the time we make the finding. To the maximum extent practicable, we must make this finding within 90 days of receiving the petition and publish a notice of the finding promptly in the **Federal Register**. Our standard for substantial information with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). When a substantial finding is made, we are required to promptly begin a review of the status of the species, if one has not already been initiated.

On July 2, 2002, we received a petition from Craig C. Dremann to list the greater sage-grouse (*Centrocercus urophasianus*) as endangered across its entire range. Mr. Dremann's 7-page petition summarizes several threats to the species' habitat, based on the author's review of the Oregon Bureau of Land Management's (BLM) management guidelines for the greater sage-grouse (Barett *et al.* 2000). A second petition requesting the same action was received from the Institute for Wildlife Protection on March 24, 2003 (cited as Webb 2002). On December 29, 2003, we received a third petition from the American Lands Alliance and 20 additional conservation organizations (American Lands Alliance *et al.*) to list the greater sage-grouse as threatened or endangered rangewide. Both of these petitions describe multiple threats to the greater sage-grouse from habitat loss and degradation, overutilization, disease and predation, the lack of regulatory protection, human-related factors (*e.g.*, pesticide use), and natural events (*e.g.*, drought). They also provide an extensive discussion, citing scientific literature, of how the unique biological characteristics of the greater sage-grouse compound extrinsic threats affecting the species' habitat and genetic stability. These petitions are 553 and 218 pages, with an additional 459 and 306 pages of literature cited, respectively. Because the petitions submitted by the Institute for Wildlife Protection and American Lands Alliance *et al.* were received after Mr. Dremann's petition, we consider those as providing supporting information for the original request.

In addition to reviewing the three petitions, we have reviewed other pertinent information and scientific literature available in our files, as well as other information that has been provided to us, including detailed comments on the petitions (particularly on the American Lands Alliance *et al.* petition) submitted by the Petroleum Association of Wyoming (PAW).

In addition to the petitions discussed above, we have previously addressed a number of other petitions related to subspecies and Distinct Population Segments (DPSs) of the greater sage-grouse. In a 90-day finding on a petition submitted by the Institute for Wildlife Protection to list the western subspecies of the greater sage-grouse (*C.u. phaios*) as threatened or endangered (February 7, 2003; 68 FR 6500), we concluded there was no scientific basis to recognize the eastern or western subspecies designations. Thus, we determined that the petition did not present substantial scientific or commercial information indicating that listing the western subspecies was warranted. For the same reason, on January 7, 2004, we published a negative 90-day finding for a subsequent petition from the same organization requesting that we list the eastern subspecies of the greater sage-grouse (*C.u. urophasianus*) (69 FR 933).

On May 7, 2001, we published a 12-month petition finding which determined that listing the Columbia Basin DPS of the western sage-grouse (now considered the greater sage-grouse) was warranted but precluded by higher priority listing actions (66 FR 22984). The Columbia Basin DPS of the greater sage-grouse is currently a candidate for listing (67 FR 40657). In a 90-day finding published December 26, 2002 (67 FR 78811), we determined that a petition to emergency list the Mono Basin population of the greater sage-grouse did not present substantial information, because the petitioner failed to adequately identify the DPS or provide sufficient information to document that continued existence of the species was threatened in the Mono Basin of California and Nevada.

A closely related species, the Gunnison sage-grouse (*C. minimus*), is currently on our candidate list (67 FR 40657). Because it is a separate species (Young *et al.* 2000), the Gunnison sage-grouse is not included in this finding.

We find the petitions by Craig C. Dremann, the Institute for Wildlife and the American Lands Alliance present substantial information indicating that listing the greater sage-grouse may be warranted. In making this finding we rely on information provided by the petitioners and evaluate that information in accordance with 50 CFR 424.14(b). The contents of this finding summarize that information included in the petition and which was available to us at the time of the petition review. Our review for the purposes of a so-called "90-day'' finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the "substantial information'' threshold. We do not conduct additional research at this point, nor do we subject the petition to rigorous critical review. Rather, as the Act and regulations contemplate, at the 90-day finding, we accept the petitioner's sources and characterizations of the information unless we have specific information to the contrary. Our finding is that the petition states a reasonable case for listing on its face. Thus, in this finding, we express no view as to the ultimate issue of whether the species should be listed. We can come to a conclusion on that issue only after a more thorough review of the species' status. In that review, which will take approximately nine more months, we will perform a rigorous critical analysis of the best available scientific information, not just the information in the petition. We will ensure that the data used to make our determination as to the status of the species is consistent with the Endangered Species Act and the Information Quality Act. We ask the public to submit to us any pertinent information concerning the status of or threats to this species.

**Biology and Distribution**

The following information regarding the description and natural history of the greater sage-grouse (sage-grouse) (American Ornithologists' Union (AOU) 2000) has been condensed from these sources: Aldrich 1963; Johnsgard 1973; Connelly *et al.* 1988; Connelly *et al.* 2000; Fischer *et al.* 1993; Drut 1994; Western States Sage and Columbia Sharp-Tailed Grouse Technical Committee (WSSCSTGTC) 1996 and 1998; and Schroeder *et al.* 1999. Specific references are cited for data of particular relevance to this finding.

The sage-grouse is the largest North American grouse species. Adult males range in length from 66 to 76 centimeters (cm) (26 to 30 inches (in)) and weigh between 2 and 3 kilograms (kg) (4 and 7 pounds (lb)). Adult females range in length from 48 to 58 cm (19 to 23 in) and weigh between 1 and 2 kg (2 and 4 lb). Males and females have dark grayish-brown body plumage with many small gray and white speckles, fleshy yellow combs over the eyes, long pointed tails, and dark green toes. Males also have blackish chin and throat feathers, conspicuous phylloplumes (specialized erectile feathers) at the back

of the head and neck, and white feathers forming a ruff around the neck and upper belly. During breeding displays, males also exhibit olive-green apteria (fleshy bare patches of skin) on their breasts.

Sage-grouse depend on a variety of shrub-steppe habitats throughout their life cycle, and are particularly tied to several species of sagebrush (Wyoming big sagebrush (*Artemisia tridentata wyomingensis*), mountain big sagebrush (*A. t. vaseyana*), and basin big sagebrush (*A. t. tridentata*)). Other sagebrush species, such as low sagebrush (*A. arbuscula*), black sagebrush (*A. nova*), fringed sagebrush (*A. frigida*) and silver sagebrush (*A. cana*) are also used. Throughout much of the year, adult sage-grouse rely on sagebrush to provide roosting cover and food. During the winter, they depend almost exclusively on sagebrush for food. The type and condition of shrub-steppe plant communities affect habitat use by sage-grouse populations (Connelly *et al.* 2000; Johnsgard 2002). However, these populations also exhibit strong site fidelity (loyalty to a particular area). Sage-grouse may disperse up to 160 kilometers (km) (100 miles (mi)) between seasonal use areas; however, average individual movements are generally less than 34 km (21 mi) (Schroeder *et al.* 1999). Sage-grouse also are capable of dispersing over areas of unsuitable habitat (Connelly *et al.* 1988). Because of the dependence of sage-grouse on sagebrush, they are rarely found outside of this habitat type (typically limited to periods of migration).

Sage-grouse consume a wide variety of forb (any herbaceous plant that is not a grass) species from spring to early fall (Schroeder *et al.* 1999). Hens require an abundance of forbs for pre-laying and nesting periods. An assortment of forb and insect species form important nutritional components for chicks during the early stages of development. Sage-grouse typically seek out more mesic (moist) habitats that provide greater amounts of succulent forbs and insects during the summer and early fall (Schroeder *et al.* 1999). Winter habitat use varies based upon snow accumulations and elevation gradients (Connelly *et al.* 2000). Sagebrush constitutes 100 percent of the sage-grouse winter diet as it is typically the only food resource available. Differences in the species of sagebrush consumed in the winter may be tied to availability, as well as preference for greater protein levels and lower levels of volatile oils (Connelly *et al.* 2000).

During the spring breeding season, primarily during the morning hours just after dawn, male sage-grouse gather together and perform courtship displays on display areas called leks. Areas of bare soil, short-grass steppe, windswept ridges, exposed knolls, or other relatively open sites may serve as leks. Leks are often surrounded by denser shrub-steppe cover. Leks can be formed opportunistically at sites within or adjacent to nesting habitat (Connelly *et al.* 2000), and therefore are not a limiting factor for sage-grouse. They range in size from less than 0.4 hectare (ha) (1 acre (ac)) to over 40 ha (100 ac) and can host from several to hundreds of males. Some leks are used for many years. These "historic'' leks are typically larger than, and often surrounded by, smaller "satellite'' leks, which may be less stable in size and location. A group of leks where males and females may interact within a breeding season or between years is called a lek complex. Males defend individual territories within leks and perform elaborate displays with their specialized plumage and vocalizations to attract females for mating. A relatively small number of dominant males accounts for the majority of breeding on a given lek (Schroeder *et al.* 1999).

Females may travel more than 20 km (12.5 mi) after mating (Connelly *et al.* 2000). They typically select nest sites under sagebrush cover, although other shrub or bunchgrass species are sometimes used. Nests are relatively simple, consisting of scrapes on the ground that are sometimes lined with feathers and vegetation. Clutch size ranges from 6 to 13 eggs. Nest success ranges from 12 to 86 percent and is relatively low compared to other prairie grouse species (Connelly *et al.* 2000). Shrub canopy and grass cover provide concealment for sage-grouse nests and young, and are critical for reproductive success. Chicks begin to fly at 2 to 3 weeks of age, and broods remain together for up to 12 weeks. Most juvenile mortality occurs during nesting and the chicks' flightless stage, and is due primarily to predation or severe weather conditions (Schroeder *et al.* 1999; Schroeder and Baydack 2001).

Sage-grouse typically live between 1 and 4 years, but sage-grouse up to 10 years of age have been recorded in the wild. The annual mortality rate for sage-grouse is roughly 50 to 55 percent, which is relatively low compared to other prairie grouse species. Females generally have a higher survival rate than males, which accounts for a female-biased sex ratio in adult birds.

Prior to European expansion into western North America, sage-grouse were believed to occur in 16 States and 3 Canadian provinces—Washington, Oregon, California, Nevada, Idaho, Montana, Wyoming, Colorado, Utah, South Dakota, North Dakota, Nebraska, Kansas, Oklahoma, New Mexico, Arizona, British Columbia, Alberta, and Saskatchewan (Schroeder *et al.* 1999; Young *et al.* 2000). The distribution of sage-grouse has contracted in a number of areas, most notably along the northern and northwestern periphery and in the center of their historic range. At present, sage-grouse occur in 11 States and 2 Canadian provinces, ranging from extreme southeastern Alberta and southwestern Saskatchewan, south to western Colorado, and west to eastern California, Oregon, and Washington. Sage-grouse have been extirpated from Nebraska, Kansas, Oklahoma, New Mexico, Arizona, and British Columbia (Schroeder *et al.* 1999; Young *et al.* 2000). The vast majority of the current distribution of the greater sage-grouse is within the United States.

In a **Federal Register** notice dated August 24, 2000, we stated that, prior to European expansion across the continent, there may have been between 1.6 and 16 million sage-grouse in western North America (65 FR 51578). These estimates were calculated by multiplying sage-grouse density estimates for a range of habitats considered of low to high quality (assuming 1 grouse per 1 square kilometer ($km^2$) (0.4 square mile ($mi^2$)) as an approximate lower density limit, and 10 grouse per $km^2$ (0.4 $mi^2$) as an approximate upper density limit (Michael Schroeder, Washington Department of Fish and Wildlife, pers. comm. 1999, cited in 65 FR 51578)) by the most recent estimate of historic sage grouse distribution (1.6 million $km^2$ (0.64 million $mi^2$).

The WSSCSTGTC (1999) estimated that there may have been 1.1 million birds in 1800. Braun (1998) estimated that the 1998 rangewide spring population numbered about 157,000 sage-grouse, while we estimated the rangewide population of sage-grouse at roughly between 100,000 and 500,000 birds in 2000 (65 FR 51578; August 24, 2000). Using our population estimates in the August 24, 2000, **Federal Register** notice, sage-grouse population numbers may have declined between 69 and 99 percent from historic to recent times (65 FR 51578). The WSSCSTGTC (1999) estimated the decline between historic and present day to have been about 86 percent.

Apparently, much of the overall decline in sage-grouse abundance occurred from the late 1800s to the mid-1900s (Hornaday 1916; Crawford 1982; Drut 1994; Washington Department of

Fish and Wildlife 1995; Braun 1998; Schroeder *et al.* 1999). Other declines in sage-grouse populations apparently occurred in the 1920s and 1930s, and then again in the 1960s and 1970s (Connelly and Braun 1997). Sage-grouse populations in Colorado have declined from 45 to 82 percent since 1980. Populations in Wyoming and Washington have declined 17 and 47 percent, respectively, from pre-1985 to post-1985 (Braun 1998). Sage-grouse numbers in South Dakota declined from approximately 25,000 birds in the 1950's to 5,000 in 1992 (Drut 1994). In Utah, the decline is estimated at 50 percent since settlement (Drut 1994). The State of Nevada has reported declining sage-grouse populations since 1970 (Neel 2001). The aforementioned population trends are based on lek counts. Braun (1998) reports that the number of males per lek, an indicator of population trend, has continuously declined across the species' range since the early 1950s.

**Taxonomic Issues**

In 1946, Aldrich described a subspecies of greater sage-grouse in the northwestern portion of the species' range based on slight color differences in the plumage of 11 museum specimens. In 1957, the AOU recognized a subspecies division within the sage-grouse taxon. However, since that time it has not conducted a review of this subspecies distinction. The AOU stopped listing subspecies as of the 6th (1983) edition of its Checklist, although it recommended the continued use of the 5th edition for taxonomy at the subspecific level. The AOU has not formally or officially reviewed the subspecific treatment of most North American birds, although it is working toward that goal (Richard C. Banks, National Museum of Natural History, pers. comm. with Oregon Field Office of the Service 2000, 2002). Therefore, the western and eastern subspecies of sage grouse are still recognized by the AOU, based on its 1957 consideration of the taxon.

The validity of the taxonomic separation has been questioned (Johnsgard 1983; Johnsgard 2002; Benedict *et al.* 2003). In our 90-day petition findings for the western subspecies of the greater sage-grouse (68 FR 6500; February 7, 2003) and eastern subspecies of the greater sage-grouse (69 FR 933; January 7, 2004), we concluded there was no basis to recognize these subspecies due to the lack of distinct genetic differences between the two, the lack of ecological or physical factors that might indicate differentiation between the populations, and evidence that birds freely cross the supposed boundary between the subspecies. We continue to believe that our earlier conclusion regarding lack of subspecies differences is correct.

**Conservation Status**

Pursuant to section 4(a) of the Act, we may list a species, subspecies, or DPS of vertebrate taxa on the basis of any of the following five factors—(A) destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; and (E) other manmade or natural factors affecting its continued existence. The rangewide petition submitted by Mr. Dremann asserts that greater sage-grouse are subject to threats under Factor A. The other petitions assert that greater sage-grouse are subject to threats under all listing factors, but primarily under Factor A. We used information provided by the petitioners and available in our files to address these factors as follows.

Under Factor A, the petitioners assert that greater sage-grouse have been impacted by the permanent conversion of sagebrush habitats to agricultural lands, and provide both rangewide and site-specific examples which have been published in the scientific literature.

Sagebrush once covered roughly 63 million ha (156 million ac) in western North America (West 1996; Miller and Eddleman 2001, cited in Knick *et al.* 2003). In our review of the scientific literature, we found that western rangelands were converted to agricultural lands on a large scale under the series of Homestead Acts in the 1800s (Braun 1998). According to Schroeder *et al.* (1999), millions of hectares of native sagebrush habitat have been cultivated for the production of potatoes, wheat, and other crops. In some States, more than 70 percent of sagebrush shrub-steppe habitats have been converted to agricultural crops (Braun 1998). This impact has been especially apparent in the Columbia Basin of the Northwest and the Snake River Plain of Idaho. Dobler (1994) estimated that approximately 60 percent of the original shrub-steppe habitat in Washington has been converted to primarily agricultural uses. Hironaka *et al.* (1983, cited in Knick *et al.* 2003) estimated that 99 percent of basin big sagebrush (*A. t. tridentata*) habitat in the Snake River Plain has been converted to cropland.

Development of irrigation projects to support agricultural production also has resulted in additional sage-grouse habitat loss (Braun 1998). During the mid-1900s, a number of hydroelectric dams were developed on the Columbia and Snake Rivers in Washington and Oregon. More than 400 dams were constructed on the Columbia River system alone. The irrigation projects formed by these reservoirs converted native shrub-steppe habitat to irrigated croplands adjacent to the rivers. The projects precipitated conversion of large expanses of upland shrub-steppe habitat in the Columbia Basin for irrigated agriculture (August 24, 2000; 65 FR 51578). This conversion has resulted in the loss of 60 percent of the original 10.4 millon acres of shrub-steppe habitats present prior to European settlement in this area (Dobler 1994). The creation of these reservoirs also inundated hundreds of kilometers of riparian habitats used by sage-grouse broods (Braun 1998). Shrub-steppe habitat continues to be converted for both dryland and irrigated crop production, albeit at much-reduced levels (65 FR 51578; Braun 1998). However, the Bureau of Reclamation retains options for further development of the Columbia Basin Irrigation Project in central Washington (65 FR 51578).

All three petitions identified sagebrush conversion resulting from both chemical (herbicide) and mechanical treatments (shredding, roller chopping, hand slashing, bulldozing, beating, chaining, root plowing, and disk plowing) as a negative impact to greater sage-grouse habitat. The petitions quantify some of this conversion and discuss the resulting impacts to greater sage-grouse populations based on information provided in the scientific literature. Webb (2002) and American Lands Alliance *et al.* also extensively explore the cumulative effects on the greater sage-grouse resulting from habitat conversion using these methods.

Large expanses of sagebrush have been removed and reseeded with non-native grasses to increase forage production (Shane *et al.* 1983, cited in Knick *et al.* 2003). In addition, thinning to reduce sagebrush density has long been practiced and continues today (Wamboldt *et al.* 2002, cited in Knick *et al.* 2003). Braun (1998) concludes that since European settlement of western North America, no sagebrush habitats used by greater sage-grouse have escaped these types of treatments.

Mechanical treatments, if carefully designed and executed, can be beneficial to sage-grouse by improving herbaceous cover, forb production, and resprouting of sagebrush (Braun 1998). However, adverse effects also have been documented (Connelly *et al.* 2000). In Montana, the number of breeding males

declined by 73 percent after 16 percent of the habitat was plowed (Connelly *et al.* 2000). Mechanical treatments in blocks greater than 100 ha (247 ac), or of any size reseeded with exotic grasses, degrade sage-grouse habitat by altering the structure and composition of the vegetative community (Braun 1998). Connelly *et al.* (2000) recommend managing for 15–25 percent of sagebrush canopy cover to maintain breeding habitat. Removal of greater than 40 percent of breeding habitat can result in the loss of the breeding population.

Greater sage-grouse response to herbicide treatments depends on the extent to which forbs and sagebrush are killed. Chemical control of sagebrush has resulted in major declines of sage-grouse breeding populations through the loss of live sagebrush cover (Connelly *et al.* 2000). Herbicide treatment also can result in sage-grouse emigration from affected areas (Connelly *et al.* 2000), and has been documented to reduce the brood carrying capacity of an area in Idaho (Klebenow 1970). While the total size of herbicide-treated areas is unknown, Braun (1998) estimates it exceeds 20 to 25 percent of the remaining sagebrush-dominated rangelands. Small treatments interspersed with nontreated sagebrush habitats appear to be neutral in their effects on sage-grouse. However, all large block treatments greater than 200 ha (494 ac) negatively affect sage-grouse (Braun 1998). Schroeder *et al.* (1999) and Braun (1998) estimated that millions of hectares within current sage-grouse habitat have been treated both mechanically and chemically to remove sagebrush since the early 1960s.

The petitions from the Institute for Wildlife Protection and American Lands Alliance *et al.* identify loss of habitat from mining as a significant impact to the greater sage-grouse. In addition to the direct loss of habitat resulting from strip mining, these petitions cite scientific literature regarding the difficulty of re-establishing sagebrush (Lovich and Bainbridge 1999, Saab and Rich 1997, and Rotenberry 1998, as cited in Webb 2002).

Development of mines and energy resources within the distribution of the sage-grouse began prior to 1900 (Robbins and Ward 1994, cited in Braun 1998). Coal, gold, and uranium mining has impacted sage-grouse habitats throughout the West (Braun 1998). Immediate impacts to the greater sage-grouse associated with mining include direct habitat loss from mining, especially open pit mining, and construction of associated facilities, roads, and powerlines (Braun 1998; Connelly *et al.* 2000). For example in Wyoming and Montana there is an estimated 38,833 ha (96,000 acres) of disturbed federal and nonfederal surface associated with existing coal mining operations. Over the next ten years, approximately 20,243 ha (50,000 acres) are estimated to be disturbed for coal mining activities. Of that, 14,170 ha (35,000 acres) should be reclaimed within the same time-period, resulting in a net annual disturbance of 607 ha (1,500 acres) (Kermit Witherbee, Bureau of Land Management, pers. commun.). However, long-term functional habitat recovery would require an extended period of time (Bureau of Land Management 2003), and population re-establishment may require at least 20 to 30 years (Braun 1998). Sage-grouse have been documented to return to some reclaimed mining areas, but there is no evidence that population levels attain their previous size (Braun 1998).

Proposed coal-bed methane development in the Powder River Basin of Wyoming is expected to result in the loss of 21,711 ha (53,626 ac) of sagebrush shrublands by 2011 (Bureau of Land Management 2003). Current sage-grouse habitat loss in the basin from coal-bed methane is estimated at 2,024 (5,000 ac) (Braun *et al.* 2002). Although reclamation of short-term disturbances will be concurrent with project development, "sage-grouse habitats would not be restored to pre-disturbance conditions for an extended period because of the time need to develop sagebrush stands with characteristics that are preferred by sage-grouse.'' (Bureau of Land Management 2003a). Disturbance to other sage-grouse habitats, such as late summer/brood-rearing areas, was not quantified in the Final Environmental Impact Statement for this project, but "disturbance would occur to all other habitat types, including nesting, brood rearing, and wintering areas that are located more than 0.25 miles from lek sites'' (Bureau of Land Management 2003a). The Bureau has proposed avoiding leks during the breeding season, minimizing noise from compressors, and locating powerlines 0.5 mi from breeding and nesting areas (Bureau of Land Management 2003a). Within the entire Powder River Basin, over 80 percent of the surface ownership where coal-bed methane development is occurring is private, where mitigation is not required (Braun *et al.* 2002).

All petitioners identified urban/suburban development as negatively impacting greater sage-grouse habitats. They support their concerns by identifying documented habitat losses from urban development in several states (Braun 1998 and Brigham 1995, as cited in Webb 2002), as well as information presented in the Gunnison sage-grouse management plans. The petitioners also discuss interrelated effects of urban/suburban development, such as construction of necessary infrastructure (roads, powerlines, and pipelines) and predation threats from the introduction of domestic pets.

Historic destruction of sage-grouse habitats for urban development undoubtedly occurred (Braun 1998). More recent urban expansion into rural subdivisions is also resulting in both direct habitat loss and conversion, as well as avoidance of suitable habitats by sage-grouse around these areas due to the presence of humans and pets (Braun 1998; Connelly *et al.* 2000). In some Colorado counties, up to 50 percent of sage-grouse habitat is under rural subdivision development, and it is estimated that 3 to 5 percent of all sage-grouse historic habitat in Colorado has been developed into urban areas (Braun 1998). We are unaware of similar estimates for other States within the range of the greater sage-grouse.

In addition to habitat loss from conversion to agriculture, chemical and mechanical treatments, mining development, and urban/suburban development, sagebrush habitat losses also are occurring as a result of the apparent interaction of natural and anthropogenic factors. According to an article in the Autumn 2003 issue of Utah Division of Wildlife Resource's "Wildlife Review,'' upwards of 400,000 acres (162,000 ha) of dead or dying Wyoming big sagebrush had been documented by State biologists by the end of June 2003 (Fairchild 2003). The species of sagebrush affected provides important food and cover to sagebrush obligate species, including greater sage-grouse. Reasons for the die-off are not entirely clear, but appear to be related to drought, fire suppression, and livestock and big game grazing.

All petitioners identify livestock grazing as one of the primary factors that has degraded greater sage-grouse habitats. The petitions discuss not only the direct impacts of livestock grazing on forage removal and sagebrush trampling (Patterson 1957, Yocom 1956, Dobkin 1995, Autenrieth *et al.* 1997, Klebenow 1982, Braun 1998, and Braun 2001, as cited in Webb 2002), but they also provide extensive reviews of associated factors, such as habitat degradation from livestock concentrations around water developments (Thomas *et al.* 1979 and Braun 1998, as cited in Webb 2002), habitat fragmentation from fences (Call

and Maser 1985, Braun 1998 and Wilkinson 2001, as cited in Webb 2002), rangeland treatments to increase forage (Drut 1994, Rogers 1965, Klebenow 1970, Martin 1970, Pyrah 1970, 1971, Wallestad 1971, 1975 and Braun *et al.* 1977, as cited in Webb 2002), invasion of exotic vegetative species (Hoffman 1991, Drut 1994 and Fleischner 1994, as cited in Webb 2002), and changes in soil characteristics, particularly the soil crust (Mack and Thompson 1982 and Quigley and Arbelbide 1997, as cited in Dremann 2002; St. Clair *et al.* 1993, as cited in Webb 2002).

Due to the absence of habitat overlap, it is unlikely that sage-grouse evolved with intensive grazing by wild herbivores, such as bison (Connelly *et al.* 2000). While little experimental evidence directly links grazing management to sage-grouse population trends (Braun 1998), the reduction of grass heights in nesting and brood-rearing areas negatively affects nesting success by reducing cover necessary for predator avoidance (Gregg *et al.* 1994; DeLong *et al.* 1995; Connelly *et al.* 2000). In addition, livestock consumption of forbs may reduce food availability for sage-grouse (*see* discussion under Factor E). This is particularly important for pre-laying hens, as forbs provide calcium, phosphorus, and protein. A hen's nutritional condition affects nest initiation rate, clutch size, and subsequent reproductive success (Connelly *et al.* 2000). Livestock grazing also may result in trampling mortality of seedling sagebrush (Connelly *et al.* 2000). This information suggests that grazing by livestock could reduce breeding habitat, subsequently affecting sage-grouse populations negatively (Beck and Mitchell 2000). However, additional replication studies are necessary to determine the effect of grazing management on sage-grouse nesting success (Beck and Mitchell 2000). Exclosure studies have demonstrated that domestic livestock grazing also reduces water infiltration rates and cover of herbaceous plants and litter, as well as compacting soils and increasing soil erosion (Braun 1998). This results in a change in proportion of shrub, grass, and forbs components in the affected area, and an increased invasion of exotic vegetative species that do not provide suitable habitat for sage-grouse (Miller and Eddleman 2000). Development of springs and other water sources to support livestock in upland shrub-steppe habitats can artificially concentrate domestic and wild ungulates in important sage-grouse habitats, thereby exacerbating grazing impacts in those areas.

Excessive grazing by wild horses has been identified by all petitioners as contributing to a decline in sage-grouse habitat. We are unaware of any studies that specifically address the impact of wild horses on sagebrush and sage-grouse. However, we believe that some impacts from wild horse grazing may be similar to the nature of impacts from domestic livestock in sagebrush habitats.

Fire often has been used as a management tool to reduce sagebrush canopy cover (Connelly *et al.* 2000) for many reasons, including increasing forage for the benefit of domestic livestock and wild ungulates. Our knowledge of sage-grouse response to fire is imperfect, but current information indicates that the species' response to fire varies depending on a variety of factors. Some studies suggest fire increases forbs and other foods important to sage-grouse (Braun 1998); others show food resources do not change between burned and unburned areas (Connelly *et al.* 2000), but that sage-grouse populations decline in response to loss of habitat (Connelly *et al.* 2000). A clear positive response of greater sage-grouse to fire has not been demonstrated (Braun 1998). Several subspecies of "big'' sagebrush (*Artemisia tridentata tridentata, A.t. vaseyana,* and *A.t. wyomingensis*), which provide important sage-grouse habitat, are killed by fire and do not re-sprout after burning (Wrobleski and Kauffman 2003). This suggests that these sagebrush subspecies evolved in an environment where wildfire was infrequent (interval of 30 to 50 years) and patchy in distribution (Braun 1998). Therefore, frequent prescribed fires in these habitats may be detrimental to sage-grouse. The effect of fire on greater sage-grouse habitats in montane sagebrush communities is not clear (Connelly *et al.* 2000). Conversely, long fire intervals and fire suppression can result in increased dominance of woody species, such as western juniper (*Juniperus occidentalis*) (Wrobleski and Kauffman 2003), resulting in a near total loss of shrubs and sage-grouse habitat (Miller and Eddleman 2000).

Wildfires have destroyed extensive areas of sagebrush habitat in recent years. For example, 30 to 40 percent of the sage-grouse habitat in southern Idaho was lost in a 5-year period (1997–2001) due to range fires, according to S. Sather-Blair, a wildlife biologist for the BLM in Idaho (quoted in Healy 2001). The largest contiguous patch of sagebrush habitat in southern Idaho occupies approximately 700,000 acres, according to M. Pellant, a rangeland ecologist with the Idaho BLM (quoted in Healy 2001). Of that total area, about 500,000 acres burned in the years 1999–2001; half of the acres that burned had already been affected by previous fires. In Nevada in 2000, more than 660,000 acres burned statewide (NDOW Hunting Area and Unit 2000 Fire Report). Many of the fires burned in habitat that was in fairly good condition, and which supported good numbers of sage-grouse (NDOW Hunting Area and Unit 2000 Fire Report).

Frequent fires with short intervals within sagebrush habitats favor invasion of cheatgrass (*Bromus tectrorum*), an exotic species that is unsuitable as sage-grouse habitat (Schroeder *et al.* 1999). Large areas of habitat in the western distribution of the greater sage-grouse have already been converted to cheatgrass (Connelly *et al.* 2000). Recovery of an area to sagebrush after cheatgrass becomes established is extremely difficult. The loss of habitat due to cheatgrass establishment results in the loss of sage-grouse populations (Connelly *et al.* 2000). Conversion to cheatgrass also reduces wildfire intervals in sagebrush ecosystems from 30 to 5 years (Pellant 1996). These shortened fire intervals further exacerbate the effects of fire in remaining sage-grouse habitats. Conversion of sagebrush vegetation communities to exotic species, such as Russian thistle (*Salsola* spp.), halogeton (*Halogeton glomeratus*), and medusahead (*Taeniatherum asperum*), also has resulted in sage-grouse habitat loss (Miller and Eddleman 2000).

Petitions from the Institute for Wildlife Protection and American Lands Alliance *et al.* assert that military activities negatively affect sage-grouse habitats. These petitions primarily refer to documented negative effects to sage-grouse from activities on the Yakima Training Center in eastern Washington, as well as providing general information regarding impacts of track vehicles on vegetation and soils.

Military facilities are found throughout the range of the greater sage-grouse. The impact of military activities at these facilities on local sage-grouse populations vary from direct mortality to habitat degradation and loss. In the fall of 1995, the U.S. Army conducted its first large-scale training exercise at the 800 square km (313 square mi) Yakima Training Center in Washington State. Analysis of the impacts from this exercise indicated that over 9 percent of the sagebrush plants within sage-grouse protection areas experienced major structural damage (Cadwell *et al.* 1996). In addition, modeling exercises

indicated that sagebrush cover would decline due to similar training scenarios if conducted on a biannual basis (Cadwell *et al.* 1996). Military training activities provide multiple ignition sources, thereby increasing the potential for fire within suitable sage-grouse habitat at military facilities. In 1996, over 25,000 ha (60,000 ac) of shrub-steppe habitat was burned as a result of training activities at the Yakima Training Center (65 FR 51578), and other large range fires have occurred at the installation since. The Yakima Training Center has developed a management plan for sage-grouse habitat on the facility (65 FR 51578). While military operations may significantly affect local sage-grouse populations, particularly where populations are isolated, there are few facilities that overlap suitable sage-grouse habitats. We could find no scientific information to support the petitioners' contention that military operations are a limiting factor on the greater sage-grouse populations range-wide.

The petitions from the Institute for Wildlife Protection and American Lands Alliance *et al.* assert that habitat fragmentation from mining and energy development, including windpower, negatively impacts the greater sage-grouse. In addition to the direct habitat loss previously mentioned, associated facilities, roads, and powerlines, as well as noise and increased human activities (*see* discussion under Factor E) associated with mining and energy development, can fragment sage-grouse habitats (Braun 1998; Connelly *et al.* 2000). More chronic impacts are less clear. Lek abandonment as a result of oil and gas development has been observed in Alberta (Connelly *et al.* 2000), and, in the Powder River Basin of Wyoming, leks within 0.4 km (0.25 mi) of a coal-bed methane well have significantly fewer males compared to less disturbed leks (Braun *et al.* 2002). The network of roads, trails, and powerlines associated with wells and compressor stations decreases the suitability and availability of sage-grouse habitat, and fragments remaining habitats (Aldridge and Brigham 2003). Human activities along these corridors can disrupt breeding activities and negatively affect survival (Aldridge and Brigham 2003). Female sage-grouse captured on leks near oil and gas development in Wyoming had lower nest-initiation rates, longer movements to nest sites, and different nesting habitats than hens captured on undisturbed sites (Lyon 2000; Lyon and Anderson 2003). Lower nest-initiation rates can result in lower sage-grouse productivity in these areas (Lyon and Anderson 2003). Activities which remove live sagebrush and reduce patch size negatively affect all sagebrush obligates (Braun *et al.* 2002).

In our review of available information, we found that sage-grouse habitats also are fragmented by fences, powerlines, roads, and other facilities associated with grazing, energy development, urban/suburban development, recreation, and the general development of western rangelands. Fences, powerlines and roads also are a direct mortality source for the greater sage-grouse (*see* discussion under Factor E).

Fences constructed for property boundary delineation and livestock management provide perching locations for raptors and travel corridors for mammalian predators, thereby increasing greater sage-grouse predation (Braun 1998; Connelly *et al.* 2000). Greater sage-grouse avoidance of habitat adjacent to fences, presumably to minimize the risk of predation, effectively results in habitat fragmentation even if the actual habitat is not removed (Braun 1998). Over 51,000 km (31,690 mi) of fences were constructed on BLM lands supporting sage-grouse populations between 1962 and 1997 (Connelly *et al.* 2000). Fences also provide a collision hazard, resulting in injury and death (Call and Maser 1985).

As with fences, powerlines provide perches for raptors (Connelly *et al.* 2000; Vander Haegen *et al.* 2002, cited in Knick *et al.* 2003), thereby resulting in sage-grouse avoidance of powerline corridors (Braun 1998). Approximately 9,656 km (6,000 mi) of powerlines have been constructed in sage-grouse habitat to support coal-bed methane production in Wyoming's Powder River Basin within the past few years. Leks within 0.4 km (0.25 mi) of those lines have significantly lower growth rates than leks further from these lines, presumably as the result of increased raptor predation (Braun *et al.* 2002). The presence of powerlines also contributes to habitat fragmentation, as greater sage-grouse typically will not use areas immediately adjacent to powerlines, even if habitat is suitable (Braun 1998).

Roads result in habitat loss and fragmentation, although the amount of habitat lost is unknown (Braun 1998). Roads also provide corridors for invasion of exotic vegetative species and predators. Lyon (2000) found that successful sage-grouse hens nested farther (mean distance = 1,138 m) from the nearest road than did unsuccessful hens (mean distance = 268 m) on Pinedale Mesa near Pinedale, Wyoming.

In summary, sagebrush once covered approximately 63 million ha (156 million ac) in western North America. Almost none of the remaining habitats are unaltered (Braun 1998; Knick *et al.* 2003). Approximately one-half of the original area occupied by sage-grouse is no longer capable of supporting sage-grouse on a year-round basis (Braun 1998). Habitat alteration, through loss and degradation, has been identified as the primary explanation for the rangewide reduction in the distribution and population size of the greater sage-grouse (Schroeder *et al.* 1999).

Based on the foregoing discussion, we believe that substantial information is available indicating that previous and ongoing habitat loss, degradation, and fragmentation within the remaining habitats are factors that may threaten the continued existence of the greater sage-grouse.

Under Factor B, the Institute for Wildlife Protection and American Lands Alliance *et al.* cite hunting as a threat to the greater sage-grouse in the contiguous United States. The petitions discuss historic losses of sage-grouse from overhunting, synergistic effects of hunting and habitat degradation, hunting as additive mortality, losses from poaching and incidental take, failure of the States to quantify hunting mortality from falconry seasons, the influence of hunting on extinction risks for small populations, and the effects of nonconsumptive activities (bird watching).

In the early 1900s, Hornaday (1916) cautioned that sage-grouse and other grouse species would face extinction if hunting practices were not changed. Sage-grouse hunting at that time was unregulated and market hunting, poaching, and overharvesting reduced historic sage-grouse populations (Hornaday 1916; Girard 1937; Schroeder *et al.* 1999). The historical impacts of hunting on the greater sage-grouse may have been exacerbated by impacts from human expansion into sagebrush-steppe habitats (Girard 1937).

Greater sage-grouse are currently hunted in 10 of the 11 States where they occur (Bohne *in litt.* 2003) and hunting is regulated by State wildlife agencies. Most State agencies base their hunting regulations on local population information and peer-reviewed scientific literature regarding the impacts of hunting on greater sage-grouse (Bohne *in litt.* 2003). Hunting seasons are reviewed annually, and most States implement adaptive harvest management based on harvest and population data. Hunting may be an additive mortality if brood hens and young birds sustain the highest hunting

mortality within a population (Braun 1998; Johnson and Braun 1999). Hunting seasons that are managed to evenly distribute mortality across all age and sex classes are less likely to negatively affect subsequent breeding populations (Braun 1998). Except for Montana, all States with hunting seasons have changed season dates and limits to more evenly distribute hunting mortality across the entire population structure. Connelly *et al.* (2000) state that most greater sage-grouse populations can sustain hunting if the seasons are carefully regulated. No hunting is permitted in Canada.

Connelly *et al.* (2000) recommend restricting the number of lek locations provided to the public for viewing to minimize disturbance to grouse during the breeding season. Negative impacts to greater sage-grouse from nonconsumptive uses during other seasons have not been identified by the scientific community. Similarly, mortality, either direct or indirect, resulting from scientific research on the greater sage-grouse has not been identified as a limiting factor for this species.

Based on the foregoing discussion, we do not believe there is substantial information available to indicate that, if properly managed, utilization of the greater sage-grouse threatens the continued existence of this species throughout its range.

Under Factor C, the petitions from the Institute for Wildlife Protection and American Lands Alliance *et al.* discuss predation, but conclude that significant predator impacts to greater sage-grouse, when they occur, are a reflection of anthropogenic impacts to sage-grouse habitat and poor land management.

Greater sage-grouse have many predators, which vary in relative importance to the species, depending on the sex and age of the bird, and the time of year. Adult female greater sage-grouse are most susceptible to predators while on the nest or during brood-rearing when they are with young chicks (Schroeder and Baydack 2001). Common nest predators include ground squirrels (*Spermophilus spp.*), badgers (*Taxidea taxus*), ravens (*Corvus corax*), crows (*C. brachyrhynchos*), magpies (*Pica pica*), coyotes (*Canis latrans*), and weasels (*Mustela spp.*). Juvenile grouse are susceptible to predation from badgers, red foxes (*Vulpes vulpes*), coyotes, weasels, American kestrels (*Falco sparverius*), merlins (*F. columbarius*), northern harriers (*Circus cyaneus*), and other hawks (Braun *in litt.* 1995; Schroeder *et al.* 1999). The mortality rate for juveniles is estimated to be 63 percent during the first few weeks after hatching (Schroeder and Baydack 2001). While chicks are very vulnerable to predation during this period, other causes of mortality, such as weather, are included in this estimate. Adult male sage-grouse are most susceptible to predation during the mating season as they are very conspicuous while performing their mating display. Also, since leks are attended daily, predators may be disproportionately attracted to these areas during the breeding season (Braun *in litt.* 1995). Common lek predators include golden eagles (*Aquila chrysaetos*), ferruginous hawks (*Buteo regalis*), red-tailed hawks (*B. jamaicensis*), Swainson's hawks (*B. swainsoni*), and other large raptors.

Research conducted to determine nest success and sage-grouse survival has concluded that predation typically does not limit sage-grouse numbers (Connelly *et al.* 2000). However, where sage-grouse habitat has been altered, predation can become more significant (Gregg *et al.* 1994; Braun *in litt.* 1995; Braun 1998; DeLong *et al.* 1995; Schroeder and Baydack 2001). Losses of nesting adult hens and nests appear to be related to the amount of herbaceous cover surrounding the nest (Braun *in litt.* 1995; Braun 1998; Connelly *et al.* 2000; Schroeder and Baydack 2001). Removal or reduction of this cover, by any method, can negatively affect nest success and adult hen survival. Similarly, habitat alteration that reduces cover for young chicks can increase the rate of predation on this age class (Schroeder and Baydack 2001). Losses of breeding hens and young chicks can negatively influence overall sage-grouse population numbers, as these two groups contribute most significantly to population productivity. Habitat concerns have not been identified as important factors influencing adult male sage-grouse predation rates as leks are relatively open areas with little cover (Schroeder *et al.* 1999). However, given the sage-grouse breeding system, where only a few males are selected by all the females for mating, loss of some adult males on the lek is not likely to have significant population effects (Braun *in litt.* 1995). Braun (*in litt.* 1995) does recommend limiting powerlines and fences within 1.6 km (1 mi) of leks to minimize the availability of raptor perches.

The Institute for Wildlife Protection and American Lands Alliance *et al.* identify several diseases and parasites that may limit greater sage-grouse populations. However, the petitioners indicate that disease and parasitism are poorly studied in this species (Webb 2002, page 176; American Lands Alliance, page 178).

We agree with the petitioners on the lack of scientific evidence about the effects of disease or parasites on sage-grouse populations, and acknowledge that this factor may be significant to small, isolated populations (Schroeder *et al.* 1999). We also agree with the petitioners' contention that habitat degradation and fragmentation may increase the effects of disease and parasites on greater sage-grouse. While some research suggests parasites may influence male mating success and evolutionary pathways (Boyce 1990), there is little information to support that disease or parasites are a significant limiting factor in the greater sage-grouse.

We have recently become aware that greater sage-grouse are susceptible to the introduced West Nile Virus (WNV) (*Flavivirus*), a concern highlighted by American Lands Alliance *et al.* While the virus has been implicated in the deaths of 24 individuals in Wyoming and Montana, actual population impacts of this disease on sage-grouse are not known. A survey of 111 hunter-killed birds and live birds trapped at sites of WNV activity in Wyoming and Montana revealed that none of the birds had antibody titers against WNV. This evidence is not conclusive and warrants further investigation, but suggests that the number of sage-grouse surviving WNV infection might be small (Dr. Todd Cornish, Wyoming State Veterinary Laboratory, University of Wyoming, pers. comm. 2003). We will continue to monitor this situation.

Based on the preceding discussion, we do not believe there is substantial information available at this time to indicate that disease or predation are factors that may threaten the continued existence of the greater sage-grouse. We will continue to monitor sage-grouse reaction to WNV as the virus becomes more prevalent across the species' range.

Under Factor D, the petitions from the Institute for Wildlife Protection and American Lands Alliance *et al.* claim that regulations for greater sage-grouse management established by State wildlife agencies are not sufficient to protect the species, because hunting is still permitted. The petitions also state that "existing regulatory mechanisms are virtually non-existent'' (Webb 2002, page 177; American Lands Alliance *et al.*, page 180) and current management for the conservation of greater sage-grouse is insufficient.

Greater sage-grouse are under the management authority of State wildlife agencies. Most State agencies base their

hunting regulations on local population information and peer-reviewed scientific literature regarding the impacts of hunting on the greater sage-grouse (Bohne *in litt.* 2003). Hunting seasons are reviewed annually, and most States implement adaptive management based on harvest and population data (*see* previous discussion under Factor B).

A large portion of habitat for the greater sage-grouse occurs on lands managed by the BLM and the U.S. Forest Service (USFS). The BLM has designated the greater sage-grouse as a special status species in 5 of the 11 States in which it currently occurs (Nevada, California, Oregon, Washington, and Wyoming). Management for special status species are addressed under BLM Manual 6840, "Special Status Species Management.'' This document provides agency policy and guidance for the conservation of special status plants and animals and the ecosystems on which they depend (BLM 2001). Although not a regulatory document, BLM Manual 6840 provides a mechanism for the conservation of the greater sage-grouse and its habitat. At present, there are no regulations requiring that BLM land use plans specifically address the conservation needs of special status species (BLM 2003b).

However, with respect to the sage-grouse, the FWS and BLM are developing strategies for conservation of the species, including BLM's draft interim planning and habitat management guidelines for its lands. FWS and BLM are also working with the States on the Sage Grouse Conservation Planning Framework Team which will produce the range-wide greater sage grouse conservation assessment and the conservation action plans to follow. In addition, BLM is undertaking a number of on-the-ground sagebrush habitat restoration projects, while it is working to complete the longer-term joint conservation assessment and planning.

The USFS requires that fish and wildlife habitats be managed to maintain viable populations of existing native vertebrate species (36 CFR 219.19). In addition, each region of the USFS maintains a sensitive species list. The USFS policy requires the agency to employ special management emphasis to ensure the viability of designated sensitive species, and "to preclude trends towards endangerment that would result in a need for Federal listing'' (USFS 1991). The greater sage-grouse is designated as a USFS sensitive species in Regions 1, 2, 4, 5, and 6, which are within the species' range. All National Forests within these regions are required to implement the USFS Sensitive Species Policy (FSM 2672.1) for the greater sage-grouse. In addition, several individual National Forests in Regions where the greater sage-grouse is not designated as a sensitive species have chosen to make the bird a Management Indicator Species (Clinton McCarthy, USFS, pers. comm. 2003). This designation requires the individual National Forest to establish objectives for the maintenance and improvement of habitat for the greater sage-grouse (36 CFR 219.19), and to monitor the status of this species on the National Forest.

Some greater sage-grouse habitat also occurs on lands managed by other Federal agencies, including the Service, National Park Service, Department of Energy, Bureau of Reclamation, and Department of Defense. Some agencies have developed site-specific plans for conserving sage-grouse habitats on their lands (*i.e.*, Yakima Training Center, Seedskadee National Wildlife Refuge) (66 FR 22984). However, we are unaware of any other agency efforts to protect and conserve sage-grouse on these Federal lands. Greater sage-grouse also occur on Native American Tribal lands. In January 2004, the Service provided a Tribal Wildlife Grant to the Shoshone and Arapahoe Joint Council of Wyoming to assist in developing a management plan for the greater sage-grouse and sagebrush habitats on the Wind River Reservation.

The petitions from the Institute for Wildlife Protection and American Lands Alliance *et al.* assert that all existing State and private conservation planning efforts for sage-grouse are ineffective because no regulatory mechanisms or funding resources are in place to ensure these efforts are implemented. Most of the States within the range of the greater sage-grouse have initiated conservation planning efforts for sage-grouse and sage-grouse habitat on State, private, and, in some cases, Federal lands. The plans are focused on addressing local sage-grouse or sagebrush habitat concerns through a variety of mechanisms (*i.e.*, changes in regulations, habitat improvement projects, etc.). When completed, the Service will review these conservation plans to determine if they are consistent with our Policy for the Evaluation of Conservation Efforts (68 FR 15100). This policy evaluates the likelihood of implementation and effectiveness for each conservation strategy presented. It is currently impossible to evaluate the effectiveness of State and private conservation efforts for the greater sage-grouse, as most are either being drafted or have not been implemented at the time of this finding. The Service is not aware of any State regulations that conserve greater sage-grouse habitat or encourage habitat conservation efforts on private lands.

The greater sage-grouse is listed as an endangered species at the national level in Canada, as well as at the provincial level in Alberta and Saskatchewan. Provincial laws in Saskatchewan prevent sage-grouse habitat from being sold or from having native vegetation cultivated. Individual birds are protected by provincial law in Alberta, but their habitat is not. However, the Province has developed guidelines to protect leks. Passage of the Canadian Species At Risk Act in 2002 allows for habitat regulations to protect sage-grouse (Aldridge and Brigham 2003).

Based on the information currently available to us for this finding, the principal concern regarding the adequacy of regulatory mechanisms is in relation to habitat conservation. The past and ongoing degradation of greater sage grouse habitat, such as habitat conversion, fragmentation, and alteration due to various land use practices (see discussion of Factor A, above), is due in large part to human actions rather than natural events. To the extent that such human-caused habitat degradation is contributing to population declines of greater sage grouse, it indicates that existing regulatory mechanisms, particularly at the Federal level (since most of the habitat is on Federal land), but also at the State, Provincial, and local levels, may be inadequate with regard to addressing threats to the species.

Under Factor E, the petitions from the Institute for Wildlife Protection and American Lands Alliance *et al.* assert that fences, powerlines, and roads are sources of direct injury and mortality to greater sage-grouse. Fences are a documented collision hazard for sage-grouse (Call and Maser 1985; Braun 1998). Over 51,000 km (31,960 mi) of fences were constructed on BLM lands supporting sage-grouse populations between 1962 and 1997 (Connelly *et al.* 2000). Direct mortality of greater sage-grouse as a result of collision with, and electrocution from, powerlines has been documented (Braun 1998; Aldridge and Brigham 2003). Sage-grouse suffer direct mortality from collisions with automobiles (Hornaday 1916; Braun 1998). To our knowledge, the extent of mortality from these factors has not been quantified. Also, the Service has not found any evidence suggesting that collisions and electrocutions limit greater sage-grouse populations.

The Institute for Wildlife Protection and American Lands Alliance *et al.* also identify fire as a source of direct

mortality to the greater sage-grouse. While we agree that some sage-grouse may perish in fires, either wild or prescribed, this mortality factor has not been identified by the scientific community as a limiting factor for sage-grouse populations.

The petitions from the Institute for Wildlife Protection and American Lands Alliance *et al.* identify several factors that may be affecting greater sage-grouse populations which are not discussed above. These include mining toxins (such as cyanide), herbicides, pesticides, ozone depletion, endocrine disrupters, pollution, global warming, competition for resources between the greater sage-grouse and other species of grouse and livestock, off-road vehicle and snowmobile use, noise, weather, natural stochastic events, and loss of genetic variation. We know of no scientific information supporting threats to greater sage-grouse populations as a result of ozone depletion, endocrine disrupters, global warming, or pollution. The petitions also do not present supporting scientific information specific to the greater sage-grouse and these threats, but rather draw conclusions based on studies on other species, including humans.

At least one study has documented direct mortality of greater sage-grouse as a result of ingestion of alfalfa sprayed with organophosphorus insecticides (Blus *et al.* 1989). Direct ingestion of other herbicides, such as chlordane, also are toxic to sage-grouse (Schroeder *et al.* 1999). However, there is little information supporting the contention that normal use of herbicides negatively affects greater sage-grouse (Schroeder *et al.* 1999), and the scientific community has not identified exposure to these substances as a limiting factor for this species. Pesticides and herbicides may result in a reduction of food resources for the greater sage-grouse, particularly nesting females and chicks (Schroeder *et al.* 1999). Seventeen different radionuclides (radioactive atoms) were found in greater sage-grouse captured near nuclear facilities at the Idaho National Engineering Laboratory in southeastern Idaho (Connelly and Markham 1983). The effects of these substances on greater sage-grouse appear to be minimal (Schroeder *et al.* 1999).

During part of the year, greater sage-grouse distribution may overlap with sharp-tailed (*Tympanuchus phasianellus*) and blue (*Dendragapus obscurus*) grouse in some areas of their ranges. Although it is likely that these species are consuming some of the same foods, there is no information that these resources are limiting and no evidence suggesting competition with other grouse species has negative effects on sage-grouse (John Connelly, Idaho Department of Fish and Game, pers. comm. 2003). Cattle and sheep will consume sagebrush, as well as grass. Sheep also consume rangeland forbs in areas where sage-grouse occur (Pedersen *et al.* 2003). The effects of direct competition between livestock and sage-grouse will depend on condition of the habitat and grazing practices, and thus vary across the range of the species. For example, Aldridge and Brigham (2003) suggest that poor livestock management in mesic sites, which are considered limited habitats for sage-grouse in Alberta, results in a reduction of forbs and grasses available to sage-grouse chicks, thereby affecting chick survival. Livestock may modify sage-grouse habitat by altering vegetation structure and changing composition; this is addressed under Factor A above.

The petitions state that off-road vehicle or snowmobile use affects greater sage-grouse through habitat alteration and degradation, increased stress, and direct mortality. While the petitions do not present supporting scientific information specific to the greater sage-grouse, we agree that habitat degradation may occur in areas of off-road vehicle and/or snowmobile use through damage to soils and plant structure, and creation of corridors for invasive species. These concerns have been discussed under Factor A. We are unaware of scientific reports documenting direct mortality of greater sage-grouse through collision with off-road vehicles or snowmobiles. We also are unaware of instances where snow compaction as a result of snowmobile use precluded greater sage-grouse survival in wintering areas. Sage-grouse are highly sensitive to disturbance, and off-road vehicle or snowmobile use in winter areas may increase stress on birds and displace sage-grouse to less optimal habitats. However, there is no empirical evidence available documenting these effects on sage-grouse, nor could we find any scientific data supporting the contention that stress from vehicles during winter was limiting greater sage-grouse populations.

The petitions identify noise as a potential impact to the greater sage-grouse through interference with sage-grouse mating displays, communication between hens and their broods, movement out of suitable habitat, and physiological stress. Acoustic signals are important in greater sage-grouse mate selection (Gibson and Bradbury 1985), and the impacts of noise on greater sage-grouse resulting from activities associated with oil and gas development on public lands have been addressed in National Environmental Policy Act documents (*e.g.*, draft Environmental Impact Statement for the Pinedale Anticline Oil and Gas Exploration and Development Project (BLM 1999)). In Wyoming's Powder River Basin, leks within 1.6 km (1 mi) of coal-bed methane facilities have consistently lower numbers of males attending than leks farther from these types of disturbances. Noise associated with these facilities is cited as one possible cause (Braun *et al.* 2002). However, the actual impact of noise from anthropogenic sources on the greater sage-grouse is currently unknown. The petitioners acknowledge the lack of scientific studies on the effects of noise on the greater sage-grouse (Webb 2002, page 141; American Lands Alliance *et al.*, page 145).

Drought is a common occurrence throughout the range of the greater sage-grouse (Braun 1998). Sage-grouse populations will decline in a drought as a consequence of increased nest predation and early brood mortality brought on by decreased nest cover and food availability (Braun 1998; Schroeder *et al.* 1999). Although drought has been a consistent and natural part of the sagebrush-steppe ecosystem, drought impacts on the greater sage-grouse can be exacerbated through poor habitat management, which results in reduced cover and food (Braun 1998; see discussion under Factor A). These effects also may be amplified through sagebrush habitat loss, as food and cover may already be limited. Cold wet weather during incubation and early brood-rearing can result in nest and brood loss (Patterson 1952; Schroeder *et al.* 1999).

Natural stochastic (randomly-occurring) events, such as floods and blizzards, can significantly affect local populations if the event results in high mortality or large areas of habitat loss. These events are most significant to small and/or fragmented populations. Small, isolated populations also may be at greater risk to the deleterious effects from inbreeding. It is unlikely that any one of the above factors has played a significant role in the population declines and range reductions of sage-grouse (65 FR 51578). However, these influences may now play an important role in the dynamics of relatively small and isolated local populations, particularly in the Columbia Basin of Oregon and Washington (65 FR 51578; Benedict *et al.* 2003).

The Institute for Wildlife Protection and American Lands Alliance *et al.* expressed concerns that greater sage-grouse are susceptible to a loss of

genetic variation due to inbreeding depression. However, in a recent survey of 16 greater sage-grouse populations, only the Columbia Basin population in Washington shows low genetic diversity, likely as a result of long-term population declines and population isolation (Benedict *et al.* 2003). We are unaware of any other genetic studies suggesting that inbreeding depression is a concern to other greater sage-grouse populations.

Based on the foregoing discussion, we do not believe there is substantial information to indicate that natural and manmade factors not associated with habitat loss or degradation (Factor A) threaten the continued existence of the greater sage-grouse in the contiguous United States.

## Finding

We have reviewed the petitions submitted by Mr. Dremann, the Institute for Wildlife Protection, and American Lands Alliance *et al.*, other pertinent information and scientific literature available in our files, and other information provided to us, including the PAW commentary. The PAW commentary suggests that there are flaws in the petitions, including inaccurate or contradictory statements, erroneous interpretation of scientific literature, conclusions not supported by literature, a lack of knowledge of the subject material, biased presentation, and lack of scientific references. We agree that the petitions contain some minor errors of the type identified in the PAW report; however, we also acknowledge that the petitions contain accurate information, which we have confirmed through our review of the scientific, peer-reviewed literature and direct communications with species experts. Based on our review of all available information, and notwithstanding the factual errors identified within the petitions by the PAW report, we find there is substantial information to indicate that listing the greater sage-grouse may be warranted. This finding is based primarily on the historic and current destruction, modification, or curtailment of greater sage-grouse habitat or range, and the inadequacy of existing regulatory mechanisms in protecting greater sage-grouse habitats throughout the species' range.

## Public Information Solicited

We are required to promptly commence a review of the status of the species after making a positive 90-day finding on a petition. With regard to this positive petition finding, we are requesting information primarily concerning the species' population status and trends, potential threats to the species, and ongoing management measures that may be important with regard to the conservation of the greater sage-grouse throughout the contiguous United States.

If you wish to comment, you may submit your comments and materials concerning this finding to the Field Supervisor (see **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

## References Cited

A complete list of all references cited herein is available upon request from the Wyoming Field Office (*see* **ADDRESSES**).

## Author

The primary author of this document is Dr. Pat Deibert, Wyoming Field Office, Cheyenne, Wyoming.

## Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 5, 2004.

**Steve Williams,**

*Director, Fish and Wildlife Service.*

[FR Doc. 04–8870 Filed 4–20–04; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

Federal Register

Vol. 69, No. 77

Wednesday, April 21, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request, Correction

April 15, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_ORIA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Cooperative State Research, Education, and Extension Service

*Title:* CSREES Current Research Information System (CRIS)

*OMB Control Number:* 0524–New.

*Summary of Collection:* The United States Department of Agriculture (USDA), Cooperative State Research, Education, and Extension Service (CSREES) administers several competitive, peer-reviewed research, education and extension programs, under which awards of a high-priority are made. These programs are authorized pursuant to the authorities contained in the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101); the Smith-Lever Act; and other legislative authorities. The Current Research Information System (CRIS) is USDA's documentation and reporting system for ongoing agricultural, food science, human nutrition, and forestry research. CRIS operates administratively under CSREES, but is a cooperative endeavor whereby information is collected on a project-by-project basis from many participant organizations, both federal and non-federal. Information is received from USDA agencies, State Agricultural Experiment Stations, the state land-grant colleges and universities, the institutions of 1890, state schools of forestry, cooperating schools of veterinary medicine, USDA grant recipients, and other cooperating institutions. The information is collected primarily via the Internet using CRIS Web forms.

*Need and Use of the Information:* The collected information is necessary in order to provide descriptive information regarding individual research activities and integrated activities, to document expenditures and staff support for the activities, and to monitor the progress and impact of such activities. The information obtained through the collection process for CRIS furnishes unique data that is not available from any other source. Interruption in the collection process, or failure to collect this information, would severely compromise one of CSREES' primary functions stated in the agency's strategic plan of "providing program leadership to identify, develop, and manage programs to support university-based and other institutional research.''

*Description of Respondents:* State, local or tribal Government; not-for-profit institutions; business or other for-profit; Federal Government.

*Number of Respondents:* 30,441.

*Frequency of Responses:* Reporting: Other (varies by form).

*Total Burden Hours:* 64,228.

### Cooperative State Research, Education, and Extension Service

*Title:* Reporting Requirements for State Plans of Work for Agricultural Research and Extension Formula Funds

*OMB Control Number:* 0524–New.

*Summary of Collection:* Section 202 and 225 of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) requires that a plan of work must be submitted by each institution and approved by the Cooperative State Research, Education, and Extension Service (CSREES) before formula funds may be provided to the 1862 and 1890 land-grant institutions. The plan of work must address critical agricultural issues in the State and describe the programs and project targeted to address these issues using the CSREES formula funds. The plan of work also must describe the institution's multistate activities as well as their integrated research and extension activities.

*Need and Use of the Information:* Institutions are required to annually report to CSREES the following: (1) The actions taken to seek stakeholder input to encourage their participation; (2) a brief statement of the process used by the recipient institution to identify individuals or groups who are stakeholders and to collect input from them; and (3) a statement of how collected input was considered. CSREES uses the information to provide feedback to the institutions on how to improve the conduct and the delivery of their programs. Failure to comply with the requirements may result in the withholding of a recipient institution's formula funds and redistribution of its share of formula funds to other eligible institutions.

*Description of Respondents:* Not-for-profit institutions; State, Local or Tribal Government.

*Number of Respondents:* 75.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 160,860.

**Rural Business-Cooperative Service**

*Title:* Annual Survey of Farmer Cooperatives.

*OMB Control Number:* 0570–0007.

*Summary of Collection:* The Rural Business Cooperative Service (RBS) was mandated the responsibility to acquire and disseminate information pertaining to agricultural cooperatives under the Cooperative Marketing Act of 1926; 7 U.S.C. 451–457 and Public Law No. 450. The primary objective of RBS is to promote understanding, use and development of the cooperative form of business as a viable option for enhancing the income of agricultural producers and other rural residents. The annual survey collects basic statistics on cooperative business volume, net income, members, financial status, employees, and other selected information to support RBS' objective and role. RBS will use a variety of forms to collect information.

*Need and Use of the Information:* RBS uses the information collected to summarized for program planning, evaluation service work and cooperative analysis and education. The information collected and published in the annual report on farmer cooperatives supports and enhances most of the major functions of RBS. By not collecting this information, the RBS would have difficulties in carrying out its policy on farmer cooperatives.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 1,766.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 1,685.

**Rural Housing Service**

*Title:* 7 CFR 1944–D, Farm Labor Housing Loan and Grant Policies, Procedures, and Authorization.

*OMB Control Number:* 0575–0045

*Summary of Collection:* Section 514 and 516 of Title V of the Housing Act of 1949 authorizes Rural Housing Service (RHS) to make loans and grants to public, private nonprofit and farm worker organizations for developing farm labor. The objective of this program is to provide decent, safe, and sanitary housing and related facilities for domestic farm labor and migrant labor in areas where needed.

*Need and Use of the Information:* The information collected is based on the program requirements and regulation that help to determine an applicant's eligibility for a loan and/or grant. RHS has the responsibility for protecting the interest of taxpayer's funds and to assure that the objectives of the loan and grant programs are carried out as intended. Failure to have this information would result in illegal and unauthorized use of federal funds.

*Description of Respondents:* Farms; not for profit institutions; State, local or tribal Government.

*Number of Respondents:* 695.

*Frequency of Responses:* Record keeping; reporting: On occasion.

*Total Burden Hours:* 10,151

**Rural Housing Service**

*Title:* 7 CFR 3570–B, Community Facilities Grant Program.

*OMB Control Number:* 0575–0173.

*Summary of Collection:* The Consolidated Farm and Rural Development Act (7 U.S.C. 1926) authorizes Rural Housing Service (RHS) to make grants to public agencies, nonprofit corporations, and Indian tribes to develop essential community facilities and services for public use in rural areas. These facilities include schools, libraries, childcare, hospitals, clinics, assisted-living facilities, fire and rescuer stations, police stations, community centers, public buildings, and transportation. The Department of Agriculture through its Community Programs strives to ensure that facilities are readily available to all rural communities.

*Need and Use of the Information:* Rural Development field offices will collect information from applicant/borrowers and consultants. This information is used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan and grant funds for authorized purposes. Failure to collect the information could result in improper determinations of eligibility, improper use of funds, and or unsound loans.

*Description of Respondents:* Not-for-profit institutions; State, Local and Tribal Government.

*Number of Respondents:* 863.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 1,070.

**Rural Housing Service**

*Title:* Farm Labor Housing Technical Assistance Grants.

*OMB Control Number:* 0575–0181.

*Summary of Collection:* The Housing Act of 1949 gives the Rural Housing Service (RHS) the authority to make loans for the construction of farm labor housing (Section 514) and to provide financial assistance (grants) to eligible private and public nonprofit agencies (Section 516). Only three applicants' proposals will be selected for funding. The applicants will be notified and given the opportunity to submit a formal application. These grants will be awarded based on the qualifications of the applicants and their formal application. Eligibility for grants is limited to private and public nonprofit agencies.

*Need and Use of the Information:* RHS staff in the national office and Rural Development field offices will collect information from applicants and grant recipients to determine their eligibility for a grant, project feasibility, to select grant proposals for funding, and to monitor performance after grants have been awarded. The three applicants, who are awarded grants, are required to provide RHS with quarterly performance reports throughout the 3-year grant period. The respondents are not required to retain records for more than three years. Failure to collect this information could result in the improper use of Federal funds; difficulties in determining eligibility and selection of qualified applicants; and monitoring performance during the grant period.

*Description of Respondents:* Not for profit institutions; State, local or tribal government.

*Number of Respondents:* 6.

*Frequency of Responses:* Recordkeeping; Reporting: Annually; Quarterly.

*Total Burden Hours:* 115.

**Agricultural Marketing Service**

*Title:* Cotton Classing, Testing, and Standards.

*OMB Control Number:* 0581–0008.

*Summary of Collection:* The U.S. Cotton Standards Act, 7 U.S.C. 51, 53 and 55, authorizes the USDA to supervise the various activities directly associated with the classification or grading of cotton, cotton linters, and cottonseed based on official USDA Standards. The Cotton Program of the Agricultural Marketing Service carries out this supervision and is responsible for the maintenance of the functions to which these forms relate. USDA is the only Federal agency authorized to establish and promote the use of the official cotton standards of the U.S. in interstate and foreign commerce and to supervise the various activities associated with the classification or grading of cotton, cotton linters, and cottonseed based on official USDA standards.

*Need and Use of the Information:* The Agricultural Marketing Service uses the various forms to collect information pertaining to classification of cotton services, to request application for license and to order or acquire cotton grade and staple standards for upland and Pima cotton. Only authorized

employees of USDA use the information.

*Description of Respondents:* Business or other for-profit; individuals or households.

*Number of Respondents:* 394.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 109.

**Agricultural Marketing Service**

*Title:* Cotton Classification and Market News Service.

*OMB Control Number:* 0581–0009.

*Summary of Collection:* The Cotton Statistics and Estimates Act, 7 U.S. Code 471–476, authorizes the Secretary of Agriculture to collect and publish annually statistics or estimates concerning the grades and staple lengths of stocks of cotton. In addition, Agricultural Marketing Service (AMS) collects, authenticates, publishes, and distributes timely information of the market supply, demand, location, and market prices for cotton (7 U.S.C. 473B). This information is needed and used by all segments of the cotton industry.

*Need and Use of the Information:* AMS will collect information on the quality of cotton in the carryover stocks along with the size or volume of the carryover. Growers use this information in making decisions relative to marketing their present crop and planning for the next one; cotton merchants use the information in marketing decisions; and the mills that provide the data also use the combined data in planning their future purchase to cover their needs. Importers of U.S. cotton use the data in making their plans for purchases of U.S. cotton. AMS and other government agencies are users of the compiled information.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 956.

*Frequency of Respondents:* Reporting: On occasion; Weekly; Annually.

*Total Burden Hours:* 716.

**Agricultural Marketing Service**

*Title:* Seed Service Testing Program.

*OMB Control Number:* 0581–0140.

*Summary of Collection:* The Agricultural Marketing Act (AMA) of 1946, as amended by 7 U.S.C. 1621 authorizes the Secretary to inspect and certify the quality of agricultural products and collect such fees as reasonable to cover the cost of service rendered. The purpose of the voluntary program is to promote efficient, orderly marketing of seeds and assist in the development of new and expanding markets. Under the program, samples of agricultural and vegetable seeds submitted to the Agricultural Marketing Service (AMS) are tested for factors such as purity and germination at the request of the applicant for the service. The Testing Section of the Seed Regulatory and Testing Branch of AMS that test the seed and issues the certificates is the only Federal seed testing facility that can issue the Federal Seed Analysis Certificate.

*Need and Use of the Information:* Applicants generally are seed firms who use the seed analysis certificates to represent the quality of seed lots to foreign customers according to the terms specified in contracts of trade. The only information collected is information needed to provide the service requested by the applicant. Applicants must provide information such as the kind and quantity of seed, tests to be performed, and seed treatment if present, along with a sample of seed in order for AMS to provide the service. Only authorized AMS employee used the information collected to track, test, and report test results to the applicant. If the information were not collected, AMS would not know which test to conduct or would not be able to relate the test results with a specific lot of seed.

*Description of Respondents:* Business or other for-profit; farms; State, local or tribal Government.

*Number of Respondents:* 82.

*Frequency of Responses:* Reporting; on occasion.

*Total Burden Hours:* 499.

**Agricultural Marketing Service**

*Title:* Reporting and Recordkeeping Requirements for 7 CFR, Part 29.

*OMB Control Number:* 0581–0056.

*Summary of Collection:* The Tobacco Inspection Act (U.S.C. 511) requires: (1) That all tobacco sold at designated auction markets in the U.S. be inspected and graded; (2) for the establishment and maintenance of tobacco standards for U.S. grown types; (3) for the collection and dissemination of market news; and (4) for provisions to be made for interested parties to request inspection and grading services on an "as needed'' basis. The Dairy and Tobacco Adjustment Act, 1983 (P.L. 98–198) gives authorization to the Secretary to inspect all tobacco offered for importation into the United states for grade and quality except cigar and oriental tobacco which must be certified by the importer as to kind and type and in the case of cigar tobacco which will be used solely in the manufacture or production of cigars. Also, the Secretary has the authority the to fix and collect fees from the importers to cover the cost of inspection.

*Need and Use of the Information:* Various forms are use for inspection and certification process. The primary sources of data used to complete the forms are used in all business transaction. Only essential information that cannot be gathered from other sources is collected. If the information were collected less frequently, it would eliminate data needed to keep the tobacco industry and the Secretary abreast of changes.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 412.

*Frequency of Responses:* Recordkeeping; reporting; on occasion.

*Total Burden Hours:* 4,547.

**Sondra Blakey,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 04–9023 Filed 4–20–04; 8:45 am]

BILLING CODE 3410–01–M

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

### Request for Revision and Extension of a Currently Approved Information Collection; Receiving and Processing Applications

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and entities on the revision and extension of currently approved information collection that supports the Direct Loan Program. The collection of information from loan applicants and commercial lenders is used to determine eligibility and financial feasibility when the applicant requests direct loan assistance.

**DATES:** Comments on this notice must be received on or before June 21, 2004 to be assured consideration.

**ADDRESSES:** Comments concerning this notice should be addressed to Janet Downs, Senior Loan Officer, USDA, Farm Service Agency, Loan Making Division, 1400 Independence Avenue, SW., Stop 0522, Washington, DC 20250–0522, and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments may be submitted by e-mail to *janet.downs@wdc.usda.gov.* Copies of the information collection may also be obtained by contacting Janet Downs.

**FOR FURTHER INFORMATION CONTACT:** Janet Downs, Loan Making Division, telephone (202) 720–0599.

**SUPPLEMENTARY INFORMATION:** *Title:* Receiving and Processing Applications.

*OMB Control Number:* 0560–0178.

*Expiration Date of Approval:* 10/31/2004.

*Type of Request:* Revision and Extension of Currently Approved Information Collection.

*Abstract:* This information collection is needed to effectively administer the Direct Loan Program in accordance with the requirements of 7 CFR Part 1910 subpart A, as authorized by the Consolidated Farm and Rural Development Act (CONACT). The collected information is submitted to the Agency loan official by loan applicants and commercial lenders for use in making program eligibility and financial feasibility determinations as required by the CONACT.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 1.66 hours per response.

*Respondents:* Individual and entity farmers and commercial lenders.

*Estimated Number of Respondents:* 17,806.

*Estimated Number of Responses per Respondent:* 3.43.

*Estimated Total Annual Burden on Respondents:* 101,283.

*Comment is invited on:* (1) Whether the collection of information is necessary for the above stated purposes and the proper performance of FSA, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility and clarity of the information being collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments will be summarized and included in the request for Office of Management and Budget approval.

Signed in Washington DC on April 14, 2004.

**James R. Little,**

*Administrator, Farm Service Agency.*

[FR Doc. 04–9022 Filed 4–20–04; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Modoc County RAC Meetings

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Modoc National Forest's Modoc County Resource Advisory Committee will meet Monday May 3, 2004, from 6 to 8 p.m. in Alturas, California. The meeting is open to the public.

**SUPPLEMENTARY INFORMATION:** Agenda topics for the meeting include approval of the April 5, 2003, minutes, review of two short form proposals for possible funding in 2005. The meeting will be held at Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas, California on Monday, May 3, 2004, from 6 to 8 p.m. Time will be set aside for public comments at the beginning of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Forest Supervisor Stan Sylva, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

**Nancy Gardner,**

*Acting Forest Supervisor.*

[FR Doc. 04–8986 Filed 4–20–04; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1326]**

### Grant of Authority for Subzone Status; Perrigo Company Manufacturing Plant (Pharmaceutical Products), Battle Creek, Michigan Area

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, the Foreign-Trade Zones Act provides 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,'' and authorizes the Foreign-Trade Zones Board 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; and when the activity results in a significant public benefit and is in the public interest;

Whereas, the City of Battle Creek, Michigan, grantee of FTZ 43, has made application to the Board for authority to establish special-purpose subzone status at the pharmaceutical product manufacturing plant of the Perrigo Company, located in the Battle Creek, Michigan, area (FTZ Docket 24–2003, filed 5/13/03, and amended 7/10/03);

Whereas, notice inviting public comment has been given in the **Federal Register** (68 FR 27985, 5/22/03); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the pharmaceutical product manufacturing facilities of the Perrigo Company, located in the Battle Creek, Michigan area (Subzone 43D), at the locations described in the application, as amended, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed in Washington, DC, this 13th day of April, 2004.

**Jeffrey A. May,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 04–9056 Filed 4–20–04; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–791–809]**

### Notice of Rescission of Antidumping Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from South Africa

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**SUMMARY:** On October 24, 2003, the Department of Commerce (the Department) initiated an administrative review of Highveld Steel and Vanadium Corporation, Ltd., Iscor (Pty) Ltd., and Saldanha Steel Limited under the antidumping duty order on certain hot–rolled carbon steel flat products from South Africa, covering the period of September 1, 2002 through August 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 60910 (October 24, 2003). Since all of the parties that

requested a review have withdrawn their requests, the Department is rescinding this review in accordance with section 351.213 (d)(1) of the Department's regulations.

**EFFECTIVE DATE:** April 21, 2004.

**FOR FURTHER INFORMATION CONTACT:** Christian Hughes or Elfi Blum–Page, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–0190 and (202)482–0197, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On September 19, 2001, the Department published, in the **Federal Register**, the antidumping duty order on certain hot–rolled carbon steel flat products from South Africa

(66 FR 48242). On September 2, 2003, the Department published an opportunity to request a review of this antidumping duty order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 52181 (September 2, 2003). On September 30, 2003, in accordance with section 351.213(b) of the Department's regulations, petitioner, United States Steel Corporation (USSC), requested a review of the antidumping duty order on certain hot–rolled carbon steel flat products from South Africa for exports of subject merchandise made by Highveld Steel and Vanadium Corporation, Ltd. (Highveld), Iscor (Pty) Ltd. (Iscor), and Saldanha Steel Limited (Saldanha). On September 30, 2003, Iscor also requested a review of this antidumping duty order with respect to its exports to the United States. On October 24, 2003, the Department initiated the administrative review covering the period from September 1, 2002 through August 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 60910 (October 24, 2003).

On November 21, 2003, the Department issued questionnaires to Highveld, Saldanha, and Iscor. On December 1, 2003, Iscor withdrew its request for review. On January 5, 2004, Iscor and Saldanha submitted a letter to the Department stating that they were unable to respond to the Department's questionnaire. On January 21, 2004, the Department received responses to Sections A, C, and D from Highveld. On January 22, 2004, USSC withdrew its request for review with respect to Highveld, Iscor, and Saldanha in accordance with section 351.213(d)(1) of the Department's regulations.

## Rescission of Administrative Review

According to section 351.213(d)(1) of the Department's regulations, the Department will rescind an administrative review "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' All withdrawal requests were submitted within the normal time limit as prescribed in section 351.213(d)(1) of the Department's regulations. Since there were no other requests for review from any other interested party, the Department finds it appropriate to accept the withdrawal requests and is rescinding the review. The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection (CBP) within 15 days of publication of this notice. The Department will direct the CBP to assess antidumping duties for each company at the cash deposit rate in effect on the date of entry for entries during the period September 1, 2002 through August 31, 2003.

## Notification of Parties

This notice serves as a reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of time. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return or 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 sanctionable violation.

This determination and notice are issued and published in accordance with sections 751(a)(2)(c) and 777(I)(1) of the Tariff Act of 1930, as amended, and section 351.213(d)(4) of the Department's regulations.

Dated: April 9, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04–9055 Filed 4–20–04; 8:45 am]

**BILLING CODE 3510–DS–S**

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# DEPARTMENT OF COMMERCE

## National Institute of Standards and Technology

## Notice of Government Owned Invention Available for Licensing

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of government owned invention available for licensing.

**SUMMARY:** The invention listed below is owned in whole by the U.S. Government, as represented by the Department of Commerce. The invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

**FOR FURTHER INFORMATION CONTACT:** Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: (301) 975–4188, fax (301) 869–2751, or e-mail: *mary.clague@nist.gov.* Any request for information should include the NIST Docket number and title for the invention as indicated below.

**SUPPLEMENTARY INFORMATION:** NIST may enter into a Cooperative Research and Development Agreement ("CRADA'') with the licensee to perform further research on the invention for purposes of commercialization. The invention available for licensing is:

*NIST Docket Number:* 02–008US.

*Title:* Selective Electroless Attachment of Contacts to Electrochemically-active Molecules.

*Abstract:* This technology provides a solution-based method for attaching metal contacts to molecular films. The metal contacts are attached to functional groups on individual molecules in the molecular film. The chemical state of the functional group is controlled to induce electroless metal deposition preferentially at the functional group site. The functionalized molecules may also be patterned on a surface to give spatial control over the location of the metal contacts in a more complex structure. Spatial control is limited only

by the ability to pattern the molecular film. To demonstrate the feasibility of this concept, self-assembled monolayers of model, molecular-electronic compounds have been prepared on gold surfaces, and these surfaces were subsequently exposed to electroless deposition plating baths. These samples exhibited selective metal contact attachments, even on patterned surfaces.

Dated: April 15, 2004.

**Hratch G. Semerjian,**

*Acting Director.*

[FR Doc. 04–9068 Filed 4–20–04; 8:45 am]

BILLING CODE 3510–13–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Federal Consistency Appeal by Islander East Pipeline Company From an Objection by the Connecticut Department of Environmental Protection

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

**ACTION:** Notice of closure—administrative appeal decision record.

**SUMMARY:** This announcement provides notice that the decision record has been closed for an administrative appeal filed with the Department of Commerce by the Islander East Pipeline Company (Consistency Appeal of Islander East Pipeline Company, L.L.C.).

**DATES:** The decision record for the Islander East Pipeline Company's administrative appeal was closed on April 15, 2004.

**ADDRESSES:** Materials from the appeal record are available at the Internet site *http://www.ogc.doc.gov/czma.htm* and at the Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Branden Blum, Senior Counselor, Office of the General Counsel, via e-mail at *gcos.inquiries@noaa.gov,* or at (301) 713–2967, extension 207.

**SUPPLEMENTARY INFORMATION:** In November 2002, the Islander East Pipeline Company, L.L.C. (Islander East or Appellant) filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.*, and the Department of Commerce's implementing regulations, 15 CFR part 930, subpart H. The appeal was taken from an objection by the Connecticut Department of Environmental Protection (State) to Islander East's consistency certification for U.S. Army Corps of Engineers and Federal Energy Regulatory Commission permits to construct and operate a natural gas pipeline spanning approximately 44 miles from North Haven, Connecticut, to Suffolk County (Long Island), New York. The certification indicates that the project is consistent with Connecticut's coastal management program. The project would cross portions of the Long Island Sound, affecting the natural resources or land and water uses of Connecticut's coastal zone.

The Appellant requested the Secretary to override the State's consistency objection on the two substantive grounds provided in the CZMA. The first ground requires the Secretary to determine that the proposed activity is "consistent with the objectives'' of the CZMA. The second substantive ground for overriding a State's objection considers whether the proposed activity is "necessary in the interest of national security.'' Decisions for CZMA administrative appeals are based on information contained in a decision record. The Islander East appeal decision record includes materials submitted by the parties, the public and interested Federal agencies, and was closed on April 15, 2004. It is expected that no further information, briefs or comments will be considered in deciding this appeal.

The CZMA requires that a notice be published in the **Federal Register** indicating the date on which the decision record has been closed. 16 U.S.C. 1465(a). A final decision of the Islander East appeal is to be issued no later than 90 days after the date of the publication of this notice. 16 U.S.C. 1465(a)(1). The deadline may be extended by publishing (within the 90-day period) a subsequent notice explaining why a decision cannot be issued within the time frame. 16 U.S.C. 1465(a)(2). In this event, a final decision is to be issued no later than 45 days after the date of publication of the subsequent notice. 16 U.S.C. 1465(b).

Additional information about the Islander East appeal and the CZMA appeals process is available from the Department of Commerce CZMA appeals Web site *http://www.ogc.doc.gov/czma.htm.*

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

Dated: April 15, 2004.

**James R. Walpole,**

*General Counsel.*

[FR Doc. 04–8955 Filed 4–15–04; 4:15 pm]

BILLING CODE 3510–08–P

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Denial of Commercial Availability Request under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

April 16, 2004.

**AGENCY:** The Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Denial of the request alleging that certain yarn-dyed, 100 percent cotton woven flannel fabrics, made from ring-spun yarns, for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

**SUMMARY:** On February 13, 2004 the Chairman of CITA received a petition from Oxford Industries, Inc. alleging that certain 100 percent cotton woven flannel fabrics, made from 21 through 36 NM single ring-spun yarns of different colors, classified in subheading 5208.43.00 of the Harmonized Tariff Schedule of the United States (HTSUS) of 2 X 1 twill weave construction, weighing not more than 200 grams per square meter, for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that apparel of such fabrics be eligible for preferential treatment under the CBTPA. Based on currently available information, CITA has determined that these subject fabrics can be supplied by the domestic industry in commercial quantities in a timely manner and therefore denies the request.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

**BACKGROUND:**

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products

manufactured from yarns and fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On February 13, 2004, the Chairman of CITA received a petition from Oxford Industries, Inc. alleging that certain 100 percent cotton woven flannel fabrics, made from 21 through 36 NM single ring-spun yarns of different colors, classified in HTSUS subheading 5208.43.00, of 2 X 1 twill weave construction, weighing not more than 200 grams per square meter, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for apparel articles that are both cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

On February 19, 2004, CITA solicited public comments regarding this request (69 FR 7727), particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. On March 6, 2004, CITA and the Office of the U.S. Trade Representative offered to hold consultations with the relevant Congressional committees. We also requested the advice of the U.S. International Trade Commission and the relevant Industry Sector Advisory Committees.

Based on the information provided, including review of the request, public comments and advice received, and our knowledge of the industry, CITA has determined that certain 100 percent cotton woven flannel fabrics, made from single ring-spun yarns of different colors, of 2 X 1 twill weave construction, weighing not more than 200 grams per square meter, for use in apparel articles, can be supplied by the domestic industry in commercial quantities in a timely manner. Oxford Industries, Inc.'s petition is denied.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.04–9057 Filed 4–20–04; 8:45 am]

**BILLING CODE 3510–DR–S**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Notice of Availability (NOA) of the Final Environmental Impact Statement (FEIS) for Transformation of U.S. Army Alaska (USARAK) at Forts Wainwright and Richardson, AK

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** The Department of the Army announces the availability of the FEIS to assess the potential impact of transformation of the 172nd Infantry Brigade (Separate) to a Stryker Brigade Combat Team (SBCT). The proposed action would affect changes to force structure and changes to ranges, facilities, and infrastructure designed to meet objectives of Army transformation in Alaska. Proposed locations for changes include Fort Wainwright (FWA), Fort Richardson (FRA), and outlying training areas (*e.g.*, Gerstle River Training Area and Black Rapids Training Site). Proposed areas of activity changes on FWA would include cantonment areas, Tanana Flats Training Area, Yukon Training Area, and Donnelly Training Area (areas which were part of the former Fort Greely).

**DATES:** The waiting period for the FEIS will end 30 days after publication of the Notice of Availability in the **Federal Register** by the U.S. environmental Protection Agency.

**ADDRESSES:** If you have questions regarding the FEIS, or to request a copy of the document, please contact: Mr. Kevin Gardner, Directorate of Public Works, 730 Quartermaster Rod, Attention: APVR–RPW–GS (Gardner), Fort Richardson, AK 99505–6500; or Mr. Calvin Bagley, Center for Environmental Management of Military Lands (CEMML), Colorado State University, Fort Collins, CO 80523–1490.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin Gardner at (907) 384–3331; by facsimile at (907) 384–3028; by e-mail at *kevin.gardner@richardson.army.mil*; or Mr. Calvin Bagley at (970) 491–3324; by facsimile at (970) 491–2713; by e-mail at *cbagley@cemml.colostate.edu*. The following Web site contains the FEIS and additional information: *http://www.cemml.colostate.edu/alaskaeis.*

**SUPPLEMENTARY INFORMATION:** The proposed action would alter various activities on military and training lands in Alaska. The range of proposed activities include (1) Stationing of forces within USARAK to achieve emission requirements; (2) construction, renovation, and demolition activities; (3) training to achieve and maintain readiness to perform assigned missions; (4) fielding of weapons systems and equipment (to include the Stryker (a light armored vehicle) and the Shadow (an unmanned aerial vehicle)); (5) deployment of forces and equipment and specific deployment training activities; and (6) institutional matters to include entire range of day-to-day management and operational activities not otherwise accounted for in other activity categories.

The FEIS analyzed the following three alternative courses of action with respect to the transformation of the 172nd Infantry Brigade (Separate) into an SBCT or USARAK: (1) Alternative 1, No Action Alternative—no transformation activities would occur and the existing 172nd Infantry Brigade (Separate) mission would continue; (2) Alternative 3, Transformation of the 172nd Infantry Brigade (Separate) with New Infrastructure Alternative—transform the 172nd Infantry Brigade (Separate) except for the 1–501st Parachute Infantry Regiment (PIR), into an SBCT and construct five new SBCT-required facilities; and (3) Alternative 4, Transformation of the 172nd Infantry Brigade (Separate) with New Infrastructure and an Airborne Task Force Alternative (Army's preferred alternative)—transform the 172nd Infantry Brigade (Separate), except for the 1–501st PIR, into an SBCT and construct five new SBCT-required facilities. Under Alternative 4, the 1–501st PIR would be assigned to USARAK and would expand to an Airborne Task Force.

The Department of the Army prepared a Final Programmatic EIS (PEIS) for Army Transformation in 2002. The corresponding Record of Decision (ROD) declared the Army's decision to undertake a program of transformation and identified three brigades and an armored cavalry regiment for transformation into a Stryker Force during the next five to ten years. The 172nd Infantry Brigade (Separate), Forts Wainwright and Richardson, Alaska, were selected in the PEIS to transform into an SBCT.

Copies of the FEIS are available at the following libraries: Z.J. Loussac Public

Library, 3600 Denali Street, Anchorage; Chugiak/Eagle River Public Library, 12400 Old Glenn Highway, Eagle River; Noel Wien Public Library, 1215 Cowles Street, Fairbanks; and the Delta Junction Public Library, Deborah Street, Delta Junction.

Dated: April 14, 2004.

**Richard E. Newsome,**

*Assistant for Restoration, (Environment, Safety and Occupational Health) OASA (I&E).*

[FR Doc. 04–8988 Filed 4–20–04; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**ACTION:** Correction Notice.

**SUMMARY:** On April 7, 2004, the Department of Education published a 60-day public comment period notice in the **Federal Register** (Page 18360, Column 2) for the information collection, "The Evaluation of Exchange, Language, International and Area Studies (EELIAS), NRC, FLAS, IPP, UISFUL, BIE, CIBE, AORC, Language Resource Centers (LRC), International Studies and Research (IRS), Fulbright-Hays Faculty Research Abroad (FRA), Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA), Fulbright-Hays Seminars Abroad (SA), Fulbright-Hays Group Projects Abroad (GPA), and Technology Innovation and Cooperation for Foreign Information Access (TICFIA) Programs''. Under Reporting and Recordkeeping Hour Burden, the Burden Hours are hereby corrected to 23,511. Also, the Abstract should read: LRC, IRS, FRA, DDRA, SA, GPA, and TICFIA are being added for clearance to the system that already contains seven other programs. Information collection assists IEGPS in meeting program planning and evaluation requirements. Program officers require performance information to justify continuation funding, and grantees use this information for self-evaluation and to request continuation funding from the Department of Education.

Dated: April 15, 2004.

**Angela C. Arrington,**

*Regulatory Information Management Group, Office of the Chief Information Officer.*

[FR Doc. 04–8951 Filed 4–20–04; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before June 21, 2004.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 14, 2004.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

**Office of the Undersecretary**

*Type of Review:* New.

*Title:* Study of States' Implementation of Accountability and Teacher Quality under NCLB.

*Frequency:* Biennially.

*Affected Public:* State, local, or tribal gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:* Responses: 128. Burden Hours: 512.

*Abstract:* The study will examine and describe how the key provisions of NCLB are implemented in the nation's state educational agencies and will assess progress made.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections'' link and by clicking on link number 2530. When you access the information collection, click on "Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–8952 Filed 4–20–04; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before June 21, 2004.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or

waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 14, 2004.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

**Office of the Undersecretary**

*Type of Review:* New.

*Title:* Data Collection for the Evaluation of the Improving Literacy through School Libraries Program (LSL).

*Frequency:* Other: one-time collection.

*Affected Public:* State, local, or tribal gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:* Responses: 800. Burden Hours: 600.

*Abstract:* This submission requests approval of a data collection for an evaluation of the Improving Literacy through School Libraries (LSL). LSL, established under the No Child Left Behind Act of 2001 (NCLB), is designed to improve the literacy skills and academic achievement of students by providing them with access to up-to-date school library materials, technologically advanced school library media centers, and professionally certified school library media specialists. The evaluation of this program is authorized by NCLB, Title I, Part B, Subpart 4.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections'' link and by clicking on link number 2528. When you access the information collection, click on "Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–8953 Filed 4–20–04; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

**[CFDA No. 84.069]**

## Federal Student Aid; Leveraging Educational Assistance Partnership and Special Leveraging Educational Assistance Partnership Programs

**AGENCY:** Department of Education.

**ACTION:** Notice of the deadline dates for receipt of State applications for Award Year 2004–2005 funds.

**SUMMARY:** The Secretary announces the deadline dates for receipt of State applications for Award Year 2004–2005 funds under the Leveraging Educational Assistance Partnership (LEAP) and Special Leveraging Educational Assistance Partnership (SLEAP) programs.

The LEAP and SLEAP programs, authorized under Title IV, Part A, Subpart 4 of the Higher Education Act of 1965, as amended (HEA), assist States in providing aid to students with substantial financial need to help them pay for their postsecondary education costs through matching formula grants to States. Under section 415C(a) of the HEA, a State must submit an application to participate in the LEAP and SLEAP programs through the State agency that administered its LEAP Program as of July 1, 1985, unless the Governor of the State has subsequently designated, and the Department has approved, a different State agency to administer the LEAP Program.

**DATES:** To assure receiving an allotment under the LEAP and SLEAP programs for Award Year 2004–2005, a State must meet the applicable deadline date. Applications submitted electronically must be received by 11:59 p.m. (eastern time) May 28, 2004. Paper applications must be received by May 21, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Gerrans, LEAP Program Manager, Financial Partners Services, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., room 111H1, Washington, DC 20202. Telephone: (202) 377–3304.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

**SUPPLEMENTARY INFORMATION:** Only the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands may submit an application for funding under the LEAP and SLEAP programs.

State allotments for each award year are determined according to the statutorily mandated formula under section 415B of the HEA and are not negotiable. A State may also request its share of reallotment, in addition to its basic allotment, which is contingent upon the availability of such additional funds.

In Award Year 2003–2004, 44 States, the District of Columbia, and the Virgin Islands received funds under the LEAP Program, and 31 States, the District of Columbia, and the Virgin Islands received funds under the SLEAP Program.

*Electronic Submission of Applications:* Financial Partners Services within Federal Student Aid has automated the LEAP and SLEAP application process in the Financial Management System (FMS). Applicants may use the Web-based form (Form 1288–E OMB 1845–0028) that is available on the FMS LEAP on line system at the following Internet address: *http://fsa-fms.ed.gov:8000/PROD_j.htm.*

*Paper Applications Delivered By Mail:* States or territories may request that a paper version of the application (Form 1288 OMB 1845–0028) be mailed to them by contacting Mr. Greg Gerrans, LEAP Program Manager, at (202) 377–3304 or by e-mail: *greg.gerrans@ed.gov.*

A paper application sent by mail must be addressed to: Mr. Greg Gerrans, LEAP Program Manager, Financial Partners Services, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., room 111H1, Washington, DC 20202.

The Department of Education encourages applicants that are completing a paper application to use certified or at least first-class mail when sending the application by mail to the Department. Paper applications that are mailed must be received no later than May 21, 2004 to assure funding for the Award Year 2004–2005.

*Paper Applications Delivered By Hand:* Paper applications that are hand-delivered must be delivered to Mr. Greg Gerrans, LEAP Program Manager, Financial Partners Services, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., room 111H1, Washington, DC 20002. Hand-delivered applications will be accepted between 8 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

Paper applications that are hand-delivered must be received by 4:30 p.m. (eastern time) on May 21, 2004 to assure funding for the Award Year 2004–2005.

*Applicable Regulations:* The following regulations are applicable to the LEAP and SLEAP programs:

(1) The LEAP and SLEAP program regulations in 34 CFR part 692.

(2) The Student Assistance General Provisions in 34 CFR part 668.

(3) The Regulations Governing Institutional Eligibility in 34 CFR part 600.

(4) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.60 through 75.62 (Ineligibility of Certain Individuals to Receive Assistance), part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local Governments), part 82 (New Restrictions on Lobbying), part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)), part 85 (Governmentwide Debarment and Suspension (Nonprocurement)), part 86 (Drug and Alcohol Abuse Prevention), and part 99 (Family Educational Rights and Privacy).

*Electronic Access to This Document*

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

**Program Authority:** 20 U.S.C. 1070c *et seq.*

Dated: April 16, 2004.

**Theresa S. Shaw,**

*Chief Operating Officer, Federal Student Aid.*

[FR Doc. 04–9050 Filed 4–20–04; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF EDUCATION

## Office of Special Education and Rehabilitative Services; Overview Information; Special Education—Research and Innovation To Improve Services and Results for Children With Disabilities—Initial Career Awards; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.324N.

**DATES:** *Applications Available:* April 22, 2004.

*Deadline for Transmittal of Applications:* May 26, 2004.

*Eligible Applicants:* State educational agencies (SEAs); local educational agencies (LEAs); institutions of higher education (IHEs); other public agencies; nonprofit private organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

*Estimated Available Funds:* $300,000.

*Estimated Average Size of Awards:* $75,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $75,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 4.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

### Full Text of Announcement

### I. Funding Opportunity Description

*Purpose of Program:* To produce, and advance the use of, knowledge to improve the results of education and early intervention for infants, toddlers, and children with disabilities.

*Priority:* In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from allowable activities specified in the statute (*see* sections 661(e)(2) and 672 of IDEA).

*Absolute Priority:* For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

*Background:* There is a need to enable individuals in the initial phases of their careers to initiate and develop promising lines of research that would improve results for children with disabilities and their families through better early intervention services for infants and toddlers, and special education and related services for children with disabilities. Support for research activities among individuals in the initial phases of their careers is intended to develop the capacity of the early intervention and special education research community to more effectively meet the needs of children with disabilities and their families. The priority established in this notice also provides support for a broad range of field-initiated research projects—focusing on the special education and related services for children with disabilities and early intervention for infants and toddlers—consistent with the purpose of the program as described in section 672 of the Individuals with Disabilities Education Act (IDEA).

*Statement of Priority:* This priority is:

Grants to eligible applicants for the support of individuals in the initial phases of their careers to initiate and develop promising lines of research consistent with the purposes of the program. For purposes of this priority, the initial phase of an individual's career is considered to be the first three years after completing a doctoral program and graduating (*i.e.*, for FY 2004 awards, projects may support individuals who completed a doctoral program and graduated no earlier than the 2000–2001 academic year).

At least 50 percent of the initial career researcher's time must be devoted to the project.

Projects must—

(a) Pursue a line of research that is developed either from theory or a conceptual framework. The line of research must establish directions for designing future studies extending beyond the support of this award. The project is not intended to represent all inquiry related to the particular theory or conceptual framework; rather, it is expected to initiate a new line or advance an existing one;

(b) Include, in design and conduct, sustained involvement with one or more nationally recognized experts. Such

experts must have substantive or methodological knowledge and expertise relevant to the proposed research. The experts do not have to be at the same institution or agency at which the project is located, but the interaction with the project must be sufficient to develop the capacity of the initial career researcher to effectively pursue the research into mid-career activities;

(c) Prepare procedures, findings, and conclusions in a manner that advances professional practice by informing other interested researchers; and

(d) Disseminate project procedures, findings, and conclusions to appropriate research institutes and technical assistance providers.

(e) The projects funded under this priority must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(f) The project's Web site, must include relevant information and documents in an accessible form.

Within this absolute priority, we are particularly interested in applications that address the following invitational priority.

*Invitational Priority:* Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Projects that include, in the design and conduct of the research project, a practicing teacher or clinician, in addition to the required involvement of nationally recognized experts.

*Waiver of Proposed Rulemaking*

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements inapplicable to the absolute priority in this notice.

**Program Authority:** 20 U.S.C. 1461 and 1472.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

**Note:** The regulations in 34 CFR part 86 apply to IHEs only.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $300,000.

*Estimated Average Size of Awards:* $75,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $75,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 4.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

## III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs; IHEs; other public agencies; nonprofit private organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—

(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities (*see* section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (*see* section 661(f)(1)(A) of IDEA).

## IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.324N.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit part III to the equivalent of no more than 30 pages using the following standards:

- A "page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to part I, the cover sheet; part II, the budget section, including the narrative budget justification; part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, the letters of support, or the appendix. However, you must include all of the application narrative in part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

*Applications Available:* April 22, 2004.

*Deadline for Transmittal of Applications:* May 26, 2004. The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

*Application Procedures*

**Note:** Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

*Governmentwide Grants.gov Project for Electronic Submission of Applications*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are participating as a partner in the new governmentwide Grants.gov Apply site in FY 2004. The Special Education—Research and Innovation To Improve Services and Results for Children With Disabilities—Initial Career Awards competition—CFDA Number 84.324N is one of the competitions included in this project. If you are an applicant under the Special Education—Research and Innovation To Improve Services and Results for Children With Disabilities—Initial Career Awards competition, you may submit your application to us in either electronic or paper format.

The project involves the use of the Grants.gov Apply site (Grants.gov). If you use Grants.gov, you will be able to download a copy of the application package, complete it offline, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us. We request your participation in Grants.gov.

If you participate in Grants.gov, please note the following:

- Your participation is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a D–U–N–S Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation, which will include a PR/Award number (an ED-specified identifying number) unique to your application.
- We may request that you give us original signatures on forms at a later date.
- If you experience technical difficulties on the application deadline date and are unable to meet the 4:30 p.m. (Washington, DC time) deadline, print out your application and follow the instructions included in the application package for the transmittal of paper applications.

You may access the electronic grant application for the Research and Innovation to Improve Services and Results for Children with Disabilities—Initial Career Awards competition at: *http://e-grants.ed.gov.*

**Note:** Please note that you must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

## V. Application Review Information

*Selection Criteria:* The selection criteria for this competition are listed in 34 CFR 75.210 of EDGAR. The specific selection criteria to be used for this competition are in the application package.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing indicators and measures that will yield information on various aspects of the quality of the Research and Innovation to Improve Services and Results for Children with Disabilities program. Included in these indicators and measures will be those that assess the quality and relevance of newly funded research projects. Two indicators will address the quality of new projects. First, an external panel of eminent senior scientists will review the quality of a randomly selected sample of newly funded research applications, and the percentage of new projects that are deemed to be of high quality will be determined. Second, because much of the Department's work focuses on questions of effectiveness, newly funded applications will be evaluated to identify those that address causal questions and then to determine what percentage of those projects use randomized field trials to answer the causal questions. To evaluate the relevance of newly funded research projects, a panel of experienced education practitioners and administrators will review descriptions of a randomly selected sample of newly funded projects and rate the degree to which the projects are relevant to practice.

Other indicators and measures are still under development in areas such as the quality of project products and long-term impact. Data on these measures will be collected from the projects funded under this notice. Grantees will also be required to report information on their projects' performance in annual reports to the Department (EDGAR, 34 CFR 75.590).

## VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** Debra Sturdivant, U.S. Department of Education, 400 Maryland Avenue, SW., room 3527, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8038.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team listed in this section.

## VIII. Other Information

*Electronic Access to This Document:* You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: April 15, 2004.

**Troy R. Justesen,**

*Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 04–9051 Filed 4–20–04; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF EDUCATION

## Office of Special Education and Rehabilitative Services; Overview Information; Training and Information for Parents of Children with Disabilities—Parent Training and Information Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.328M.

**DATES:** *Applications Available:* April 22, 2004.

*Deadline for Transmittal of Applications:* May 26, 2004.

*Deadline for Intergovernmental Review:* July 26, 2004.

*Eligible Applicants:* Parent organizations. The full definition of Parent Organization is provided elsewhere in this notice in Section III. Eligibility Information.

*Estimated Available Funds:* $4,144,360.

*Estimated Average Size of Awards:* $275,000.

*Maximum Award:* For funding information regarding individual States, see the chart in the Award Information section of this notice.

*Estimated Number of Awards:* 15.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

## Full Text of Announcement

## I. Funding Opportunity Description

*Purpose Of Program:* The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

*Priority:* In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from allowable activities specified in the statute (see sections 661(e)(2) and 682 of the Individuals with Disabilities Education Act (IDEA)).

*Absolute Priority:* For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

*Background:* In order to allocate resources equitably, create a unified system of service delivery, and provide the broadest coverage for the parents and families in every State, the Assistant Secretary is making awards in five-year cycles for each State. In FY 2004, applications for 5-year awards will be accepted for the following States: Arizona; Delaware; District of Columbia; Indiana; Iowa; Massachusetts; Minnesota; Mississippi; Missouri; South Dakota; Virginia; Washington; and Wyoming. Awards may also be made to authorized entities in Guam, the Commonwealth of the Northern Mariana Islands, and the freely associated States. However, maximum funding levels have not been specified.

In addition to the State awards, the Secretary intends to fund one award that focuses on the needs of Native-American families who have children with disabilities and one award that focuses on the needs of military families who have children with disabilities. Each of these projects must have a national focus with strategies for outreach to their specific populations and coordination with the Parent Training Information (PTI) Centers and Community Parent Resource Centers (CPRCs) in the States.

*Statement of Priority:* This priority is: Awards to PTI Centers.

A PTI Center must—

(a) Provide training and information that meets the training and information needs of parents of children with disabilities in the area served by the PTI Center, particularly underserved parents and parents of children who may be inappropriately identified as having a disability when the child may not have a disability;

(b) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under IDEA, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in IDEA;

(c) Serve the parents of infants, toddlers, and children with the full range of disabilities;

(d) Assist parents to—

(1) Better understand the nature of their children's disabilities and their educational and developmental needs;

(2) Communicate effectively with personnel responsible for providing special education, early intervention, and related services;

(3) Participate in decisionmaking processes and the development of individualized education programs and individualized family service plans;

(4) Obtain appropriate information about the range of options, programs, services, and resources available to assist children with disabilities and their families;

(5) Understand the provisions of IDEA and the No Child Left Behind Act of 2001 (NCLB) relating to the education of, and the provision of early intervention services to, children with disabilities; and

(6) Participate in school reform activities;

(e) Contract with the State educational agency, if the State elects to contract with the PTI Center, for the purpose of meeting with parents who choose not to use the mediation process to encourage the use, and explain the benefits, of mediation consistent with section 615(e)(2)(B) and (D) of IDEA;

(f) Establish cooperative relations with the CPRC or PTI Centers in their State in accordance with section 683(b)(3) of IDEA;

(g) Network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 685(d) of IDEA, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities;

(h) Annually report to the Assistant Secretary on—

(1) The number of parents to whom the PTI Center provided information and training in the most recently concluded fiscal year, and

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities; and

(i) If there is more than one parent center in a particular State, coordinate its activities with the other center or centers to ensure the most effective assistance to parents in that State.

An applicant must identify the strategies it will undertake—

(a) To ensure that the needs for training and information for underserved parents of children with disabilities in the areas to be served are effectively met, particularly in underserved areas of the State; and

(b) To work with the community-based organizations, particularly in the underserved areas of the State.

A PTI Center that receives assistance under this absolute priority may also conduct the following activities—

(a) Provide information to teachers and other professionals who provide special education and related services to children with disabilities;

(b) Assist students with disabilities to understand their rights and responsibilities on reaching the age of majority, as stated in section 615(m) of IDEA; and

(c) Assist parents of children with disabilities to be informed participants in the development and implementation of the State improvement plan under IDEA.

(d) Budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(e) Include relevant information and documents in an accessible form on the project's Web site.

In addition to the annual Project Directors' meeting discussed in paragraph (d) of this section, a project's budget must include funds to attend a regional Project Directors' meeting to be held each year of the project.

*Waiver of Proposed Rulemaking:* Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements inapplicable to the priority in this notice.

**Program Authority:** 20 U.S.C. 1482.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $4,144,360.

*Estimated Average Size of Awards:* $275,000.

*Maximum Award:* For funding information regarding individual States, see the chart in the Award Information section of this notice.

*Estimated Number of Awards:* 15.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

Current funding levels and population of school age children were factors in determining the funding level for grants.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 2004

| CFDA number and name | Maximum award (per year)[2] |
|---|---|
| 84.328M Parent Training and Information Centers [1]: | |
| Arizona | $300,000 |
| Delaware | 214,300 |
| District of Columbia | 186,700 |
| Indiana | 359,300 |
| Iowa | 226,200 |
| Massachusetts | 367,450 |
| Minnesota | 347,200 |
| Mississippi | 244,050 |
| Missouri | 288,430 |
| South Dakota | 209,775 |
| Virginia | 391,090 |
| Washington | 331,365 |
| Wyoming | 178,500 |
| Native American Families | 250,000 |
| Military Families | 250,000 |

[1] Awards may also be made to authorized entities in Guam, the Commonwealth of the Northern Mariana Islands, and the freely associated States. However, maximum funding levels have not been specified.

[2] We will reject any application that proposes a budget exceeding the funding level for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the FEDERAL REGISTER.

**Note:** The Department is not bound by any estimates in this notice.

## III. Eligibility Information

1. *Eligible Applicants:* Parent organizations, as defined in section 682(g) of IDEA. A parent organization is a private nonprofit organization (other than an institution of higher education) that:

(a) Has a board of directors, the parent and professional members of which are broadly representative of the population to be served and the majority of whom are parents of children with disabilities, that includes individuals with disabilities and individuals working in the fields of special education, related services, and early intervention; or

(b) Has a membership that represents the interests of individuals with disabilities and has established a special governing committee meeting the requirements for a board of directors in paragraph (a) under *Eligible Applicants* and has a memorandum of

understanding between this special governing committee and the board of directors of the organization that clearly outlines the relationship between the board and the committee and the decisionmaking responsibilities and authority of each.

In addition, to demonstrate eligibility to receive a grant, an applicant must describe how its board of directors or special governing committee meets the criteria for a parent organization in section 682(g) of IDEA. Any parent organization that establishes a special governing committee under section 682(g)(2) of IDEA must demonstrate that the bylaws of its organization allow the governing committee to be responsible for operating the project (consistent with existing fiscal policies of its organization).

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities (*see* section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (*see* section 661(f)(1)(A) of IDEA).

## IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.328M.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit part III to the equivalent of no more than 60 pages, using the following standards:

- "page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to part I, the cover sheet; part II, the budget section, including the narrative budget justification; part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

*Applications Available:* April 22, 2004.

*Deadline for Transmittal of Applications:* May 26, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

*Deadline for Intergovernmental Review:* July 26, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

### *Application Procedures*

**Note:** Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

*Pilot Project for Electronic Submission of Applications:* We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. Special Education—Training and Information for Parents of Children with Disabilities Program—Parent Training and Information Centers—CFDA Number 84.328M is one of the competitions included in the pilot project. If you are an applicant under the Special Education—Training and Information for Parents of Children with Disabilities Program—Parent Training and Information Centers competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the

Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Your e-Application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on other forms at a later date.

*Application Deadline Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Special Education—Training and Information for Parents of Children with Disabilities Program—Parent Training and Information Centers competition and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and
2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Special Education—Training and Information for Parents of Children with Disabilities Program—Parent Training and Information Centers competition at: *http://e-grants.ed.gov*.

## V. Application Review Information

*Selection Criteria:* The selection criteria for this competition are listed in 34 CFR 75.210 of EDGAR. The specific selection criteria to be used for this competition are in the application package.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing measures that will yield information on various aspects of the quality of the Training and Information for Parents of Children with Disabilities program (*e.g.*, the extent to which projects use high quality methods and materials, and the impact of services on helping parents improve results for their children). Data on these measures will be collected from the projects funded under this notice.

As specified in section I of this notice, grantees must, in collaboration with the Office of Special Education Programs and the National Parent Technical Assistance Center, participate in an annual collection of program data for the PTI Centers and the CPRCs.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (EDGAR, 34 CFR 75.590).

## VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: 1–202–205–8207.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team listed in this section.

## VIII. Other Information

*Electronic Access to This Document:* You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html*.

Dated: April 15, 2004.

**Troy R. Justesen,**

*Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 04–9052 Filed 4–20–04; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; Overview Information; Technical Assistance and Dissemination to Improve Services and Results for Children With Disabilities—National Clearinghouse on Deaf-Blindness; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.326U.

**DATES:** *Applications Available:* April 22, 2004.

*Deadline for Transmittal of Applications:* May 26, 2004.

*Deadline for Intergovernmental Review:* July 26, 2004.

*Eligible Applicants:* State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), other public agencies, nonprofit private organizations, for-profit organizations, outlying areas, freely associated States, and Indian tribes or tribal organizations.

*Estimated Available Funds:* $400,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $400,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

*Number of Awards:* 1.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 24 months.

### Full Text of Announcement

### I. Funding Opportunity Description

*Purpose of Program:* This program provides technical assistance and information that (1) support States and local entities in building capacity to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and (2) address goals and priorities for improving State systems that provide early intervention, educational, and transitional services for children with disabilities and their families.

*Priority:* In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from allowable activities specified in the statute (*see* sections 661(e)(2) and 685 of the Individuals with Disabilities Education Act (IDEA)).

*Absolute Priority:* For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

*Background:* As a result of the uniqueness and complexity of serving children and young adults who are deaf-blind, there is a significant need to provide and disseminate information on a national basis to those with deaf-blindness and to their families, stakeholders, service providers, and other interested parties. The current trend of these children to live and attend neighborhood schools has caused an increase in the number and variety of individuals who require access to current, organized, authoritative, and synthesized information pertaining to deaf-blindness.

In an effort to effectively address this informational need and to improve results for children who are deaf-blind, the following priority supports a national clearinghouse that will make widely available evidence-based research, specialized knowledge, effective practices, and other informational resources related to deaf-blindness.

*Statement of Priority:* This priority is:

The establishment and operation of a national clearinghouse on deaf-blindness to improve outcomes for children and individuals who are deaf-blind.

The clearinghouse must—

(a) Identify, collect, organize, and disseminate information related to deaf-blindness, including research-based and other practices that are supported by statistical data or other evidence establishing their effectiveness in improving results for children who are deaf-blind. Information made available through the clearinghouse shall relate, at a minimum, to the following items—

(1) Early intervention, special education, and related services, for children with deaf-blindness;

(2) Related medical, health, social, and recreational services;

(3) The nature of deaf-blindness and the barriers to education and employment that it causes;

(4) Identified legal issues that are currently affecting persons with deaf-blindness; and

(5) Postsecondary education and transitional services for individuals with deaf-blindness.

(b) Disseminate evidence-based research and information on deaf-blindness to a wide variety of audiences employing multiple dissemination mechanisms and approaches, including the establishment and maintenance of a user-friendly Web site that permits the downloading of all clearinghouse information databases and incorporates hotlinks to other relevant information sources. The databases must also include national bibliographic, personnel, and organizational resources;

(c) Employ state-of-the-art technology, while linking researchers with practitioners in order to identify, collect, develop, and disseminate information;

(d) Assist State and local educational agencies, including these agencies' projects under Projects for Children and Young Adults who are Deaf-Blind program—CFDA 84.326C, and other related agencies and organizations, in developing and implementing systemic-change goals supported by available evidence-based research for children with deaf-blindness;

(e) Respond to information requests from professionals, parents, students, institutions of higher education, and other interested individuals. The clearinghouse shall also develop and implement appropriate strategies for disseminating information to under-represented groups, including those with limited English proficiency;

(f) Carry out clearinghouse activities by collaborating with appropriate agencies, organizations, and consumer and parent groups that have specific expertise in addressing the needs of children with deaf-blindness and building capacity to improve results for these children;

(g) Develop a broad, coordinated network of professionals, parents, related organizations and associations, mass media, other clearinghouses, and governmental agencies at the Federal, regional, State, and local level for purposes of promoting awareness of issues related to deaf-blindness and referring individuals to appropriate resources;

(h) Expand and broaden the use of current informational resources by developing materials that synthesize evidence-based research, best practices, and emerging knowledge into easily understandable products with accessible formats; and

(i) Establish and implement a comprehensive system of evaluation to determine the impact of the clearinghouse activities on children with deaf-blindness, identify relevant achievements, and identify strategies for improvement, on an annual basis.

(j) The projects funded under this priority must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(k) The project's Web site must include relevant information and documents in an accessible form.

*Waiver of Proposed Rulemaking:* Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally

offers interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements inapplicable to the priority in this notice.

**Program Authority:** 20 U.S.C. 1461 and 1485.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

## II. Award Information

*Type of Award:* Cooperative agreements.

*Estimated Available Funds:* $400,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $400,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

*Number of Awards:* 1.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 24 months.

## III. Eligibility Information

1. *Eligible Applicants:* SEAs, LEAs, IHEs, other public agencies, nonprofit private organizations, for-profit organizations, outlying areas, freely associated States, and Indian tribes or tribal organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities (*see* section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (*see* section 661(f)(1)(A) of IDEA).

## IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: 301–470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.326U.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contract Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 40 pages, using the following standards:

- A "page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

*Applications Available:* April 22, 2004.

*Deadline for Transmittal of Applications:* May 26, 2004. The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

*Deadline for Intergovernmental Review:* July 26, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

*Application Procedures:*

**Note:** Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

*Pilot Project for Electronic Submission of Applications:* We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Special Education—Technical Assistance and Dissemination of Services and Results for Children with Disabilities—National Clearinghouse on Deaf-Blindness competition—CFDA Number 84.326U is one of the competitions included in the pilot project. If you are an applicant under the Special Education—Technical Assistance and Dissemination of Services and Results for Children with Disabilities—National Clearinghouse on Deaf-Blindness competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application

you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

*Application Deadline Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Special Education—Technical Assistance and Dissemination of Services and Results for Children with Disabilities—National Clearinghouse on Deaf-Blindness competition and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Special Education—Technical Assistance and Dissemination of Services and Results for Children with Disabilities—National Clearinghouse on Deaf-Blindness competition at: *http://e-grants.ed.gov.*

## V. Application Review Information

*Selection Criteria:* The selection criteria for this competition are listed in 34 CFR 75.210 of EDGAR. The specific selection criteria to be used for this competition are in the application package.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing measures that will yield information on various aspects of the quality of the Technical Assistance to Improve Services and Results for Children with Disabilities program (*e.g.*, the extent to which projects use high quality methods and materials, provide useful products and services, and contribute to improving results for children with disabilities). Data on these measures will be collected from the projects funded under this notice.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (EDGAR, 34 CFR 75.590).

## VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: 1–202–205–8207.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team listed in this section.

## VIII. Other Information

*Electronic Access to This Document:* You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: April 15, 2004.

**Troy R. Justesen,**

*Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 04–9053 Filed 4–20–04; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Notice of Intent To Prepare a Programmatic Environmental Impact Statement for Implementation of the Carbon Sequestration Program

**AGENCY:** Department of Energy.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Department of Energy (DOE) announces its intent to prepare a Programmatic Environmental Impact Statement (PEIS) pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) NEPA regulations (40 Code of Federal Regulations [CFR] parts 1500–1508), and the DOE NEPA regulations (10 CFR part 1021), to assess the potential environmental impacts from the Department of Energy's (DOE's) Carbon Sequestration Program, which is being implemented by the Office of Fossil Energy.

The Carbon Sequestration PEIS will evaluate the issues and impacts associated with the demonstration and deployment of technologies to implement the key elements of the Program, including: carbon dioxide ($CO_2$) capture; sequestration (geologic, oceanic, and terrestrial); measurement, monitoring, and verification (MMV); and breakthrough concepts. Major initiatives to demonstrate the key elements of the Program may require collaboration with Federal agencies, State and regional governments, and private sector partnerships. The PEIS will analyze impacts of carbon sequestration technologies and potential future demonstration activities programmatically and will not directly evaluate specific field demonstration projects. However, because the PEIS will evaluate issues and impacts associated with regional approaches, opportunities, and future needs for the Program, findings from the PEIS may be applicable to future site-specific projects within the Carbon Sequestration Program, for which separate NEPA documents that could tier from the PEIS would be prepared. The PEIS will evaluate the potential environmental impacts of implementing the Carbon Sequestration Program (the Proposed Action), in comparison with other reasonable alternatives.

**DATES:** To ensure that all of the issues related to this proposal are addressed, DOE invites Federal agencies, Native American tribes, state and local governments, and members of the public to comment on the proposed scope and content of the PEIS. Comments must be received by June 25, 2004 to ensure consideration. Late comments will be considered to the extent practicable. In addition to receiving comments in writing and by telephone (see **ADDRESSES** below), DOE will conduct public scoping meetings in which agencies, organizations, and the general public are invited to present oral comments or recommendations with respect to the range of environmental issues, alternatives, analytic methods, and impacts to be considered in the PEIS. Public scoping meetings will be held in geographic locations throughout the United States (*see* **SUPPLEMENTARY INFORMATION**—Public Scoping Process for meeting locations and scheduled dates).

**ADDRESSES:** Written comments on the scope of the PEIS and requests to participate in the public scoping meetings should be submitted to Heino Beckert, Ph.D., NEPA Document Manager for Carbon Sequestration PEIS, U.S. Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507. Individuals who want to participate in the public scoping process should contact Dr. Beckert directly by telephone: (304) 285–4132; fax: (304) 285–4403; electronic mail: *heino.beckert@netl.doe.gov;* or toll-free telephone number: (877) 367–1521.

**FOR FURTHER INFORMATION CONTACT:** For information on the DOE's Carbon Sequestration Program or to receive a copy of the Draft PEIS for review when it is issued, contact Dr. Heino Beckert as described in **ADDRESSES** above. For general information on the DOE NEPA process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, telephone: (202) 586–4600, fax: (202) 586–7031, or leave a toll-free message at 800–472–2756. Additional NEPA information is available at the DOE Web site: *http://www. eh.doe.gov/nepa/.* Additional information on the Carbon Sequestration Program can be found at the following Web site: *http://www.netl.doe.gov/coalpower/sequestration/index.html.*

**SUPPLEMENTARY INFORMATION:**

### Definitions

For the purpose of this Notice, the following terms are defined:

Carbon Sequestration—The term given to a suite of technologies that can remove carbon dioxide from large point sources, such as power plants, oil refineries and industrial processes, or from the air itself. The carbon dioxide can then be stored in geologic formations, such as depleted oil and gas reservoirs, deep coal seems or saline formations. It can also be stored in plants, trees and soils by increasing their natural carbon dioxide uptake.

Carbon Intensity—The ratio of carbon dioxide emissions to economic output.

$CO_2$ Capture—Refers to a range of technologies and methods employed to capture carbon dioxide in the process stream or at the source of emission. Such technologies may include organic chemical absorbents, carbon absorbents, membranes, sodium and other metal-based absorbents, electromechanical pumps, hydrates, mineral carbonation, and other processes.

Geologic Sequestration—Refers to a range of technologies and methods employed to bind or store carbon dioxide in geologic formations, including depleted oil or gas reservoirs, unminable coal seams, saline formations, shale formations with high organic content, and others.

Oceanic Sequestration—Refers to a range of technologies and methods employed to bind, store, or increase carbon dioxide uptake in the ocean. Such technologies may include deep ocean injection of captured carbon dioxide gas or the enhancement of free carbon dioxide uptake by marine ecosystems through ocean fertilization or other methods to enhance natural absorption processes.

Terrestrial Sequestration—Refers to a range of technologies and methods employed to increase carbon uptake by terrestrial ecosystems. Such methods may involve changes in land management practices, including forestation or reforestation, agricultural practices that enhance carbon storage in soils, and other land reclamation methods.

Measurement, Monitoring, and Verification (MMV)—Refers to a range of technologies and methods employed to measure baseline carbon levels in geologic formations, oceans, and terrestrial ecosystems; to assess ecological impacts of carbon storage; to

detect leaks or deterioration in carbon dioxide storage processes; and to calculate net carbon dioxide emissions to the atmosphere avoided via technologies for capture and sequestration.

Breakthrough Concepts—Refers to a range of technologies and methods emerging from scientific research that may be employed to reduce carbon dioxide emissions or otherwise capture and sequester carbon. Such technologies and methods may involve processes for advanced carbon dioxide capture through biochemistry or enzymes, subsurface neutralization of carbon dioxide, or unique systems that may enhance carbon sequestration.

**Background and Need for Agency Action**

Since 1997, when the DOE's Office of Fossil Energy consolidated its funding of research and evaluations for controlling greenhouse gas emissions, that office has continued to be engaged in research studies, evaluations, and limited field investigations into technologies and methods for capturing and sequestering carbon dioxide. These carbon sequestration activities received increased emphasis with the announcement of the Global Climate Change Initiative (GCCI) on February 14, 2002, by President George W. Bush, which calls for an 18 percent reduction in the carbon intensity (the ratio of carbon dioxide emissions to economic output) of the U.S. economy by 2012. The consolidated Carbon Sequestration Program, which is administered for the Office of Fossil Energy by the National Energy Technology Laboratory (NETL), is seeking to develop a portfolio of technology options that have significant potential for achieving the GCCI carbon goal.

The Program now encompasses more than 80 research and development projects conducted throughout the United States. The programmatic objective is to demonstrate a series of safe and cost-effective technologies at a commercial scale by 2012 and to establish the potential for deployment leading to substantial market acceptance beyond 2012. Because the research and development activities for carbon sequestration are demonstrating the potential readiness of technologies for field-testing, DOE has initiated planning to prepare a PEIS.

Concentrations of carbon dioxide in the atmosphere have increased rapidly in recent decades, and the increase correlates to the rate of world industrialization. In 1992, the United States and 160 other countries ratified the Framework Convention on Climate Change, which calls for "* * * stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.'' What constitutes an acceptable level of greenhouse gases in the atmosphere remains open to debate, but even modest stabilization scenarios would eventually require a reduction in worldwide greenhouse gas emissions of 50 to 90 percent below current levels (Carbon Sequestration Project Portfolio, available on the Carbon Sequestration Web site at: *http://www.netl.doe.gov/coalpower/sequestration/index.html*).

Technology solutions that provide energy-based goods and services with reduced greenhouse gas emissions are the President's preferred approach to achieving the GCCI goal. The GCCI also calls for a progress review relative to the goals of the initiative in 2012, at which time decisions will be made about additional implementation measures for mitigating greenhouse gas emissions. By focusing on greenhouse gas intensity as the measure of success, this strategy promotes vital climate change research and development (R&D) while minimizing the economic impact of greenhouse gas stabilization in the United States.

In combination with improved energy efficiency of fossil fuel utilization and use of low-carbon fuels, carbon sequestration is an option for greenhouse gas mitigation. It involves the capture and storage of carbon dioxide and other greenhouse gases that would otherwise be emitted to the atmosphere. The greenhouse gases can be captured at the point of emission, or they can be removed from the air. The captured gases can potentially be stored in geologic reservoirs, dissolved in deep oceans, converted to rock-like solid materials, or absorbed by vegetation and soils for long-term and stable sequestration.

Current annual U.S. greenhouse gas emissions are 12 percent higher than they were in 1992, and the Energy Information Administration (EIA) forecasts that growth in U.S. $CO_2$ emissions over the next 20 years will exceed 30 percent (Annual Energy Outlook, 2004). The projected increase is more significant when one considers that in their analysis, EIA assumes significant deployment of new energy technologies through 2020—for example, a fourfold increase in electricity generation from wind turbines, a doubling of ethanol use in automobiles, and a 25 percent decrease in industrial energy use per unit of output. The need for greenhouse gas emissions reduction could be very large within a few decades. If the potential for carbon sequestration can be realized, it would greatly reduce the cost of greenhouse gas emissions mitigation.

Approximately one-third of the current U.S. greenhouse gas emissions come from power plants, oil refineries, and other large point sources, and the percentage will increase in the future with a trend toward increased refining and de-carbonization of fuels. At the same time, the United States has vast forests and prairies, and is underlain by numerous significant saline formations, depleted oil and gas reservoirs, and unminable coal seams that have the combined potential to store centuries of greenhouse gas emissions. Many options for $CO_2$ storage also have the potential to provide value-added benefits. For example, tree plantings, no-till farming, and other terrestrial sequestration practices can reduce soil erosion and pollutant runoff into streams and rivers. Storing $CO_2$ in depleted oil reservoirs and unminable coal seams containing methane can enhance the recovery of crude oil and natural gas, while leaving a portion of the greenhouse gas sequestered. These value-added benefits have provided motivation for near-term action and create potentially viable opportunities for integrated $CO_2$ capture and storage systems.

**Proposed Action**

The Proposed Action is for DOE to continue implementation of its Carbon Sequestration Program with a focus on moving toward GCCI goals and to eventually help meet the requirements of the Framework Convention on Climate Change. To achieve these objectives, the Program needs to consider, evaluate, develop, and implement carbon capture and carbon storage technologies, including effective measurement, monitoring, and verification methods, over a longer-range planning horizon. The Program also needs to provide technological viability data for the GCCI 2012 technology assessment.

The Carbon Sequestration Program encompasses all aspects of carbon sequestration. DOE's NETL Carbon Sequestration Web site, *http://www.netl.doe/coal/power/sequestration/* describes all of these aspects of carbon sequestration and provides the public examples of the technologies, relationships, and challenges that this PEIS will address. The Program has engaged Federal and private sector partners that have expertise in certain technology areas; for example, U.S. Department of Agriculture (USDA) and electric utilities in terrestrial sequestration; U.S.

Geologic Survey and the oil industry in geologic sequestration; and the National Academy of Sciences in breakthrough concepts. The Office of Fossil Energy and the USDA have joint responsibility for terrestrial carbon sequestration activities (sequestration in the biosphere). DOE has collaborated with other Federal agencies for developing general and technical (*e.g.*, terrestrial sequestration, geologic sequestration) guidelines for use in voluntary reporting to the Energy Information Administration on greenhouse gas emissions, as mandated by Title XVI, section 1605(b) of the Energy Policy Act of 1992. On a programmatic level, the USDA's Natural Resources Conservation Service (NRCS) and Forest Service have been directly involved in the implementation of terrestrial sequestration field projects. The Carbon Sequestration Program has also cooperated with the U.S. Department of the Interior's (DOI) Office of Surface Mining under a Memorandum of Understanding to sequester carbon on abandoned mined lands. The Program's longer-term research efforts (breakthrough concepts) are coordinated with DOE's Office of Science, the National Science Foundation, and within the academic research community. Finally, the Program is working with the U.S. Environmental Protection Agency to assess the role that non-$CO_2$ greenhouse gas emissions abatement actions can play in a nationwide strategy for reducing greenhouse gas intensity and to identify priority research.

A strong focus is placed on direct capture of $CO_2$ emissions from large point sources and subsequent storage in geologic formations. These large point sources, such as power plants, oil refineries, and industrial facilities, are the foundation of the U.S. economy. Reducing net $CO_2$ emissions from these facilities complements efforts to reduce emissions of particulate matter, sulfur dioxide, and nitrogen oxides, and represents a progression toward fossil fuel production, conversion, and use with little or no detrimental environmental impact. In addition, measurement, monitoring, and verification is emerging as an important crosscutting component for $CO_2$ capture and storage systems, and terrestrial offsets are a vital component of cost-effective, near-complete elimination of net $CO_2$ emissions from many large point sources. *See* NETL's Carbon Sequestration Web site, described above for further information.

Through the Carbon Sequestration Program, DOE is seeking to develop a portfolio of technologies that hold the greatest promise for the capture and long-term sequestration of greenhouse gases. The timeline for the Program will need to demonstrate the readiness of a variety of safe and cost-effective candidate carbon capture and carbon storage technologies for consideration in deployment at a commercial scale by 2012, if needed, with potential deployment leading to substantial market acceptance beyond 2012. Wide-scale deployment of these technologies will require confirmation and acceptance of their ability to slow the growth of greenhouse gas emissions in the near-term while ultimately leading to a stabilized emission rate toward the middle of the 21st century.

DOE proposes that the Carbon Sequestration PEIS will evaluate the issues and impacts associated with the demonstration and deployment of technologies to implement the key elements of the Program: carbon dioxide capture; sequestration (geologic, oceanic, and terrestrial); MMV; and breakthrough concepts (*see* Definitions, previous). Major initiatives to demonstrate the key elements of carbon sequestration may require increased collaboration with Federal agencies, state and regional governments, and private sector partnerships. The PEIS will analyze impacts of carbon sequestration technologies and future demonstration activities programmatically and will not directly evaluate specific field demonstration projects. However, because the PEIS will evaluate issues and impacts associated with regional approaches, opportunities, and future needs for the Program, findings from the PEIS may be applicable to future site-specific projects within the Carbon Sequestration Program, for which separate NEPA documents that could tier from the PEIS would be prepared.

**Alternatives**

NEPA requires that agencies evaluate the reasonable alternatives to a proposed major Federal action significantly affecting the environment in an EIS. The purpose for agency action determines the range of reasonable alternatives. At a minimum, DOE expects that alternatives will include the Proposed Action and No Action. Under the Proposed Action, DOE would proceed to implement the Carbon Sequestration Program to achieve GCCI goals with broad participation in a range of technology initiatives, including the demonstration and deployment of promising technologies for: carbon dioxide capture; sequestration (geologic, oceanic, and terrestrial); MMV; and breakthrough concepts on a regional and national scale. For the No Action alternative, the Carbon Sequestration Program would continue along a path comparable to previous research studies, evaluations, and field investigations. However, the No Action alternative might jeopardize or limit the most effective approaches for sequestration and hinder the identification and optimization of approaches that could best achieve Program objectives. Under either alternative, individual ongoing and near-term future projects will continue and be subject to separate and specific NEPA review and documentation.

Under the Proposed Action, the PEIS would analyze reasonable alternatives for implementing the Carbon Sequestration Program. These action alternatives would include the range of technologies and strategies for implementing key elements of the program, including $CO_2$ capture; sequestration (geologic, ocean, and terrestrial); MMV; and breakthrough concepts. Each of these technologies and strategies are explained in detail on DOE NETL Web site. DOE will consider analyzing additional action alternatives that may emerge during scoping and further development of the PEIS. For example, consideration may be given to alternative schedules for implementation of Program components, alternative technologies or variations in the mix of technologies to achieve Program objectives, variations in the implementation of sequestration methods, variations in implementation by geographic region, and other possibilities.

DOE expects that the PEIS findings with respect to potentially significant issues and impacts will inform the DOE decision-making process for selecting technologies to be demonstrated and deployed, as well as for establishing the timetable for their implementation. To that end, DOE is considering analyzing alternatives comprised of combinations of technology and strategic options. The PEIS might also identify technologies that appear critically flawed or that may have serious and unpredictable impacts, which would preclude them from further consideration as reasonable alternatives under the Proposed Action.

Finally, the PEIS will provide the framework for future technology assessment and field studies for the identification of new Program needs and future directions for carbon sequestration efforts. As a programmatic document, the PEIS will indicate issues and potential impacts to be evaluated more closely in site-specific environmental studies for project-specific NEPA documents.

**Preliminary Identification of Environmental Issues**

DOE intends to address the issues listed below when considering the potential impacts of the Carbon Sequestration Program alternatives and technologies for $CO_2$ capture, sequestration, MMV, and breakthrough concepts. This list is neither intended to be all-inclusive nor a predetermined set of potential impacts. DOE invites comments from Federal agencies, Native American tribes, state and local governments, other interested parties, and the general public on these and any other issues that should be considered in the PEIS. The environmental issues include:

(1) Potential impacts on atmospheric resources and air quality from technologies used to capture and sequester carbon dioxide, including emissions from associated activities and the construction and operation of support facilities;

(2) Potential impacts on aesthetic and scenic resources from the construction and operation of facilities and support equipment, including pipelines and utility corridors;

(3) Potential impacts on vegetation, wildlife, wildlife habitat, marine ecosystems, and species protected by the Endangered Species Act or Marine Mammal Protection Act that may result from implementing the Program, including the construction and operation of facilities, support equipment, ocean platforms, pipelines, utility corridors, and changes in land management practices;

(4) Potential impacts on cultural and historic resources from the construction and operation of facilities and support equipment, including land-disturbing activities for the construction of facilities, access roads, pipelines, and utility corridors;

(5) Potential changes in land use to provide new facilities, access roads, pipelines, and utility corridors, and changes in commercial and industrial development patterns that may occur in areas considered suitable for the implementation of respective technologies;

(6) Potential increases in uses of fuels, solvents, and hazardous materials, as well as increases in solid and liquid waste streams from facilities and equipment uses;

(7) Human health and safety issues associated with the construction and operation of new facilities, access roads, ocean platforms, pipelines, and utility corridors.

(8) Human health and safety issues related to potential unplanned instantaneous release or slow leakage of $CO_2$ from pipelines, facility infrastructure, and sequestration media.

(9) Potential socioeconomic impacts from the energy demands for $CO_2$ capture facilities, from the effects of geologic sequestration on oil and gas production, from the effects of ocean sequestration on fishing and tourism, from changes in land management practices for terrestrial sequestration, from the potential creation of a commodity market for trading in $CO_2$ reduction credits, and from other factors associated with the implementation of the Program, including environmental justice issues that may result from the siting of facilities;

(10) Potential impacts on utility infrastructure resulting from the demands of new facilities and equipment;

(11) Impacts on water resources and quality resulting from land-disturbance and runoff during construction and operation of facilities, equipment, access roads, and utility corridors associated with the Program; geologic sequestration may have impacts on groundwater resources, and ocean $CO_2$ sequestration may have impacts on aquatic chemistry and marine ecosystems;

(12) Soil contamination, erosion, and sedimentation may result from construction and operation of facilities, equipment, access roads, and utility corridors associated with the implementation of the Program; changes in land management practices may also affect soils; and

(13) Potential hydrologic fractures in formations due to $CO_2$ injection that may affect aquifers and could cause small and localized seismic hazards.

**Public Scoping Process**

DOE will hold eight public scoping meetings for the Carbon Sequestration PEIS throughout the United States. The objective of the scoping meetings is to seek input from attendees that will be used to refine the issues and focus the Draft PEIS evaluations. The meeting schedules, including any changes to meeting locations or dates, will be published in the **Federal Register**, the respective local media, and DOE's monthly Carbon Sequestration Newsletter, and be posted at the DOE Carbon Sequestration Web site: *http://www.netl.doe.gov/coalpower/sequestration/index.html.* The dates and locations for the meetings are as follows:

- May 6, 2004: Alexandria, Virginia. Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, VA 22311.
- May 18, 2004: Columbus, Ohio. Greater Columbus Convention Center, 400 North High Street, Columbus, OH 43215.
- May 19, 2004: Chicago, Illinois. Holiday Inn—Rolling Meadows, 3405 Algonquin Road, Rolling Meadows, IL 60008.
- May 25, 2004: Houston, Texas. Humble Civic Center, 8233 Will Clayton Parkway, Humble, TX 77338.
- May 27, 2004: Sacramento, California. Lions Gate, 3410 Westover St., McClellan, CA 95652–1005.
- June 2, 2004: Atlanta, Georgia. Hilton Atlanta Northeast, 5993 Peachtree Industrial Blvd., Norcross, GA 30092.
- June 8, 2004: Bozeman, Montana. (Open House starting at 5 p.m.), Bozeman High School, 205 N. 11th Avenue, Bozeman, MT 59715.
- June 10, 2004: Grand Forks, North Dakota. Northland Community & Technical College, 2022 Central Avenue, NE., East Grand Forks, MN 56721.

The scoping meetings will begin at 7 p.m. and will conform to NEPA guidance and DOE Public Participation policies. Unless otherwise noted, each meeting will be preceded by an informal information session from 4 p.m. until approximately 7 p.m. providing an opportunity for individuals to learn more about the Carbon Sequestration Program and the NEPA process and to talk with Program participants. Graphic displays and presentation materials will be made available to the public during the meetings. The scoping meetings will include presentations about the Carbon Sequestration Program and the NEPA process, followed by an opportunity for attendees to speak on behalf of organizations or themselves. To ensure that all individuals wishing to speak have an adequate opportunity to do so, each speaker will be allotted five minutes. Depending upon the number of persons wishing to speak, additional time may be provided. All spoken comments will be recorded during the meetings and a transcript prepared; however, speakers are encouraged to provide written versions of their prepared comments for the record. Comment cards also will be available at the meetings for written comments. The comment cards may be submitted at the meeting or mailed to DOE (*see* **ADDRESSES**) within the established public comment period. Written and spoken comments will be given equal consideration.

**Preliminary PEIS Schedule**

DOE plans to complete the Draft PEIS by Summer 2005 and will announce its availability in the **Federal Register** and other media when published. Agencies,

organizations, and the public will then have an opportunity to submit comments. DOE will also hold public hearings for the Draft PEIS at locations comparable to those for the scoping meetings. The public hearings will be held during the weeks following publication of the Draft PEIS and will be announced in the Notice of Availability for the Draft PEIS and other media. DOE will consider all substantive comments received at public meetings or otherwise during preparation of the Final PEIS, which DOE plans to issue by the Spring of 2006.

Issued in Washington, DC, on April 16, 2004.

**Beverly A. Cook,**

*Assistant Secretary, Environment, Safety and Health.*

[FR Doc. 04–9021 Filed 4–20–04; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

**[FE DOCKET NO. 04–30–NG]**

### Office of Fossil Energy; Keyspan Gas East Corporation; Order Granting Long-Term Authority To Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of Order.

**SUMMARY:** The Office of Fossil Energy (FE) gives notice that on April 1, 2004, it issued DOE/FE Order No. 1967 granting KeySpan Gas East Corporation authority to import the following volumes of natural gas from Canada, in accordance with its February 4, 2004, gas sales agreement with Nexen Marketing from April 1, 2004, to April 1, 2007, up to 25,451 million cubic feet (Mcf) per day of natural gas and from November 1, 2004, to April 1, 2005, and from November 1, 2005, to April 1, 2007, up to 27,508 Mcf per day of natural gas.

This Order may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 8, 2004.

**Yvonne Caudillo,**

*Acting Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.*

[FR Doc. 04–9049 Filed 4–20–04; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

**[FE Docket Nos. 04–21–NG, et al.]**

### Office of Fossil Energy; Kimball Energy Corporation, et al.; Orders Granting, Transferring, and Vacating Authority To Import and Export Natural Gas, Including Liquefied Natural Gas

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of Orders.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy gives notice that during March 2004, it issued Orders granting, transferring, and vacating authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on April 9, 2004.

**Yvonne Caudillo,**

*Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.*

APPENDIX—ORDERS GRANTING, TRANSFERRING, AND VACATING IMPORT/EXPORT AUTHORIZATIONS

| Order No. | Date issued | Importer/Exporter FE docket No. | Import volume | Export volume | Comments |
|---|---|---|---|---|---|
| 1952 ..... | 3–4–04 ... | Kimball Energy Corporation—04–21–NG. | 75 Bcf | ..... | Import natural gas from Canada, beginning on April 1, 2004, and extending through March 31, 2006. |
| 1953 ..... | 3–9–04 ... | Citadel Energy Products LLC—04–20–NG. | 20 Bcf | | Import and export a combined total of natural gas, including LNG from and to Canada and Mexico, beginning March 9, 2004, and extending through March 8, 2006. |
| 1954 ..... | 3–9–04 ... | EXCO Energy Inc.—04–07–NG ..... | 50 Bcf | | Import and export a combined total of natural gas from and to Canada, beginning on March 9, 2004, and extending through March 8, 2006. |
| 1174–B ... | 3–10–04 | Producers Marketing Corporation—96–34–NG. | ..... | ..... | Order vacating blanket import authority. |
| 259–B ..... | 3–10–04 | Producers Marketing Corporation—88–27–NG. | ..... | ..... | Order vacating blanket import authority. |
| 1925–A ... | 3–19–04 | PERC Canada, Inc. (Successor to Peoples Energy Wholesale Marketing, LLC)—03–80–NG. | ..... | ..... | Order transferring blanket import and export authority. |
| 1897–A ... | 3–19–04 | NUI Energy Brokers, Inc.—03–53–NG | ..... | ..... | Order vacating blanket import and export authority. |
| 1955 ..... | 3–19–04 | Central Lomas de Real, S.A. C.V.—04–31–NG. | 60 Bcf | | Import and export a combined total of natural gas from and to Mexico, beginning on April 1, 2004, and extending through March 31, 2006. |
| 1956 ..... | 3–23–04 | Seminole Canada Gas Company—04–34–NG. | 150 Bcf | 150 Bcf | Import and export natural gas from and to Canada, beginning on March 23, 2004, and extending through March 22, 2006. |
| 1957 ..... | 3–30–04 | Gasoducto Rosarito, S. De R.L. de C.V.. | ..... | 155 Bcf | Export natural gas to Mexico, beginning April 1, 2004, and extending through March 31, 2006. |
| 1963 ..... | 3–31–04 | Duke Energy Marketing Canada Corp.—04–36–NG. | 900 Bcf | | Import and export natural gas, including LNG from and to Canada, and import LNG from other countries for a combined total beginning on April 1, 2004, and extending through March 31, 2006. |

APPENDIX—ORDERS GRANTING, TRANSFERRING, AND VACATING IMPORT/EXPORT AUTHORIZATIONS—Continued

| Order No. | Date issued | Importer/Exporter FE docket No. | Import volume | Export volume | Comments |
|---|---|---|---|---|---|
| 1964 ..... | 3–31–04 | Energy Source Canada Inc.—04–37–NG. | 1 Bcf | | Import and export a combined total of natural gas from and to Canada, beginning on March 31, 2004, and extending through March 30, 2006. |
| 1965 ..... | 3–31–04 | LD Energy Canada LP—04–38–NG .... | 100 Bcf | | Import and export a combined total of natural gas from and to Canada, beginning on May 1, 2004, and extending through April 30, 2006. |

[FR Doc. 04–9048 Filed 4–20–04; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP04–102–000]**

### CenterPoint Energy Gas Transmission Company; Notice of Request Under Blanket Authorization

April 15, 2004.

Take notice that on April 7, 2004, CenterPoint Energy Gas Transmission Company (CEGT), 1111 Louisiana Street, Houston, Texas 77002–5231, filed in Docket No. CP04–102–000 a request pursuant to its blanket certificate issued September 1, 1982, and amended February 10, 1983, under Docket Nos. CP82–384–000 and CP82–384–001, for authority under section 157.211 of the Commission's regulations (18 CFR 157.211) to construct and operate a delivery tap in Sebastian County, Arkansas to deliver approximately 3,500 Dth/day (1,000,000 Dth annually) to the MacSteel Division of Quanex Corporation (MacSteel) under CEGT's Rate Schedule FT. The delivery tap will be constructed at an estimated cost of $110,774, which will be reimbursed by MacSteel, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Any questions regarding this application should be directed to Lawrence O. Thomas, Director-Rates & Regulatory, CenterPoint Energy Gas Transmission Company, P.O. Box 21734, Shreveport, Louisiana 71151, at (318) 429–2804 or fax (318) 429–3133.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests, comments and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages interveners to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

*Comment Date:* May 6, 2004.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–903 Filed 4–20–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–13–012]**

### East Tennessee Natural Gas Company; Notice of Negotiated Rate Filing

April 15, 2004.

Take notice that on April 9, 2004, East Tennessee Natural Gas Company (East Tennessee) tendered for filing its negotiated rate transactions with Washington Gas Light Company (WGL) pursuant to East Tennessee's Rate Schedule FT–A and with Lenoir City Utilities Board (LCUB) pursuant to East Tennessee's Rate Schedule FT–GS.

East Tennessee states that the purpose of this filing is to implement negotiated rate agreements for firm service to be rendered on East Tennessee pursuant to the WGL and LCUB service agreements. East Tennessee requests that the Commission accept for filing the WGL Negotiated Rate Agreement effective January 12, 2004, and the LCUB Negotiated Rate Agreement effective March 1, 2004. In addition, East Tennessee requests that the Commission grant any authorizations and waivers of the Commission's regulations to the extent necessary to permit the agreements to be made effective as proposed.

East Tennessee states that copies of the filing were sent to all affected customers of East Tennessee and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the e-Filing link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–897 Filed 4–20–04; 8:45 a.m.]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–152–004]**

### Northern Natural Gas Company; Notice of Compliance Filing

April 15, 2004.

Take notice that on April 8, 2004, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Revised Seventh Revised Sheet No. 303, with an effective date of January 1, 2004.

Northern states that the filing is being made to comply with the Commission's Letter Order directing Northern to clarify that any service agreement containing any type of formula-based discount identify the rate component discounted and that any formula produce a reservation rate per unit of contract demand.

Northern states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–900 Filed 4–20–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–171–001]**

### Portland Natural Gas Transmission System; Notice of Compliance Filing

April 15, 2004.

Take notice that on April 9, 2004, Portland Natural Gas Transmission System (PNGTS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of April 1, 2004:

Substitute First Revised Sheet No. 218
Substitute Original Sheet No. 219
Substitute Original Sheet No. 223
Substitute Third Revised Sheet No. 326
Substitute Second Revised Sheet No. 329

PNGTS states that the purpose of its filing is to comply with the Commission's Order issued in this proceeding on March 25, 2004, which accepted subject to certain conditions and modifications, tariff sheets filed by PNGTS on February 17, 2004, to establish a new hourly firm transportation service, *i.e.*, "Hourly Reserve Service'' (HRS) provided under a new Rate Schedule HRS.

PNGTS states that copies of this filing are being served on all jurisdictional customers and interested state commissions, as well as all persons on the service list for this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–902 Filed 4–20–04; 8:45 am]

**BILLING CODE 6717–01–U**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RP00–479–004 and RP00–624–004]**

### Trailblazer Pipeline Company; Notice Of Compliance Filing

April 15, 2004.

Take notice that on April 8, 2004, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, with an effective date of December 1, 2003.

Trailblazer states that the purpose of this filing is to comply with the Commission's Letter Order issued March 24, 2004, in Docket Nos. RP00–479–003 and RP00–624–003.

Trailblazer states that copies of the filing have been mailed to all parties on the Commission's official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the e-Filing link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–901 Filed 4–20–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP04–104–000]**

### Transwestern Pipeline Company; Notice Of Application

April 15, 2004.

Take notice that on April 8, 2004, Transwestern Pipeline Company (Transwestern), 1331 Lamar Street, Houston, Texas 77010, filed in Docket No. CP04–104–000 on an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA), to abandon and construct and operate pipeline and compression facilities (adding 72.6 miles of 36-inch diameter pipeline and 20,000 horsepower of compression) on Transwestern's San Juan Lateral in New Mexico in order to expand system capacity by 375,000 Dekatherms per day in order to alleviate supply and transportation constraints, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the web at *http://www.ferc.gov* using the "eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to Stephen T. Veatch, Senior Director, Certificates and Regulatory Reporting, at (713) 853–6549.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing'' link.

*Comment Date:* May 6, 2004.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–898 Filed 4–20–04; 8:45 a.m.]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EG04–47–000, et al.]**

### Curtis/Palmer Hydroelectric Company L.P., et al.; Electric Rate and Corporate Filings

April 13, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Curtis/Palmer Hydroelectric Company L.P.**

[Docket No. EG04–47–000]

On April 5, 2004, Curti/Palmer Hydroelectric Company L.P., filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Curtis/Palmer Hydroelectric Company L.P., states that it is a New York limited partnership that owns a generation facility near Corinth, New York.

*Comment Date:* April 26, 2004.

**2. TransCanada Power, L.P.**

[Docket No. EG04–48–000]

On April 5, 2004, TransCanada Power, L.P., filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. TransCanada Power, L.P., states that it is an Ontario limited partnership that will indirectly wholly own a generation Facility near Brush, Colorado and a hydroelectric Facility near Corinth, New York.

*Comment Date:* April 26, 2004.

**3. Manchief Power Company LLC**

[Docket No. EG04–49–000]

On April 5, 2004, Manchief Power Company LLC, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Manchief Power Company LLC states that it is a Delaware limited liability company that owns a generation facility near Brush, Colorado.

*Comment Date:* April 26, 2004.

**4. TransCanada Power L.P. USA Ltd.**

[Docket No. EG04–50–000]

On April 5, 2004, TransCanada Power L.P. USA Ltd., filed with the Federal Energy Regulatory Commission an application for determination of exempt

wholesale generator status pursuant to part 365 of the Commission's regulations. TransCanada Power, L.P. USA Ltd., states that it is a Delaware corporation that will indirectly own a generation Facility near Bush, Colorado and a hydroelectric Facility near Corinth, New York.

*Comment Date:* April 26, 2004.

**5. TC Power (Castleton) Ltd.**

[Docket No. EG04–51–000]

On April 5, 2004, TC Power (Castleton) Ltd., filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. TC Power (Castleton) Ltd., states that it is a Canadian corporation incorporated pursuant to the laws of Alberta that owns a generation facility near Castleton-on-Hudson, New York.

*Comment Date:* April 26, 2004.

**6. Midwest Independent Transmission System Operator, Inc., et al.; Ameren Services Company, et al.**

[Docket Nos. EL02–111–014 and EL03–212–011]

Take notice that on April 5, 2004, Ameren Services Company (Ameren) filed revisions to its open access transmission tariff (OATT) to comply with the Commission's order issued March 19, 2004 in Midwest Independent Transmission System Operator, Inc., *et al.*, Docket No. EL02–111–004 and Ameren Services Company, *et al.*, Docket No. EL03–212–002.

Ameren states that it has served electronic copies of this filing on all of the parties listed on the official service lists maintained in Docket Nos. EL02–111–000 and EL03–212–000, the Missouri Public Service Commission and the Illinois Commerce Commission.

*Comment Date:* April 26, 2004.

**7. Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.**

[Docket No. EL02–111–015]

Take notice that on April 5, 2004, PJM Interconnection, L.L.C., (PJM) on behalf of itself and the Transmission Owners Agreement Administrative Committee, filed revisions to its Open Access Transmission Tariff, in compliance with the Commission's Order Accepting Agreement Establishing Going-Forward Principles and Procedures, and Extending Dates, issued on March 19, 2004, in Docket No. EL02–111–045,106 FERC ¶ 61,260 (2004). PJM states that the compliance tariff sheets have an effective date of May 1, 2004.

PJM states that copies of this filing have been served on all PJM members and utility regulatory commissions in the PJM Region and on all parties listed on the official service list compiled by the Secretary in this proceeding.

*Comment Date:* April 26, 2004.

**8. Midwest Independent Transmission System Operator, Inc.**

[Docket Nos. EL02–111–016 and EL03–212–014]

Take notice that on April 5, 2004, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing revisions to its Open Access Transmission Tariff in response to the Commission's March 19, 2004, Order in the above-captioned dockets, to become effective as of December 1, 2004.

The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

*Comment Date:* April 26, 2004.

**9. American Electric Power Service Corporation, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., and Dayton Power and Light Company**

[Docket No. EL03–212–005]

Take notice that on April 5, 2004, American Electric Power Service Corporation on behalf of Appalachian Power Service Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company (AEP), Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (ComEd), and Dayton Power and Light Company (DP&L) (Companies) submitted a notice of withdrawal of compliance filings submitted previously in this proceeding on January 2, 2004, and February 25, 2004. The Companies state that they are withdrawing these compliance filings because the filings have been superseded by the Commission's Order in this proceeding on March 19, 2004, Midwest Independent Transmission System Operator, *et al.*, 106 FERC ¶ 61,260 (2004), and by a compliance filing in response to the March 19 Order filed by PJM on behalf of the Companies and the PJM Transmission Owners Agreement Administrative Committee.

AEP, ComEd and DP&L state that they have served copies of this filing on all parties on the Commission's official service list for this proceeding.

*Comment Date:* April 26, 2004.

**10. Illinois Power Company**

[Docket No. EL03–212–013]

Take notice that on April 5, 2004, Illinois Power Company (IPC) filed revisions to Schedules 7 and 8 of its Open Access Transmission Tariff to comply with the order accepting the Going Forward Principles and Procedures that the Commission issued in Docket Nos. EL02–111–004 and EL03–212–002 on March 19, 2004, 106 FERC ¶ 61,262 (2004). IPC states that the revisions are to become effective on December 1, 2004.

*Comment Date:* April 26, 2004.

**11. W.E. Power LLC, and Elm Road Generating Station Supercritical, LLC**

[Docket No. EL04–96–000]

Take notice that on April 7, 2004, W.E. Power LLC (W.E. Power) and Elm Road Generating Station Supercritical, LLC (the Project Company) pursuant to section 207 of the Commission's rules of practice and procedure, 18 CFR 385.207 (2003), filed a Petition for Declaratory Order requesting the Commission to find that W.E. Power and the Project Company are not public utilities under section 201(e) of the Federal Power Act, 16 U.S.C. 824(e).

*Comment Date:* April 26, 2004.

**12. Allegheny Power**

[Docket No. ER02–136–006]

Take notice that on April 8, 2004, West Penn Power Company doing business as Allegheny Power (Allegheny Power) filed with the Commission a compliance filing as required by the Commission's Opinion No. 469 issued March 9, 2004, in Docket No. ER02–136–004.

*Comment Date:* April 29, 2004.

**13. Pacific Gas and Electric Company**

[Docket Nos. ER03–409–002 and ER03–666–002]

Take notice that on April 8, 2004, Pacific Gas and Electric Company (PG&E) submitted a refund compliance filing in response to the Commission(s Opinion No. 470, issued March 9, 2004, in Docket Nos. ER03–409–001 and ER03–666–001.

PG&E states that copies of this filing have been served upon the California Independent System Operator Corporation (CAISO), Scheduling Coordinators registered with the CAISO, the California Public Utilities Commission and parties to the official service lists in the affected dockets.

*Comment Date:* April 29, 2004.

**14. Devon Power LLC, Middletown, Power LLC, Montville Power LLC, Norwalk Power LLC and NRG Power Marketing Inc.**

[Docket No. ER03–563–032]

Take notice that on April 7, 2004, Devon Power LLC, Middletown Power LLC, Montville Power LLC, and Norwalk Power LLC (collectively Applicants) tendered for filing True-Up Schedules to the Cost-of-Service Agreements entered into between Applicants and ISO New England Inc. (ISO–NE).

Applicants state that they have provided copies of this filing to ISO–NE and served each person designated on the official service list compiled by the Secretary in this proceeding.

*Comment Date:* April 29, 2004.

**15. Gilroy Energy Center, LLC**

[Docket No. ER04–321–002]

Take notice that on April 8, 2004, Gilroy Energy Center, LLC (Gilroy) submitted a compliance filing containing revised rate schedule sheets to the Amended and Restated Must-Run Service Agreement between Gilroy and the California Independent System Operator Corporation, pursuant to the Commission's March 24, 2004, Order in this proceeding, 106 FERC ¶ 61,270 (2004).

Gilroy states that copies of the filing have been served upon each person designated on the official service list compiled by the Secretary in these proceedings.

*Comment Date:* April 29, 2004.

**16. New York Independent System Operator, Inc.**

[Docket No. ER04–449–001]

Take notice that on April 8, 2004, the New York Independent System Operator, Inc. (NYISO) and the New York Transmission Owners (collectively, the Joint Filing Parties) filed a Motion to Supplement Joint Compliance Filing submitted by the Joint Filing Parties on January 20, 2004.

The Joint Filing Parties state that a copy of this filing has been served upon all parties in Docket No. ER04–449–000.

*Comment Date:* April 19, 2004.

**17. Pacific Gas and Electric Company**

[Docket No. ER04–484–002]

Take notice that on April 7, 2004, Pacific Gas and Electric Company (PG&E) tendered this filing in compliance with the Commission's order issued March 18, 2004, in Docket Nos. ER04–484–000 and ER04–484–001.

PG&E states that copies of this filing have been served upon the California Independent System Operator Corporation (CAISO), Hercules Municipal Utility, and the California Public Utilities Commission.

*Comment Date:* April 28, 2004.

**18. CMS Energy Resource Management Company**

[Docket No. ER04–543–001]

Take notice that on April 8, 2004, CMS Energy Resource Management Company (CMS ERM) submitted for filing a revised power marketing tariff together with an appendix to implement market behavior rules. CMS states that this filing is intended to change the name of the entity on their existing power marketing tariff, and to engraft the Commission approved market behavior rules into the tariff.

*Comment Date:* April 29, 2004.

**19. Northeast Utilities Service Company**

[Docket No. ER04–720–000]

Take notice that on April 8, 2004, Northeast Utilities Service Company (NUSCO), on behalf of the Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, and Public Service Company of New Hampshire, submitted pursuant to section 205 of the Federal Power Act and part 35 of the Commission's regulations, Notices of Cancellation of the rate schedules for sales of electricity to the City of Chicopee, Massachusetts, Municipal Light Plant (Chicopee) and the City of Holyoke Gas & Electric Department (Holyoke). NUSCO requests that the rate schedule cancellations be effective as of October 31, 2004, the date on which the rate schedules terminated by their own terms.

NUSCO states that a copy of this filing has been mailed to Chicopee, Holyoke and Select Energy, Inc.

*Comment Date:* April 28, 2004.

**20. Pacific Gas and Electric Company**

[Docket No. ER04–721–000]

Take notice that on April 8, 2004, Pacific Gas and Electric Company (PG&E) pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and section 35.13(a)(2)(iii) of the regulations of the Commission, 18 CFR 35.13(a)(2)(iii), filed an Amendment to the existing Interconnection Agreement under Service Agreement No. 12, PG&E Electric Tariff, First Revised Volume No. 4 between Pacific Gas and Electric Company and Port of Stockton (Port).

PG&E states that copies of the filing have been served upon each person designated on the official service list compiled by the Secretary in Docket No. ER03–947–000.

*Comment Date:* April 29, 2004.

**21. Sierra Pacific Power Company and Nevada Power Company**

[Docket No. ER04–722–000]

Take notice that on April 8, 2004, Nevada Power Company and Sierra Pacific Power Company (the Nevada Companies) tendered for filing revisions to its Open Access Transmission Tariff (OATT) with respect to the Large Generator Interconnection Procedures and Large Generator Interconnection Agreement pro forma requirements issued by the Commission in FERC Order Nos. 2003 and 2003–A. The Nevada Companies request an effective date of June 7, 2004, for implementation of the requested changes.

The Nevada Companies state that copies of this letter have been served on all Nevada Company OATT customers, and the State public utility commissions of Nevada and California.

*Comment Date:* April 29, 2004.

**22. Arizona Public Service Company**

[Docket No. ER04–723–000]

Take notice that on April 8, 2004, Arizona Public Service Company (APS) tendered for filing revisions to its Open Access Transmission Tariff (OATT) with respect to the Large Generator Interconnection Procedures and Large Generator Interconnection Agreement pro forma requirements issued by the Commission in FERC Order Nos. 2003 and 2003–A. APS requests an effective date of June 7, 2004, for implementation of the requested changes.

APS state that copies of this letter have been served on all OATT customers and the Arizona Corporation Commission.

*Comment Date:* April 29, 2004.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing'' link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–896 Filed 4–20–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 7725–005]**

### Barton Village, Inc., Vermont; Notice Of Availability Of Environmental Assessment

April 15, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Barton Village Hydroelectric Project and has prepared an Environmental Assessment (EA) for the project. The project is located on the Clyde River, in the Town of Charleston, within the county of Orleans, Vermont. No Federal lands or facilities are occupied or used by the project.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's website at *http://www.ferc.gov* using the "eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix "Barton Village Hydroelectric Project No. 7725'' to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing'' link. For further information, contact Timothy Looney at (202) 502–6096 or by e-mail at *timothy.looney@ferc.gov*.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–899 Filed 4–20–04; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7650–9]**

### Science Advisory Board Staff Office; Request for Nominations for Additional Expertise on the Science Advisory Board's Ecological Processes and Effects Committee to Review a Model for Predicting Ecological Significance at the Landscape Scale

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office is requesting nominations to add expertise to the SAB Ecological Processes and Effects Committee to review EPA's Critical Ecosystem Assessment Model (CrEAM). The CrEAM was developed to predict ecological significance at the landscape scale.

**DATES:** Nominations should be submitted by May 12, 2004 per the instructions below.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information regarding this Request for Nominations may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), via telephone/voice mail at (202) 343–9995; via e-mail at *armitage.thomas@epa.gov;* or at the U.S. EPA Science Advisory Board (1400F), 1200 Pennsylvania Ave., NW., Washington, DC 20460. General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab.*

**SUPPLEMENTARY INFORMATION:**

*Background:* EPA Region V has requested that the SAB conduct a review of the CrEAM. The CrEAM is a spatially explicit model developed by EPA Region V for predicting the ecological significance of undeveloped land using ecological theory, existing data sets, and geographic information system (GIS) technology. The EPA Region V Critical Ecosystems Team developed the CrEAM to assess the ecological significance of land areas across the states of EPA Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin). The model may potentially be used to identify significant ecosystems in order to target protection and restoration efforts in EPA Region V. The CrEAM identifies ecologically significant areas by integrating three important conditions: (1) Ecosystem diversity, (2) ecological self sustainability, and (3) species and land cover rarity. A geographic information system was selected as the analysis platform for the CrEAM in order to aggregate multiple geographically referenced data sets and conduct landscape scale analysis. The National Land Cover Database (NLCD) was used as the base data layer in the model and twenty relevant data sets were used as indicators to predict the potential for ecosystem diversity, ecological self sustainability, and species and land cover rarity at a scale of 300m x 300m. This information can be used to prioritize ecologically significant areas in EPA Region V.

The Science Advisory Board is a chartered Federal advisory committee, which reports directly to the EPA Administrator. The panel being formed will provide advice to the Agency, as a part of the SAB's mission to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical bases for EPA positions and regulations. The Panel will provide advice to the EPA through the chartered SAB. The Panel will comply with the provisions of the Federal Advisory Committee Act and all appropriate SAB procedural policies, including the SAB process for panel formation described in the *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board*, which can be

found on the SAB's Web site at: *http://www.epa.gov/sab/pdf/ec0210.pdf.* The Panel will hold a two-day meeting to review the CrEAM.

*Tentative Charge to the Panel:* EPA is seeking comment on the scientific validity of the conceptual framework and methodology used to identify ecologically significant ecosystems and on the scientific defensibility of the results generated from CrEAM queries. Specifically, EPA seeks advice from the panel on: (1) The appropriateness of the term "ecological significance'' as defined in the CrEAM; (2) the scientific validity of the use the selected data sets and indicators to generate ratings of ecological significance; (3) the scientific validity of nesting and compositing of multiple indicator data sets to rate ecosystems; (4) relevant data sets consistently collected across the 6-state Region that should have been used but were not; and (5) the scientific and technical sufficiency of CrEAM queries for use in strategic planning and priority setting.

*Request for Nominations:* The SAB Staff Office is requesting nominations to add expertise to the Ecological Processes and Effects Committee to form an SAB panel to review the CrEAM. To supplement expertise on the Ecological Processes and Effects Committee, the SAB Staff Office is seeking individuals who have expertise in ecology and the use of geographic information system technology to evaluate data and conduct landscape scale analyses.

*Process and Deadline for Submitting Nominations:* Any interested person or organization may nominate individuals qualified in the areas of expertise described above to serve on the Subcommittee. Nominations should be submitted in electronic format through the *Form for Nominating Individuals to Panels of the EPA Science Advisory Board* provided on the SAB Web site, *http://www.epa.gov/sab.* The form can be accessed through a link on the blue navigational bar on the SAB Web site, *http://www.epa.gov/sab.* To be considered, all nominations must include the information required on that form.

Anyone who is unable to submit nominations using this form, and any questions concerning any aspects of the nomination process may contact the DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than May 12, 2004. Any questions concerning either this process or any other aspects of this notice should be directed to the DFO.

The SAB will acknowledge receipt of the nomination and inform nominators of the panel selected. From the nominees identified by respondents to this **Federal Register** notice (termed the "Widecast''), SAB Staff will develop a smaller subset (known as the "Short List'') for more detailed consideration. Criteria used by the SAB Staff in developing this Short List are given at the end of the following paragraph. The Short List will be posted on the SAB Web site at: *http://www.epa.gov/sab*, and will include, for each candidate, the nominee's name and biosketch. Public comments on the Short List will be accepted for 21 calendar days. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff should consider in evaluating candidates for the Panel.

For the SAB, a balanced review panel (*i.e.*, committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the panel, along with information provided by candidates and information gathered by SAB Staff independently of the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluation of an individual subcommittee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Short List candidates will also be required to fill-out the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110–48.pdf.*

In addition to reviewing background material, Panel members will be asked to attend one public face-to-face meeting over the anticipated course of the advisory activity.

Dated: April 15, 2004.

**Vanessa T. Vu,**

*Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 04–9047 Filed 4–20–04; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7650–7]**

## Science Advisory Board Staff Office; Request for Nominations for the Science Advisory Board Formaldehyde Review Panel

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office announces the formation of a new SAB review panel known as the Formaldehyde Review Panel (FRP), and is soliciting nominations for members of the Panel.

**DATES:** Nominations should be submitted by May 12, 2004.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public requiring further information regarding this Request for Nominations, or a paper nomination form, may contact Dr. Suhair Shallal, Designated Federal Officer (DFO), by telephone/voice mail at (202) 343–9977, via e-mail at *shallal.suhair@epa.gov*, or at the following address: Suhair Shallal, PhD., Science Advisory Board Staff Office, U.S. Environmental Protection Agency (Mail Code 1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB can be found in the SAB Web site at: *http://www.epa.gov/sab.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The EPA SAB Staff Office is announcing the formation of a new review panel and soliciting nominations for members of the panel. This panel is being formed to help provide advice to the Agency, as part of the SAB's mission, established by 42 U.S.C. 4365, to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical bases for EPA policies and regulations. The work of this panel is expected to continue until the review is complete. The SAB

is a chartered Federal Advisory Committee that reports directly to the Administrator. The FRP will provide advice through the chartered SAB. The FRP will comply with the openness provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies, including the SAB process for panel formation described in the Overview of the Panel Formation Process at the Environmental Protection Agency, Science Advisory Board (EPA–SAB–EC–COM–02–010), *http://www.epa.gov/sab/pdf/ecm02010.pdf.*

EPA's National Center for Environmental Assessment (NCEA) had requested that the SAB conduct a peer review of the set of three toxicological reviews including: formaldehyde, acetaldehyde, and vinyl acetate. All three of these documents were to be reviewed simultaneously. Accordingly, the SAB Staff Office announced in a **Federal Register** notice dated March 4, 2003 (68 FR10241) the formation of a SAB Review Panel (Formaldehyde, Acetaldehyde, and Vinyl Acetate Toxicological Reviews panel) and sought public nomination of experts to serve on the panel. At this time, NCEA has requested that the SAB conduct a peer review of the Formaldehyde Toxicological Review document first. The Acetaldehyde and Vinyl Acetate Toxicological Reviews will be peer reviewed at a later date. Formaldehyde is listed as a hazardous air pollutants (HAPs) on the Clean Air Act Amendments of 1990 and is associated with significant ambient exposures. The SAB is being asked to conduct this review because of its previous review of the draft formaldehyde risk assessment update (EPA–SAB–EHC–92–021), the precedent setting nature of the assessment using mode of action and biologically based models, and the high priority with respect to programmatic relevance of this document.

The overall charge to the FRP is to review the Formaldehyde Toxicological Review for consistency in application of the Agency's proposed revised cancer guidelines and principles of mode-of-action modeling, with special emphasis on: (a) Weight-of-the-evidence issues to identify key events; (b) the use of pharmacokinetic and pharmacodynamic data; (c) motivation for dose surrogate and effect measures; (d) model structures for interspecies dosimetric adjustment; (e) model structures or dose-response analysis; (f) data-derived uncertainty factors for interspecies and intrahuman variability; and (g) leveraging of data on critical health effects and model structure sharing between routes and across chemically-related compounds to help inform alignment of the estimates.

*SAB Request for Nominations:* The SAB Staff Office is requesting nominations of recognized experts with one or more of the following expertise: (a) Inhalation dosimetry modeling (*e.g.*, computational fluid dynamics (CFD) modeling), (b) physiologically based pharmacokinetic (PBPK) modeling, (c) biologically-based dose-response (BBDR) modeling for cancer, (d) epidemiology including exposure reconstruction, (e) biochemistry, (f) inhalation toxicology and respiratory physiology, (g) gastrointestinal tract toxicology and physiology, (h) pathology, (i) carcinogenesis including leukemia, (j) respiratory biology and immunology, (k) toxicology (including, genetic, reproductive, developmental), (l) quantitative risk assessment, and (m) biostatistics and mathematical modeling.

*Process and Deadline for Submitting Nominations:* Any interested person or organization may nominate qualified individuals to serve as panel members in the areas described above. Nominations should be submitted in electronic format through the Form for Nominating Individuals to Panels of the U.S. Environmental Protection Agency (EPA) Science Advisory Board provided on the SAB Web site. The form can be accessed through a link on the blue navigational bar of the SAB Web site at: *http:// www.epa.gov/sab.* To be considered, all nominations should include the information requested on that form. Anyone who is unable to access nominations on the SAB Web site can obtain a paper copy of the form by contacting the DFO, as indicated above. The nominating form requests the following: (1) Contact information about the person making the nomination; (2) contact information about the nominee; (3) the disciplinary and specific areas of expertise of the nominee; (4) the nominee's resume; and (5) a general biosketch of the nominee indicating education, expertise, past research, recent service on other advisory committees or with professional associations, and recent grant and/or contract support. Nominations should be submitted in time to arrive no later than May 12, 2004. From the nominees identified by respondents to this notice and through other sources (termed the "Widecast''), the SAB Staff Office will develop a smaller subset (known as the "Short List'') for more detailed consideration. Criteria used by the SAB Staff Office in developing this Short List are given at the end of the following paragraph. The SAB Staff Office will contact individuals who are considered for inclusion in the Short List to determine whether they are willing to serve on the Panel. The Short List will be posted on the SAB Web site at: *http://www.epa.gov/sab*, and will include, for each candidate, the nominee's name and their biosketch. The Short List also will be available from the DFO listed above. Public comments will be accepted for 14 calendar days on the Short List. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates for the Panel. For the SAB, a balanced Panel is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge.

Public responses to the Short List candidates will be considered in the selection of the Panel members, along with information provided by candidates and information gathered by SAB Staff Office independently on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating individual nominees include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in panels. Those Short List candidates ultimately chosen to serve on the Panel will be appointed as Special Government Employees (SGEs). Therefore, all Short List candidates will be required to fill out the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities as an SGE and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the SAB Web site at: *http://www.epa.gov/sab/pdf/epaform3110-48.pdf.*

Dated: April 15, 2004.

**Vanessa T. Vu,**

*Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 04–9045 Filed 4–20–04; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2002–0001; FRL–7356–9]**

## National Pollution Prevention and Toxics Advisory Committee; Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 (Public Law 92–463), EPA gives notice of a 1 day meeting of the National Pollution Prevention and Toxics Advisory Committee (NPPTAC). The purpose of the NPPTAC is to provide advice and recommendations to EPA regarding the overall policy and operations of the programs of the Office of Pollution Prevention and Toxics (OPPT).

**DATES:** The meeting will be held on May 13, 2004, from 8 a.m. to 4:30 p.m..

Registration to attend the meeting, identified by docket ID number OPPT–2002–0001, must be received on or before May 7, 2004. Registration will also be accepted at the meeting.

Requests to provide oral comments at the meeting, identified as NPPTAC May 2004 meeting, must be received in writing on or before April 27, 2004.

Written comments, identified as NPPTAC May 2004 meeting, may be submitted at any time. Written comments received on or before April 27, 2004, will be forwarded to the NPPTAC members prior to or at the meeting.

**ADDRESSES:** The meeting will be held at the Hilton—Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

For address information concerning registration, the submission of written comments, and requests to present oral comments, refer to Unit I. of the **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

*For technical information contact*: Mary Hanley (7401M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9891; e-mail address: *npptac.oppt@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of particular interest to those persons who have an interest in or may be required to manage pollution prevention and toxic chemical programs, individuals, groups concerned with environmental justice, children's health, or animal welfare, as they relate to OPPT's programs under the Toxic Substances Control Act (TSCA) and the Pollution Prevention Act (PPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in the activities of the NPPTAC. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0001. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102—Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. EPA's Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search,'' then key in the appropriate docket ID number.

*C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the docket ID number OPPT–2002–0001, NPPTAC May 2004 meeting in the subject line on the first page of your comment.

1. *By mail:* OPPT Document Control Office, Environmental Protection Agency, 7407M, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

2. *Electronically:* At *http://www.epa.gov/edocket/*, search for OPPT–2002–0001, and follow the directions to submit comments.

3. *Hand delivery/courier:* OPPT Document Control Office in EPA East Bldg., Rm. M6428, 1201 Constitution Ave., Washington, DC.

### II. Background

The proposed agenda for the NPPTAC meeting includes: The High Production Volume Challenge Program; Pollution Prevention, Risk Assessment; Risk Management; Risk Communication, and coordination with Tribes and other stakeholders. The meeting is open to the public.

### III. How Can I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. Please note that registration will assist in planning adequate seating; however, members of the public can register the day of the meeting. Therefore, all seating will be available on a first come, first serve basis.

1. *To register to attend the meeting.* Pre-registration for the May 2004 NPPTAC meeting and requests for special accommodations may be made by visiting the NPPTAC web site at: *http://www.epa.gov/oppt/npptac/*

*meetings.htm.* If you have problems downloading the registration form, please e-mail us at *npptac.oppt@epa.gov* or leave a message at (202) 564–9891. Please indicate your name and telephone number. Registration will also be available at the meeting. In order to provide special accommodations, the request should be received by April 27, 2004. Special accommodations may also be requested by calling (202) 564–9891 and leaving your name and telephone number.

2. *To request an opportunity to provide oral comments.* You must register first in order to request an opportunity to provide oral comments at the May 2004 NPPTAC meeting. To register visit the NPPTAC web site at: *http://www.epa.gov/oppt/npptac/meetings.htm.* Request to provide oral comments at the meeting must be submitted in writing on or before April 27, 2004, with a registration form. Please note that time for oral comments may be 3 to 5 minutes per speaker, depending on the number of requests received.

3. *Written comments.* You may submit written comments to the docket address listed under Unit I.C.1. Written comments can be submitted at any time. If written comments are submitted on or before April 27, 2004, they will be provided to the NPPTAC members prior to or at the meeting. If you provide written comments at the meeting, 35 copies will be needed.

Do not submit any information that is considered CBI.

### List of Subjects

Environmental protection, NPPTAC, Pollution prevention, Toxics, Toxic chemicals, Chemical health and safety.

Dated: April 15, 2004.

**Mary Ellen Weber,**

*Acting Director, Office of Pollution Prevention and Toxics.*

[FR Doc. 04–9088 Filed 4–16–04; 4:27 pm]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2003–0349; FRL–7335-7]**

## Availability of Reregistration Eligibility Decision Document for Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces availability and starts a 60-day public comment period on the Reregistration Eligibility Decision (RED) document for the pesticide active ingredient diuron. The RED represents EPA's formal regulatory assessment of the human health and environmental risks of diuron, outlines measures for mitigating the risks, and presents the Agency's determination regarding which pesticidal uses are eligible for reregistration. Diuron is registered for pre-emergent and post-emergent herbicide treatment of both crop and non-crop areas, as a mildewcide and preservative in paints and stains, and as an algaecide in commercial fish production, residential ponds and aquariums.

**DATES:** Comments, identified by docket ID number OPP–2003–0349, must be received on or before June 21, 2004.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Diane Isbell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8154; e-mail address:*isbell.diane@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug, and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticides users; and members of the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0349. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the"**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* To access the RED document and RED fact sheet electronically, go directly to the REDs table on the EPA Office of Pesticide Programs Home Page, at *http://www.epa.gov/pesticides/reregistration/status.htm.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly

available docket materials through EPA's electronic public docket.

For public commentors, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search,'' and then key in docket ID number OPP–2003–0349. The system is an "anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0349. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0349.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0349. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

*D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Background

*A. What Action is the Agency Taking?*

The Agency has issued the RED for the pesticide active ingredient diuron. Diuron is registered for use as an herbicide, mildewcide, and algaecide; however, most of the use is on citrus and non-crop areas, such as rights-of-way. The diuron risk mitigation includes rate reductions and increased retreatment intervals on 10 crops. In addition, aerial applications have been eliminated except for rights-of-way, alfalfa, cotton, winter barley, winter wheat, sugarcane, and grass seed crops. All wettable powder products are being canceled. Application by pump-feed backpack spreader and gravity-feed backpack spreader will be prohibited. Use on home lawns will be prohibited.

Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of diuron is substantially complete, and the pesticide's risks have been mitigated so that it will not pose unreasonable risks to people or the environment when used according to its approved labeling. In addition, EPA is reevaluating existing pesticides and reassessing tolerances under the Food Quality Protection Act (FQPA) of 1996. The pesticide included in this notice also has been found to meet the FQPA safety standard. The tolerance reassesment decision was completed in July 2002.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing this RED as a final document with a 60–day comment period. The 60–day public comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. If any comment significantly affects the RED, EPA will amend the RED by publishing the amendment in the **Federal Register**.

*B. What is the Agency's Authority for Taking this Action?*

The legal authority for the RED falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products, and either reregistering products or taking "other appropriate regulatory action.''

### List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: April 6, 2004.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 04–8583 Filed 4–20–04; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2004–0101; FRL–7354–1]**

## Pesticide Product; Registration Applications

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of an application to register a pesticide product containing an active ingredient involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Written comments, identified by the docket ID number OPP–2004–0101, must be received on or before May 21, 2004.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Anne Ball, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8717; e-mail address: *ball.anne@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

You may be potentially affected by this action if you are a pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

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

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0101. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and

other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search,'' and then key in docket ID number OPP–2004–0101. The system is an "anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0101. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0101.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0101. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

*D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Registration Applications

EPA received an application as follows to register a pesticide product containing an active ingredient involving a changed use pattern pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

*File symbol*: 68660–O. *Applicant*: Solvay Interox, Inc., 3333 Richmond Ave., Houston, TX 77098. *Product name*: PAK 27 Algaecide. *Product type*: Biochemical algaecide. *Active ingredient*: Sodium carbonate peroxyhydrate. *Proposed classification/Use*: None. Pak 27 Algaecide has claims for control of blue-green algae in lakes, ponds and drinking water reservoirs.

## List of Subjects

Environmental protection, Pesticides and pest.

Dated: April 9, 2004.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 04–8906 Filed 4–20–04; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2004–0112; FRL–7355–4]**

## Extension/Amendment of an Experimental Use Permit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted an experimental use permit (EUP) extension/amendment to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

**FOR FURTHER INFORMATION CONTACT:** Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information a

*A. Does this Action Apply to Me?*

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0112. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search,'' then key in the appropriate docket ID number.

## II. EUP

EPA has issued the following EUP:

*68467–EUP–6*. Extension/Amendment. DowAgro Sciences, LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054. This EUP allows the use of 61,891 pounds of the plant-incorporated protectant *Bacillus thuringiensis* var. aizawai strain PS811 (Cry1F insecticidal protein in cotton) and *Bacillus thuringiensis* var. kurstaki strain HD73 (Cry1Ac insecticidal crystal protein in cotton) on 4,953 acres of cotton to evaluate the control of tobacco budworm and pink bollworm. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, South Carolina, Tennessee, Texas, and Virginia. The EUP is effective from March 11, 2004 to April 30, 2005. A tolerance has been established for residues of the active ingredient in or on cotton.

**Authority:** 7 U.S.C. 136c.

## List of Subjects

Environmental protection, Experimental use permits.

Dated: April 12, 2004.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 04–8907 Filed 4–20–04; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2004–0113; FRL–7355–5]**

### Issuance of an Experimental Use Permit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

**FOR FURTHER INFORMATION CONTACT:** Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0113. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search,'' then key in the appropriate docket ID number.

### II. EUP

EPA has issued the following EUP:

*67979–EUP–2*. Issuance. Syngenta Seeds, 3054 Cornwallis Road, Research Triangle Park, NC 27709–2257. This EUP allows the use of 23.7432 grams of the plant-incorporated protectant *Bacillus thuingiensis* VIP3A insect control protein as expressed in Event COT102 cotton plants on 4,195 acres of cotton to evaluate the control of cotton bollworm and tobacco budworm. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. The EUP is effective from March 18, 2004 to March 31, 2005. A tolerance has been established for residues of the active ingredient in or on cotton.

**Authority:** 7 U.S.C. 136c.

### List of Subjects

Environmental protection, Experimental use permits.

Dated: April 12, 2004.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 04–8908 Filed 4–20–04; 8:45 am]

BILLING CODE 6560–50–S

## FEDERAL ELECTION COMMISSION

**[Notice 2004–9]**

### Schedule of Matching Fund Submission Dates and Submission Dates for Statements of Net Outstanding Campaign Obligations (NOCO) for 2004 Presidential Candidates Post Date of Ineligibility

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of matching fund submission dates and submission dates for statements of net outstanding campaign obligations for 2004 Presidential candidates post Date of Ineligibility.

**SUMMARY:** The Federal Election Commission is publishing matching fund submission dates for publicly funded 2004 Presidential primary candidates. Eligible candidates may present one submission and/or resubmission per month on the designated date. Also being published are submission dates for statements of net outstanding campaign obligations ("NOCO statements'') which are required to be submitted by publicly funded 2004 presidential primary candidates following their date of ineligibility ("DOI''). Candidates are required to submit a NOCO statement prior to each regularly scheduled date on which they receive federal matching funds, on dates to be determined by the Commission.

**FOR FURTHER INFORMATION CONTACT:** Mr. Raymond Lisi, Audit Division, 999 E Street, NW., Washington, DC 20463, (202) 694–1200 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:**

### Matching Fund Submissions

Presidential candidates eligible to receive federal matching funds may present submissions and/or resubmissions to the Federal Election Commission once a month on designated submission dates. The Commission will review the submissions/resubmissions and forward certifications to the Secretary of Treasury for payments. Since no payments could be made during 2003, submissions received during 2003 were certified in late December 2003, for payment on January 2, 2004. 11 CFR 9036.2(c). During 2004 and 2005, certifications and payments will be made on a monthly basis. The last date a candidate may make a submission is March 7, 2005.

The submission dates specified in the following list pertain to non-threshold matching fund submissions and resubmissions after the candidate

establishes eligibility. The threshold submission on which that eligibility will be determined may be filed at any time and will be processed within fifteen business days unless review of the threshold submission determines that eligibility has not been met.

**NOCO Submissions**

Under 11 CFR 9034.5, a candidate who received federal matching funds must submit a NOCO statement to the Commission within 15 calendar days after the candidate's date of ineligibility, as determined under 11 CFR 9033.5. The candidate's net outstanding campaign obligations is equal to the difference between the total of all outstanding obligations for qualified campaign expenses plus estimated necessary winding down costs less cash on hand, the fair market value of capital assets, and accounts receivable. 11 CFR 9034.5(a). Candidates will be notified of their DOI by the Commission.

Candidates who have net outstanding campaign obligations post-DOI may continue to submit matching payment requests as long as the candidate certifies that the remaining net outstanding campaign obligations equal or exceed the amount submitted for matching. 11 CFR 9034.5(f)(1). If the candidate so certifies, the Commission will process the request and certify the appropriate amount of matching funds.

Candidates must also file revised NOCO statements in connection with each matching fund request submitted after the candidate's DOI. These statements are due just before the next regularly scheduled payment date, on a date to be determined by the Commission. They must reflect the financial status of the campaign as of the close of business three business days before the due date of the statement and must also contain a brief explanation of each change in the committee's assets and obligation from the most recent NOCO statement. 11 CFR 9034.5(f)(2).

The Commission will review the revised NOCO statement and adjust the committee's certification to reflect any change in the committee's financial position that occurs after submission of the matching payment request and the date of the revised NOCO statement.

The following schedule includes both matching fund submission dates and submission dates for revised NOCO statements.

SCHEDULE OF MATCHING FUND SUBMISSION DATES AND SUBMISSION DATES FOR STATEMENTS OF NET OUTSTANDING CAMPAIGN OBLIGATIONS (NOCO) FOR 2004 PRESIDENTIAL CANDIDATES

| Submission dates | NOCO submission dates |
|---|---|
| 02/02/04 | 02/23/04 |
| 03/01/04 | 03/24/04 |
| 04/01/04 | 04/23/04 |
| 05/03/04 | 05/25/04 |
| 06/01/04 | 06/23/04 |
| 07/01/04 | 07/23/04 |
| 08/02/04 | 08/25/04 |
| 09/01/04 | 09/23/04 |
| 10/01/04 | 10/25/04 |
| 11/01/04 | 11/25/04 |
| 12/01/04 | 12/27/04 |
| 01/03/05 | 01/25/05 |
| 02/01/05 | 02/21/05 |
| 03/07/05 | 03/24/05 |

Dated: April 15, 2004.

**Bradley A. Smith,**

*Chairman, Federal Election Commission.*

[FR Doc. 04–8954 Filed 4–20–04; 8:45 am]

BILLING CODE 6715–07–P

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 010776–125.

*Title:* Asia North America Eastbound Rate Agreement.

*Parties:* American President Lines, Ltd.; APL Co. Pte Ltd.; Hapag-Lloyd Container Line GmbH; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; A. P. Moller-Maersk A/S; Nippon Yusen Kaisha Line; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; and P&O Nedlloyd Limited.

*Synopsis:* The modification extends the suspension of the conference through November 30, 2004.

*Agreement No.:* 011878.

*Title:* Lykes/MOL Slot Charter Agreement.

*Parties:* Lykes Lines Limited, LLC and Mitsui O.S.K Lines, Ltd.

*Synopsis:* The agreement authorizes Lykes to charter space to MOL between the U.S. Gulf Coast and Puerto Rico, on the one hand, and ports in the Dominican Republic, Mexico, Honduras, Costa Rica, Panama, Colombia, and Venezuela, on the other hand.

*Agreement No.:* 011879.

*Title:* CMA CGM/WHL/Norasia Cross Space Charter and Sailing Charter Agreement.

*Parties:* CMA CGM, S.A.; Norasia Container Lines Limited; and Wan Hai Lies Ltd.

*Synopsis:* The agreement authorizes the parties to share vessel space in the trade between ports in China and South Korea and ports on the Pacific Coast of the United States.

By Order of the Federal Maritime Commission.

Dated: April 16, 2004.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 04–9026 Filed 4–20–04; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

*License Number:* 008657N.
*Name:* AACCO.
*Address:* 841 Pioneer Avenue, Wilmington, CA 90744.
*Date Revoked:* March 31, 2004.
*Reason:* Failed to maintain a valid bond.

*License Number:* 015429N.
*Name:* A.C.C. Logistics Ltd.
*Address:* 231 West 39th Street, Suite 729, New York, NY 10018.
*Date Revoked:* March 20, 2004.
*Reason:* Failed to maintain a valid bond.

*License Number:* 001752F.
*Name:* Amtonco Inc. dba Amton Shipping Company.
*Address:* 154–14 15th Avenue, Suite A, Beechhurst, NY 11357–2759.
*Date Revoked:* March 17, 2004.
*Reason:* Surrendered license voluntarily.

*License Number:* 14144N and 14144F.
*Name:* B & C Shipping Line Corporation.
*Address:* 1881 NW. 93rd Avenue, Miami, FL 33172.

*Date:* February 20, 2004. and March 19, 2004.
*Reason:* Failed to maintain valid bonds.
*License Number:* 016628NF.
*Name:* Beacon International Inc. dba Beacon Container Lines.
*Address:* 39 Beacon Street, Port Reading, NJ 07064.
*Date Revoked:* April 7, 2004.
*Reason:* Failed to maintain valid bonds.
*License Number:* 003716F.
*Name:* C J International, Inc.
*Address:* 405 Maclean Avenue, Suite 1, Louisville, KY 40209.
*Date Revoked:* April 7, 2004.
*Reason:* Failed to maintain a valid bond.
*License Number:* 017132N.
*Name:* Centroline, Inc.
*Address:* 469 W. 18th Street, Hialeah, FL 33010.
*Date Revoked:* March 22, 2004.
*Reason:* Failed to maintain a valid bond.
*License Number:* 004658F.
*Name:* Container Port Services, Inc.
*Address:* 1717 Turning Basin Drive, 310, Houston, TX 77029.
*Date Revoked:* April 7, 2004.
*Reason:* Failed to maintain a valid bond.
*License Number:* 014760N.
*Name:* Freight Express International, Inc.
*Address:* 2762 NW. 112th Avenue, Miami, FL 33172.
*Date Revoked:* March 31, 2004.
*Reason:* Failed to maintain a valid bond.
*License Number:* 016564F.
*Name:* Hexcorps Inc.
*Address:* 14730 Treborway Drive, Houston, TX 77014.
*Date Revoked:* March 31, 2004.
*Reason:* Surrendered license voluntarily.
*License Number:* 016624F.
*Name:* Interstar, Inc.
*Address:* 5839 Bender Road, Humble, TX 77396.
*Date Revoked:* March 22, 2004.
*Reason:* Failed to maintain a valid bond.
*License Number:* 017526N.
*Name:* Intertainer Line, Inc.
*Address:* 5839 Bender Road, Humble, TX 77396.
*Date Revoked:* March 22, 2004.
*Reason:* Failed to maintain a valid bond.
*License Number:* 014680N.
*Name:* MB Cargo, Inc.
*Address:* 7202 NW. 84th Avenue, Miami, FL 33166.
*Date Revoked:* March 31, 2004.
*Reason:* Surrendered license voluntarily.
*License Number:* 002045F.
*Name:* Ned Shipping Co., Inc.
*Address:* 5247 Wisconsin Avenue, NW., #3, Washington, DC 20015.
*Date Revoked:* April 3, 2004.
*Reason:* Failed to maintain a valid bond.
*License Number:* 10826F.
*Name:* Pacific Transit Services, Inc. dba PTS Container Line dba Sea Road New York.
*Address:* 147–29 182nd Street, Suite 202, Jamaica, NY 11413.
*Date Revoked:* March 5, 2004.
*Reason:* Surrendered license voluntarily.
*License Number:* 016907N.
*Name:* Principal Container Line Inc.
*Address:* 515 N. Sam Houston Parkway East, Suite 175, Houston, TX 77060.
*Date Revoked:* March 31, 2004.
*Reason:* Failed to maintain a valid bond.
*License Number:* 017866N.
*Name:* Swiftpak Inc.
*Address:* 17352 SW. 35th Street, Miramar, FL 33029.
*Date Revoked:* April 8, 2004.
*Reason:* Failed to maintain a valid bond.
*License Number:* 017193N.
*Name:* TMX Logistics, Inc.
*Address:* 8005 NW. 80th Street, Miami, FL 33166.
*Date Revoked:* April 7, 2004.
*Reason:* Failed to maintain a valid bond.
*License Number:* 007785N.
*Name:* Trinforwarding International, Inc. dba U.S. Atlantic Freight Lines.
*Address:* 7303 NW. 79th Street, Miami, FL 33166.
*Date Revoked:* April 28, 2003.
*Reason:* Failed to maintain a valid bond.
*License Number:* 012530N.
*Name:* U.S. National Lines, Inc.
*Address:* 87–23 167th Street, Jamaica, NY 11432.
*Date Revoked:* April 3, 2004.
*Reason:* Failed to maintain a valid bond.

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 04–9025 Filed 4–20–04; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

| License No. | Name/address | Date reissued |
|---|---|---|
| 003402F | Customs Services International, Inc. 7425 NW., 48th Street, Miami, FL 33166 | February 19, 2004. |
| 016597N | First Forward International Services, Inc. dba First Forward Container Line, 5745 Arbor Vitae Street, Los Angeles, CA 90045. | January 12, 2004. |
| 017064F | International Transport Solutions, Inc., 310 Paterson Plank Road, Carlstadt, NJ 07072 | December 8, 2003. |
| 016126N | Motorvation Services Inc., 100 Broad Street, Tonawanda, NY 14151 | March 6, 2004. |
| 013266N | Trans—Aero—Mar, Inc., 1203 NW., 93rd Court, Miami, FL 33172 | January 19, 2004. |
| 9862N | United Transport Tankcontainers, Inc., 1225 North Loop West, Suite 1110, Houston, TX 77008. | August 6, 2003. |

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 04–9024 Filed 4–20–04; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by

the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 14, 2004.

**A. Federal Reserve Bank of San Francisco** (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

*1. BancWest Corporation*, Honolulu, Hawaii, and BNP Paribas, SA, Paris, France; to acquire 100 percent of the voting shares of Community First Bankshares, Inc., Fargo, North Dakota, and thereby indirectly acquire voting shares of Community First National Bank, Fargo, North Dakota.

Board of Governors of the Federal Reserve System, April 15, 2004.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 04–8970 Filed 4–20–04; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 5, 2004.

**A. Federal Reserve Bank of San Francisco** (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

*1. Security Pacific Bancorp and Network Finance, Inc.*, both of Ontario, California; to acquire 51 percent of the voting shares of Genuine Home Loans, Inc., Pasadena, California, and thereby engage in mortgage lending activities, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, April 15, 2004.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc.04–8971 Filed 4–20–04; 8:45 am]

BILLING CODE 6210–01–S

## HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

### Sunshine Act Meeting; Meeting of the Trustees and Officers of the Harry S. Truman Scholarship Foundation

May 7, 2004, 9:30–11 a.m., U.S. Capitol, Room HC–8

I. Call to Order.
II. Welcome: President Albright.
III. Introduction of new Trustees and presentation of Certificates of Appointment.
IV. Approval of minutes of Meeting of September 3, 2003.
V. Report from the Executive Secretary: Ratification of the 2004 Truman Scholars.
VI. Financial Report of the Foundation.
VII. Discussion of the Report by the Task Force on Scholar Accountability.
VIII. Progress Report on the Task Force on Reinventing the Truman Scholarship Foundation.
IX. Recommendations from President Albright.
X. Old Business/New Business.
XI. Adjournment.

**Louis H. Blair,**

*Executive Secretary.*

[FR Doc. 04–9172 Filed 4–19–04; 1:51 pm]

BILLING CODE 6820–AD–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Community-Focused Initiative To Reduce the Burden of Stroke

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Minority Health.

*Funding Opportunity Title:* Community-Focused Initiative to Reduce the Burden of Stroke.

*Announcement Type:* Initial announcement of availability of funds.

*Catalog of Federal Domestic Assistance Number:* 93.004.

*Key Dates:* Application Availability Date: Monday, April 19, 2004; Technical Assistance Conference Call for Potential Applicants: Tuesday, April 27, 2004; Letter of Intent: Wednesday, May 12, 2004; Application Deadline: Thursday, June 17, 2004.

**SUPPLEMENTARY INFORMATION:**

### I. Funding Opportunity Description

**Authority:** This program is authorized under section 1707 of the Public Health Service Act (PHS), as amended, 42 U.S.C. 300u–6.

*Purpose:* This announcement is made by the United States Department of Health and Human Services (HHS or The Department), acting through the Office of Minority Health (OMH) located within the Office of Public Health and Science (OPHS), and working in a "One-Department'' approach collaboratively with participating HHS agencies and programs (entities). As part of a new Secretary of HHS initiative, the Department announces availability of FY 2004 (future funding periods on an as-funds-are-available basis) funding for a cooperative agreement program for implementation of a core framework entitled, "The Stroke Belt Elimination Initiative (SBEI).'' (*See* Section VIII. A. Rationale, for description of the core components of SBEI.)

*Project Requirements:* Activities designed to achieve SBEI core goals and objectives, implement the core framework that includes an Enabling ring of collaborative activities and a core collaboration process, and use core

measures are required. Other activities may be added by the Stroke Belt Community Action Team (SBCAT) upon approval under terms of the cooperative agreement with HHS. The community recipient will be responsible for activities listed in section 1 and HHS for activities listed in section 2.

*1. Required Community Recipient Activities*

A. Fiduciary Responsibilities

i. *Specify the Lead (Fiduciary) Agency within the SBCAT.* The lead agency must have valid Internal Revenue Service (IRS) 501(c)(3) tax-exempt status or other IRS status indicating a bona fide not-for-profit organization or a public entity.

ii. *Allocate Funds.* Allocate and disperse funds to implement at least core activities within the community. Include adequate funds to participate fully in the orientation meeting and support a SBCAT Coordinator.

iii. *Oversight of SBCAT-linked Services.* This includes responsibility for overseeing fiscal and programmatic services linked to the SBCAT, and that are deemed necessary to accomplish the goals and objectives of this program announcement.

iv. *Link Budget to Performance.* Provide timely integrated progress and financial reports that link performance to expenditures by the SBCAT and its key partners.

B. Leadership, Coordination, and Management

i. *Establish or Designate the SBCAT and Implement Activities that include an Enabling ring.* Identify existing key partners and coalitions that focus on chronic disease, especially stroke and high blood pressure, that have existing capacity and strong track records. Strengthen partnerships and coalitions committed to participating actively in the planning, implementation, and evaluation of the SBEI. Key partners should demonstrate a high-level commitment to the initiative by their willingness to invest expertise, leadership, personnel, and other resources in the success of this initiative.

Partners must include, but are not limited to, local and State health departments; community-based health centers and other health care offices, clinics, systems or providers identified to provide care to medically insured, under insured and uninsured people identified with high blood pressure through activities of this or other initiatives; key community, health care, voluntary, and professional organizations; business, community, and faith-based leaders; and at least one lay representative of the population to be served. Other partners may include, but are not limited to, existing community coalitions or entities (especially those already focusing on stroke and high blood pressure), local education agencies; worksite wellness programs, health care purchasers, health plans, unions, health care providers for farm and migrant workers and their families, primary care associations, social service providers, health maintenance organizations, private providers, hospitals, universities, schools of public health, academic health centers, State Medicaid officials, community service organizations, aging services organizations, senior centers, community action groups, consumer groups, and the media.

Partnerships will operate in accordance to the core collaboration process and Enabling ring framework described above.

ii. *Establish or Designate, and Coordinate a Leadership Team.* This team will consist of a subset of SBCAT members who function as a steering or executive committee. The Leadership team will be responsible for overseeing project activities, establishing and maintaining an organizational structure and governance for the SBCAT (including decisionmaking procedures), determining the project budget and subcontracts, and participating in project-related local and national meetings. The leadership team should include, but is not limited to, the local health department, key community leaders, and others who have experience working in community health promotion and addressing stroke, high blood pressure, and high-risk populations.

iii. *Establish or Designate and Support a SBCAT Coordinator or other Project Staff as Required.* Project staff must include a full-time SBCAT Coordinator with a strong background in community-based projects, communications and health data evaluation, and experience in coordination of community-wide initiatives. The Coordinator will function as the program manager, coordinate community activities, help to facilitate the SBCAT, and effectively collaborate with the Stroke Belt Regional Action Team (SBRAT) Coordinator and the HHS Action Team. Other part-time, full-time, or in-kind staff, contractors, and consultants must be sufficient in number and expertise to ensure project success and have demonstrated skills and experience in coalition and partnership development, community mobilization, health care systems, public health, program evaluation, epidemiology, data management, health promotion, policy and environmental interventions, health care quality improvement, communications, resource development, and the prevention and control of stroke and high blood pressure.

iv. *Rapidly Develop a Stroke Belt Community Action Plan and Implement Community-Based Interventions.* Identify and implement high priority, intervention strategies proven to prevent and control hypertension and stroke. Communities must examine their stroke and hypertension burdens, higher-risk populations, current services and resources, and partnership capabilities to develop a comprehensive community action plan that effectively addresses required activities including coordination among SBCAT members, its leadership team, coordinator, community, State or sub-regional, regional, and national resources and activities via application of an Enabling ring model.

v. *Project Management.* The SBCAT Coordinator, in collaboration with other project staff and the leadership team, should:

a. Encourage active participation of SBCAT in project activities and decisions, through regular meetings and other proactive methods of communication.

b. Actively oversee all project activities during their planning, development, implementation, and evaluation phases.

c. Track performance in relationship to the achievement of short-term and intermediate goals and objectives as well as budgetary expenditures.

d. Collaborate with the SBRAT Coordinator to seek technical assistance from the State, region, HHS and other Federal agencies, other recipients, national voluntary organizations, universities, or other sources (*see* Core Collaboration Process section).

e. Collaborate with the SBRAT Coordinator to keep the Project Officer informed and seek Project Officer input and assistance.

f. When necessary, take corrective action promptly to ensure project success.

g. Participate in program evaluation and use evaluation data for program improvement.

C. Core Objectives

*Core Objective 1*—Increase community awareness and knowledge of hypertension and stroke.

Communities are required to implement coordinated interventions

designed to educate the community about stroke and high blood pressure. Such interventions might include:

i. Conducting community-wide campaigns about the signs and symptoms of stroke and recommended action steps; facilitating and coordinating prevention messages including collaborating with existing educational campaigns such as those occurring in May related to National Stroke Awareness Month, National High Blood Pressure Education Month, and National Physical Fitness and Sports Month.

ii. Coordinating with organizations and specific community settings via a community Enabling ring and a core collaboration process to increase the knowledge of people about prevention and control of stroke and high blood pressure. These include but are not limited to worksites, schools, health care settings, media outlets, and other community organizations such as faith-based organizations and senior centers.

*Core Objective 2*—Enhance early detection of high blood pressure and stroke with early referral to care.

Such interventions might include:

i. Working with community-based health centers, health care providers, health systems and plans, and employer/purchasers to increase the use of evidence-based preventive care practices for enhancing prevention and control of stroke and hypertension.

ii. Providing access to training for health care professionals on implementation of effective guideline-based care plans, including guidance on effective self-management for patients, employees, and other individuals with hypertension or stroke.

iii. Ensuring that mechanisms are in place in the community for networked notification about the when and where of free blood pressure checks and referrals to care. This might be done through increased collaborations with community-based health centers, clinics, medical offices, systems, plans, worksites, faith-based sites, volunteer health professionals, and others.

iv. Enhancing access to and utilization of quality health care services for prevention and control of stroke and hypertension.

*Core Objective 3*—Increase the community's adoption and use of lifestyle behaviors known to promote prevention and control of hypertension and stroke.

Promote lifestyle behaviors aimed at preventing or reducing risk of high blood pressure and stroke at the individual/patient, health professional/provider, health system or plan, and other organizational levels as well as in other community sectors.

Such interventions might include:

i. Improving community environmental/ecological policies and systems to manage strokes during the acute phase and decrease deaths and disability related to stroke. For example, enhancing 911 coverage, EMS and other first responder stroke training and protocols, and hospital stroke protocols.

ii. Working with health professionals and health professional organizations to more effectively counsel individuals regarding adoption and continued use of stroke- and hypertension-prevention and control health behaviors.

iii. Working with commercial, Medicaid, and Medicare health plans to more effectively counsel patients to use stroke- and hypertension-prevention and control health behaviors.

iv. Working with health systems to develop and implement policy-level incentives for providers and staff to more effectively counsel patients as regards use of stroke- and hypertension-prevention and control health behaviors.

v. Working with other community sectors to encourage students, employees, members, clients, local media, and others to use stroke- and hypertension-prevention and control health behaviors.

*Core Objective 4*—Enhance blood pressure control rates among community persons who are known to have hypertension and who are members of a health plan or otherwise visit health systems, clinics, or medical offices.

It is expected that activities will be undertaken to facilitate incorporation of clinical practice guideline-based approaches into organizational programmatic and system-wide policies and procedures that will improve high blood pressure control rates in health plans, health systems, and medical practice.

Such interventions might include:

i. Working with health care providers and in other settings to ensure effectiveness of systems designed to support appropriate and timely monitoring and care of persons with hypertension and sharing verbal and written BP readings and BP goals with them. For example, identification and effective management of patients with hypertension, including referrals to care, follow-up on visits, and use of patient as well as provider reminder systems.

ii. Working with community, state, and national partners to enhance hypertension and stroke training and continuing education for health professionals.

iii. Working with health professionals and health professional organizations to increase the percentage of community residents with hypertension whose blood pressure is controlled to guideline-recommended levels.

iv. Working with commercial, Medicaid, and Medicare health plans to meet or exceed the national average for controlling high blood pressure reported annually by the National Committee for Quality Assurance (NCQA).

v. Collaborating with health systems to develop and implement effective policy-level incentives for providers and staff to meet or exceed the national average for controlling high blood pressure reported annually by the NCQA.

vi. Partnering with pharmacists, pharmaceutical companies, and others to enhance access to basic anti-hypertensive medications for persons with hypertension who lack sufficient drug coverage.

vii. Increasing medical self-management skills of persons with hypertension or stroke, including better adherence to medication and other health regimens.

*2. HHS Activities*

A. Leadership and Coordination

i. *HHS Stroke Belt Action Team.* An HHS-level Stroke Belt Action Team (HHSAT) has been established to coordinate and organize the Stroke Belt Elimination Initiative at the national level. The HHSAT is comprised of high-level representatives of participating HHS entities. The team will provide SBEI policy oversight and direction. In addition, the HHSAT will develop agreements with HHS entities as well as national partners specifying how each will assist the SBRAT and SBCAT and coordinate technical assistance in support of achievement of the goals and objectives described in this program announcement.

ii. *Regional Stroke Belt Action Team.* An SBRAT will be formally established and an SBRAT Coordinator hired to facilitate and coordinate activities among the funding communities. The action team will work with representatives from funded communities; States; and sub-regional, regional, and national partners to ensure effective use of an enabling ring-based collaboration process by SBCATs, funded under this program announcement, and their key partners. This action team should: 1) anticipate priority needs of recipients and help to meet such needs collaboratively and on

a timely basis so that the SBEI is implemented efficiently and effectively; and 2) assist in organizing and facilitating approaches to sharing experiences, lessons-learned, results, outcomes, and resources among recipients and existing community and state chronic disease programs.

B. Technical Assistance

HHS will provide technical assistance training and support to funded communities in the areas of surveillance and epidemiology, community assessment and planning, evidence-based interventions, community mobilization and partnership development, monitoring of program performance outcomes, baseline data acquisition and data management, program sustainability, and other areas as deemed necessary by SBCATs and approved by HHS.

C. Baseline Mean Community Blood Pressure and Follow-up

Because of the importance of external baseline determination of average community blood pressure using representative cross-sampling methodologies, HHS will provide this critical element.

D. Evaluation Oversight and Coordination

HHS will separately fund and direct an independent, external evaluation of the SBEI. However, recipients are expected to budget for their full participation in the data collection associated with this external review. Additionally, HHS will work with recipients to finalize the evaluation plan based upon the initial plan included with the recipient's application.

## II. Award Information

*Estimated Funds Available for Competition:* $2,000,000.

*Anticipated Number of Awards:* 3 to 4.

*Range of Awards:* $500,000 to $650,000 per year.

*Anticipated Start Date:* Friday, July 30, 2004.

*Budget Period Length:* 12 months.

*Period of Performance:* 4 Years.

Continuation awards and level of funding within an approved project period will be based on the availability of funds and satisfactory progress in achieving performance measures as evidenced by required progress reports. It is expected that projects will begin to implement interventions within Year One of funding. It is also expected that assessment and evaluation will require special emphasis during the first two years of funding. It is anticipated that additional FY 2004 resources may enable HHS to fund additional prevention initiatives based on this announcement or a separate announcement.

Pending availability of funds, beginning in FY 2004 and each of the remaining years of this program announcement, there may be an open season for new competitive applications. Specific guidance will be provided with application due dates and funding levels each year.

*Type of Award:* Cooperative Agreement.

*Type of Application Accepted:* New.

Applicants funded for the first time will be required to submit a revised work plan and budget to address issues identified in the objective review of applications in order to receive their first year of funding. For subsequent years of funding, the applicants may be required to submit a revised work plan and budget to address issues identified in the technical review of their continuation applications.

## III. Eligibility Information

### *1. Eligible Applicants*

This announcement only requests qualified applicants from communities in each of the contiguous Seven Core Stroke Belt States (Alabama, Arkansas, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee). These States are part of the original 11 Stroke Belt States and either have a long history of ranking high in terms of stroke death rates or rank first in the 2001 analysis (*see* Attachment B). That these states are also contiguous provides opportunity to truly regionalize this initiative, assuring enhanced ability to form an Enabling ring around the priority condition (stroke) and priority risk factor (hypertension) in a contiguous region of significant need.

Applicants must meet the following additional criteria:

A. Must be a public or non-profit organization, including faith-based organizations;

B. Have been in the community for at least five years to enhance likelihood of familiarity with and recognition by other community entities and individuals; and

C. Have an agreement (*e.g.*, Memorandum of Understanding, contract, written agreement) or document that an agreement is being developed with one or more community health centers and/or other health providers, systems or plans to offer care to uninsured people identified as having high blood pressure through the activities of this initiative to assure availability of followup care of hypertension.

For this announcement, the term "community'' is defined as any contiguous geographic area (including counties). Applicants can specify an intervention area that is smaller than the entire city or county, or includes multiple counties, but the intervention area must be geographically contiguous. The area must include a population of at least 100,000 residents for an urban community and 60,000 residents for a rural community. Although multiple applications may be submitted from an eligible community, only one award will be made to a community that is selected as part of this SBEI.

Communities with substantial expertise and infrastructure for the design, delivery, and evaluation of chronic disease prevention and control interventions and are able to begin intervention activities under the program announcement in year one of funding are encouraged to apply under this announcement.

### *2. Cost Sharing or Matching*

Matching funds, that is, a specific percentage of program costs that must be contributed by a recipient in order to be eligible for this announcement, are not required. Applicants are encouraged, however, to identify financial and in-kind contributions from their own organization and their partners to support and sustain the activities of this program announcement. Applicants are encouraged to seek partnerships and in-kind support from a variety of partners including (1) private partners (*e.g.*, health care providers or systems, businesses), (2) regional and State partners (*e.g.*, regional stroke networks, the State Health Department Heart Disease and Stroke Prevention Program), and (3) federally funded partners (*e.g.*, Federally Funded Health Centers).

### *3. Other*

Organizations must submit documentation of nonprofit status with their applications. If documentation is not provided, the application will be considered non-responsive and will not be entered into the review process. The organization will be notified that the application did not meet the submission requirements.

Any of following serves as acceptable proof of nonprofit status:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS Code.

• A copy of a currently valid IRS tax exemption certificate.

• A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a nonprofit status and that none of the net earnings accrue to any private shareholders or individuals.

• A certified copy of the organization's certificate of incorporation or similar document that clearly establishes nonprofit status.

• Any of the above proof for a State or national organization and a statement signed by the parent organization that the applicant organization is a local nonprofit affiliate.

If funding is requested in an amount greater than the ceiling of the award range, the application will be considered non-responsive and will not be entered into the review process. The application will be returned with notification that it did not meet the submission requirements.

Applications that are not complete or that do not conform to or address the criteria of this announcement will be considered non-responsive and will not be entered into the review process. The application will be returned with notification that it did not meet the submission requirements.

An organization may submit no more than one proposal for the Stroke Belt Elimination Initiative. Organizations submitting more than one proposal for the same grant program will be deemed ineligible. The proposals will be returned without comment.

Organizations are not eligible to receive funding from more than one OMH grant program to carry out the same project and/or activities.

## IV. Application and Submission Information

### *1. Address To Request Application Package*

To obtain an application kit, write to: Ms. Karen Campbell, Director, OPHS Office of Grants Management, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852, or telephone (301) 594–0758, e-mail *kcampbell@osophs.dhhs.gov.*

### *2. Content and Form of Application*

A. Letter of Intent

A Letter of Intent (LOI) is required from all potential applicants for the purpose of planning the competitive review process. The narrative should be no more than two pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. LOIs should include the following information: (1) The program announcement title and number; (2) whether the application will be from an urban or rural community; (3) the exact boundaries and total population size of the contiguous geographic area with population that qualifies the applicant as eligible for this program announcement; and (4) the name of the applicant agency or organization, the official contact person and that person's telephone number, fax number, and mailing and e-mail addresses. If an applicant does not submit an LOI prior to submitting an application, the application will not be entered into the review process.

Submit the LOI to: Ms. Karen Campbell, Director, OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852. Letters of intent must be received by the OPHS Office of Grants Management by 5 p.m. e.d.t. on Wednesday, May 12, 2004.

B. Application

Applications must be prepared using Form PHS 5161–1 (revised July 2000 and approved by OMB under Control Number 0348–0043). This form is available in Adobe Acrobat format at the following Web site: http://www.cdc.gov/od/pgo/forminfo/htm.

The narrative (excluding attachments) should be no more than 50 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. In addition to the application forms, the application must contain the following in this order:

**A. Table of Contents**

Include a Table of Contents with page numbers for each of the following sections:

**B. Executive Summary**

An Executive Summary should be included that provides specific evidence that the applicant is eligible to apply (*see* section on Eligible Applicants). It should also briefly describe the overall project; intervention area and population size; and partnerships, intervention strategies, and predicted major short-term and intermediate outcomes.

**C. Community Lead Agency**

A description of the lead agency should be provided, including fiduciary and programmatic capabilities, length of time in community, as well as an inventory of current agency activities and partnerships related to this announcement and confirmation of relevant agreements. For example, include a Memorandum of Understanding or other written agreement with appropriate partners to provide health care services to uninsured people identified to have high blood pressure as a result of activities of this initiative.

**D. Intervention Area**

Provide a description of the community intervention area, including its demographic, geographic and political boundaries, target populations to receive special focus under the SBEI, as well as evidence of the burden of disease, and disparities in hypertension and stroke, and access to and use of proven prevention and control interventions. Description of current local, State, and already-active private-sector activities that focus on chronic conditions, especially hypertension and stroke, and each relevant HHS agency and national partner. Include a description of related assets and needs of the intervention area including a description of findings from any community assessments or asset mapping done in the past three years.

**E. Staffing**

Provide a description of proposed program staff including resumes or job descriptions for full-time project coordinator and other key staff, the qualifications and responsibilities of each staff member, and percent of time each is committing to the program.

**F. Stroke Belt Community Action Team**

Include a description of the proposed SBCAT including a list of key partners and documentation of their capabilities; their commitment to specific functions, responsibilities, and resources; and evidence of prior successful collaborations. The structure, decision making processes, and methods for accountability of the members should be described as well as how coordination and linkage with existing programs and interventions with similar focus will be maintained.

**G. Community Action Plan**

Include a detailed plan for year one and a preliminary plan for years two through four. The community action plan for year one should include goals, objectives, a work plan, and timeline for carrying out the Required Activities (*see* section 1). The community action plan objectives should be time-phased, specific, measurable, and realistic and should clearly relate to attaining specific short-term and intermediate outcomes that are based on the needs of the community and gaps in current prevention and control activities. The

community action plan should identify likely approaches, strategies, and interventions to be used in year one and over the four-year project period to address stroke and high blood pressure. The organizations responsible for the interventions should be identified as well as the target populations to be addressed. The preliminary plan for years two though four should include the community interventions to be employed as well as a plan to ensure long-term sustainability of project efforts and outcomes.

**H. Financial Contributions**

Provide a description of financial and in-kind resources, if any, that will be contributed toward activities initiated as part of the SBEI. Also discuss how these will enhance the likelihood of achieving sustainability of activities within the community.

**I. Evaluation and Monitoring**

Include a plan for data identification, collection, and use for program planning and monitoring for the community that includes a commitment to work with HHS on baseline and subsequent data collection. Describe any additional efforts to obtain data and sources to better understand the burden and trends in stroke and high blood pressure and the effects of this initiative. Provide specific assurance that the community will track common performance measures and participate fully in an independent, external evaluation of initiative outcomes. Describe how the project is anticipated to improve specific performance measures and outcomes compared to baseline performance.

**J. Communication Plan**

Provide a plan for the community to communicate and share information with the members of its SBCAT, other key partners, and its own community broadly, as well as with other communities funded under this initiative. This plan should describe the proposed exchange of information, proposed means and timing of communication, with an emphasis on communications innovations such as electronic formats or web forums.

**K. Budget and Budget Justification/ Narrative**

Provide a One-Year and Four-Year Budget. In support of the four-year community action plans, provide a detailed budget and budget justification/ narrative for the first budget year and a budget estimate for years two through four.

i. Provide a detailed budget for the first budget year in support of each activity that must be completed in the first year of program operations to accomplish the short-term and intermediate outcomes specified in the five-year community action plan.

This detailed budget must include:

a. Community expenditures. A budget justification and narrative that describe all requested funds for the 501(c)(3) and other key community partners by category in support of first-year activities in the four-year community action plan. As part of the request for travel funds in FY 2004, applicants should budget for two trips to workshops and/or conferences for key community members. For planning purposes, use Atlanta and Washington, DC, as the travel destinations.

b. The information above should be consistent with the first year budget information entered in Section B of Standard Form 424A (Budget Information—-Non-Construction Programs).

ii. Provide estimated budgets for funding years two to four that are linked to accomplishment of intermediate community outcomes. For each budget year, include budget estimates for two trips to workshops and/or conferences for key staff members of the lead/ fiduciary organization and its key partners. For planning purposes, use Atlanta and Washington, DC as the travel destinations. Provide the estimated total budget for each year for each object class category in Section B of Standard Form 424A (Budget Information—Non-Construction Programs).

**L. Letters of Support**

Provide letters of support and Memoranda of Understanding, as appropriate, from the local health departments, community-based health centers and other health care partners, and additional key members of the SBCAT, specifying their specific roles, responsibilities, and resources.

DUNS Number Requirement

Beginning October 1, 2003, all applicants are required to obtain a Data Universal Numbering System (DUNS) number as preparation for doing business electronically with the Federal Government. The DUNS number must be obtained prior to applying for OMH funds. The DUNS number is a nine-character identification code provided by the commercial company Dun & Bradstreet, and serves as a unique identifier of business entities. There is no charge for requesting a DUNS number, and you may register and obtain a DUNS number by either of the following methods: Telephone: 1–866–705–5711; Web site: *http://eupdate.dnb.com/requestoptions.html.* Be sure to click on the link that reads, "DUNS Number Only'' at the left hand bottom corner of the screen to access the free registration page. Please note that registration via the web site may take up to 30 business days to complete.

*3. Submission Dates and Times*

*Letter of Intent Deadline Date:* Wednesday, May 12, 2004, by 4 p.m.

*Application Deadline Date:* Thursday, June 17, 2004, by 4 p.m.

*Explanation of Deadlines:* Applications must be received by the Office of Public Health and Science, Office of Grants Management by 4 p.m. on Thursday, June 17, 2004, by 4 p.m. Applications will be considered as meeting the deadline if they are received on or before the deadline date. The application due date requirement in this announcement supercedes the instructions in the PHS 5161–1. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications that do not meet the deadline will be considered late and will be returned to the applicant unread.

Applications must be submitted to Ms. Karen Campbell, Director, OPHS Office of Grants Management, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852.

Applications will be screened upon receipt. Applications that are not complete or that do not conform to or address the criteria of the announcement will be returned without comment.

Each organization may submit no more than one proposal under this announcement.

Organizations submitting more than one proposal will be deemed ineligible. The proposals will be returned without comment.

Accepted applications will be reviewed for technical merit in accordance with PHS policies.

*4. Intergovernmental Review*

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit available under this notice will contain a list of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review.

Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline established by the Office of Public Health and Science Grants Management Officer. The OMH does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (*See* "Intergovernmental Review of Federal Programs'' Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements).

This program is subject to Public Health Systems Reporting Requirements. Under these requirements, a community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424), and (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served; (2) a summary of the services to be provided; and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the OMH.

*5. Funding Restrictions*

Cooperative agreement funds may be used to expand, enhance, or complement existing activities to accomplish the objectives of this program announcement. Funds may be used to pay for, but are not limited to: staffing, consultants, contractors, materials, resources, travel, and associated expenses to implement and evaluate intervention activities related to addressing stroke and high blood pressure. Activities might relate to such things as: Helping health care centers, worksites, schools, senior centers, faith-based organizations and other community locations educate people about stroke and high blood pressure, and making environmental changes to support prevention and control of stroke and high blood pressure in the community and among higher risk populations; educating health plans, purchasers, and providers regarding guidelines for preventive health care practices related to stroke and high blood pressure and how to fully implement them; enhancing office-based systems to ensure that persons with stroke and high blood pressure are called for routine exams and other follow-up; using information technology (such as the web and email) to communicate with people with stroke and high blood pressure; developing community support groups for persons with stroke and high blood pressure; conducting awareness and media campaigns tied to prevention and outreach programs to educate persons about their risk of stroke and high blood pressure, the signs and symptoms of stroke and what actions to take; conducting community-based outreach to high-risk populations, encouraging them to seek appropriate care and increasing knowledge of self-management of high blood pressure; and training lay health workers to conduct health promotion programs and outreach into the community.

Cooperative agreement funds may not be used for direct patient care, diagnostic medical testing, patient rehabilitation, pharmaceutical purchases, facilities construction, lobbying, basic research, or controlled trials. Applicants may not use these funds to supplant funds from State sources or the Preventive Health and Health Services Block Grant dedicated to stroke, high blood pressure, or the related risk factors of tobacco use, physical inactivity, overweight, and excessive salt intake.

Although program funds under this Program Announcement are to be used to address stroke and high blood pressure, resources to address related risk factors (*i.e.*, tobacco use, physical inactivity, overweight, and excessive salt intake) are important and can be reported as in-kind support.

*6. Other Submission Requirements*

Applications may only be submitted in hard copy. Send an original, signed in blue ink, and two copies of the complete grant application to Ms. Karen Campbell, Grants Management Officer, Office of Grants Management, Office of Public Health and Science, Tower Building, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852. Applications submitted by e-mail, Facsimile transmission (FAX) or any other electronic format will not be accepted.

**V. Application Review Information**

*1. Criteria*

A. *Strength of Technical Approach (25 points).* (1) Overall strength and creativity of proposed SBCAT technical approach in relation to stroke and high blood pressure; and (2) innovation of approach; extent to which the HHS Core Framework shapes the SBCAT's plan which must include goals, objectives, and measures; and commitment of partners to employ the enabling ring concept and to share existing or add new resources to help achieve goals/objectives and obtain measures to evaluate impact. In addition, likelihood that the proposed SBCAT plan, if implemented, will reduce mean high blood pressure as well as stroke mortality rate; and likelihood that efforts will be institutionalized within the community. The evaluation plan contains appropriate performance measures/indicators (of success) and data collection and analysis methodologies.

B. *Understanding of the Problem (20 points).* Demonstrated understanding of: (1) Stroke (condition) and high blood pressure (risk factor) and their differential geographic and racial/ethnic impact in the Stroke Belt and within the target community; (2) local community health needs related to management and control of stroke and high blood pressure; (3) issues related to the underutilization of proven/science-based modalities (*e.g.*, guideline-based and case or disease management-based interventions), both clinical and behavioral; and (4) relevance to eliminating disparities in stroke deaths and high blood pressure prevalence.

C. *Capacity and Commitment of Organization (20 points).* Demonstrated capacity and documented past program success; existing infrastructure and strength of partnerships; evidence of past collaboration within the community and substantiated commitment to participate in the project via an "enabling ring of collaborators'' who may already be involved in local activities. These may be representatives from the community sectors (*i.e.*, government, education, business, faith, health care, media, and voluntary agencies); and documented commitment of resources to the proposed project in terms of dollars, staff, and/or administrative support.

D. *Staff Capability (20 points).* Capacity and skills of proposed staff, including, but not limited to, project management experience, familiarity with stroke and high blood pressure activities and issues, understanding of cultural diversity, competence and sensitivity, knowledge of evaluation methodology, and understanding of and access to information technologies. The respondent must demonstrate existing and sufficient computer hardware and software capabilities, including the technical ability to access the Internet, and submit reports electronically.

E. *Understanding of Core SBEI Concept (15 points).* Demonstrated understanding of core goals, core framework, and collaborative enabling ring concept of the SBEI.

*2. Review and Selection Process*

Applications will be evaluated by an independent Objective Review Committee (ORC) appointed by HHS against specific criteria. The ORC members are chosen for their expertise in minority health and their understanding of the unique health problems and related issues confronted by the racial/ethnic minority populations in the United States. Funding decisions will be determined by the Deputy Assistant Secretary for Minority Health will take under consideration the recommendations and ratings of the ORC, and geographic and racial/ethnic distribution.

*Funding Preferences:* Preference in funding may be given to ensure:

- Geographic distribution of programs.
- Inclusion of geographic areas with high, age-adjusted rates of stroke and high blood pressure.
- Inclusion of populations disproportionately affected by stroke and high blood pressure.
- Inclusion of communities of varying sizes, including rural and urban communities.

*3. Anticipated Award Date*

Friday, July 30, 2004.

**VI. Award Administration Information**

*1. Award Notices*

Successful applicants will receive a notification letter from the Deputy Assistant Secretary for Minority Health and a Notice of Grant Award (NGA), signed by the OPHS Grants Management Officer. The NGA shall be the only binding, authorizing document between the recipient and the Office of Minority Health. Notification will be mailed to the Program Director/Principal Investigator identified in the application.

Unsuccessful applicants will receive a notification letter with the results of the review of their application from the Deputy Assistant Secretary for Minority Health.

*2. Administrative and National Policy Requirements*

In accepting this award, the grantee stipulates that the award and any activities thereunder are subject to all provisions of 45 CFR parts 74 and 92, currently in effect or implemented during the period of the grant.

The Buy American Act of 1933, as amended (41 U.S.C. 10a–10d), requires that Government agencies give priority to domestic products when making purchasing decisions. Therefore, to the greatest extent practicable, all equipment and products purchased with grant funds should be American-made.

A Notice providing information and guidance regarding the "Government-wide Implementation of the President's Welfare-to-Work Initiative for Federal Grant Programs'' was published in the **Federal Register** on May 16, 1997. This initiative was designated to facilitate and encourage grantees and their sub-recipients to hire welfare recipients and to provide additional needed training and/or mentoring as needed. The text of the notice is available electronically on the OMB home page at *http://www.whitehouse.gov/omb.*

The HHS Appropriations Act requires that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, grantees shall clearly state the percentage and dollar amount of the total costs of the program or project which will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

*3. Reporting Requirements*

A successful applicant under this notice will submit: (1) Progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the OMH, in accordance with provisions of the general regulations which apply under "Monitoring and Reporting Program Performance,'' 45 CFR part 74.51–74.52, with the exception of State and local governments to which 45 CFR part 92, subpart C reporting requirements apply.

Provision of Smoke-Free Workplace and Non-Use of Tobacco Products by Recipients of PHS Grants

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children.

**VII. Agency Contacts**

Questions regarding programmatic information and/or requests for technical assistance in the preparation of the grant application should be directed to Ms. Cynthia H. Amis, Director, Division of Program Operations, Office of Minority Health, 1101 Wootton Parkway, Suite 600, Rockville, MD 20852, telephone (301) 594–0769. Technical assistance on budget and business aspects of the application may be obtained from the OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852, telephone (301) 594–0758.

For health information call the OMH Resource Center at 1–800–444–6472.

*Special Guidelines for Technical Assistance Conference Call.* A conference call will be held on *Tuesday, April 27, 2004* to provide technical assistance to potential applicants. Interested parties must register for the conference call by calling (301) 594–0769, e-mail *kcampbell@osophs.dhhs.gov.* Information will be provided at that time on the date and time of the conference call, the call-in number and the access code.

The purpose of the conference call is to help potential applicants to:

1. Understand the scope and intent of the program; and
2. Review application and evaluation procedures.

Participation in this conference call is not mandatory.

*HHS "One-Department'' Participating Entities:* These include, but are not limited to, the Administration on Aging, Administration for Children and Families, Agency for Healthcare Research and Quality, Centers for Disease Control and Prevention, Centers for Medicare and Medicaid Services, Food and Drug Administration, Health Resources and Services Administration, Indian Health Service, National Institutes of Health, the Substance

Abuse and Mental Health Services Administration, and the Office of Disease Prevention and Health Promotion.

## VIII. Other Information

### *1. Rationale*

The Stroke Belt is located in the southeastern region of the United States (U.S.) and primarily consists of contiguous states where rates of stroke death have exceeded the U.S. national average by more than 10 percent since its initial identification in the 1980s. Accordingly, the Stroke Belt represents a long-standing geographic disparity. In addition, demographic disparities exist within many areas, including the Stroke Belt. The Stroke Belt Elimination Initiative is undertaken by the Department to complement and, where indicated, enhance existing local, regional, and national activities designed to contribute to reducing and ultimately eliminating excessive rates of stroke death in this geographic area. Where necessary, the SBEI will seek to encourage effective and innovative approaches to this problem. *Focus on the Stroke Belt* provides a unique opportunity to leverage and coordinate resources within a well-defined and contiguous region, with an opportunity to expand efforts at a later time should effectiveness be demonstrated. *Focus on communities within the Stroke Belt* recognizes the importance of identifying, enhancing, allocating, and coordinating resources at the level where individuals live, work, and play in efforts to further enable communities to more fully encircle or form a collaborative ring around the problem and ultimately reduce or eliminate excess stroke death rates. *Focus on formation of an enabling ring of collaborative activities* addressing the community's stroke problem is a required core component of this announcement. This is undertaken in view of the need for enhanced coordination of existing as well as newly developed stroke-reducing activities that typically occur concurrently with single communities. *Focus on hypertension* recognizes that (1) this is one of the most prevalent and significant modifiable risk factors contributing to stroke, (2) the risk of stroke death doubles as blood pressure rises 20 mm Hg and very importantly, it falls in a similar doubling-fashion as blood pressure is reduced, and (3) the need to provide simpler messages for lay individuals to build upon over time.

Essential core components of the overall SBEI are detailed below.

*Core Goals: Short-term (by month 4)*—to begin implementing core framework, including establishment of an effective enabling ring of collaborative activities around the problem of stroke death in the community. *Mid-Term (by month 18)*—to begin to reduce mean community blood pressure (BP) among adults ≥18 years of age living within the community and to begin to reduce mean subpopulation BP among at least one demographic subpopulation considered to be a higher risk for hypertension. Mean community and subpopulation BPs will be obtained via a representative cross-sectional sampling methodology under guidance and funding by HHS (*see below,* core framework component 6). *Long-term (by month 36)*—to begin to reduce mean community stroke death rate (SDR) among adults ≥18 years of age living within the community and to begin to reduce mean population SDR among at least one demographic subpopulation considered to be a higher risk for stroke death. The community may set other measurable goals; however, core goals must be included and additional ones approved by HHS. Mean community and subpopulation SDRs will be obtained under guidance from HHS using a process that includes a modified health behaviors and blood pressure readings survey.

*Core Framework:* Each selected community is required to make use of a core framework for action. Additional activities may be pursued as determined by the community's Stroke Belt Community Action Team (SBCAT). *Core framework component 1 (pre-award)*—an SBCAT is being formed or designated and is comprised of representation from entities that formally agree to work collaboratively toward goals, submits application for funding, and is responsible for receiving and allocating funding under a cooperative agreement with HHS. *Core framework component 2 (by month 3)*—following notification of selection, the SBCAT will designate attendees of an orientation conference to be attended by national and regional members of a Stroke Belt Regional Action Team (SBRAT) (defined in section Core Collaboration Process, Regional Level). *Core framework component 3 (by month 3)*—the SBCAT reviews and adopts core goals, objectives, and process and creatively adapts them to their specific community. Other goals, objectives, and processes may be added by the SBCAT upon approval under terms of the cooperative agreement with HHS. *Core framework component 4 (by month 3)*—a full-time SBCAT Coordinator is hired or designated, whose experience includes leading effective community action interventions and has familiarity with health data, and who works directly and daily on the community's goals under the direction of the leadership of the SBCAT and in coordination with the SBRAT Coordinator. *Core framework component 5 (by month 4)*—an Enabling ring of collaborative activities is being formed or designated, including formal statements of the specific activity or activities that each enabling ring participant will coordinate or be responsible for in a collective effort to manage the priority condition (stroke) and priority risk factor (hypertension). *Core framework component 6 (by month 6)*—the HHS will work directly with the SBCAT to obtain baseline data on mean community blood pressure and basic health behaviors that impact hypertension and stroke. This step will consist of performing a representative sampling and will be technically coordinated and funded by HHS and performed in collaboration with the SBCAT. This survey includes an assessment of basic health behaviors and blood pressure and will be repeated at months 18 and 36. *Core framework component 7 (by month 6)*—the SBCAT coordinates with HHS to approve a framework for action and specific measures for evaluation of activities.

*Enabling Ring of Collaborative Activities:* The need for enhanced systemic coordination of activities designed to improve health results and outcomes is well recognized. This announcement emphasizes the requirement that selected communities will identify existing activities at local, State, regional, and national levels that have direct or indirect impact on prevention and control of hypertension (priority risk factor) and stroke (priority condition) within the community.

Once these activities and resources are identified, the community, via their SBCAT and SBCAT Coordinator, will work collaboratively with entities and individuals leading those activities to collaboratively encircle the problem, enabling the community to more effectively solve it (*see Core Collaboration Process*).

*Core Objectives:* The SBCAT is required to review, adopt, and adapt the following core objectives in order to enhance the likelihood for reducing hypertension and stroke locally. *Core objective 1*—increase community awareness and knowledge of hypertension and stroke. This requires use of an educational campaign (HHS to make electronic templates available) and, in the month of May (beginning in 2005), annual recognition of National

Stroke Awareness Month, National High Blood Pressure Education Month, and National Physical Fitness and Sports Month. *Core objective 2*—enhance early detection of hypertension and stroke with early referral to care. Formation of a volunteer information/notification network whereby community members are informed of when and where free blood pressure checks will be available. *Core objective 3*—increase the community's adoption and use of lifestyle behaviors known to promote prevention and control of hypertension and stroke. Strategically, these behaviors should be adopted by individuals/patients, families, health professionals/providers, health systems or plans, and by other community organizations and leaders including but not limited to schools, faith-based institutions, and work sites. *Core objective 4*—enhance blood pressure control rates (the percentage of persons with hypertension whose blood pressure is treated and controlled to levels that are recommended by accepted clinical practice guidelines) among community persons who are known to have hypertension and who are members of a health plan or otherwise visit health systems, clinics, or medical offices. This objective requires inclusion of representatives of these health-related organizations in the SBCAT. Other objectives may be added by the SBCAT upon approval under terms of the cooperative agreement with HHS.

*Core Collaboration Process:* to facilitate coordination of effort at local, State, regional, and national levels, and to achieve establishment of the community's Enabling ring, a core process for multi-level partnering will be utilized. *National Level*—HHS will be responsible for establishing and maintaining formal agreements of collaboration with non-Federal national organizations and other Federal entities for the purposes of this announcement and coordinating communications with entities at this level. The SBCAT will be required to coordinate with HHS to avoid multiple contacts from multiple communities to a single national entity. *Regional Level*—HHS will establish a SBRAT that includes appropriate HHS Regional Health Administrators and Regional Directors, pre-existing stroke consortia or networks as well as other national, regional, sub-regional, and local representatives. The SBRAT will be responsible for maintaining formal agreements of collaboration with regional entities for the purposes of this announcement and coordinating communications with entities at this level. The SBCAT will be required to coordinate with the SBRAT to avoid multiple contacts from multiple communities to a single regional entity. *State and Local Levels*—The SBCAT will be responsible for coordinating communications with entities at this level while keeping SBRAT and HHS point of contacts up to date as per final agreement. The key roles and responsibilities of partners and their specific enabling ring of activities must be clearly delineated.

*Core Measures for Evaluation and Process Improvement:* While community-specific measures are important, a core set of measures is required to enhance opportunities to share insights and lessons-learned as well as facilitate assessment of progress across multiple communities. *Core Process Measures*—These are required to include documentation of (a) an effective SBCAT, (b) evidence of attendance at the initial awardees orientation meeting, (c) SBCAT Coordinator, (d) membership in the SBRAT, (e) an effective enabling ring of collaboration within the community, (f) an effective educational campaign that also makes use of existing efforts and materials by participating entities as well as SBEI-specific ones to be provided by HHS, (g) evidence of annual recognition in the Month of May of National Stroke Awareness Month, National High Blood pressure Education Month, and National Physical Fitness and Sports Month, (h) evidence from SBCAT-participating health professionals, medical societies, health systems and health plans, and other SBCAT-member community organizations of efforts to incorporate guideline-based hypertension and stroke reducing behaviors into their policies and practices, (i) evidence of an information network, formal or informal, that notifies the community of when and where blood pressure checks are available, (j) evidence of activities undertaken that are designed to increase BP control rates in community persons with hypertension, and (k) approval of an evaluation plan. *Core Results Measures*—Requirements include documentation of (a) SBCAT-facilitated and HHS coordinated and funded baseline and follow-up data on a timeline-appropriate basis (mean community adult BP and mean BP for at least one demographic subpopulation at higher risk for hypertension or stroke; mean community adult stroke death rate and SDR for at least one demographic subpopulation at higher risk for hypertension or stroke; and simple questionnaire-based survey of lifestyle behaviors; for example, self-reported physical activity, weight control, salt use, smoking, consumption of fruits and vegetables, and other hypertension and stroke-related questions), (b) a summary of traditional metrics for the education campaign (*e.g.*, extent and frequency of multi-media paid advertisements and public service announcements, and estimated number and demographics of community persons reached), and (c) estimated number of blood pressure screenings performed by participants in the volunteer informational blood pressure check network. *Core Outcomes Measures*—These include estimation by SBCAT, in collaboration with HHS, of the degree of change, if any, in: (a) Mean community adult BP and mean BP for at least one demographic subpopulation at higher risk for hypertension or stroke; (b) mean community adult SDR and SDR for at least one demographic subpopulation at higher risk for hypertension or stroke; and (c) surveyed hypertension and stroke-reducing lifestyle behaviors.

*2. Background*

*The Stroke Belt is an Important Geographic Disparity:* The original Stroke Belt region was designated in 1980 by the National Heart, Lung, and Blood Institute and consisted of eleven States mainly in the southeast where the rate of death due to stroke was at least 10 percent higher than the U.S. national average. The original 11 Stroke Belt States are Alabama, Arkansas, Georgia, Indiana, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia. A review of earlier statistical evidence indicates that excess rates of stroke-deaths have been present in this general region for a long period of time. As of 2001, the top seven of the original 11 Stroke Belt States, in terms of stroke death rates, are contiguous within the southeastern U.S. and include Alabama, Arkansas, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee (the Seven Core Stroke Belt States).

*Stroke Burden:* The overall burden of stroke is significant. Stroke is the third leading cause of death in the U.S., and, on average, someone living in the U.S. has a stroke about every 45 seconds. There are over 700,000 new strokes annually and about 29 percent of these are recurrent strokes. There are at least 4.7 million U.S. persons living with stroke. Stroke accounts for over 981,000 hospital discharges and over $51.2 billion in costs annually. Reductions in stroke mortality account for about 1 of 6 years gained in life expectancy from 1970–2000. In 2001, approximately 163,538 U.S. deaths were directly

attributable to stroke. As of 2001, the average stroke death rate for the Seven Core Stroke Belt States was significantly higher than the U.S. national average or that for the remaining 43 states and the District of Columbia (about 22 percent and 26 percent higher, respectively).

*Stroke Risk Factors:* Risk factors for stroke include high blood pressure, excess weight, and heart disorders such as atrial fibrillation, an irregular heart rhythm, or a large area of heart wall damage due to a heart attack. High cholesterol, smoking, significant carotid artery disease, markedly high red blood cell count, and sleep apnea are also risk factors. The risk of stroke increases with age, being over 25-times higher for persons 75 years and older, and over 11-times higher for persons 65 to 74 years-old, compared to persons 35 to 44 years of age. Men 75 years and older have a 16 percent higher risk of stroke compared to women. A history of a prior stroke or mini-stroke (transient ischemic attack, TIA) or a family history of stroke are associated with increased stroke risk. The presence of diabetes increases the risk of stroke by over 150 percent. The importance of risk factors is underscored by the fact that persons with a low risk profile for heart disease or stroke are almost 60 percent less likely to die prematurely. These persons are also estimated to live up to 9.5 years longer. Accordingly, clinical practice guidelines for early intervention exist and have been recently updated.

*The Demographic Disparity of Death from Stroke:* As of 2001, Latino/Hispanic persons had the lowest stroke death rate (44.9 deaths per 100,000, age-adjusted). Rates for non-Latino/Hispanic blacks, whites, and others were 74 percent, 25 percent and 29 percent higher, respectively. Lack of early clinical management of ischemic stroke increases the risk of disability and death.

*Hypertension Defined:* Adult hypertension is currently defined as present when systolic blood pressure is ≥ 140 mm Hg , or diastolic BP ≥ 90 mm Hg on multiple readings over several different days, or when a person is taking anti-hypertensive medication to control BP over time. Blood pressure normally varies over time. Accordingly, a high blood pressure reading does not always constitute hypertension in a individual; the time element is an important component of the diagnosis. This is why referral to care for formal assessment and management is recommended following detection of elevated BP during a screening event.

*Hypertension Is a Potent Stroke Risk Factor:* Hypertension is one of the most prevalent and powerful risk factors for stroke. The risk of dying from stroke rises rapidly as blood pressure increases above 115/75 mm Hg. Stroke mortality doubles for every 20 mm Hg rise in systolic BP or for every 10 mm Hg rise in diastolic BP. Very importantly, the risk of stroke falls exponentially as high blood pressure is controlled to guideline-recommended levels in persons with hypertension. For this reason, the SBEI focuses on hypertension as the priority risk factor while facilitating activities that will also favorably impact other stroke risk factors. Hypertension is both preventable and treatable using a combination of lifestyle changes and medication.

*Hypertension Burden:* The public health, health care, and economic burdens of hypertension are substantial. Hypertension is the most common cardiovascular disease and the most common primary care clinical diagnosis in the U.S. It is estimated that not fewer than 50 million U.S. adults have hypertension. The burden of hypertension rises with age; over 80 percent of U.S. adults with hypertension are ≥ 45 years of age. A person with normal blood pressure at 55 years of age has a 90 percent risk of developing hypertension over their remaining lifetime. Health care costs for patients with hypertension and complications due to high blood pressure are estimated at $109 billion for 1998 (over $120 billion in U.S. 2002 dollars). About $22 billion of the total estimate was spent for anti-hypertensive treatment alone (over $24 billion in U.S. 2002 dollars). The average amount spent annually per person with a hypertensive condition was about $3,787 and about $4,180 in U.S. 2002 dollars when hypertensive complications and co-morbid conditions are included. Carving out complications and hypertensive co-morbidities yielded an estimated total 2004 cost of $55.5 billion for hypertensive disease alone (at least $1,110 per person for hypertension alone).

*Why Hypertension Prevention and Control and Key Goals:* It is estimated that almost 50,000 strokes could be prevented and more than 28,000 U.S. lives saved each year if about 90 percent of persons with hypertension had their blood pressure controlled to guideline-recommended levels. Intensified hypertension control was very cost-effective in a recent cost-effectiveness analysis of patients with type 2 diabetes. Nationally, in spite of notable successes over the years, only about 59 percent of adults with hypertension were being treated and only about 34 percent of adults with hypertension had their blood pressure controlled to guideline-recommended levels in 1999–2000. Mean high blood pressure control rates for the year 2002 for commercial health plans, Medicare and Medicaid were 58.4 percent, 56.9 percent and 53.4 percent, respectively. These values represent significant improvements over year 2000 values and thus, serve as a basis for encouragement toward continued performance improvement. A recent analysis of data from the third National Health and Nutrition Examination Survey (NHANES III; 1988–1994) indicates that although there were some differences in health care access and utilization, about 92 percent of adults with uncontrolled hypertension reported having health insurance and 86 percent of them had a usual source of care. It was also found that U.S. adults with hypertension not controlled to guideline-recommended levels reported an average of over four visits per year to physicians. About 75 percent of U.S. adults in the NHANES III survey who were not aware that they had hypertension, had their blood pressure checked by a health professional at some time within the prior 12 months.

*3. Healthy People 2010*

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a PHS-led national activity announced in January 2000 to eliminate health disparities and improve years and quality of life. More information may be found on the Healthy People 2010 Web site: *http://www.healthypeople.gov*. Copies of the *Healthy People 2010: Volumes I and II* can be purchased by calling (202) 512–1800 (cost $70.00 for printed version; $20.00 for CD–ROM). Another reference is the *Healthy People 2000 Final Review 2001*. For one free copy of *Healthy People 2010*, contact: The National Center for Health Statistics (NCHS), Division of Data Services, 3311 Toledo Road, Hyattsville, MD 20782; or, telephone (301) 458–4636. Ask for DHHS Publication No. (PHS) 99–1256. This document may also be downloaded from the *http://www.healthypeople.gov*.

*4. Resources*

The following are Web sites from various Federal and non-Federal sources that may serve as resources as you develop your proposals related to stroke and/or high blood pressure prevention and control:

Agency for Healthcare Research & Quality

Put Prevention Into Practice, *http://www.ahrq.gov/clinic/ppipix.htm*.

Guide to Clinical Preventive Services, Chapters 19 & 21, *http://hstat.nlm.nih.gov/hq*.

Centers for Disease Control and Prevention

Guide to Community Preventive Services, *http://www.thecommunityguide.org*.

Promising Practices in Chronic Disease Prevention and Control, Chapter on Achieving a Heart-Healthy and Stroke-Free Nation, *http://www.cdc.gov/nccdphp/promising_practices/index.htm*.

Overweight and Obesity, *http://www.cdc.gov/nccdphp/dnpa/obesity/index.htm*.

Centers for Excellence—Exemplary State Programs, *http://www.cdc.gov/nccdphp/exemplary/heart_disease.htm* and *http://www.cdc.gov/nccdphp/exemplary/diabetes.htm*.

State Heart Disease and Stroke Prevention Program *http://www.cdc.gov/cvh/stateprogram.htm*.

State-Based Nutrition and Physical Activity Program; Obesity; 5 A-Day; Active Community Environments; Kids Walk to School; Physical Activity, *http://www.cdc.gov/nccdphp/dnpa*.

Atlas of Stroke Mortality (county-level data), Cardiovascular Health Program, CDC, *http://www.cdc.gov/cvh*.

WISEWOMAN (Well Integrated Screening & Evaluation for Women Across the Nation): Screening and Lifestyle Interventions for Many Low-Income, Uninsured Women, *http://www.cdc.gov/wisewoman*.

Surgeon General's Report on Physical Activity, *http://www.cdc.gov/nccdphp/sgr/sgr.htm*.

National Health and Nutrition Examination Survey, *http://www.cdc.gov/nchs/nhanes.htm*.

Behavioral Risk Factor Surveillance System—State, city and county data, *http://apps.nccd.cdc.gov/brfss/index.asp*.

Centers for Medicare & Medicaid Services

Quality Initiatives (main page summary), *http://cms.hhs.gov/quality/*.

Quality Fact, Sheet *http://cms.hhs.gov/quality/QualityFactSheet.pdf*.

Hospital Quality Initiative (National Voluntary Hospital Reporting Initiative), *http://cms.hhs.gov/quality/hospital/*.

Medicaid Quality in Home and Community Based Services, *http://cms.hhs.gov/medicaid/waivers/quality.asp*.

Quality in Managed Care, *http://cms.hhs.gov/healthplans/quality/*.

Demonstration Projects and Evaluation Reports, *http://cms.hhs.gov/researchers/demos/*.

Medicare Physician Group Practice Demonstration, *http://cms.hhs.gov/researchers/demos/PGP.asp*.

CMS Research Activities: The Active Projects Report, 2003 Edition, Theme 7: Outcomes, Quality and Performance, *http://cms.hhs.gov/researchers/projects/apr/* (complete report), *http://cms.hhs.gov/researchers/projects/APR/2003/theme7.pdf*.

Quality Improvement Organizations (QIOs), *http://cms.hhs.gov/qio/*.

Statistics and Data, *http://cms.hhs.gov/researchers/*.

Health Resources and Services Administration

Find a Health Center; people looking for low cost health care, *http://bphc.hrsa.gov/*.

Area Health Education Centers; Health Education Training Centers, *http://bhpr.hrsa.gov/interdisciplinary/hetc.html*.

Indian Health Service

IHS National Diabetes Program; Diabetes topics; Nutrition topics; Pediatric Height and Weight Study; IHS Best Practice Model; Type 2 Diabetes in Youth; School Health-Physical Activity and Nutrition; Pathways; Cardiovascular Disease, *http://www.ihs.gov/MedicalPrograms/Medical_index.asp*.

National Institutes of Health

Evidence-Based Health Information for the Public, *http://medlineplus.gov*.

NIDA Nicotine Information Page, *http://www.drugabuse.gov/drugpages/nicotine.html*.

Evidence-Based Approaches for Implementation of 5 A Day for Better Health, *http://dccps.nci.nih.gov/5ad_6_eval.html*.

Obesity Education Initiative, *http://www.nhlbi.nih.gov/health/public/heart/obesity/lose_wt/index.htm*.

Hearts N' Parks, *http://www.nhlbi.nih.gov/health/prof/heart/obesity/hrt_n_pk/index.htm*.

Heart Healthy Recipes, *http://www.nhlbi.nih.gov/health/public/heart/obesity/lose_wt/recipes.htm*.

National High Blood Pressure Education Program, *http://www.nhlbi.nih.gov/hbp/index.html*.

National Cholesterol Education Program, *http://www.nhlbi.nih.gov/chd/index.htm*.

Information for Patients & General Public, *http://www.nhlbi.nih.gov/health/public/heart/index.htm*.

Enhanced Dissemination & Utilization Centers (EDUCs) in communities, *http://hin.nhlbi.nih.gov/educs/awardees.htm*.

The Heart Truth Campaign, *http://www.nhlbi.nih.gov/health/hearttruth/index.htm*.

Act in Time to Heart Attack Signs, *http://www.nhlbi.nih.gov/actintime/index.htm*.

Healthy People 2010 Cardiovascular Gateway, *http://hin.nhlbi.nih.gov/cvd_frameset.htm*.

Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults: The Evidence Report, *http://www.nhlbi.nih.gov/guidelines/obesity/ob_home.htm*.

Body Mass Index Calculator, *http://www.nhlbisupport.com/bmi/bmicalc.htm*.

National Diabetes Education Program; Small Steps, Big Rewards—Prevent Type 2 Diabetes, *http://www.ndep.nih.gov*.

Diabetes Research and Training Centers Demonstration and Education Divisions; The Pima Indians—Pathfinders for Health; Diabetes Prevention Program Prevention Trial—Type 1 (DPT–1); Look Ahead (Action in Health for Diabetes), *http://www.niddk.nih.gov/patient/show/lookahead.htm*.

Stroke Awareness, *http://www.ninds.nih.gov/news_and_events/pressrelease_may_stroke_050801.htm*.

Weight Control Information Network, *http://www.niddk.nih.gov/health/nutrit/win.htm*.

Exercise: A Guide from the National Institute on Aging, *http://nia.nih.gov/exercisebook/*.

Office of the Secretary

HealthierUS, *http://www.healthierus.gov/, http://www.whitehouse.gov/infocus/fitness/*.

Healthy People 2010, *http://www.health.gov/healthypeople/document/html*.

Best Practices Initiative—Comprehensive Diabetes Control Program, *http://www.osophs.dhhs.gov/ophs/BestPractice/MI.htm*.

Nutrition Guidelines (Developed by HHS and United States Department of Agriculture), *http://www.health.gov/dietaryguidelines/*.

The Surgeon General's Call to Action to Prevent and Decrease Overweight and Obesity, *http://www.surgeongeneral.gov/topics/obesity*.

Girls and Obesity Initiative, *http://www.4woman.gov/owh/education.htm*.

Non-Federal Resources

Tri-state Stroke Network, *http://www.tristatestrokenetwork.org*.

State Heart Disease and Stroke Prevention Programs, *http://www.cdc.gov/cvh/stateprogram.htm*.

American Heart Association, *http://www.americanheart.org*.

American Heart Association's Guide for Community-Wide Cardiovascular

Health, *http://www.americanheart.org/presenter.jhtml?identifier=3008344.*

American Stroke Association, *http://www.strokeassociation.org.*

Comprehensive resource, for patients and families, *http://www.medlineplus.org.*

Health Disparities Collaborative, *http://www.healthdisparities.net/.*

National Stroke Association, *http://www.stroke.org.*

National training program using community mobilization model, *http://www.diabetestodayntc.org.*

University of Michigan's Mfit Community Nutrition Program, *http://www.mfitnutrition.com/supermarketprogram.asp.*

Web-based training program on how to provide tobacco cessation counseling, *http://oralhealth.dent.umich.edu/VODI/html/index.html.*

Writing in plain language, *http://www.plainlanguage.gov/handbook/index.htm.*

Evaluation and Logic Models

CDC Office on Smoking and Health, *http://www.cdc.gov/tobacco/evaluation_manual/app_b.html.*

CDC Division of Nutrition and Physical Activity, *http://www.cdc.gov/nccdphp/dnpa/physical/handbook/step2.htm#logic.*

Kellogg Foundation Logic Model Development Guide (under "Tools'', "Evaluation''), *http://www.wkkf.org/.*

Promising Practices in Chronic Disease Prevention and Control: A Public Health Framework for Action, *http://www.cdc.gov/nccdphp/promising_practices/pdfs/Heart.pdf.*

University of Wisconsin-Extension, *http://www1.uwex.edu/ces/lmcourse.*

Kansas University Community Tool Box, *http://ctb.ku.edu.*

*5. Basis for Focus on the Seven Core Stroke Belt States*

Using 1930–2001 age-adjusted stroke mortality rate data from the National Center for Health Statistics, South Carolina has ranked second or first in 8 of 8 decades (100 percent of the time), Georgia first or second in 6 of 8 decades (75 percent of the time), North Carolina seventh or higher in 8 of 8 decades (100 percent of the time), Alabama sixth or higher in 6 of 8 decades (75 percent of the time), Mississippi seventh or higher in 7 of 8 decades (97 percent of the time), Tennessee seventh or higher in 6 of 8 decades (75 percent of the time), and Arkansas ranks first as of the most recent 2001 analysis, demonstrating the most rapid increase of all states and the District of Columbia over the study period. Arkansas' stroke mortality rate ranking has moved dramatically from a rank of 36th in 1940 and 1950 to 15th in 1960, to 7th or 8th in 1970–1980, to 3rd in 1990, and to 1st in 2001.

Dated: April 15, 2004.

**Nathan Stinson, Jr.,**

*Deputy Assistant Secretary for Minority Health.*

[FR Doc. 04–9080 Filed 4–19–04; 8:45 am]

BILLING CODE 4150–29–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2004N–0166]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Infant Feeding Practices Study II

**AGENCY:** Food and Drug Administration, HHS

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a voluntary consumer survey about infant feeding and diet of pregnant women and new mothers.

**DATES:** Submit written or electronic comments on the collection of information by June 21, 2004.

**ADDRESSES:** Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane., rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

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

**Infant Feeding Practices Study II**

Under section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)), FDA is authorized to conduct research and educational and public information programs relating to foods and devices. Under this authority, FDA is planning to conduct a consumer study about infant feeding and the diet of pregnant women and new mothers. The study will provide detailed information about foods fed to infants, including breast milk and infant formula; factors that may contribute to infant feeding choices and to breastfeeding success, including intrapartum hospital experiences, mother's employment status, mother's self confidence, postpartum depression, infant sleeping arrangements; and other issues of interest to FDA, including infant food allergy, and experiences with breast pumps. The study will measure dietary intake of pregnant women and new mothers. It will also be used as one component of an evaluation of the Department of Health and Human

Services (HHS) National Breastfeeding Awareness Campaign.

A sample of pregnant women will be drawn from a commercial consumer opinion panel for a longitudinal study in which almost all data will be collected by mailed questionnaires. The sample design was chosen to maximize the response rate, which is critical for the success of a longitudinal study. Almost all of the sample will be members of the consumer opinion panel from which the sample will be drawn, while a few will be household members but not the panel member. All participants will be asked to complete one questionnaire during pregnancy, a short telephone interview shortly after delivery, a neonatal questionnaire sent a few weeks after the birth, and nine postnatal questionnaires sent approximately monthly from infant age 2 to 12 months. The postnatal questionnaires consist of various combinations of nine modules, some of which will be sent at each data collection, while others will be sent only some of the time. Seven of the questionnaires will take about 25 minutes to complete, and the other two will take about 15 minutes.

A subset of the sample will be asked to complete a modified Diet History Questionnaire (from National Institutes of Health, National Cancer Institute) during pregnancy and again when the infants are about 3 months old. Pregnant women who reside in a panel member's home but are not themselves the panel member will be sent a short additional questionnaire to collect basic demographic information.

The expected sample size is about 3,500 pregnant women, of whom about 2,250 are expected to complete questionnaires in the later infant ages. The sample will be well distributed throughout the United States. Only women who give birth to a full-term, healthy, singleton infant will be included in the study. An estimated 12 percent of the original 3,500 women will be ineligible for the study by these criteria. Many of the questions are identical to ones asked in a previous Infant Feeding Practices Study conducted by the FDA in 1993 to 1994. Use of the same questions in both time periods will enable comparison between the two data collections. Because the previous data are a decade old, and research suggests that significant changes in infant feeding issues have occurred in the past ten years, it is likely that consumer attitudes and practices have changed since the first data collection. FDA needs current information to support consumer education programs and to describe the policy context of current issues related to infant feeding. In addition, HHS and its agencies need data to evaluate various outreach efforts about child and maternal nutrition.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED REPORTING BURDEN[1]

| Questionnaire | No. of Respondents | Frequency per Response | Total Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| Prenatal | 3,500 | 1 | 3,500 | .25 | 875 |
| Prenatal diet history questionnaire | 900 | 1 | 900 | 1.00 | 900 |
| Demographic questionnaire | 140 | 1 | 140 | .17 | 24 |
| Birth screener | 2,772 | 1 | 2,772 | .07 | 194 |
| Neonatal questionnaire | 2,494 | 1 | 2,494 | .25 | 624 |
| Postnatal diet history questionnaire | 900 | 1 | 900 | 1.00 | 900 |
| Postnatal questionnaires A | 2,250 | 7 | 15,750 | .42 | 6,615 |
| Postnatal questionnaires B | 2,250 | 2 | 4500 | .25 | 1,125 |
| Total | | | | | 11,257 |

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

The burden estimate is based on FDA's experience with the 1993 to 1994 survey mentioned in the previous paragraph and information available for the diet history questionnaire.

Dated: April 15, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–8995 Filed 4–20–04; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0525]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Hazard Analysis and Critical Control Point; Procedures for the Safe and Sanitary Processing and Importing of Juice

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by May 21, 2004.

**ADDRESSES:** OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and

Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Hazard Analysis and Critical Control Point (HAACP); Procedures for the Safe and Sanitary Processing and Importing of Juice (OMB Control Number 0910–0466)—Extension**

These regulations mandate the application of HACCP procedures to fruit and vegetable juice processing. HACCP is a preventative system of hazard control that can be used by all food processors to ensure the safety of their products to consumers. A HACCP system of preventive controls is the most effective and efficient way to ensure that these food products are safe. FDA's mandate to ensure the safety of the nation's food supply is derived principally from the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 *et seq.*). Under the act, FDA has authority to ensure that all foods in interstate commerce, or that have been shipped in interstate commerce, are not contaminated or otherwise adulterated, are produced and held under sanitary conditions, and are not misbranded or deceptively packaged; under 21 U.S.C. 371, the act authorizes the agency to issue regulations for its efficient enforcement. The agency also has authority under the Public Health Service Act (42 U.S.C. 264) to issue and enforce regulations to prevent the introduction, transmission, or spread of communicable diseases from one State to another other State. Information development and recordkeeping are essential parts of any HACCP system. The information collection requirements are narrowly tailored to focus on the development of appropriate controls and document those aspects of processing that are critical to food safety. Through these regulations, FDA is implementing its authority under section 402(a)(4) of the act (21 U.S.C. 342(a)(4)).

In the **Federal Register** of December 8, 2003 (68 FR 68400), FDA asked for public comment on the information collection. FDA received one comment. The comment stated that the agency had underestimated the annual recordkeeping burden of the regulation. The comment identified the following three sources of underestimated burden:

1. The comment stated that we underestimated the burden of validation required of importers in 21 CFR 120.14. We estimated the burden to be 4 hours, whereas the comment said that validation requires 30 to 40 hours per importer.

2. The comment stated that we underestimated the time required to document the monitoring of critical control points (21 CFR 120.8(b)(7)). We estimated 36 seconds; the comment said that 2 to 3 minutes is a better estimate.

3. The comment stated that we underestimated the number of times per week that processors verify records in accordance with 21 CFR 120.11. We estimated once per week but, according to the comment, many processors verify records more often. The comment said that some processors verify records daily.

We have considered the three points raised in the comment. We will revise the estimated burden in response to the first point, but we find that the other two points do not require a revision of the estimated burden. The following are our detailed responses:

1. Part of the difference between our estimated burden under 21 CFR 120.14 and the estimate in the comment is that we computed burden per foreign source (308 entities) while the comment computes burden per importer (120 entities). Our burden per importer for validation is about 10 hours per year, which is still less than the comment's estimate but by a smaller order of magnitude. If foreign processors deal with multiple importers, the comment's estimate of 30 to 40 hours per importer is plausible. We therefore adjust the last line in the table in response to the comment. The hours per record change from 4 to 12 (column 5 of the table), and the total burden changes from 1,232 to 3,696 hours (column 6 of the table). This total burden corresponds to a burden of about 30 hours per importer.

2. The comment on documenting the monitoring of critical control points reflects some confusion about our calculation as presented in the burden table. Our estimate of 0.6 minutes per record is an average based on our overall estimate of the amount of additional recordkeeping time per hour required by the rule (on average an additional 3 minutes per hour). Some records will require more time to keep and others less. The comment may be correct that some records may take at least 2 to 3 minutes to make. However, the comment does not purport, and FDA does not believe, that all records will require that amount of time. Furthermore, many firms are already voluntarily performing a significant amount of the activities required to keep the records required by the rule to maintain good quality control to protect their brand value. Our estimate of the recordkeeping burden attributable to this rule is only for those additional activities that firms have not been doing prior to the rule, but undertake to comply with the rule.

3. The verification burden under 21 CFR 120.11 is based on the number of records that need to be verified. We say that each record must be verified within a week, so verification can be done weekly. But the burden is the same if verification is done twice a week or daily because the number of records to be verified is the same. So the burden would not change if we assumed more frequent verification.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Sections | No. of Recordkeepers | Annual Frequency of Recordkeeping | Total Annual Records | Hours per Record | Total Hours |
|---|---|---|---|---|---|
| 120.6(c) and 120.12(a)(1) and (b) | 1,875 | 365 | 684,375 | 0.1 | 68,438 |
| 120.7, 120.10(a), and 120.12(a)(2), (b), and (c) | 2,300 | 1.1 | 2,530 | 20 | 50,600 |
| 120.8(b)(7) and 120.12(a)(4)(i) and (b) | 1,450 | 14,600 | 21,170,000 | 0.01 | 211,700 |
| 120.10(c) and 120.12(a)(4)(ii) and (b) | 1,840 | 12 | 22,080 | 0.1 | 2,208 |

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]—Continued

| 21 CFR Sections | No. of Record-keepers | Annual Frequency of Recordkeeping | Total Annual Records | Hours per Record | Total Hours |
|---|---|---|---|---|---|
| 120.11(a)(1)(iv), 120.11 (a)(2), and 120.12 (a)(5) | 1,840 | 52 | 95,680 | 0.1 | 9,568 |
| 120.11(b) and 120.12(a)(5) and (b) | 1,840 | 1 | 1,840 | 4 | 7,360 |
| 120.11(c) and 120.12(a)(5) and (b) | 1,840 | 1 | 1,840 | 4 | 7,360 |
| 120.14(a)(2) and 120.14(c) and (d) | 308 | 1 | 308 | 12 | 3,696 |
| Total hours | | | | | 360,930 |

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

Table 1 provides a breakdown of the total estimated annual recordkeeping burden. The estimates in this table have been reviewed by the agency's HACCP experts, who have practical experience in observing various processing operations and related recordkeeping activities.

The burden estimates in table 1 are based on an estimate of the total number of juice manufacturing plants (i.e., 2,300) affected by the regulations. Included in this total are 850 plants currently identified in FDA's official establishment inventory plus 1,220 very small apple juice manufacturers and 230 very small orange juice manufacturers. The total burden hours are derived by estimating the number of plants affected by each portion of this final rule and multiplying the corresponding number by the number of records required annually and the hours needed to complete the record. These numbers were obtained from the agency's final regulatory impact analysis prepared for these regulations.

Moreover, these estimates assume that every processor will prepare sanitary standard operating procedures and a HACCP plan and maintain the associated monitoring records and that every importer will require product safety specifications. In fact, there are likely to be some small number of juice processors that, based upon their hazard analysis, determine that they are not required to have a HACCP plan under these regulations.

Dated: April 15, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–8996 Filed 4–20–04; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0329]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry on How to Use E-Mail to Submit Information to the Center for Veterinary Medicine

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Industry on How to Use E-Mail to Submit Information to the Center for Veterinary Medicine,'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of January 26, 2004 (69 FR 3586), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0454. The approval expires on March 31, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: April 14, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–9072 Filed 4–20–04; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0327]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry on How to Use E-Mail to Submit a Request for a Meeting or Teleconference to the Office of New Animal Drug Evaluation

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Industry on How to Use E-Mail to Submit a Request for a Meeting or Teleconference to the Office of New Animal Drug Evaluation,'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of January 26, 2004 (69 FR 3587), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned

OMB control number 0910–0452. The approval expires on March 31, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: April 15, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–9073 Filed 4–20–04; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2004D–0156]**

### International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products; Draft Guidance for Industry on Environmental Impact Assessments for Veterinary Medicinal Products—Phase II; Request for Comments; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability for comments of a draft guidance document for industry (#166) entitled "Environmental Impact Assessments (EIA's) for Veterinary Medicinal Products (VMP's)—Phase II'' (VICH GL38). This draft guidance has been developed for veterinary use by the International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This draft VICH guidance document provides recommendations for internationally harmonized test methods used to generate environmental fate and toxicity data.

**DATES:** Submit written or electronic comments on the draft guidance by May 21, 2004, to ensure their adequate consideration in preparation of the final guidance document. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments should be identified with the full title of the draft guidance and the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Eirkson, Center for Veterinary Medicine (HFV–145), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6958, e-mail: *ceirkson@cvm.fda.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonization of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission, European Medicines Evaluation Agency, European Federation of Animal Health, Committee on Veterinary Medicinal Products, FDA, the U.S. Department of Agriculture, the Animal Health Institute, the Japanese Veterinary Pharmaceutical Association, the Japanese Association of Veterinary Biologics, and the Japanese Ministry of Agriculture, Forestry and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee as follows: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH Steering Committee meetings.

#### II. Draft Guidance on Environmental Impact Assessments

The VICH Steering Committee held a meeting in October 2003 and agreed that the draft guidance document entitled "Environmental Impact Assessments (EIA'S) For Veterinary Medicinal Products (VMP's)—Phase II'' (VICH GL38) should be made available for public comment. The aim of the guidance is to assess the potential for VMP's to affect nontarget species in the environment, including both aquatic and terrestrial species. It is not possible to evaluate the effects of VMP's on every species in the environment that may be exposed to the VMP following its administration to the target species. The species tested are intended to serve as surrogates or indicators for the range of species present in the environment.

This Phase II guidance contains sections for each of the major branches: (1) Aquaculture; (2) intensively reared terrestrial animals; and (3) pasture animals, each containing decision trees pertaining to the branch. The document also contains a section listing the recommended tests for physical/chemical properties, environmental fate and environmental effects, as well as a recommendation of how to determine when tests may be relevant.

In the United States, the environmental impact of VMP's is determined under the requirements established by the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR part 1500 and 21 CFR part 25) and under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(d)). Under NEPA, an environmental assessment (EA) is conducted to determine whether a VMP may have a significant environmental impact. A particular VMP may be categorically excluded from the requirement of an EA, or it may require

an EA, an environmental impact statement (EIS), or both.

FDA and the VICH Ecotoxicity/Environmental Impact Assessment Working Group will consider comments about the draft guidance document. Information collection is covered under the Office of Management and Budget control number 0910–0032.

**III. Significance of Guidance**

This draft document, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated "guidance'' rather than "guideline.'' Because guidance documents are not binding, mandatory words such as "must,'' "shall,'' and "will'' in the original VICH document have been substituted with "should.'' Similarly, words such as "require'' or "requirement'' have been replaced by "recommend'' or "recommendation'' as appropriate to the context.

The draft VICH guidance (#166) represents the agency's current thinking on the conduct of environmental impact assessments for veterinary medicinal products proposed for marketing in the European Union, Japan, and the United States. This guidance does not create or confer any rights for or on any person and will not operate to bind FDA or the public. You may use an alternative method as long as it satisfies the requirements of applicable statutes and regulations.

**IV. Comments**

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this draft guidance document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

**V. Electronic Access**

Electronic comments may also be submitted electronically on the Internet at *http://www.fda.gov/dockets/ecomments*. Once on this Internet site, select [docket number] entitled "Environmental Impact Assessments (EIA's) for Veterinary Medicinal Products (VMP's)—Phase II'' (VICH GL38) and follow the directions.

Copies of the draft guidance document entitled "Environmental Impact Assessments (EIA's) for Veterinary Medicinal Products (VMP's)—Phase II'' (VICH GL38) may be obtained on the Internet from the CVM home page at *http://www.fda.gov/cvm*.

Dated: April 13, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–9071 Filed 4–20–04; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources And Services Administration

### Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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.

**Proposed Project: The Division of Independent Review Grant Reviewer Recruitment Form—New**

HRSA's Division of Independent Review (DIR) is responsible for carrying out the independent and objective review of all eligible applications submitted to HRSA. DIR ensures that the independent review process is efficient, effective, economical and complies with statutes, regulations and policies. The review of applications is performed by people knowledgeable in the field of endeavor for which support is requested and is advisory to individuals in HRSA responsible for making award decisions.

To streamline the collection, selection and assignment of grant reviewers to objective review committees, HRSA will utilize a web-based data collection form to gather critical reviewer information. The Grant Reviewer Recruitment Form will standardize pertinent categories of reviewer information, such as areas of expertise, occupation, work settings, reviewer experience, and allow maximum use of drop-down menus to simplify for the data collection process. All self-nominated reviewers will be channeled to the Grant Reviewer Recruitment Form; DIR anticipates a monthly volume of approximately 100 self-nominated responses. On a periodic basis, existing HRSA reviewers will be notified and directed to update their profile (via the Grant Reviewer Recruitment Form). HRSA maintains a pool of approximately 5,000 individuals that have previously served on HRSA objective review committees; DIR projects that approximately 3,700 individuals (or 75% of existing reviewers) would comply with instructions to update their profile on the web-based Recruitment Form.

For existing HRSA reviewers, the amount of time required to complete the Recruitment Form will be abbreviated since HRSA will fill-in the Form with previously collected personal information; existing reviewers will focus only on updating changes (*e.g.*, addresses, employer, expertise, occupation) to their profile.

The estimate of burden for the HRSA Grant Reviewer Recruitment Form is as follows:

| Type of respondent* | Number of respondents | Responses per respondent | Total responses | Minutes per response (minutes) | Total burden hours |
|---|---|---|---|---|---|
| New reviewer | 1,200 | 1 | 1,200 | 45 | 900 |

| Type of respondent* | Number of respondents | Responses per respondent | Total responses | Minutes per response (minutes) | Total burden hours |
|---|---|---|---|---|---|
| Existing reviewer | 3,700 | 1 | 3,700 | 30 | 1850 |
| Total | 2,750 | | | | |

* Includes two categories of grant reviewers: 1) new or self-nominated reviewers that have never served as a HRSA grant reviewer and 2) existing reviewers that have previously served on a HRSA objective review committee.

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 14, 2004.

**Tina M. Cheatham,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 04–8950 Filed 4–20–04; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting.

*Name:* Advisory Committee on Interdisciplinary, Community-Based Linkages.

*Dates and Times:* May 3, 2004, 8:30 a.m.–5:30 p.m., May 4, 2004, 8:30 a.m.–5:30 p.m., May 5, 2004, 8:30 a.m.–2:00 p.m.

*Place:* The Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Status:* The meeting will be open to the public.

*Agenda:* Agenda items will include, but not be limited to: Welcome; plenary session on healthcare workforce issues as they relate to the grant programs under the purview of the Committee with presentations by speakers representing the Department of Health and Human Services (DHHS), constituent groups, field experts and committee members. The following topics will be addressed at the meeting: What does the national health care workforce currently look like; what is the impact of Title VII, Section 751–756 programs on health workforce distribution and retention; and what are next steps for Title VII, Sections 751–756 programs in addressing the distribution and retention of health professionals.

Proposed agenda items are subject to change as priorities dictate.

*Public Comments:* Public comment will be permitted at the end of the Committee meeting on May 3, 2004 and before lunch on May 4, 2004. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, with a copy of their presentation to: Jennifer Donovan, Deputy Executive Secretary, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–8044.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The Division of State, Community and Public Health will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file a request in advance for a presentation, but wish to make an oral statement may register to do so at the Double Tree Hotel, Rockville, MD, on May 3, 2004. These persons will be allocated time as the Committee meeting agenda permits.

*For Further Information Contact:* Anyone requiring information regarding the Committee should contact Jennifer Donovan, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–8044.

Dated: April 14, 2004.

**Tina M. Cheatham,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 04–8949 Filed 4–20–04; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

### Program Exclusions: March 2004

**AGENCY:** Office of Inspector General, HHS.

**ACTION:** Notice of program exclusions.

During the month of March 2004, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

| Subject name | Address | Effective date |
|---|---|---|
| **PROGRAM-RELATED CONVICTIONS** | | |
| ABELL, RICHARD | NEW PORT RICHEY, FL | 4/20/2004 |
| ANZUETO, ROSA | SOUTH GATE, CA | 4/20/2004 |
| ARCIAGA, RECY | FONTANA, CA | 4/20/2004 |
| BONDERER, VIRGINIA | NORWALK, OH | 4/20/2004 |
| BRISBON, TERESA | ATLANTA, GA | 4/20/2004 |
| BROWN, RONALD | ST LOUIS, MO | 4/20/2004 |
| BURGESS, STEPHANIE | CLEVELAND, SC | 4/20/2004 |
| CALIMBAS, JOSELITO | MONROVIA, CA | 4/20/2004 |
| CASTILLO, ELI | LOS ANGELES, CA | 4/20/2004 |

| Subject name | Address | Effective date |
|---|---|---|
| CASTRO-SANCHEZ, MARLENE | SALT LAKE CITY, UT | 4/20/2004 |
| CLARK, TONYA | LYNCHBURG, VA | 4/20/2004 |
| DALES, CHRISTINA | PIERPORT, OH | 4/20/2004 |
| DANIELS, RUTH | LEXINGTON, KY | 4/20/2004 |
| DOMANTAY, ADELAIDA | LOS ANGELES, CA | 4/20/2004 |
| DOMANTAY, BRUMEO | LOS ANGELES, CA | 4/20/2004 |
| FAN, ALLEN | MONTEREY PARK, CA | 4/20/2004 |
| FAYNGOR, IRINA | LOS ANGELES, CA | 4/20/2004 |
| FLORES, ELIZETTE | N MIAMI, FL | 4/20/2004 |
| FOX, WANDA | DORSET, OH | 4/20/2004 |
| GENOCHIO, CORA | DES MOINES, IA | 4/20/2004 |
| GHOURI, AQEEL | SCARSDALE, NY | 4/20/2004 |
| GRAHAM, LINDA | ASHLAND, WI | 4/20/2004 |
| GUARDADO, SILVIA | LOS ANGELES, CA | 4/20/2004 |
| HAINS, DONALD | NEW ORLEANS, LA | 4/20/2004 |
| HAMILTON, SIDNEY | SANTEE, SC | 4/20/2004 |
| HASTINGS, KATHLEEN | BEAVERCREEK, OH | 4/20/2004 |
| HAUCK, MARLA | WATERTOWN, SD | 4/20/2004 |
| HILL, AMY | THORNVILLE, OH | 4/20/2004 |
| JOHNSON, LAVENDER | MILWAUKEE, WI | 4/20/2004 |
| JOHNSON, PAUL | COLORADO SPRINGS, CO | 4/20/2004 |
| JONES, HARRY | MIAMI, FL | 4/20/2004 |
| KEENER, JODI | BILOXI, MS | 4/20/2004 |
| KIDS HEALTH SERVICES, INC | CORAL SPRINGS, FL | 4/20/2004 |
| KIM, JENNIFER | FORT LEE, NJ | 4/20/2004 |
| LOPEZ, JOSE | LOS ANGELES, CA | 4/20/2004 |
| LOPEZ, MANUEL | MIAMI, FL | 4/20/2004 |
| MACABUHAY, DENNIS | LONG BEACH, CA | 4/20/2004 |
| MATEVOSYAN, GEVORG | LOMPOC, CA | 4/20/2004 |
| OJEDA, ALBERTA | BALDWIN PARK, CA | 4/20/2004 |
| PAPOLCZY, TERESA | ODIN, IL | 4/20/2004 |
| PARKS, SYTALIA | BLACKLICK, OH | 4/20/2004 |
| PASHYAN, ARTAVAZD | LONG BEACH, CA | 4/20/2004 |
| PASTRANA, ZENAIDA | LOS ANGELES, CA | 4/20/2004 |
| REED, DEBORA | ST PAUL, MN | 4/20/2004 |
| RUTHERFORD, HARRY | COLUMBIA, SC | 4/20/2004 |
| SANCHEZ, EDUARDO | MIAMI, FL | 4/20/2004 |
| SCOTT, CARLOS | MIAMI, FL | 4/20/2004 |
| SMITH, COREY | MILWAUKEE, WI | 4/20/2004 |
| STEVENS, JUANITA | COLUMBUS, OH | 4/20/2004 |
| STUART, AARON | SAFETY HARBOR, FL | 4/20/2004 |
| TAYLOR, JOANN | JAMAICA, NY | 4/20/2004 |
| TERMIKAYELYAN, LEVON | LONG BEACH, CA | 4/20/2004 |
| THOMPSON, RHONDA | HOLLY HILL, SC | 4/20/2004 |
| THOMSON, ROBY | PHOENIX, AZ | 4/20/2004 |
| UCHE, HYACINTH | BALTIMORE, MD | 4/20/2004 |
| WEEKS, CHARLOTTE | FRENCH LICK, IN | 4/20/2004 |
| WORRELL, BRENDA | ALDERSON, WV | 4/20/2004 |
| **FELONY CONVICTION FOR HEALTH CARE FRAUD** | | |
| CLAIRMONT, BARBARA | PARMELEE, SD | 4/20/2004 |
| DILLON, ANNETTE | MISSION, SD | 4/20/2004 |
| IRVING, EDWARD | NEWARK, NJ | 4/20/2004 |
| KING, JOSEPH | ST LOUIS, MO | 4/20/2004 |
| LAI, HOAN | FOUNTAIN VALLEY, CA | 4/20/2004 |
| LYNCH, RICHARD | CHARITON, IA | 4/20/2004 |
| MATTSCHECK, KAREN | MARYSVILLE, OH | 4/20/2004 |
| MCKINNEY, EYRERHONDA | HOUSTON, TX | 4/20/2004 |
| MERLI, JEAN | ST LOUIS, MO | 4/20/2004 |
| NAZIR, CARLOS | MIAMI, FL | 4/20/2004 |
| PELSANG, DANIEL | OMAHA, NE | 4/20/2004 |
| VIHINEN, JEFFRIE | LAKE FOREST, CA | 4/20/2004 |
| WEAVER, DEBORAH | TIGARD, OR | 4/20/2004 |
| **FELONY CONTROL SUBSTANCE CONVICTION** | | |
| AGUILAR, SHANNON | FRESNO, CA | 4/20/2004 |
| BOWERS, ANGELA | SAVANNAH, GA | 4/20/2004 |
| CLAWSON, VIRGINIA | ELIZABETHTON, TN | 4/20/2004 |
| COATES, KAREN | DES MOINES, IA | 4/20/2004 |
| CONTE, RICHARD | LOVELOCK, NV | 4/20/2004 |
| COX, LINDA | CORYDON, IA | 4/20/2004 |

| Subject name | Address | Effective date |
|---|---|---|
| CURTIS, MARY | WAVERLY, TN | 4/20/2004 |
| CURTIS, SHERYL | FT WORTH, TX | 4/20/2004 |
| GIBSON, DAVID | TRINIDAD, CO | 4/20/2004 |
| MEDINNUS, MARK | SAN JOSE, CA | 4/20/2004 |
| MILBAUER, HOWARD | RYE BROOK, NY | 4/20/2004 |
| MILBAUER, MARILYN | RYE BROOK, NY | 4/20/2004 |
| MINOR, KRISTI | APPLETON, WI | 4/20/2004 |
| ORR, TAMARA | ARVADA, CO | 4/20/2004 |
| PACHINGER, ROBERT | KNOXVILLE, TN | 4/20/2004 |
| POLANCO, OFELIA | MOUNT VERNON, WA | 4/20/2004 |
| POWERS, PAULA | ROANOKE, VA | 4/20/2004 |
| ROSSON, HELEN | MCLOUD, OK | 4/20/2004 |
| SAYLOR, JAMES | STATEN ISLAND, NY | 4/20/2004 |
| **PATIENT ABUSE/NEGLECT CONVICTIONS** | | |
| ANTHONY, LAYFE | OWYHEE, NV | 4/20/2004 |
| ATAEE, SHAHAB | ALISO VIEJO, CA | 4/20/2004 |
| BAILEY, KAY | COLORADO SPRINGS, CO | 4/20/2004 |
| BECKER, MARTHA | GRESHAM, OR | 4/20/2004 |
| BENECKE, CHARLES | SIOUX FALLS, SD | 4/20/2004 |
| BOWMAN, TONI | COLUMBUS, GA | 4/20/2004 |
| BUNCH, JIMMY | LAUREL, MS | 4/20/2004 |
| DUNN, WANDA | AKRON, OH | 4/20/2004 |
| EUBANKS, ANDREW | CALHOUN CITY, MS | 4/20/2004 |
| FLOYD, KIMBERLY | CRYSTAL SPRINGS, MS | 4/20/2004 |
| FUGA, GLORIA | WAIPAHU, HI | 4/20/2004 |
| HABIB, DAVID | REDLANDS, CA | 4/20/2004 |
| HASENFUS, MARCIA | MARINETTE, WI | 4/20/2004 |
| HILL, DEONCA | CHICAGO, IL | 4/20/2004 |
| HOSKINS, DONNA | BLACK RIVER FALLS, WI | 4/20/2004 |
| KEELER, BEVERLY | HEIDELBERG, MS | 4/20/2004 |
| KNOLLY, OLIVIA | TOLEDO, OH | 4/20/2004 |
| MARTIN, ANGELA | INDIANOLA, MS | 4/20/2004 |
| NOLDEN, CHRISTOPHER | TUPELO, MS | 4/20/2004 |
| OCLINARIA, DAVID | WAIANAE, HI | 4/20/2004 |
| PIMENTEL, DEBRA | LAS VEGAS, NV | 4/20/2004 |
| POKI, YVETTE | EWA BEACH, HI | 4/20/2004 |
| PULE, BERNADETTE | WAIANAE, HI | 4/20/2004 |
| RIOS, ROBERT | COLLINGA, CA | 4/20/2004 |
| ROGERS, PEGGY | POPLARVILLE, MS | 4/20/2004 |
| ROSS, VICTORIA | DECATUR, AL | 4/20/2004 |
| SMITH, ELIZABETH | BALTIMORE, MD | 4/20/2004 |
| SPROULLS, OLIVIA | BENOIT, MS | 4/20/2004 |
| THOMPSON, KAREN | ANDERSON, SC | 4/20/2004 |
| WALKER, MARY | RIENZI, MS | 4/20/2004 |
| WEATHERS, PEGGY | WEST VALLEY CITY, UT | 4/20/2004 |
| WOLFE, NEAL | THORNTON, CO | 4/20/2004 |
| **CONVICTION FOR HEALTH CARE FRAUD** | | |
| WILLIAMS, CAROL | EMMETT, ID | 4/20/2004 |
| **CONTROLLED SUBSTANCE CONVICTIONS** | | |
| LUNDBERG, FRANCINE | MARATHON, IA | 4/20/2004 |
| **LICENSE REVOCATION/SUSPENSION/SURRENDERED** | | |
| ACREE, CAROLYN | HODGENVILLE, KY | 4/20/2004 |
| ALBERT, SHERILL | BROOKSVILLE, FL | 4/20/2004 |
| ALLBRIGHT, ANGELA | LONGVIEW, TX | 4/20/2004 |
| ANDERSON, DIANA | LEXINGTON, KY | 4/20/2004 |
| ASHBY, ELIZABETH | TACOMA, WA | 4/20/2004 |
| AUGHTRY, PAUL | CLEARWATER, FL | 4/20/2004 |
| BALDWIN, TERRY | WHEAT RIDGE, CO | 4/20/2004 |
| BARR, ALVIN | LUSBY, MD | 4/20/2004 |
| BARTLEY, DEWAYNE | SNEADS FERRY, NC | 4/20/2004 |
| BAUMANN, CAROL | BROOKLYN, MD | 4/20/2004 |
| BECKWITH, CAROLYN | SAINT CLOUD, FL | 4/20/2004 |
| BESSETTE, JILL | BURLINGTON, VT | 4/20/2004 |
| BLAIOTTA, ANTHONY | SAN FRANCISCO, CA | 4/20/2004 |
| BOSWELL, RICHARD | BOYNTON, FL | 4/20/2004 |
| BOWEN, VICKI | GILBERT, AZ | 4/20/2004 |

| Subject name | Address | Effective date |
|---|---|---|
| BOWSER, PATRICK | ST CLOUD, FL | 4/20/2004 |
| BOYER, TAMMY | CAPE CORAL, FL | 4/20/2004 |
| BOYETTE, RHODA | MAXWELL, IA | 4/20/2004 |
| BROOKS, CAROL | JACKSONVILLE, FL | 4/20/2004 |
| BROWN, VICKI | ONA, FL | 4/20/2004 |
| BURNHAM, BRIAN | E ROCHESTER, OH | 4/20/2004 |
| CAMIQUE, ELISEO | OXNARD, CA | 4/20/2004 |
| CARTER, ALLEN | COPPERTON, UT | 4/20/2004 |
| CASAS, ROBERT | GLENVIEW, IL | 4/20/2004 |
| CHENOWETH, DONOVAN | MOUNTAIN HOME, TN | 4/20/2004 |
| CHOUDHARY, SANDEEP | OAK BROOK TERRACE, IL | 4/20/2004 |
| CHRISTIE, LORETTA | GOODYEAR, AZ | 4/20/2004 |
| CLARK, GLORIA | PENSACOLA, FL | 4/20/2004 |
| COBERN, VERNA | ORANGE BEACH, AL | 4/20/2004 |
| CROMWELL, DANIEL | SUGAR LAND, TX | 4/20/2004 |
| CULLERS, STEPHEN | CHURCHVILLE, VA | 4/20/2004 |
| DAVIS, BONNIE | SEDONA, AZ | 4/20/2004 |
| DAVIS, KATHEY | TOLEDO, OH | 4/20/2004 |
| DAVIS, KIMBERLY | PATASKALA, OH | 4/20/2004 |
| DAVIS, SHEILA DIANE | ATMORE, AL | 4/20/2004 |
| DAWSON, LEROY | POLK CITY, FL | 4/20/2004 |
| DAYTON, LAREE | PHOENIX, AZ | 4/20/2004 |
| DESHARNAIS, JANINE | BONITA SPRINGS, FL | 4/20/2004 |
| DEWITT, LISA | TUCSON, AZ | 4/20/2004 |
| DIETZ, MARIA | TUCSON, AZ | 4/20/2004 |
| DILLON-GEHRIG, IAN | SEATTLE, WA | 4/20/2004 |
| DITTO, KATHY | BRADENTON, FL | 4/20/2004 |
| DUPRAW, ERNEST | STOCKTON, CA | 4/20/2004 |
| FALLICK, HAROLD | ROYAL PALM BEACH, FL | 4/20/2004 |
| FERGUSON, CLEOPHAS | STOCKTON, CA | 4/20/2004 |
| FERNANDEZ, SUSAN | ARCADIA, FL | 4/20/2004 |
| FLOWERS, SHERRI | NEW BRAUNFELS, TX | 4/20/2004 |
| FRASER, MICHAEL | SARASOTA, FL | 4/20/2004 |
| FREDERICKSON, SUSAN | E GREENWICH, RI | 4/20/2004 |
| FRIEDLAND, STEPHEN | PALM CITY, FL | 4/20/2004 |
| FRIEDMAN, LISA | DUBUQUE, IA | 4/20/2004 |
| GARCIA, GERALD | ROCKY FORD, CO | 4/20/2004 |
| GIBSON, WILLIAM | NAPLES, FL | 4/20/2004 |
| GIDDINGS, JOHN | DUARTE, CA | 4/20/2004 |
| GORDON, WENDELL | BENTON, KY | 4/20/2004 |
| GRACIA, MIGDALIA | LANCASTER, PA | 4/20/2004 |
| GRAHAM, JOYCE | PICAYUNE, MS | 4/20/2004 |
| GREEN, JAMES | SIERRA VISTA, AZ | 4/20/2004 |
| GRIGG, DONNA | MT VERNON, IL | 4/20/2004 |
| GROSSI, SUSAN | EDGEWATER, FL | 4/20/2004 |
| HAIR, EDWARD | RALEIGH, NC | 4/20/2004 |
| HAMILTON, KENNETH | SAN BERNARDINO, CA | 4/20/2004 |
| HANRAHAN, GARY | DECATUR, GA | 4/20/2004 |
| HARDT, FRITZ | CASA GRANDE, AZ | 4/20/2004 |
| HARPER, GAIL | BARSTOW, CA | 4/20/2004 |
| HARTMAN, DONNA | MORRISTOWN, TN | 4/20/2004 |
| HAYA, BAB | ANAHEIM, CA | 4/20/2004 |
| HEALTH PARK FLORIDA FITNESS CTR | CAPE CORAL, FL | 4/20/2004 |
| HEIN, JANETTE | MILWAUKEE, WI | 4/20/2004 |
| HERBST, ERIC | ST CLOUD, MN | 4/20/2004 |
| HIGNEY, CATHERINE | MELBOURNE, FL | 4/20/2004 |
| HOBSON, DENISE | GOLDEN, CO | 4/20/2004 |
| HOFSTRAND, CHRISTINE | OMAHA, NE | 4/20/2004 |
| HORTON, WILBUR | ONTARIO, CA | 4/20/2004 |
| HUMPHRIES, SHARON | CHESTER, MD | 4/20/2004 |
| HUNTLEY, MICHAEL | MIAMI, FL | 4/20/2004 |
| Hurd, Lorine | Tampa, FL | 4/20/2004 |
| Hutcherson, Shane | Bloomfield, IN | 4/20/2004 |
| IGLESIAS, MANUEL | MIAMI, FL | 4/20/2004 |
| IRESON, ANGELA | LEBANON, VA | 4/20/2004 |
| IVERSON, JOHN | FORT MYERS, FL | 4/20/2004 |
| JACKSON, QIANA | CORONA, CA | 4/20/2004 |
| JARZYNKA, JOHN | RENO, NV | 4/20/2004 |
| JOHNSON, SHARON | GALVESTON, TX | 4/20/2004 |
| KAHANE, LIOR | STUDIO CITY, CA | 4/20/2004 |
| KAIMAN, FAYE | SARASOTA, FL | 4/20/2004 |
| KELLEY, TIMOTHY | SAN LUIS OBISPO, CA | 4/20/2004 |
| KING, NANCY | MARTINEZ, GA | 4/20/2004 |

| Subject name | Address | Effective date |
|---|---|---|
| KIRCHHOFER, KIM | YOUNGTOWN, AZ | 4/20/2004 |
| LE JUVENT | PEMBROKE PINES, FL | 4/20/2004 |
| LEDUC, SANDRA | MELBOURNE, FL | 4/20/2004 |
| LEVY, DORA | W PALM BEACH, FL | 4/20/2004 |
| LI, WEISI | ROSLYN HEIGHTS, NY | 4/20/2004 |
| LIPSON, THERESE | SCOTTSDALE, AZ | 4/20/2004 |
| LOMNECK, ERIK | ORLANDO, FL | 4/20/2004 |
| LOPEZ, JOSE | MIAMI, FL | 4/20/2004 |
| MAIONE, JENNIFER | HAUSER, ID | 4/20/2004 |
| MAJERCIN, AMY | STREATOR, IL | 4/20/2004 |
| MARQUETTE, DINA | HOLBROOK, NY | 4/20/2004 |
| MARTINEZ, ALEXANDER | VENTURA, CA | 4/20/2004 |
| MATTHEW, BRIAN | MINNEAPOLIS, MN | 4/20/2004 |
| MCKAHAN, ROBERT | SARASOTA, FL | 4/20/2004 |
| MCNEILL, SCOTT | SAN ANTONIO, TX | 4/20/2004 |
| MERRITT, RICHARD | JACKSONVILLE, FL | 4/20/2004 |
| MILLER, ORAM | FAIRFIELD, IA | 4/20/2004 |
| MINATREA, WILLIAM | MESA, AZ | 4/20/2004 |
| MITCHELL, CHARLOTTE | SALINAS, CA | 4/20/2004 |
| MIXON, PEARLA | ST PETERSBURG, FL | 4/20/2004 |
| MONK, DAVID | HAMPTON COVE, AL | 4/20/2004 |
| MOORE, RACHEL | SOUTH BEND, IN | 4/20/2004 |
| MORRIS, KATHLEEN | HASTINGS, MI | 4/20/2004 |
| MOVIC ENTERPRISES, INC | MIAMI, FL | 4/20/2004 |
| NADA, MOHAMED | HUNTINGTON BEACH, CA | 4/20/2004 |
| NAKAGAWA, WALLACE | WILCOX, AZ | 4/20/2004 |
| NARSESIAN, TERI | WINTER SPRINGS, FL | 4/20/2004 |
| NEELY, SUEANNE | SHELTON, WA | 4/20/2004 |
| NELSON, MICHELLE | PENSACOLA, FL | 4/20/2004 |
| NESBIT, MICHAEL | MUSCATINE, IA | 4/20/2004 |
| NORRIS, DARRELL | HOUSTON, TX | 4/20/2004 |
| NUNEZ, OSCAR | FREMONT, CA | 4/20/2004 |
| OPSAHL, JON | COLTON, CA | 4/20/2004 |
| OXENDINE, SHERBY | KURE BEACH, NC | 4/20/2004 |
| PADILLA, SALLY | ST PETERSBURG, FL | 4/20/2004 |
| PASS, APRIL | CALHOUN, GA | 4/20/2004 |
| PEDERSON, CHRISTIAN | MIRAMAR, FL | 4/20/2004 |
| PERASH, DAVID | LOUISVILLE, TN | 4/20/2004 |
| PETWAY, SHARON | DEFUNIAK SPRINGS, FL | 4/20/2004 |
| POWELL, ANTHONY | DENVER, CO | 4/20/2004 |
| PRATT, ANTHONY | OKLAHOMA CITY, OK | 4/20/2004 |
| QUESINBERRY, ALLYSON | AVONDALE, AZ | 4/20/2004 |
| QUINTERO, MARIA | HIGHLAND, CA | 4/20/2004 |
| RAY, CARMEN | CENTER POINT, AL | 4/20/2004 |
| ROCHE, JERRIE | BATON ROUGE, LA | 4/20/2004 |
| RODRIGUEZ, FLORENTINO | PHOENIX, AZ | 4/20/2004 |
| ROSENTHAL, ERIC | ALGONQUIN, IL | 4/20/2004 |
| RUBEN, JEANETTE | CINCINNATI, OH | 4/20/2004 |
| RUSSO, JAMES | APOPKA, FL | 4/20/2004 |
| SCHMIDT, KAREN | PALM BAY, FL | 4/20/2004 |
| SECONDI, RICHARD | LAKE WORTH, FL | 4/20/2004 |
| SETZER, RONNIE | PINSON, AL | 4/20/2004 |
| SHAFFER, CLINTON | LEHIGH, FL | 4/20/2004 |
| SHEFFER, MELODY | DEBARY, FL | 4/20/2004 |
| SHORT, CATHY | POULSBO, WA | 4/20/2004 |
| SIRACUSA, JOSEPH | LUTZ, FL | 4/20/2004 |
| SKYERS, VASHTI | BRIDGEPORT, CT | 4/20/2004 |
| SLOPNICK, PATRICIA | BARRE, VT | 4/20/2004 |
| SMALHEISER, PAUL | MIAMI, FL | 4/20/2004 |
| SMART, CRAIG | WAYCROSS, GA | 4/20/2004 |
| SMILEY, JIMMY | BELLE GLADE, FL | 4/20/2004 |
| SMITH, MARILYN | CHATTANOOGA, TN | 4/20/2004 |
| SNOW, WARD | BREWER, ME | 4/20/2004 |
| SOJKA, DEE | SACRAMENTO, CA | 4/20/2004 |
| SPICER, JOHN | LA MESA, AZ | 4/20/2004 |
| STAMPER, GLYNN | SPRINGFIELD, IL | 4/20/2004 |
| STIRLING, BEVERLY | SAN BERNARDINO, CA | 4/20/2004 |
| SUTHERLAND, SHANNON | SPOKANE, WA | 4/20/2004 |
| TANCK, ERIC | SHEBOYGAN, WI | 4/20/2004 |
| TATUM-DAVIS, BRIGETTE | SACRAMENTO, CA | 4/20/2004 |
| TAYLOR, HELEN | MOBILE, AL | 4/20/2004 |
| TAYLOR, TYLER | DALLAS, TX | 4/20/2004 |
| TERRELL, BRIAN | TUCSON, AZ | 4/20/2004 |

| Subject name | Address | Effective date |
|---|---|---|
| THOMAS, LYNDA | TRUSSVILLE, AL | 4/20/2004 |
| THOMAS, SHARTARYA | SOUTH BAY, FL | 4/20/2004 |
| THOMPSON, DIANA | GRAYSLAKE, IL | 4/20/2004 |
| TIMMONS, VICKI | KEOTA, OK | 4/20/2004 |
| TINKLE, JON | W HOLLYWOOD, CA | 4/20/2004 |
| TOWNS, DONNALEE | CORPUS CHRISTI, TX | 4/20/2004 |
| TUCKER, SANDRA | CASA GRANDE, AZ | 4/20/2004 |
| TUTTLE, SHELLEY | CONCORD, NC | 4/20/2004 |
| TYO, STEPHEN | PALM HARBOR, FL | 4/20/2004 |
| UBEROI, SUNNY | MARY ESTHER, FL | 4/20/2004 |
| VAUGHAN, THOMAS | NATCHEZ, MS | 4/20/2004 |
| VIP HEALTH SPA | TAMPA, FL | 4/20/2004 |
| WASHINGTON, DANA | CHARLOTTESVILLE, VA | 4/20/2004 |
| WATKINS, DENISE | NORFOLK, VA | 4/20/2004 |
| WENTZELL, JENNIFER | PINE BUSH, NY | 4/20/2004 |
| WERNER, STEPHANIE | GLEN BURNIE, MD | 4/20/2004 |
| WHARTON, SHARON | PORT CHARLOTTE, FL | 4/20/2004 |
| WILKERSON, LATANYA | BIRMINGHAM, AL | 4/20/2004 |
| WILLIAMS, LINDA | WILSON, NC | 4/20/2004 |
| ZMOLIK, NANCY | ENNIS, TX | 4/1/5396 |
| **FRAUD/KICKBACKS** | | |
| BROWN, RONALD | ST LOUIS, MO | 3/6/2003 |
| **OWNED/CONTROLLED BY CONVICTED ENTITIES** | | |
| ABBA'S LIMO SERVICE, LLC | COLORADO SPRINGS, CO | 4/20/2004 |
| ALLEN T FAN, D D S, INC | MONTEREY PARK, CA | 4/20/2004 |
| CARLOS NAZIR, M D, P A | MIAMI, FL | 4/20/2004 |
| CHARLES C NEAULT, D C | SIMI VALLEY, CA | 4/20/2004 |
| COWAN, INC | VENICE, FL | 4/20/2004 |
| DANIEL STRUB, M D, INC | POWAY, CA | 4/20/2004 |
| DR HAROLD H FALLICK, INC | GREEN ACRES, FL | 4/20/2004 |
| GIBSON DENTAL ASSOC, P A | NAPLES, FL | 4/20/2004 |
| LOW BACK PAIN CLINIC | SIMI VALLEY, CA | 4/20/2004 |
| SIEGFRIED PSYCHOLOGICAL CONSULTANTS | CHASKA, MN | 4/20/2004 |
| WINN KING, INC | COLLEGE PARK, GA | 4/20/2004 |
| **DEFAULT ON HEAL LOAN** | | |
| HALL, TERRY | HURST, TX | 4/20/2004 |
| MCWILLIAMS, PATRICK | SACRAMENTO, CA | 4/20/2004 |
| NOON, JEFFREY | ORLANDO, FL | 4/20/2004 |
| RUSSELL, IRVING | STONE MOUNTAIN, GA | 4/20/2004 |
| SCHLUTER, KATHLEEN | SONOMA, CA | 4/20/2004 |
| VENEGAS, CARLOS | IRVING, TX | 4/20/2004 |
| WARNER, ARTHUR | MILPITAS, CA | 4/20/2004 |

Dated: April 6, 2004.

**Katherine B. Petrowski,**

*Director, Exclusions Staff, Office of Inspector General.*

[FR Doc. 04–8618 Filed 4–20–04; 8:45 am]

**BILLING CODE 4150–04–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission to OMB, Comment Request; the Impact of a Decade of the Fogarty International Research Collaboration Award (FIRCA)

**SUMMARY:** Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Fogarty International Center (FIC), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 26, 2003, in Volume 68, No. 58, pages 14670–14671, and allowed 60 days for public comment. No public comments were received. The purpose of this announcement is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Proposed Collection: Title:* The Impact of a Decade of the Fogarty International Research Collaboration Award (FIRCA). *Type of Information Collection Request:* New. *Need and Use of Information Collection:* This study will access the outputs, outcomes and impacts of the Fogarty International Research Collaboration Award (FIRCA). The primary objectives of the study are to determine if FIRCA awards (1) Extend and enhance the research interests of the US principal investigator (USPI) and the international research collaborator (IRC); (2) increase the research capacity of the international scientists and institution; and (3) foster discovery and reduce global health disparities through

the support of international cooperation across the continuum of basic, clinical and applied biomedical, behavioral and health sciences. The findings will provide valuable information concerning: (1) specific research advances attributable to FIRCA support; (2) specific capacity and career enhancing advances that are attributable to FIRCA funding; and (3) policy implications for the FIRCA program based on USPI and IRC responses. *Frequency of Response:* Once. *Affected Public:* Individuals. *Types of Respondents:* US researchers and their foreign research collaborators. *Estimated Number of Respondents:* 1072. *Estimated Number of Responses per Respondent:* 1. *Average Burden Hours Per Response:* 1. *Estimated Total Annual Burden Hours Requested:* 1072. The annualized cost to respondents is estimated at $26,130. Tables 1 and 2 respectively present data concerning the burden hours and cost burdens for this data collection. There are no capital costs, operating, and/or maintenance costs to report.

TABLE 1.—ESTIMATE OF HOUR BURDEN

| Type of respondents | Number of respondents | Frequency of response | Average time per response (hr) | Total annual hour burden |
|---|---|---|---|---|
| USPIs | 536 | 1 | 1.0 | 536 |
| IRCs | 536 | 1 | 1.0 | 536 |
| Total | 1072 | | | 1072 |

TABLE 2.—ANNUALIZED COST TO RESPONDENTS

| Type of respondents | Number of respondents | Response frequency | Hourly wage rate | Respondent cost |
|---|---|---|---|---|
| USPIs | 536 | 1 | $38.75 | $20,770 |
| IRCs | 536 | 1 | 10.00 | 5,360 |
| Total | 1072 | | | 26,130 |

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503. Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Linda Kupfer, Fogarty International Center, National Institutes of Health, 16 Center Drive, Building 16, Bethesda, MD 20892–6705, call the non-toll-free number 301–496–3288, or E-mail your request, including your address, to: *Kupferl@mail.nih.gov*.

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: April 15, 2004.

**Richard Miller,**

*Executive Officer, FIC, National Institutes of Health.*

[FR Doc. 04–9031 Filed 4–20–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel.

*Date:* May 17, 2004.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 14, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–8985 Filed 4–20–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel Review of Research Program Projects (P01) Applications.

*Date:* May 21, 2004.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

*Contact Person:* Nancy L. Di Fronzo, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, 6701 Rockledge II, Room 7196 (MSC 7924), Bethesda, MD 20892, (301) 435–0288.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel To Review Inflammation and Thrombosis Applications.

*Date:* June 3–4, 2004.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Columbia Circle, Columbia, MD 21044.

*Contact Person:* Katherine M. Malinda, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892, (301) 435–0297.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.838, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 15, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–9029 Filed 4–20–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Competing Continuation of SBIR/STTR Phase II Awards—Meeting 3.

*Date:* May 12, 2004.

*Time:* 10 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Eugene R. Baizman, PhD, Scientific Review Administrator, DHHS/NIAID/DEA/SRP, Room 2209, 6700B Rockledge Drive, Bethesda, MD 20892–7616, (301) 496–2550, *eb237e@nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel Biodefense and Emerging Infectious Disease Research Opportunities.

*Date:* May 12, 2004.

*Time:* 12:30 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Annie Walker-Abbey, PhD, Scientific Review Administrator, Scientific Review Program, NIAID/DEA, 6700B Rockledge Drive, RM 2217, MSC–7616, Bethesda, MD 20892–7616, (301) 496–2550.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel Biodefense and Emerging Infectious Diseases.

*Date:* May 19, 2004.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Alec Ritchie, PhD, Scientific Review Administrator, DHHS/NIH/NIAID/DEA Scientific Review Program, 6700B Rockledge Drive MSC 7616, Room 3123, Bethesda, MD 20892, (301) 496–2550, *aritchie@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 14, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–8981 Filed 4–20–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* NIDCR Special Grants Review Committee, Review of RO3s, Ks, and Ts.

*Date:* June 17–18, 2004.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Lynn Mertens King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–38K, National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, (301) 594–5006.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 14, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–8983 Filed 4–20–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 04–54, Review of R21s.

*Date:* May 4, 2004.

*Time:* 3:15 p.m. to 4:15 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 04–55, Review of R01s.

*Date:* May 17, 2004.

*Time:* 9 a.m. to 10 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 04–50, Review of R21s.

*Date:* June 7, 2004.

*Time:* 10 a.m. to 11:45 a.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Room 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* H. George Hausch, PhD, Acting Director, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2904, *george_hausch@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 14, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–8984 Filed 4–20–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1 HH (21)—Review of U18 Grant Application.

*Date:* April 30, 2004.

*Time:* 12:30 p.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, NIAAA, 5635 Fishers Lane, Room 3033, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, OSA, 5635 Fishers Lane, Bethesda, MD 20892–9304, (301) 435–5337, *jtoward@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 15, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–9027 Filed 4–20–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National institute on Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1 HH (17)—Review of B-Start Application.

*Date:* April 30, 2004.

*Time:* 9 a.m. to 9:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, NIAAA—Fishers Building, 5635 Fishers Lane, Room 3033, Bethesda, MD 20892.

*Contact Person:* Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, OSA, 5635 Fishers Lane, Bethesda, MD 20892–9304, (301) 435–5337, *jtoward@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1 HH (18)—Review of B-Start Application.

*Date:* April 30, 2004.

*Time:* 10 a.m. to 11 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, NIAAA—Fishers Building, 5635 Fishers Lane, Room 3033, Bethesda, MD 20892.

*Contact Person:* Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, OSA, 5635 Fishers

Lane, Bethesda, MD 20892–9304, (301) 435–5337, *jtoward@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1 CC (11)—K24 Application Review.

*Date:* May 6, 2004.

*Time:* 4 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, NIAAA/Fishers Building, 5635 Fishers Lane, Room 3041, Bethesda, MD 208929, (Telephone Conference Call).

*Contact Person:* Mahadev Murthy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse, and Alcoholism, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, (301) 443–2860.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1 BB (12) Special Emphasis Panel.

*Date:* May 6, 2004.

*Time:* 4 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, NIAAA/Fishers Building, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Dorita Sewell, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Research, 5635 Fishers Lane, Bethesda, MD 20892–9304, (301) 443–2890, *dsewell@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.;271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 15, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–9028 Filed 4–20–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel Loan Repayment: Clinical and Pediatric Research.

*Date:* April 29, 2004.

*Time:* 11 am to 2 pm.

*Agenda:* to review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN–22, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Helen R. Sunshine, PhD, Chief, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12F, Bethesda, MD 20892, 301–594–2881, *sunshinh@nigms.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 15, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–9030 Filed 4–20–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Skeletal Muscle Biology Exercise Physiology Special Emphasis Panel.

*Date:* April 28, 2004.

*Time:* 11:30 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Room 4108, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Richard J. Bartlett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–6809.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, National Centers for Biomedical Computing.

*Date:* May 26–27, 2004.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

*Contact Person:* Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7849, Bethesda, MD 20892, (301) 435–1159, *ameros@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, National Centers for Biomedical Computing.

*Date:* May 26–27, 2004.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Swissotel Washington, The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

*Contact Person:* George W. Chacko, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room: 4186, MSC: 7806, Bethesda, MD 20892, (301) 435–1220, *chackoge@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 14, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–8982 Filed 4–20–04; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### National Toxicology Program (NTP), National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH), NTP Interagency Center for the Evaluation of Alternative Test Methods (NICEATM); In Vitro Endocrine Disruptor Test Methods: Request for Comments and Nominations

**SUMMARY:** The Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) and the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM) have identified *in vitro* endocrine disruptor screening methods as a priority for validation. ICCVAM has published guidelines for development of *in vitro* endocrine-disruptor estrogen and androgen receptor binding and transcriptional activation assays. In these guidelines, ICCVAM recommends that priority be given to assays that (1) do not require the use of animal tissue as the receptor source, but rather use recombinant-derived proteins and (2) do not use radioactive materials. On behalf of the ICCVAM, NICEATM invites the nomination for validation studies of *in vitro* test methods that meet these recommendations and for which there are standardized test method protocols, pre-validation data, and proposed validation study designs. At this time, ICCVAM has received nominations for two *in vitro* endocrine-disruptor screening methods purported to meet these recommendations. Information on the nominated methods is posted on the ICCVAM/NICEATM Web site (*http://iccvam.niehs.nih.gov*) or available from NICEATM (contact information provided below). ICCVAM will consider nominations and comments received in response to this notice and develop recommended priorities for proposed evaluation and validation studies of endocrine disruptor screening methods.

#### Request for Comments and Nomination of In Vitro Endocrine Disruptor Test Methods

Comments and nominations submitted in response to this notice should be sent by mail, fax, or e-mail to NICEATM (Dr. William S. Stokes, Director, NICEATM, NIEHS, 79 T. W. Alexander Drive, P.O. Box 12233, MD EC–17, Research Triangle Park, NC 27709, (phone) 919–541–2384, (fax) 919–541–0947, (e-mail) *iccvam@niehs.nih.gov*) by June 7, 2004, in order to ensure their consideration by the ICCVAM.

**SUPPLEMENTARY INFORMATION:** In May 2003, ICCVAM published a report entitled, "ICCVAM Evaluation of *In Vitro* Test Methods for Detecting Potential Endocrine Disruptors: Estrogen Receptor and Androgen Receptor Binding and Transcriptional Activation Assays' (NIH Publication No. 03–4503; available: *http://iccvam.niehs.nih.gov/methods/endocrine.htm*). During its evaluation of *in vitro* endocrine disruptor screening assays, ICCVAM recommended that preference be given to development of assays that (1) do not require the use of animal tissue as the receptor source, but rather use recombinant-derived proteins and (2) do not use radioactive materials. ICCVAM also recommended minimum procedural standards that should be incorporated in standardized test method protocols and minimum lists of chemicals that should be used for validation studies. ICCVAM subsequently received nominations of two methods for validation studies. The first nomination is for a biosensor system that can assess estrogen receptor binding and transcriptional activation. The second nomination is for a stably transfected recombinant cell-based transcriptional method. The methods meet the ICCVAM's recommendations for studies that do not require the use of animals as a receptor source or use radioactive materials. Both methods detect receptor agonist and antagonist activity.

ICCVAM reviewed the two nominations described above and unanimously approved the following draft recommendation: "Evaluation studies for *in vitro* receptor binding and transcriptional activation test methods that do not require the use of animals should receive a high priority for support. Prior to the initiation of such studies, the proposed validation studies should be evaluated for adherence to relevant recommendations in the report: "ICCVAM Evaluation of *In Vitro* Test Methods for Detecting Potential Endocrine Disruptors: Estrogen Receptor and Androgen Receptor Binding and Transcriptional Activation Assays'' (NIH Publication No. 03–4503) by the ICCVAM Endocrine Disruptor Working Group (EDWG) and NICEATM.''

ICCVAM subsequently presented these nominations and its recommendation to the SACATM at its March 10–11, 2004 meeting. SACATM concurred with ICCVAM that endocrine disrupting screening assays should be a priority.

#### Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that use, generate, or disseminate toxicological information. ICCVAM promotes the development, validation, regulatory acceptance, and national and international harmonization of toxicological test methods that more accurately assess the safety or hazards of chemicals and products and test methods that refine, reduce and replace animal use. The ICCVAM Authorization Act of 2000 (Pub. L. 106–545, available at *http://iccvam.niehs.nih.gov/about/PL106545.htm*) established ICCVAM as a permanent interagency committee of the NIEHS under the NICEATM. NICEATM administers the ICCVAM and provides scientific support for ICCVAM and ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of Federal agencies. Additional information about ICCVAM and NICEATM can be found at the following Web site: *http://iccvam.niehs.nih.gov.*

Dated: April 9, 2004.

**Samuel H. Wilson,**

*Deputy Director, National Institute of Environmental Health Sciences.*

[FR Doc. 04–8980 Filed 4–20–04; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH), National Toxicology Program (NTP); Request for Nominations of Scientific Experts for Independent Expert Panel Evaluations and/or other Reviews of In Vitro Testing Methods for Identifying Potential Ocular Irritants

**Summary**

The NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) in collaboration with the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) is seeking nominations of scientific experts to evaluate the validation status of in vitro test methods for determining the potential ocular irritancy of chemicals and other substances. The experts will serve on future independent expert panel(s) or participate at other similar meetings and provide input on the usefulness, limitations, accuracy, and reliability of test methods proposed for identifying whether and to what extent substances may cause reversible or irreversible eye damage. The initial review activity will evaluate test methods that may be used to identify severe irreversible ocular irritation/corrosion. Applicable test methods anticipated for review include, but are not limited to: (1) The Bovine Corneal Opacity and Permeability (BCOP) test; (2) the Hen's Egg Test—Chorion Allantoic Membrane (HET-CAM); (3) the Isolated Rabbit Eye (IRE) test; and (4) the Isolated Chicken Eye (ICE) test. Details about future meetings to evaluate the validation status of in vitro ocular toxicity test methods, including the date, location and availability of background documents, will be announced in the **Federal Register** and posted on the ICCVAM/NICEATM website *(http://iccvam.niehs.nih.gov).*

**Request for Nominations of Experts**

NICEATM invites nominations of scientists with relevant knowledge and experience that can serve on independent expert panels or participate at other similar meetings to evaluate in vitro ocular toxicity test methods. Areas of relevant expertise include, but are not limited to: human and animal ophthalmology, with an emphasis on evaluation and treatment of chemical injuries; in vivo ocular toxicity testing; in vitro ocular toxicology (particularly experience with BCOP, IRE, ICE, and/or HET–CAM); test method validation; and biostatistics. Each nomination should include the person's name, affiliation, contact information (*i.e.*, mailing address, e-mail address, telephone and fax numbers), a brief summary of relevant experience and qualifications, and curriculum vitae, if possible. Nominations should be sent to NICEATM by mail, fax, or e-mail within 45 days of the publication date of this notice. Correspondence should be directed to Dr. William Stokes, Director, NICEATM, NIEHS, 79 T.W. Alexander Dr., MD EC–17, P.O. Box 12233, Research Triangle Park, NC 27709; telephone: 919–541–2384; fax: 919–541–0947; e-mail: *iccvam@niehs.nih.gov.*

**SUPPLEMENTARY INFORMATION:** In August 2003, the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM) recommended that ICCVAM evaluate certain in vitro test methods for ocular toxicity that could be used to identify substances that cause irreversible ocular damage. The SACATM recommended that NICEATM and ICCVAM prepare a background review document and convene a workshop or other appropriate review activity. In October 2003, EPA submitted a nomination to ICCVAM that included a request to: (1) Review the validation status of four in vitro ocular test methods with the potential to screen chemicals for severe eye irritation or corrosion (BCOP, IRE, ICE, HET–CAM); (2) review the state of the science for other in vitro methods for assessing moderate or mild eye irritation; (3) obtain good quality in vivo eye irritation/corrosion reference data; and (4) to review ways to alleviate pain and suffering which might arise from current in vivo eye irritation testing. ICCVAM endorsed this nomination as a high priority. NICEATM published a **Federal Register** notice on March 24, 2004 (Vol. 69, No. 57, pages 13959–13861) inviting public comment on the nomination and related activities.

NICEATM is preparing Background Review Documents on in vitro ocular test methods that will contain comprehensive summaries of available data, an analysis of the accuracy and reliability of available test method protocols, and related information characterizing the current validation status of these assays. NICEATM requested data on ocular irritancy for chemicals tested using in vivo and in vitro test methods in the March 24 **Federal Register** notice. Applicable data received in response to this notice will be included in the Background Review Documents and used to assess the performance of in vitro ocular toxicity test methods. Conclusions and recommendations from independent evaluations will be made publicly available and considered by ICCVAM in developing its recommendations on in vitro ocular toxicity test methods. ICCVAM recommendations will address the usefulness and limitations of the test methods for regulatory testing purposes and may include recommended standardized protocols, performance standards, and reference chemicals for future validation studies.

**Background Information on ICCVAM and NICEATM**

ICCVAM is an interagency committee composed of representatives from fifteen Federal regulatory and research agencies that use or generate toxicological information. ICCVAM promotes the development, validation, regulatory acceptance, and national and international harmonization of toxicological test methods that more accurately assess the safety or hazards of chemicals and products; and test methods that refine, reduce and replace animal use. The ICCVAM Authorization Act of 2000 (Pub. L. 106–545, available at *http://iccvam.niehs.nih.gov/about/PL106545.htm*) established ICCVAM as a permanent interagency committee of the NIEHS under the NICEATM. NICEATM administers the ICCVAM and provides scientific support for ICCVAM and ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of Federal agencies. Additional information about ICCVAM and NICEATM can be found at the following Web site: *http://iccvam.niehs.nih.gov.*

Dated: April 9, 2004.

**Samuel H. Wilson,**

*Deputy Director, National Institute of Environmental Health Sciences.*

[FR Doc. 04–9032 Filed 4–20–04; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HOMELAND SECURITY

### Citizenship and Immigration Services

### Agency Information Collection Activities: Comment Request

**ACTION:** Notice of Information Collection Under Review; Alien Change of Address Card

The Department of Homeland Security, Citizenship and Immigration

Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This notice is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 21, 2004.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(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, including through the use of appropriate automated, electronic, mechanical, or other technical collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Alien Change of Address Card.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form AR–11, Records Operations, Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Section 265 of the Immigration and Nationality Act requires aliens in the United States to inform the Citizenship and Immigration Services of any change of address. This form provides a standardized format for compliance.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 720,000 responses at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 59,760 annual burden hours.

If you have additional comments, suggestions, or need a copy, of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services, Citizenship and Immigration Services, Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: April 16, 2004.

**Richard A. Sloan,**

*Department Clearance Officer, Department of Homeland Security, Citizenship and Immigration Services.*

[FR Doc. 04–9000 Filed 4–20–04; 8:45 am]

**BILLING CODE 4410–10–M**

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## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

### Agency Information Collection Activities: African Growth and Opportunity Act (AGOA) Textile Certificate of Origin

**AGENCY:** Bureau of Customs and Border Protection, Department of Homeland Security.

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: African Growth and Opportunity Act Certificate of Origin. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 70284) on December 17, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before May 21, 2004.

**ADDRESSES:** Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Title:* African Growth and Opportunity Act Certificate of Origin.

*OMB Number:* 1651–0082.

*Form Number:* None.

*Abstract:* The collection of information is required to implement the duty preference provisions of the African Growth and Opportunity Act (AGOA) to provide extension of duty-free treatment under the Generalized System of Preferences (GSP) to sensitive articles normally excluded from GSP duty treatment. It also provides for the entry of specific textile and apparel articles free of duty and free of any

quantitative limits to the countries of sub-Saharan Africa.

*Current Actions:* This submission is being submitted to extend the expiration date with no change to the burden hours.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses, Institutions.

*Estimated Number of Respondents:* 440.

*Estimated Time Per Respondent:* 23 hours.

*Estimated Total Annual Burden Hours:* 10,400.

*Estimated Total Annualized Cost on the Public:* $239,269.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at (202) 927–1429.

Dated: April 14, 2004.

**Tracey Denning,**

*Agency Clearance Officer, Information Services Branch.*

[FR Doc. 04–8961 Filed 4–20–04; 8:45 am]

**BILLING CODE 4820–02–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petition To Delist the Stephens' Kangaroo Rat and Initiation of a 5-Year Review

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and initiation of status review for the 12-month finding and 5-year review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to remove the Stephens' kangaroo rat (*Dipodomys stephensi*) from the Federal List of Threatened and Endangered Wildlife and Plants pursuant to the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*). We find that the petition presents substantial information and are initiating a status review to determine if delisting this species is warranted. We are requesting submission of any new information (best scientific and commercial data) on the Stephens' kangaroo rat since its original listing as an endangered species in 1988. Following this status review, we will issue a 12-month finding on the petition to delist. Because a status review is also required for the 5-year review of listed species under section 4(c)(2)(A) of the Act, we are electing to prepare these reviews simultaneously. At the conclusion of these simultaneous reviews, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act, and make the requisite finding under section 4(c)(2)(B) of the Act based on the results of the 5-year review.

**DATES:** The 90-day finding announced in this document was made on March 24, 2004. To be considered in the 12-month finding on this petition, comments and information should be submitted to us by June 21, 2004.

**ADDRESSES:** Comments, material, information, or questions concerning this petition and finding should be sent to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, California 92009. The petition and supporting information are available for public inspection by appointment during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone: 760/431–9440; fax: 760/431–9618).

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If we find substantial information is present, we are required to promptly commence a review of the status of the species (50 CFR 424.14). "Substantial information'' is defined in 50 CFR 424.14(b) as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.'' Petitioners need not prove that the petitioned action is warranted to support a "substantial'' finding; instead, the key consideration in evaluating a petition for substantiality involves demonstration of the reliability and adequacy of the information supporting the action advocated by the petition.

When considering an action for listing, delisting, or reclassifying a species, we are required to determine whether a species is endangered or threatened based on one or more of the five listing factors as described at 50 CFR 424.11. These factors are given as: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting the continued existence of the species. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error.

We received two similar petitions from Mr. Robert Eli Perkins requesting us to delist the Stephens' kangaroo rat from the Federal List of Threatened and Endangered Wildlife and Plants pursuant to the Act. The first petition, submitted on behalf of the Riverside County Farm Bureau (RCFB), was received on May 1, 1995. We subsequently sent a letter on June 12, 1995, to the RCFB acknowledging the receipt of the petition. On August 13, 1997, the RCFB sent us an inquiry regarding the status of the delisting petition and requesting clarification as to whether we had the funds or staff to respond with a 90-day finding to the petition. We sent another letter to the RCFB on August 26, 1997, stating that we were unable to review the petition and publish our 90-day finding due to limited resources. We also provided the RCFB with additional information concerning our Listing Priority Guidance for Fiscal Year 1997, which indicated that delisting petitions ranked as a low-priority Tier 3 action and that higher priority work took precedence. We received a resubmittal of the first petition to delist the Stephens' kangaroo rat from Mr. Perkins on February 25, 2002, and sent a letter acknowledging the receipt of the second petition to Mr. Perkins on August 6, 2002. The second petition repeated the same information as the first petition, and also stated that delisting is warranted as a result of the Riverside County Habitat Conservation Agency's conservation measures.

The petition provides information on the species' range, habitat requirements, population size, population density, reproductive ability, ability to persist in small patches, and colonization capability, and states that this

information demonstrates that the species was listed in error. The petition also states that delisting is warranted because the existing habitat conservation measures identified in a Habitat Conservation Plan (HCP) by the Riverside County Habitat Conservation Agency (RCHCA) are adequate.

**Biology and Distribution**

The Stephens' kangaroo rat is a medium-sized, five-toed, broad-faced kangaroo rat of the rodent family Heteromyidae. Kangaroo rats (genus *Dipodomys*) are nocturnal, burrow-dwelling rodents found in semiarid and arid habitats of western North America (Eisenberg 1963). Members of this genus are characterized by their external fur-lined cheek pouches used for transporting seeds to safe caches; large hind legs adapted for rapid hopping; relatively small front legs; long tails; and large heads (Brown *et al.* 1979).

The Stephens' kangaroo rat reaches its highest densities in intermediate successional stage grassland communities characterized by moderate to high amounts of bare ground, high forb cover, moderate slopes, and well-drained soils (O'Farrell and Uptain 1987, Anderson and O'Farrell, in review). This species prefers grassland communities dominated by herbaceous plants rather than by annual grasses because annual herbs rapidly break down after drying, which results in substantial patches of bare ground (O'Farrell and Clark 1987), which provide suitable conditions for the species' specialized mode of locomotion (Bartholomew and Caswell 1951). Because of these habitat preferences, natural or artificial disturbances that prevent the development of dense ground cover, and/or succession of grassland communities to later stage shrub communities can be beneficial to the species (O'Farrell 1993; Price *et al.* 1994). However, too much disturbance may also be detrimental to the species (SJM Biological Consultants 1999). While disturbances such as off-road vehicle use, farming, and grazing may be beneficial to the species by maintaining bare areas, such disturbances, if too excessive or intense, may be harmful, resulting in burrow destruction and possible changes to the vegetation community. Further research is needed to determine at what levels and intensities these disturbances become detrimental to the species.

The Stephens' kangaroo rat's known historic range is small for rodents in general, and in particular for kangaroo rats (Price and Endo 1989). Its historic range encompassed extreme southwestern San Bernardino, western Riverside, and parts of northern and central San Diego Counties in southern California (Grinnell 1922; Lackey 1967; Bleich 1973; O'Farrell *et al.* 1986; O'Farrell and Uptain 1989; Pacific Southwest Biological Services, Inc. 1993; Ogden Environmental and Energy Services Co., Inc. 1997). However, massive expansion of urban, agricultural, and recreational development throughout the species' historic range during the past century resulted in severe losses of habitat and fragmentation of remaining populations (O'Farrell and Clark 1987; Price and Endo 1989).

On September 30, 1988, we listed the Stephens' kangaroo rat (*Dipodomys stephensi*) as endangered (53 FR 38465) pursuant to the Act. This determination was based upon the best scientific and commercial information available at the time of listing. As stated in the final rule, this action was taken, in part, because of significant known and impending losses of habitat due to development. We did not designate critical habitat for the Stephens' kangaroo rat at the time of listing because such action was not considered prudent at that time. We published a notice of availability for the Draft Recovery Plan for the Stephens' kangaroo rat in the **Federal Register** on June 23, 1997 (62 FR 33799) and are currently working to finalize the Recovery Plan based on public comment and information that has become available since the draft publication.

**Review of Petition**

We have reviewed the petition and its supporting documents, as well as information in our files. We have found that substantial information relating to the distribution of the species and factors threatening its continued existence has become available since the Stephens' kangaroo rat was listed as an endangered species. We believe that it is appropriate to consider this information, and any other new information available about this species and the threats it may face, in a status review.

The petition states that the size of the known range for the Stephens' kangaroo rat has increased considerably since we listed the species. Federal listing of the Stephens' kangaroo rat prompted several focused surveys for the species in response to proposed development projects. These surveys occurred throughout, and adjacent to, the species' known range. As discussed in the Draft Recovery Plan for the Stephens' Kangaroo Rat (62 FR 33799), the range of the species is now known to be larger, with new populations in the general vicinities of Norco and Anza in Riverside County, and Guejito Ranch and Ramona in San Diego County (USFWS 1997). Significant questions remain about the amount and quality of occupied habitat within the current range, and the species' ability to persist in the face of expanding agricultural and urban development; however, we consider the expansion of the known range to be an issue relevant to the listing status of the Stephens' kangaroo rat that warrants further investigation.

The petition also states that we may have overestimated the impact of actions such as grazing, off-road vehicle use, and farming in the listing rule. The listing rule identified these types of actions as potentially reducing habitat suitability. When properly managed, certain types of activities, such as grazing, off-road vehicle use, and farming, can cause artificial disturbance and promote bare ground, which may benefit the species. As discussed earlier, the best suitable habitat for the Stephens' kangaroo rat consists of early to intermediate successional stage grassland communities characterized by moderate to high amounts of bare ground, high forb cover, moderate slopes, and well-drained soils. Without a disturbance event, succession to dense ground cover (*i.e.*, shrubs and invasive annual grasses) will render the habitat unsuitable in a relatively short time (O'Farrell and Uptain 1989). Maintenance of suitable Stephens' kangaroo rat habitat may require perpetual habitat manipulation to maintain the sparse vegetation conditions preferred by this species. In our status review, we will further evaluate actions such as grazing, off-road vehicle use, and farming, and assess their impact to the Stephens' kangaroo rat.

The petition also questioned the need for listing the species when most of the lands in the core reserves under the HCP for the Stephens' kangaroo rat in western Riverside County were already under public ownership at the time of listing. The petitioner states that listing was not necessary because the missions of these public lands were compatible with the preservation of the species. Prior to listing, conservation measures for the species were not developed specifically for the preservation of the species in perpetuity. Since Federal listing, several public land agencies have participated in conservation measures or developed conservation strategies for ensuring the species' long-term survival. In our status review, we will examine the efficacy of these conservation measures by the various public land agencies.

The petition also stated that the species warranted delisting because the RCHCA provided adequate habitat conservation measures for the species through the HCP for the Stephens' kangaroo rat in western Riverside County, which was initiated following our listing of the species in 1988. Following the completion of the HCP in March 1996 (RCHCA 1996), we issued a 30-year Incidental Take Permit pursuant to section 10(a)(1)(B) of the Act to the RCHCA and other jurisdictional entities on May 2, 1996. Under the HCP, the RCHCA and other permittees agreed to offset "take'' of the Stephens'' kangaroo rat by funding and establishing a permanent reserve system consisting of seven core reserves for the conservation, preservation, and enhancement of the Stephens' kangaroo rat and its habitat within western Riverside County. We are also currently working with Riverside County and local jurisdictions on the development of a Western Riverside Multiple Species Habitat Conservation Plan (MSHCP). If approved, the MSHCP will provide for the conservation, management, and "take'' authorization of the Stephens' kangaroo rat outside the boundaries of the existing HCP for the Stephens' kangaroo rat in western Riverside County. We are also working with San Diego County toward the development of a Multiple Species Conservation Program North County Subarea Plan that, if approved, will also provide for the conservation, management, and take authorization of the Stephens' kangaroo rat in northern San Diego County. The Multiple Habitat Conservation Program of northwestern San Diego County might also contribute toward the conservation and management of this species. Both public and private landowners have undertaken significant measures to conserve the Stephens' kangaroo rat. These conservation efforts are also an issue relevant to the listing status of the Stephens' kangaroo rat that warrants further evaluation in a status review.

## Finding

We have reviewed the petition and the supporting documents, as well as other information in our files. We find that the petition and other information in our files presents substantial information that delisting the Stephens' kangaroo rat may be warranted, and are initiating a status review. We will issue a 12-month finding in accordance with section 4(b)(3)(B) of the Act as to whether or not delisting is warranted.

## Five-Year Review

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every five years. We are then, under section 4(c)(2)(B) and the provisions of subsection (a) and (b), to determine, on the basis of such a review, whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened, or threatened to endangered. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the Stephens' kangaroo rat.

## Public Information Solicited

We are requesting information for both the 12-month finding and the 5-year review, as we are conducting these reviews simultaneously.

When we make a 90-day finding on a petition that substantial information exists to indicate that listing or delisting a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the Stephens' kangaroo rat. This includes information regarding historical and current distribution, biology and ecology, ongoing conservation measures for the species and its habitat, and threats (including wildfires) to the species and its habitat. We also request information regarding the adequacy of existing regulatory mechanisms. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry or environmental entities, or any other interested parties concerning the status of the Stephens' kangaroo rat.

The 5-year review considers all new information available at the time of the review. This review will consider the best scientific and commercial data that have become available since the current listing determination or most recent status review, such as:

A. Species biology, including, but not limited to, population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including, but not limited to, amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends;

E. Other new information, data, or corrections, including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

If you wish to comment for either the 12-month finding or the 5-year review, you may submit your comments and materials concerning this finding to the Field Supervisor, Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Carlsbad address.

## References Cited

A complete list of all references cited in this finding is available, upon request, from the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section).

## Authority

The authority for this action is section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: March 24, 2004.

**Marshall Jones,**

*Deputy Director, U. S. Fish and Wildlife Service.*

[FR Doc. 04–7536 Filed 4–20–04; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Aquatic Nuisance Species Task Force/ National Invasive Species Council Prevention Committee Meeting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a meeting of the Aquatic Nuisance

Species (ANS) Task Force/National Invasive Species Council (NISC) Prevention Committee. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION** section.

**DATES:** The Aquatic Nuisance Species Task Force/National Invasive Species Council Prevention Committee will meet from 9 a.m. to 4 p.m. on Tuesday, May 4, 2004. Minutes of the meeting will be available for public inspection during regular business hours, Monday through Friday.

**ADDRESSES:** The Aquatic Nuisance Species Task Force/National Invasive Species Council Prevention Committee meeting will be held at the Main Interior Building, 1849 C Street, NW., Washington, DC 20240 in Room 7000B. Minutes of the meeting will be maintained in the office of Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, Suite 322, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622.

**FOR FURTHER INFORMATION CONTACT:** Richard Orr, Prevention Committee Chair, Assistant Director for International Policy and Prevention, National Invasive Species Council, at (202) 354–1882.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. I), this notice announces meetings of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the ANS Task Force/NISC Prevention Committee meeting include: review and approval of the Roles and Responsibilities draft document; identification of the Prevention Committee member's responsibilities to the five working groups; and discussion of actions required to get working groups functioning.

Dated: April 9, 2004.

**Everett Wilson,**

*Acting Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.*

[FR Doc. 04–9139 Filed 4–20–04; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Hanford Reach National Monument Federal Advisory Committee Meetings

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of Hanford Reach National Monument Federal Planning Advisory Committee meeting.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) is announcing a two-day meeting of the Hanford Reach National Monument Federal Planning Advisory Committee (Committee). In this meeting, the Committee will continue working on making recommendations to the Service and the Department of Energy on preparation of the Comprehensive Conservation Plan and associated Environmental Impact Statement (CCP/EIS) for the Hanford Reach National Monument (Monument). The Committee is focusing on advice that identifies and reconciles land management issues while meeting the directives of Presidential Proclamation 7319 that established the Monument.

**DATES:** The Committee has scheduled the following meetings:

1. Wednesday, June 16, 2004, 9:30 a.m. to 4:30 p.m., Richland, WA.

2. Thursday, June 17, 2004, 9:30 a.m. to 12:30 p.m., Richland, WA.

**ADDRESSES:** Both meetings will take place at the Washington State University Tri-Cities Consolidated Information Center, 2770 University Drive, Rooms 120 and 120 A, Richland, WA.

Written comments may be submitted to: Mr. Greg Hughes, Designated Federal Official for the Hanford Reach National Monument Federal Planning Advisory Committee, Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge, 3250 Port of Benton Blvd., Richland, WA, 99352. Copies of the draft meeting agenda can be obtained from the Designated Federal Official. Comments may also be submitted via e-mail to *hanfordreach@fws.gov* or faxed to (509) 375–0196. Additional information regarding the Monument and the CCP/EIS is available on the Monument's Internet site at *http://hanfordreach.fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** For further information concerning the meetings, contact Mr. Greg Hughes, via telephone at (509) 371–1801, or fax at (509) 375–0196.

**SUPPLEMENTARY INFORMATION:** Committee meetings are open to the public. Verbal comments may be submitted during the course of the meeting. Written comments may be submitted as described under **ADDRESSES.**

Dated: April 6, 2004.

**David J. Wesley,**

*Acting Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 04–8989 Filed 4–20–04; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Formal Establishment of the Rocky Mountain Arsenal National Wildlife Refuge, Adams County, CO

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the provisions of the Rocky Mountain Arsenal National Wildlife Refuge Act of 1992 (Pub. L. 102–402, 106 Stat. 1961, hereinafter referred to as the Refuge Act), the Secretary of the Army has transferred primary administrative jurisdiction over approximately 4,929.85 acres of real property at Rocky Mountain Arsenal (RMA), Adams County, Colorado, to the Secretary of the Interior. The transfer of jurisdiction over this property occurred on April 2, 2004.

Pursuant to section 4(a) of the Refuge Act, the Secretary of the Interior hereby announces the formal establishment of the Rocky Mountain Arsenal National Wildlife Refuge. The refuge will be managed by the U.S. Fish and Wildlife Service (Service) as a unit of the National Wildlife Refuge System. The refuge will be managed in accordance with the Refuge Act, and the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*).

**DATES:** This action will be effective on April 2, 2004.

**FOR FURTHER INFORMATION CONTACT:** Dean Rundle, Refuge Manager, Bldg. 111 RMA, Commerce City, Colorado 80022, or at telephone number (303) 289–0350.

**SUPPLEMENTARY INFORMATION:** The Refuge Act mandates that following environmental remediation of RMA, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, and other applicable provisions of law, the Secretary of the Army will transfer jurisdiction over the real property comprising the Arsenal to the Secretary of the Interior for the formal establishment of the Rocky Mountain Arsenal National Wildlife Refuge.

Environmental remediation of the Rocky Mountain Arsenal National

Priorities List (RMA/NPL) Site has been ongoing, pursuant to a Record of Decision signed in 1996 by the Army, U.S. Environmental Protection Agency (EPA), and the State of Colorado. On January 15, 2004, the Regional Administrator of the EPA published notice(s) in the **Federal Register** announcing deletion of the Selected Perimeter Area (SPA) and Surface Deletion Area (SDA) from the RMA/NPL Site. On January 27, 2004, the Administrator of EPA, acting through the Regional Administrator of EPA, Region 8, certified to the Secretary of the Army that all response actions required for the SPA and SDA have been completed.

Pursuant to the Refuge Act, portions of the SPA and SDA will be transferred by the Army to local units of government to permit the widening of existing roads. Approximately 4,901.81 acres of the SPA and SDA were available for transfer, for refuge purposes, to the Secretary of the Interior. Additionally, approximately 28.04 acres, known as the "Klein Halo,'' was included in an area deleted from the RAM/NPL Site, as the Western Tier Parcel partial deletion, on January 21, 2003, and was also available for transfer to the Secretary of the Interior. Administrative jurisdiction over these approximately 4,929.85 acres was transferred from the Department of the Army to the Department of the Interior on April 2, 2004. This notice is required within 30 days of that transfer by section 4(a) of the Refuge Act.

It is anticipated that as the environmental remediation at RMA proceeds, additional lands may be deleted from the RMA/NPL Site. As those partial deletions are completed and certification of completion of required response actions is made by EPA to the Secretary of the Army, primary administrative jurisdiction of additional lands will be transferred to the Secretary of the Interior. Such transfers will continue until such time as the remediation is complete and the final configuration of the refuge is determined.

Since 1992, and in accordance with section 2(a) of the Refuge Act, Rocky Mountain Arsenal has been managed "as if it were a unit of the National Wildlife Refuge System'' under provisions of a Cooperative Agreement between the Army and the Service. The Cooperative Agreement, mandated by the Refuge Act, created an overlay/secondary jurisdiction refuge status for the Rocky Mountain Arsenal with primary jurisdiction remaining with the Army. As such, the real property comprising the Rocky Mountain Arsenal has previously been reported as Real Property Number 1229, with 17,000 acres under secondary jurisdiction, in the "Annual Report of Lands Under Control of the U.S. Fish and Wildlife Service,'' by the Service's Division of Realty. The action of this notice is the formal establishment of the Rocky Mountain Arsenal National Wildlife Refuge, under primary jurisdiction of the Department of the Interior, and does not require establishment of a new Real Property Number by the Service's Division of Realty.

Dated: April 6, 2004.

**Mike Stempel,**

*Regional Director, Region 6, Denver, Colorado.*

[FR Doc. 04–8990 Filed 4–20–04; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## Proposed Information Collection Activities, Request for Comments

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice announces that the Information Collection Request for the Housing Assistance Application requires renewal. The proposed information collection requirement, with no appreciable changes, described below will be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget for review after a public comment period as required by the Paperwork Reduction Act. The Bureau is soliciting public comments on the subject proposal.

**DATES:** Submit comments on or before June 21, 2004.

**ADDRESSES:** Interested parties are invited to submit written comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to Frank Joseph, Bureau of Indian Affairs, Department of the Interior, 1951 Constitution Avenue, NW., MS–355B–SIB, Washington, DC 20240. Telephone (202) 513–7620.

**FOR FURTHER INFORMATION CONTACT:** Copies of the collection of information form or requests for additional information should be directed to Frank Joseph, (202) 513–7620.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The information is needed to establish an applicant's eligibility to receive services under the Housing Improvement Program and to establish the priority order in which eligible applicants may receive services under the program.

### II. Method of Collection

The housing regulations at 25 CFR part 256 contain the program eligibility and selection criteria (§§ 256.6, 256.8, 256.9, 256.10, 256.13, 256.14), which must be met by prospective applicants seeking program services. Information collected from applicants under these regulations provides eligibility and selection data used by the local servicing housing office to establish whether an applicant is eligible to receive services. The local servicing housing office may be a tribal housing office under a Public Law 93–638, Indian Self-Determination contract or a Self-Governance annual funding agreement, or part of the Bureau of Indian Affairs. Additionally, the data is used by the Assistant Secretary—Indian Affairs to establish whether a request for waiver of a specific housing regulation is in the best interest of the applicant and the Federal Government.

### III. Data

(1) *Title of the Collection of Information:* Department of the Interior, Bureau of Indian Affairs, Housing Assistance Application.

*OMB Control Number:* 1076–0084.

*Expiration Date:* October 31, 2004.

*Type of Review:* Renewal of a currently-approved information collection.

(2) *Summary of the Collection of Information:* The collection of information provides pertinent data concerning an applicant's eligibility to receive services under the Housing Improvement Program and includes:

A. Applicant Information including: Name, current address, telephone number, date of birth, Social Security Number, Tribe, Roll Number, Reservation, marital status, name of spouse, date of birth of spouse, Tribe of spouse, and Roll Number of Spouse.

B. Family Information including: Name, date of birth, relationship to applicant, and Tribe/Roll Number.

C. Income Information: Earned and unearned income.

D. Housing Information including: Location of the house to be repaired, constructed, or purchased. Description of housing assistance for which applying; Knowledge of receipt of prior Housing Improvement Program assistance, amount, to whom and when; ownership or rental; availability of electricity and name of electric company; type of sewer system; water

source; number of bedrooms; size of house; and bathroom facilities.

E. Land Information including: Landowner; legal status of land; or type of interest in land.

F. General Information including: Prior receipt of services under the Housing Improvement Program and description of such; Ownership of other housing and description of such; Identification of Housing and Urban Development funded house and current status of project; Identification of other sources of housing assistance for which the applicant has applied and been denied assistance if applying for a new housing unit or purchase of an existing standard unit; and advisement and description of any severe health problem, handicap or permanent disability.

G. Applicant Certification including: Signature of applicant and date, and signature of spouse and date.

(3) *Description of the need for the information and proposed use of the information:* Submission of this information is required in order to receive services under the Housing Improvement Program. The information is collected to determine applicant eligibility for services and applicant priority order to receive services under the program.

(4) *Description of Likely Respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information: Description of Affected Entities:* Individual members of federally recognized Indian tribes who are living within a designated tribal or legally defined service area.

*Estimated Number of Respondents:* 3500.

*Proposed Frequency of Response:* Annually or less frequently, depending on length of waiting list, funding availability and dynamics of service population.

*Estimated Number of Annual Responses:* 3500.

*Estimated Time per Application:* 1 hour.

*Estimated Total Annual Burden Hours:* 3,500 hours.

*Estimated record keeping burden per application:* The record keeping burden for tribes submitting eligible applicant data and not having or receiving funds to administer the program is estimated to average 1 hour per application, including the time for reviewing the application, determining applicant eligibility, priority ranking and summarizing data for submission.

*Estimated Total Salary Record Keeping Burden and Cost:* 3500 hours × $25.00 per hour = $87,500.

**IV. Request for Comments**

We specifically request your comments concerning the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the BIA, including whether the information will have practical utility;

(2) The accuracy of the BIA's estimate of the burden to collect the information, including the validity of the methodology and assumptions used;

(3) The quality, utility and clarity of the information to be collected; and,

(4) How to minimize the burden of the information collection on those who are to respond, including the use of appropriate automated electronic, mechanical 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; the comments will also become a matter of public record. All written comments will be available for public inspection in Room 335B of the South Interior Building, 1951 Constitution Avenue NW, Washington, DC, from 9 a.m. until 4 p.m., Monday through Friday, excluding legal holidays.

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 comments, names and addresses of commenters will be available for public view during regular business hours. If you wish us to withhold this information, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law.

Dated: April 14, 2004.

**David W. Anderson,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 04–8997 Filed 4–20–04; 8:45 am]

BILLING CODE 4310–4J–P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK961–1410–HY–P; F–19570–A; BSA–1]**

### Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, DOI.

**ACTION:** Notice of decision approving lands for conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Solomon Native Corporation. The lands are described as lot 4, U.S. Survey No. 10246, Alaska, and are located in T. 11 S., R. 29 E., Kateel River Meridian, in the vicinity of Solomon, Alaska, and contain 40.00 acres. Notice of the decision will also be published four times in the Nome Nugget.

**DATES:** The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until May 21, 2004, to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**ADDRESSES:** A copy of the decision may be obtained from:

Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

**FOR FURTHER INFORMATION CONTACT:** Christy Favorite, by phone at 907–271–5656, or by e-mail at *cfavorit@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Favorite.

**Christy Favorite,**

*Land Law Examiner, Branch of Land Transfer Services.*

[FR Doc. 04–8973 Filed 4–20–04; 8:45 am]

BILLING CODE 4310–$$–P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–920–1310–04; OKNM 106640]**

### Proposed Reinstatement of Terminated Oil and Gas Lease OKNM 106640

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of reinstatement of terminated oil and gas lease.

**SUMMARY:** Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease OKNM 106640 for lands in Dewey County, Oklahoma, was timely filed and was accompanied by all required rentals and royalties accruing from June 1, 2002, the date of termination.

**FOR FURTHER INFORMATION CONTACT:** Lourdes B. Ortiz, BLM, New Mexico State Office, (505) 438–7586.

**SUPPLEMENTARY INFORMATION:** No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16 2/3 percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice. The Lessee has met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective June 1, 2002, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: February 27, 2004.

**Lourdes B. Ortiz,**

*Land Law Examiner.*

[FR Doc. 04–8974 Filed 4–20–04; 8:45 am]

**BILLING CODE 4310–FB–U**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–050–1220–PM]**

### Supplementary Rules for the Lower Madison Recreation Area of the Dillon Field Office; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Supplementary rules for the Lower Madison Recreation Area managed by the Dillon Field Office, Bureau of Land Management, Montana.

**SUMMARY:** In accordance with the Lower Madison Recreation Area Management Plan, BLM publishes overnight camping fees and supplementary rules for all public lands located within the corridor of the lower Madison River, from the Bear Trap Canyon Wilderness to Black's Ford Fishing Access Site. The fees are necessary to help spread some of the costs for managing these lands among those who use them. They will help to recover the cost of managing camping and recreation related resource issues and improve recreation opportunities. The supplementary rules are necessary to maintain the public health and safety, and to protect the environment of the recreation area. They will help stop the spread of noxious weeds, reduce erosion, reduce fire hazards, prevent further damage to cultural resources, provide for public safety, and prevent damage to cultural and natural resources.

**EFFECTIVE DATE:** May 21, 2004.

**ADDRESSES:** You may send inquiries or suggestions to the Dillon Field Office, 1005 Selway Drive, Dillon, Montana 59725. You may obtain a copy of the Lower Madison Recreation Area Management Plan and/or Environmental Assessment from the Dillon Field Office, 1005 Selway Drive, Dillon, Montana 59725.

**FOR FURTHER INFORMATION CONTACT:** Susan James, Outdoor Recreation Planner, BLM Dillon Field Office, P.O. Box 765, Ennis, Montana 59729, 406–682–4082.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In 1996, to address increasing visitor use and impacts on the public lands and declining Federal budgets for recreation, Congress directed the U.S. Department of the Interior to implement the Recreation Fee Demonstration Program. The intent of the program is to help spread some of the costs for managing these lands among those who use them. The Dillon Field Office is one of the BLM fee demonstration pilot sites. All of the fees collected in the Lower Madison are returned to the Dillon Field Office for use in managing the area. Supplementary Rules for the Lower Madison Recreation Area are defined below.

*Section 1. What Rules Apply in the Lower Madison Recreation Area?*

a. Overnight campers must pay the posted camping fee and display a fee payment receipt at the campsite as proof of payment.

b. Vehicle travel is limited to the road surface of posted, designated routes.

c. The entire area is closed to the discharge or use of firearms, except for the purpose of hunting during upland game, waterfowl, and big game hunting seasons. All developed and designated campgrounds, campsites, trailheads, and recreation access sites, including a safety zone of 50 feet, are closed to discharge of all firearms yearlong. This includes bow and arrow and fireworks.

d. Camping is allowed only in signed, designated sites or within a developed campground. All campsites are limited to a maximum of 3 vehicles per site unless otherwise indicated. Camping is restricted to a maximum of 14 days within any 28-day period, after which a person must move a minimum of 5 miles.

e. Open fires must be completely contained within a permanently installed metal fire grate provided. Construction of rock fire rings, or use of any existing rock fire ring, is prohibited. The area is also closed to the collection of firewood and any chopping or destruction of trees dead or alive.

f. Boat and raft launching is permitted only from developed designated launch sites.

*Section 2. Penalties.*

On public lands, under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7, any person who violates any of these supplementary rules within the boundaries established in the rules may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

*Section 3. Authorities*

a. The Omnibus Consolidated Rescissions and Appropriation Act of 1996 (Pub. L. 104–134, Sec. 315) provides the authority for BLM to carry out the Recreational Fee Demonstration Program by charging and collecting fees in Pilot Fee Sites.

b. Additional authorities for collecting user fees, implementing special regulations for visitor conduct, and imposing fines for noncompliance with regulations include the Federal Land Policy and Management Act of 1976, Public Law 94–579 (43 U.S.C. 1701 *et seq.*), the Land and Water Conservation Fund Act of 1965, Public Law 88–578 (16 U.S.C. 460 (1–6a) *et seq.*), 43 CFR subpart 8372, and 43 CFR 8365.1–6, Supplementary Rules. Violation of any supplementary rule by a member of the public is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. (43 CFR 8360.0–7)

### II. Public Participation

The public has been involved in planning for the management of the area. Public review under the National Environmental Policy Act (NEPA) did not generate comments specific to the subject matter of the supplementary rules. Following are steps the Dillon Field Office has taken to involve the public in planning for the area and developing the policies embodied in the supplementary rules:

• The Dillon Field Office held meetings with affiliated land managing agencies and interested user groups. Those agencies and groups include the Montana Department of Natural Resources and Conservation, the Montana Department of Fish, Wildlife and Parks, the Montana Department of Transportation, and Fishing Outfitters Association of Montana.

• In the fall of 1998, the Dillon Field Office began soliciting public input regarding future management of the planning area. At that time, BLM posted notices at the turnoff to the county road and Bear Trap Road requesting the public to contact the Dillion Field Office with comments. On January 28, 2000, BLM mailed a scoping letter to the public and other agencies that had expressed interest in the plan, and held public meetings.

• BLM mailed an Environmental Assessment (EA) on September 3, 2002, with a 30-day comment period, and issued a press release on October 18, 2002. On the same date, BLM mailed another letter to the mailing list of interested persons notifying them of the availability of the EA, and extending the comment period 30 days. BLM received several comments, most favoring the selected alternative. Some comments were outside the scope of the EA.

Further, BLM already has regulatory authority to enforce the provisions in the supplementary rules. Publishing them as supplementary rules has two purposes:

• Providing BLM law enforcement personnel added enforcement capability; and

• Providing the recreating public better and more convenient information as to the applicable requirements.

Therefore, BLM finds good cause to issue these supplementary rules in final form without further opportunity for public comment.

## III. Procedural Matters

*Executive Order 12866, Regulatory Planning and Review*

These supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 million or more on the economy. They are not intended to affect commercial activity, but contain rules of conduct for public use of certain recreational areas. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

*Clarity of the Supplementary Rules*

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the supplementary rules clearly stated?

(2) Do the supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the supplementary rules (grouping and order of sections, use of headings, paragraphing, *etc.*) air or reduce their clarity?

(4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand?

Please send any comments you have on the clarity of the supplementary rules to the address specified in the **ADDRESSES** section.

*National Environmental Policy Act*

The BLM has prepared an environmental assessment (EA) and has found that the supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The supplementary rules merely contain rules of conduct for certain recreational lands in Montana. These rules are designed to protect the environment and the public health and safety. A detailed statement under NEPA is not required. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

*Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The supplementary rules do not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific public lands. Therefore, BLM has determined under the RFA that these supplementary rules would not have a significant economic impact on a substantial number of small entities.

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

These supplementary rules do not constitute a "major rule'' as defined at 5 U.S.C. 804(2). Again, the supplementary rules merely contain rules of conduct for recreational use of certain public lands. The supplementary rules have no effect on business, commercial or industrial, use of the public lands.

*Unfunded Mandates Reform Act*

These supplementary rules do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor do these supplementary rules have a significant or unique effect on state, local, or tribal governments or the private sector. The supplementary rules do not require anything of state, local, or tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

*Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)*

The supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights in any form, and do not cause the impairment of anybody's property rights. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

*Executive Order 13132, Federalism*

The supplementary rules will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The supplementary rules affect land in only one state, Montana, and do not address jurisdictional issues involving the state government. Therefore, in accordance with Executive Order 13132, BLM has

determined that these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

*Executive Order 12988, Civil Justice Reform*

Under Executive Order 12988, the Office of the Solicitor has determined that these supplementary rules will not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

*Consultation and Coordination With Indian Tribal Governments (E.O. 13175)*

In accordance with Executive Order 13175, we have found that this final rule does not include policies that have tribal implications. The supplementary rules do not affect lands held for the benefit of Indians, Aleuts, or Eskimos.

*Paperwork Reduction Act*

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Dated: April 14, 2004.

**Howard A. Lemm,**

*Acting State Director.*

[FR Doc. 04–8991 Filed 4–20–04; 8:45 am]

BILLING CODE 4310–DN–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[75% to CO–956–1420–BJ–0000–241A; 8.333% to CO–956–1420–BJ–CAPD–241A; 8.333% to CO–956–1420–BJ–TRST–241A; 8.333% to CO–956–9820–BJ–CO01–241A]**

### Colorado: Filing of Plats of Survey

April 12, 2004.

**SUMMARY:** The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., April 12, 2004. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat representing the dependent resurveys and surveys in Township 36 North, Range 18 West, New Mexico Principal Meridian, Group 1316, Colorado, was accepted January 30, 2004.

The plat representing the dependent resurveys and surveys in Township 1 North, Range 84 West, Sixth Principal Meridian, Group 1365, Colorado, was accepted February 11, 2004.

The plat representing the dependent resurveys and surveys in Township 1 North, Range 85 West, Sixth Principal Meridian, Group 1365, Colorado, was accepted February 11, 2004.

The plat representing the dependent resurveys and surveys in Township 1 South, Range 85 West, Sixth Principal Meridian, Group 1365, Colorado, was accepted February 11, 2004.

The plat (in 2 sheets), representing the entire record of the dependent resurveys and surveys in Township 17 South, Range 68 West, Sixth Principal Meridian, Group 1329, Colorado, was accepted February 25, 2004.

The plat representing the dependent resurveys and surveys in Township 8 North, Range 92 West, Sixth Principal Meridian, Group 1355, Colorado, was accepted March 4, 2004.

The plat representing the entire record of the dependent resurvey in Township 5 North, Range 60 West, Sixth Principal Meridian, Group 1408, Colorado, was accepted March 8, 2004.

The plat representing the dependent resurveys and surveys in Township 9 South, Range 103 West, Sixth Principal Meridian, Group 1350, Colorado, was accepted March 17, 2004.

The supplemental plat creating new lots in sections 9, 14, 15, and 23, Township 40 North, Range 2 West, New Mexico Principal Meridian, Colorado, was accepted January 14, 2004.

These surveys and plats were requested by the Bureau of Land Management for administrative and management purposes.

The plat representing the dependent resurveys and surveys, in Township 13 South, Range 67 West, Sixth Principal Meridian, Group 1308, Colorado, was accepted February 23, 2004.

The plats (in 6 sheets) representing Amended Protraction Diagram Number 1, for Townships 3, 4, and 5 North, Ranges 73, 75 and 76 West, Sixth Principal Meridian, Colorado, was accepted March 22, 2004.

These surveys and plats were requested by the U.S. Forest Service for administrative and management purposes.

The plat representing the dependent resurveys and surveys in Township 32 North, Range 3 West, New Mexico Principal Meridian, Group 1253, Colorado, was accepted February 5, 2004.

This survey and plat was requested by the Southern Ute Indian Tribe, through the Bureau of Indian Affairs, Albuquerque, New Mexico for administrative and management purposes.

**Paul Lukacovic,**

*Acting Chief Cadastral Surveyor for Colorado.*

[FR Doc. 04–8969 Filed 4–20–04; 8:45 am]

BILLING CODE 4310–JB–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 10, 2004. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by May 6, 2004.

**Carol D. Shull,**

*Keeper of the National Register of Historic Places.*

**DISTRICT OF COLUMBIA**

**District of Columbia**

Connecticut Avenue Bridge over Klingle Valley, Connecticut Avenue, NW over Klingle Valley, Washington, 04000448

Washington DC Radio Terminal, 4623 41 St. NW., Washington, 04000449

**FLORIDA**

**Orange County**

Tinker Field, 1610 W. Church St., Orlando, 04000456

**KANSAS**

**Atchison County**

Drimmel, John, Sr., Farm, 16339 290th Rd., Atchison, 04000452

**Johnson County**

Virginia School District #33, 71st St. and Clare Rd., Shawnee, 04000454

**Marshall County**

Westminster Presbyterian Church, 1275 Boswell Ave., Topeka, 04000453

**Morris County**

Jenkins Building, 101 W. Mackenzie St., White City, 04000451

**Nemaha County**

Nemaha County Jail and Sheriff's House, 113 N. 6th St., Seneca, 04000455

**Sumner County**

Smith, Edwin, House, 114 S. Jefferson, Wellington, 04000450

**MICHIGAN**

**Calhoun County**

Boys' Club Building, 115 West St., Battle Creek, 04000457

**Kalamazoo County**

Acres, The, 10036,10069,11090,11108 and 11185 Hawthorne Dr., Charleston Township, 04000458
Oshtemo Town Hall, 10 S. Eighth St., Oshtemo Charter Township, 04000459

**MINNESOTA**

**Dakota County**

St. Shefan's Romainia Orthodox Church, 350 5th Ave. N, South St. Paul, 04000461

**MISSOURI**

**St. Louis County**

Coldwater Cemetery, 15290 Old Halls Ferry Rd., Florissant, 04000462

**MONTANA**

**Missoula County**

McCormick Neighborhood Historic District, Roughly bounded by River Rd., S. 6th W, S. Orange St., and Bitterroot Line of the railroad, Missoula, 04000460

**NORTH CAROLINA**

**Graham County**

Cheoah Hydroelectric Development, (Tapoco Hydroelectric Project MPS) 1512 Tapoca Rd., NC 129, Robbinsville, 04000464
Santeetlah Hydroelectric Development, (Tapoco Hydroelectric Project MPS) Dam-Hwy NC 1247, Powerhouse-1277 Farley Branch Rd., Robbinsville, 04000466
Tapoco Lodge Historic District, (Tapoco Hydroelectric Project MPS) 14981 Tapoco Rd., Robbinsville, 04000465

**Rowan County**

Monroe Street School, 1100 West Monroe St., Salisbury, 04000463

**NORTH DAKOTA**

**Kidder County**

First Presbyterian Church of Steele, Mitchell Ave. N and First St., Steele, 04000467

**PENNSYLVANIA**

**Chester County**

Thomas Mill and Miller's House, (West Whiteland Township MRA) 130 W. Lincoln Hwy., West Whiteland, 04000468

**SOUTH DAKOTA**

**Aurora County**

Raesly House, Second and East Rd., Plankinton, 04000472
Smith, William P., House, 306 N. Third Ave., Stickney, 04000471

**Dewey County**

Dakota Club Library, (Federal Relief Construction in South Dakota MPS) Lot 4 Block 3 Main St., Eagle Butte, 04000474

**Lake County**

Goff, J. Whitney, Round Barn, (South Dakota's Round and Polygonal Barns and Pavilions MPS) 44520 236th St., Winfred, 04000469

**Moody County**

Pettigrew Barns, (South Dakota's Round and Polygonal Barns and Pavilions MPS) 309 East Broad, Flandreau, 04000473

**Roberts County**

Walla Lutheran Church, 46532 105th St., New Effington, 04000470

**TENNESSEE**

**Rutherford County**

Idler's Retreat, 112 Oak St., Smyrna, 04000475

**VIRGINIA**

**Fairfax County**

Oak Hill, 4716 Wakefield Chapel Rd., Annandale, 04000478

**Grayson County**

Bourne, Stephen G., House, 6707 Spring Valley Rd., Fries, 04000483
Cox, Dr. Virgil, House, 406 West Stuart Dr., Galax, 04000476

**Isle Of Wight County**

Saunders, Henry, House, 13009 East Windsor Blvd., Windsor, 04000479

**Middlesex County**

Prospect, 2847 Grey's Point Rd., Topping, 04000480

**Northumberland County**

Clifton, 49 Clifton Ave., Kimarnock, 04000477

**Rockingham County**

Contentment, 253 Contentment Ln., Mt. Crawford, 04000481

**Virginia Beach Independent City**

Murray, Thomas, House, 3425 S. Crestline Dr., Virginia Beach (Independent City), 04000482

A request for REMOVAL has been made for the following resource:

**PENNSYLVANIA**

**Northumberland County**

Victoria Theatre, 46 W. Independence St., Shamokin, 85002907

[FR Doc. 04–8966 Filed 4–20–04; 8:45 am]

BILLING CODE 4312–51–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 27, 2004. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by May 6, 2004.

**Carol D. Shull,**

*Keeper of the National Register of Historic Places.*

**COLORADO**

**Bent County**

Fort Lyon, Jct. of Bent Cty. Rd. 15 and Fort Lyon Gate Rd., Las Animas, 04000388

**Denver County**

Altamaha Apartments, 1490 Lafayette St., Denver, 04000382
West Side Court Building, 924 W. Colfax Ave., Denver, 04000383

**San Juan County**

Martin Mining Complex, 6350 Cty Rd. #2, Silverton, 04000384

**CONNECTICUT**

**Fairfield County**

Perkins, Maxwell E., House, 63 Park St., New Canaan, 04000415

**Hartford County**

Downtown North Historic District, Roughly Ann, Atlant, Ely, High, Main and Pleasant Sts., Hartford, 04000390

**Litchfield County**

Hine—Buckingham Farms, 44, 46, 48 Upland Rd., 78, 81 Crossman Rd., New Milford, 04000413

**New London County**

Hartford Colony, Roughly Leonard Court, New Shore Rd., and Shore Rd., Waterford, 04000414

**MISSOURI**

**Cape Girardeau County**

B'Naie Israel Synagogue, 126 S. Main, Cape Girardeau, 04000385
Jackson County 1524 Grand Avenue Building, 1524 Grand Blvd., Kansas City, 04000389
Buick Automobile Company Building, 216 Admiral Blvd., Kansas City, 04000386
Kansas City Southern Railway Building, (Railroad Related Historic Commercial and Industrial Resources in Kansas City, Missouri MPS) 114 W. 11th St., Kansas City, 04000392
Midwest Hotel, (Working Class Hotels at 19th and Main Streets, Kansas City, Missouri MPS) 1925 Main St., Kansas City, 04000394
Monroe Hotel, (Working Class Hotels at 19th and Main Streets, Kansas City, Missouri

MPS) 1904–06 Main St., Kansas City, 04000395
Park Lane Apartments, 4600–4606 J.C. Nichols Parkway, Kansas City, 04000387
Rieger Hotel, (Working Class Hotels at 19th and Main Streets, Kansas City, Missouri MPS) 1922 Main St., Kansas City, 04000396
Union Station (Boundary Increase), Generally bounded by Kansas City Terminal RR tracks, Pennway, Pershing Rd. and Union Station, Kansas City, 04000393

**NEW JERSEY**

**Somerset County**

Ten Eyck, Andrew, House, 671 Old York Rd., Branchburg, 04000391

**PENNSYLVANIA**

**Dauphin County**

Pennsylvania Railroad GG! Streamlined Electric Locomotive #4859, Track 5, Harrisburg Transportation Center Aberdeen St., Harrisburg, 04000399

**Lehigh County**

Allentown Masonic Temple, 1524 W. Linden St., Allentown, 04000402

**Northampton County**

Bethlehem Steel Lehigh Plant Mill #2 Annex, 11 W. 2nd St., Bethlehem, 04000401

**York County**

West Side Sanitarium, 1253–1261 West Market St., West York Borough, 04000400

**UTAH**

**Salt Lake County**

Draper Poultryment and Egg Producers' Plant, (Draper, Utah MPS) 1071 E. Pioneer Rd., Draper, 04000403
Fitzgerald, Perry and Agnes Wadsworth, House, (Draper, Utah MPS) 1144 E. Pioneer Rd., Draper, 04000404
Mickelsen, Joseph E. and Mina W., House, (Draper, Utah MPS) 782 E. Pioneer Rd., Draper, 04000405
Mickelsen, S.J., Hardware Store and Lumber Yard, (Draper, Utah MPS) 12580–12582 S. Fort St., Draper, 04000406

**WISCONSIN**

**Brown County**

Rockwood Lodge Barn and Pigsty, 5632 Sturgeon Bay Rd., Green Bay, 04000412

**Door County**

Bouche, J.B., House, 9697 School Rd., Brussels, 04000411
Draize, August, Farmstead, 814 Tru-Way Rd., Union, 04000398
Engleber, Frank and Clara, House, 9390 Cemetery Rd., Brussels, 04000397
Falque, Joachine J., House, 1059 County Trunk Highway C, Brussels, 04000407
Joint Brussels and Garner District School Number One, 8571 State Trunk Highway 57, Brussels, 04000408
Monfils, Joseph, Farmstead, 1463 Dump Rd., Brussels, 04000409
Vangindertahlen, Louis, House, 1514 Dump Rd., Brussels, 04000410

[FR Doc. 04–8967 Filed 4–20–04; 8:45 am]

BILLING CODE 4312–27–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 3, 2004. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by May 6, 2004.

**Carol D. Shull,**

*Keeper of the National Register of Historic Places.*

**ALASKA**

Wrangell-Peterburg Borough-Census Area
Five Finger Light Station, (Light Stations of the United States MPS), Island of The Five Fingers, approx. 37 mi. NW of the city of Petersburg, Petersburg, 04000416

**CONNECTICUT**

Hartford County
Southern New England Telephone Company Building, 55 Trumbull St., Hartford, 04000417

**ILLINOIS**

Bureau County
Lone Tree School, 19292 250 North Avenue, Tiskilwa, 04000418
Du Page County
Emery, Jr., William H., House, 281 Arlington, Elmhurst, 04000421
Logan County
Allen Chapel African Methodist Episcopal Church, 902 Broadway, Lincoln, 04000422
Macoupin County
Soulsby Service Station, (Route 66 through Illinois MPS), 102 Sout Route 66 St., Mount Olive, 04000420
Will County
Small—Towle House, 515 County Rd., Wilmington, 04000419

**MASSACHUSETTS**

Essex County
Rockport High School, Old, 58 Broadway, Rockport, 04000424
Middlesex County
Community Memorial Hospital, 15 Winthrop Ave., Ayer, 04000423
Glenwood Cemetery, NE of Parker St. and Great Rd., Maynard, 04000425
Suffolk County
Nazing Court Apartments, 224–236 Seaver St. and 1–8 Nazing Court, Boston, 04000426

**MISSOURI**

Buchanan County
Buddy, Charles A. and Annie, House, (St. Joseph MPS), 424 S. 9th St., St. Joseph, 04000427
St. Louis Independent city
Riggio Building, 5145–5149 Shaw Ave., St. Louis (Independent City), 04000428

**NEW JERSEY**

Middlesex County
Trinity Episcopal Church, 650 Rahway Ave., Woodbridge Township, 04000431
Union County
Green Brook Park, All parkland from Clinton Ave. to W of West End Ave., and Jct of Lawrence and Parkview Ave., Fisk and Townsend Pls., Plainfield, 04000437

**NEW YORK**

Albany County
Enlarged Erie Canal Historic District (Discontiguous), City of Cohoes, roughly from S to NW city boundary, Cohoes, 04000434
Dutchess County
Beverwyck Site, SE of jct. of U.S. 46 and S. Beverwyck Rd., Parsippany-Troy Hills, 04000430
Herkimer County
Covewood Lodge, 120 Covewood Lodge Rd., Big Moose, 04000435
Oneida County
Fort Schuyler Club Building, 254 Genesee St., Utica, 04000436
Onondaga County
Babcock—Shattuck House, 2000–2004 W. Genesee St., Syracuse, 04000429
Saratoga County
Mead House, 2210 Galway Rd., Galway, 04000433
Ulster County
Elting Memorial Library, 93 Main St., New Paltz, 04000432

**PENNSYLVANIA**

Allegheny County
Teutonia Maennerchor Hall, 857 Phineas St., Pittsburgh, 04000439
Montgomery County
Glendside Memorial Hall, 185 Keswick Ave., Cheltenham, 04000438

**TENNESSEE**

Davidson County
Temple Cemetery, 2001 15th Ave. N, Nashville, 04000440

**VERMONT**

Caledonia County
Darling, J.R., Store, 284 Scott Highway, Groton, 04000442
Goodine, Alice Lord, House, 276 Scott Highway, Groton, 04000441
Franklin County
Richford Primary School, (Educational Resources of Vermont MPS), 140 Intervale Ave., Richford, 04000443
Sweat—Comings Company House, 10–12 Powell St., Richmond, 04000444
Wheeler, F.W., House, 31 Interbale Ave., Richford, 04000445

**WASHINGTON**

Spokane County
Davenport Hotel (Boundary Decrease), 807 W. Sprague Ave., Spokane, 04000447

**WISCONSIN**

Brown County
Smith, J.B., House and Granary, 5121 Gravel Pit Rd., Green Bay, 04000446

[FR Doc. 04–8968 Filed 4–20–04; 8:45 am]

**BILLING CODE 4312–51–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Proposed Information Collection; Comments: Agricultural and Food Processing Clearance Order, ETA Form 790 and the Agricultural and Food Processing Clearance Memorandum, ETA Form 795

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

**DATES:** Submit comments on or before June 21, 2004.

**ADDRESSES:** Send comments to: Anthony Dais, U.S. Department of Labor/Employment and Training Administration, Office of Workforce Investment, Room S–4231, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: 202–693–2784 (this is not a toll-free number) fax: 202–693–3015 and Internet address: *dais.anthony@dol.gov*.

**FOR FURTHER INFORMATION CONTACT:** Erik Lang, U.S. Department of Labor/Employment and Training Administration, Office of Workforce Investment, Room S–4231, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: 202–693–2916 (this is not a toll-free number) and Internet address: *lang.erik@dol.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

ETA regulations at 20 CFR 653.500 established procedures for the recruitment of agricultural workers. In situations where an adequate supply of workers does not exist in the local recruiting area, out-of-area recruitment can be attempted. In order to initiate out-of-area recruitment for temporary agricultural work, agricultural employers must use the Agricultural and Food Processing Clearance Order, ETA Form 790, if they wish to list the job opening with the State Workforce Agencies (SWAs). The Agricultural and Food Processing Clearance Memorandum, ETA Form 795 is used by SWAs to extend job orders beyond their jurisdictions, give notice of action on a clearance order, request additional information, amend the order, report results, and accept or reject the extended job order.

**II. Desired Focus of Comments**

Currently, ETA is soliciting comments concerning the proposed two-year extension and change of the Agricultural and Food Processing Clearance Order, ETA Form 790, and the Agricultural and Food Processing Clearance Memorandum, ETA Form 795, from the current end date of June 30, 2004, to a new end date of June 30, 2006. Changes are proposed for both forms, particularly the Agricultural Food Processing Clearance Order, ETA Form 790. Both forms will be produced in a bilingual, English-Spanish format. The Agricultural Food Processing Clearance Order, ETA Form 790 will be lengthened slightly to include a number of items required by the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1800 *et seq.* These items will provide workers with needed specifics surrounding a job prior to considering employment outside of their commuting area (*i.e.*, Workers Compensation Insurance information, the availability of Unemployment Compensation Insurance coverage, the existence of a work stoppage, *etc.*). These items are replicated from the Worker Information—Terms and Conditions of Employment, Wage & Hour Form 516. By adding these items to the Agricultural Food Processing Clearance Order, ETA Form 790, agricultural employers will satisfy their disclosure requirements without also having to fill out the Worker Information—Terms and Conditions of Employment, Wage & Hour Form 516. This will ensure that workers receive full disclosure of required terms and conditions of employment in an appropriate language prior to traveling out of their commuting area. Comments are requested in order to achieve the following:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond by including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the office listed above in the addressee section of this notice.

**III. Current Actions**

This is a request for Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)) to extend the collection and change of the Agricultural and Food Processing Clearance Order, ETA Form 790, and the Agricultural and Food Processing Clearance Memorandum, ETA Form 795, from the current end of date of June 30, 2004, to the new end date of June 30, 2006.

*Type of Review:* Extension (with change).

*Agency:* Employment and Training Administration.

*Title:* Agricultural and Food Processing Clearance Order, ETA Form 790, and the Agricultural and Food Processing Clearance Memorandum, ETA Form 795.

*OMB Number:* 1205–0134.

*1. Processing ETA Form 790*

*Annual number of forms:* 4,600.
*Minutes per form:* 60.
*Processing hours:* 4,600.

*2. Processing ETA Form 795*

*Annual number of forms:* 1,000.
*Minutes per form:* 15.
*Processing hours:* 250.
*Estimated Total Burden Hours:* 4,850.
*Frequency:* On occasion.
*Affected Public:* Employers, and State Governments.
*Number of Respondents:* 3,000.
*Estimated Total Burden Hours:* 4,850.

*Total Burden Cost (operating/maintaining):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 8, 2004.

**Emily Stover DeRocco,**

*Assistant Secretary for Employment and Training.*

BILLING CODE 4510–30–P

## Agricultural and Food Processing Clearance Order

**U.S. Department of Labor**
Employment and Training Administration

**Read Carefully:** In view of the statutorily established basic function of the employment service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the ETA nor the State agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the ES constitute a contractual job offer to which the ETA or a State agency is in any way a party.

OMB Approval No. 1205-0134
Expires: 6/30/2004

1. Industry Code
2. Job Order Number
3. Occupational Title and Code

4. Employer's Name and Address (Number, Street, City, State, ZIP Code and Telephone Number)

5. Anticipated Period of Employment
From: To:

6. Clearance Order Issue Date
Job Order Expiration Date

7. Preferred Crew Leader/Worker's Name and Address
Identifier
Telephone Number

Leader's Functions

| | Yes | No |
|---|---|---|
| Supervises | ☐ | ☐ |
| Transports | ☐ | ☐ |
| Pays | ☐ | ☐ |
| Assumes OASI | ☐ | ☐ |

8. No. & Type of Workers Requested
Total Number _____
No. Individual _____
No. Family _____

9. Wage Rates, Special Pay Information and Deductions

| Crop Activity | Flat Rate (i.e., hr. wk.) | Piece Rate | Unit | Est. Hourly Rate Equiv. | C /L Wage Rate |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |

(See attachment no. _____ )

10. Anticipated Hrs. of Work
Per Week _____

**Normal Hours Per Day**
Sun _____
Mon _____ Thur _____
Tue _____ Fri _____
Wed _____ Sat _____

11. Job Specifications (If additional space is needed, please use separate sheet of paper or reverse of form)

(See attachment no. _____ )

12. Location and Direction to Work Site
(See attach. no. _____ )

13. Board Arrangements
(See attachment no. _____ )

14. Location and Description of Housing

Employer assures the availability of no cost or public housing which meets the full set of applicable standards. (See attach. no. _____ )

Number and Capacity of Housing Units

| Barracks No. | Barracks Total Cap. | Family Units No. | Family Units Total Cap. | Single Rooms No. | Single Rooms Total Cap. |
|---|---|---|---|---|---|
| | | | | | |

Authorized Capacity _____

15. Referral Instructions
(See attach. no. _____ )

16. Collect Calls Accepted

| | Yes | No |
|---|---|---|
| By Employer | ☐ | ☐ |
| By Order Holding Office | ☐ | ☐ |

17. Transportation Arrangements
(See attach. no. _____ )

18. Distribution of Clearance Order

9. Address of Order Holding Office (Include Telephone Number)

20. **Employer's Certification:** This job order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job.
Signature

Name of Agency Representative (Include Telephone Number)

Title

Person are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. Respondents obligation to reply are Mandatory (PL 97-300), 29 USC 49). Public reporting burden for this collection of information is estimated to average 1 hour 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 this collection of information, including suggestions for reducing this burden, to the U.S. Employment Service, U.S. Department of Labor, Room N-4456, Washington, D.C. 20210 (Paperwork Reduction Project 1205-0134).

ETA 790 (Rev. Jan. 1990)

Agricultural and Food Processing Clearance Memorandum

**U.S. Department of Labor**
Employment and Training Administration

OMB Approval No. 1205-0134
Expires: 06/30/2004

| 1. **To:** (Name and Address) | 3. JOB Order Number | 4. Date of Issue |
|---|---|---|
| | 5. Employer | |
| 2. **From:** (Name and Address of Local Office) | 6. Distribution | |

7. Please note the following concerning the above job order:

| ı. **Employer's Certification** ▶ This clearance memorandum accurately describes the changes in employment conditions offered by me on the above Job Order. | | |
|---|---|---|
| 'yped Name of Employer | Signature (Title if other than Employer named) | Date Signed |
| ı. BY: Typed Name of ES Agency Representative | Title | Date Signed |
| ıignature | | Telephone Number |

0. Applicant Holding Office: ("X" one)

☐ Accepted (If accepted, list local offices extend to). ☐ Rejected (If rejected, provide reasons).

'omments

| 1. BY: Typed Name of ES Agency Representative | Telephone Number | Date Signed |
|---|---|---|

'ersons are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. Respondents ›bligation to reply are Mandatory (PL 97-300), 29 USC 49). Public reporting burden for this collection of information is estimated to average 30 ninutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data ıeeded, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of his collection of information, including suggestions for reducing this burden, to the U.S. Employment Service, U.S. Department of Labor, Room ı-4456, Washington, D.C. 20210 (Paperwork Reduction Project 1205-0134).

ETA 795 (January 1990)

## I. Special Insutrctions

None

## II. Preparation of Memorandum

A. Heading of Memorandum

1. Item 1, To. Enter the name and address of the organization to which directed (Regional Office, State Administrative Office, Local Office, etc.)

2. Item 2, From. Enter the name and address of the preparing office.

3. Item 3, Job Order Number. Enter the Job Order Number from Item #2 of the ETA 790.

4. Item 4, Date of Issue. Enter date of issue from item #6 of the ETA 790.

5. Item 5, Employer. Enter the employers name from item #4 of the ETA 790.

6. Item 6, Distribution. In accordance with the distribution instructions on summary page of ETA 795 and the same distribution as the accompanying ETA 790 associated with each ETA 795 form.

B. Memorandum Items

1. Item 7, Please note the following concerning the above job order. Enter any changes in, or additions to, original clearance order.

2. Item 8, Employer Certification. Offices reporting changes in employment conditions must have the employer or an authorized representative sign the form which includes the following certification "This clearance memorandum accurately describes the changes in employment conditions offered by me on the above job order." Employer must sign the original and copies must be noted (Name of Signer).

3. Item 9, By Typed Named of ES Agency Representative. Self-explanatory.

4. Item 10, Applicant-Holding Office. Indicate either acceptance or rejection of the ETA 790. If accepted, indicate local offices to which extended. If rejected, provide reason for rejection.

[FR Doc. 04–8992 Filed 4–20–04; 8:45 am]
BILLING CODE 4510–30–C

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Proposed Information Collection Request Submitted for Public Comment and Recommendations; Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

**DATES:** Submit comments on or before June 21, 2004.

**ADDRESSES:** Send comments to William L. Carlson, Chief, Division of Foreign Labor Certification, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210, (202) 693–3010 (this is not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** William L. Carlson, Chief, Division of Foreign Labor Certification, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210, (202) 693–3010 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The information collection is required by amendments to section 258 of the Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*) The amendments created a prevailing practice exception to the general prohibition on the performance of longshore work by alien crewmembers in U.S. ports. Under the prevailing practice exception, before any employer may use alien crewmembers to perform longshore activities in U.S. ports, it must submit an attestation to the Employment and Training Administration (ETA) containing the elements prescribed by the INA.

The INA further requires that the Department make available for public examination in Washington, DC, a list of employers that have filed attestations, and for each of these employers, a copy of the employer's attestation and accompanying documentation received by the Department.

#### II. Desired Focus of Comments

Currently, the Department is soliciting comments concerning the proposed extension of an existing collection of information pertaining to employers' seeking to use alien crewmembers to perform longshore activities in U.S. ports. The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above in the addressee section of this notice.

#### III. Current Actions

In order to meet its statutory responsibilities under the INA, the Department needs to extend an existing collection of information pertaining to employers seeking to use alien crewmembers to perform longshore activities in U.S. ports.

Because the prevailing practice exception remains in the statute, ETA is requesting a one-hour marker as a place holder for this collection of information. ETA has not received any attestations under the prevailing practice exception within the last three years. An information collection request will be submitted to increase the burden should activities recommence.

*Type of Review:* Extension.

*Agency:* Employment and Training Administration.

*Title:* Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports.

*OMB Number:* 1205–0309.

*Affected Public:* Businesses or other for-profit.

*Form:* Form ETA 9033.

*Total Respondents:* 1.

*Frequency of Response:* On occasion.

*Total Responses:* 1.

*Average Burden Hours Per Response:* 4.

*Estimate Total Burden Hours:* 4.

*Total Burden Cost:* 0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the ICR; they will also become a matter of public record.

Dated: April 14, 2004.

**Emily Stover DeRocco,**

*Assistant Secretary, Employment and Training Administration.*

[FR Doc. 04–8993 Filed 4–20–04; 8:45 am]
BILLING CODE 4510–30–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: 04–051]**

### Notice of Information Collection

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection.

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

**DATES:** All comments should be submitted within 60 calendar days from the date of this publication.

**ADDRESSES:** All comments should be addressed to Ms. Nancy Kaplan, Code VE, National Aeronautics and Space Administration, Washington, DC, 20546–0001.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Nancy Kaplan, NASA Reports Officer, NASA Headquarters, 300 E Street SW., Code VE, Washington, DC 20546, (202) 358–1372, *nancy.kaplan@nasa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The National Aeronautics and Space Administration (NASA) is initiating a new collection designed to assess almost three years' worth of organizational climate initiatives at Marshall Space Flight Center (MSFC) in Huntsville, Alabama. The survey will attempt to measure several facets of the MSFC culture including safety, communication, and leadership, to see how successful previous cultural change activities have been. This survey is aligned with a larger effort within the Agency to assess organizational climate and culture issues, but has a slightly different focus due to the emphasis on culture issues specific to MSFC.

**II. Method of Collection**

NASA will collect this information electronically via a Web-based survey.

**III. Data**

*Title:* Organizational Climate Survey for NASA Marshall Space Flight Center.

*OMB Number:* 2700–XXXX.

*Type of review:* New collection.

*Affected Public:* Business or other for-profit; Federal Government.

*Estimated Number of Respondents:* 365.

*Estimated Time Per Response:* 20 minutes.

*Estimated Total Annual Burden Hours:* 121.

*Estimated Total Annual Cost:* $0.

**IV. Request for Comments**

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**Patricia L. Dunnington,**

*Chief Information Officer, Office of the Administrator.*

[FR Doc. 04–9033 Filed 4–20–04; 8:45 am]

**BILLING CODE 7510–01–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: 04–052]**

### Notice of Information Collection

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection.

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

**DATES:** All comments should be submitted within 60 calendar days from the date of this publication.

**ADDRESSES:** All comments should be addressed to Ms. Nancy Kaplan, Code VE, National Aeronautics and Space Administration, Washington, DC 20546–0001.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Nancy Kaplan, NASA Reports Officer, NASA Headquarters, 300 E Street SW., Code VE, Washington, DC 20546, (202) 358–1372, *nancy.kaplan@nasa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The National Aeronautics and Space Administration (NASA) is renewing an existing collection which is used to identify all new technologies (*i.e.*, "inventions, discoveries, improvements, and innovations'') resulting from work performed under NASA contracts and agreements. The requirement for this information is set forth in Section 305(b) of the National Aeronautics and Space Act of 1958, and subpart 1827 of the NASA Federal Acquisition Regulation Supplement.

**II. Method of Collection**

NASA uses both paper and electronic methods to collect this information. Respondents may submit NASA Form 1679, Disclosure of Invention and New Technology, or use the eNTRe system for electronic reporting.

**III. Data**

*Title:* AST—Technology Utilization.

*OMB Number:* 2700–0009.

*Type of review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit; not-for-profit institutions.

*Estimated Number of Respondents:* 538.

*Estimated Time Per Response:* Ranges from 0.75 hours to 1 hour.

*Estimated Total Annual Burden Hours:* 1545.

*Estimated Total Annual Cost:* $0.

**IV. Request for Comments**

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**Patricia L. Dunnington,**

*Chief Information Officer.*

[FR Doc. 04–9034 Filed 4–20–04; 8:45 am]

**BILLING CODE 7510–01–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency proposes to request use of NA Form 6045, Volunteer Service Application Form, used by individuals who wish to volunteer at the National Archives Building, the National Archives at College Park, regional records services facilities, and Presidential Libraries. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be received on or before June 21, 2004, to be assured of consideration.

**ADDRESSES:** Comments should be sent to: Paperwork Reduction Act Comments

(NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–3213.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on respondents. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

*Title:* Volunteer Service Application Form.

*OMB number:* 3095–NEW.

*Agency form number:* NA Form 6045.

*Type of review:* Regular.

*Affected public:* Individuals or households.

*Estimated number of respondents:* 2,300.

*Estimated time per response:* 15 minutes.

*Frequency of response:* On occasion.

*Estimated total annual burden hours:* 575 hours.

*Abstract:* NARA uses volunteer resources to enhance its services to the public and to further its mission of providing ready access to essential evidence. Volunteers assist in outreach and public programs and provide technical and research support for administrative, archival, library, and curatorial staff. NARA needs a standard way to recruit volunteers and assess the qualifications of potential volunteers. The NA Form 6045, Volunteer Service Application Form, will be used by members of the public to signal their interest in being a NARA volunteer and to identify their qualifications for this work.

Dated: April 15, 2004.

**L. Reynolds Cahoon,**

*Assistant Archivist for Human Resources and Information Services.*

[FR Doc. 04–8998 Filed 4–20–04; 8:45 am]

BILLING CODE 7515–01–P

## THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meetings of Humanities Panel

**AGENCY:** The National Endowment for the Humanities

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Michael P. McDonald, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

**SUPPLEMENTARY INFORMATION:** The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* May 3, 2004.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 730.
*Program:* This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the March 22, 2004 deadline.

2. *Date:* May 10, 2004.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 730.
*Program:* This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the March 22, 2004 deadline.

**Michael P. McDonald,**

*Acting Advisory Committee Management Officer.*

[FR Doc. 04–8956 Filed 4–20–04; 8:45 am]

BILLING CODE 7536–01–P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATES:** Weeks of April 19, 26, May 3, 10, 17, 24, 2004.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**Matters To Be Considered**

*Week of April 19, 2004*

There are no meetings scheduled for the Week of April 19, 2004.

*Week of April 26, 2004—Tentative*

There are no meetings scheduled for the Week of April 26, 2004.

*Week of May 3, 2004—Tentative*

Tuesday, May 4, 2004

9:30 a.m. Briefing on Results of the Agency Action Review Meeting (Public Meeting) (Contact: Bob Pascarelli, 301–415–1245).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Thursday, May 6, 2004

1:30 p.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

*Week of May 10, 2004—Tentative*

Monday, May 10, 2004

1 p.m. Briefing on Grid Stability and Offsite Power Issues (Public Meeting) (Contact: Cornelius Holden, 301–415–3036)

**Note:** This meeting has a new start time.

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Tuesday, May 11, 2004

9:30 a.m. Briefing on Status of Office of International Programs (OIP) Programs, Performance, and Plans (Public Meeting) (Contact: Ed Baker, 301–415–2344).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

1:30 p.m. Briefing on Threat Environment Assessment (Closed—Ex. 1).

*Week of May 17, 2004—Tentative*

There are no meetings scheduled for the Week of May 17, 2004.

*Week of May 24, 2004—Tentative*

Tuesday, May 25, 2004

1:30 p.m. Discussion of Management Issues (Closed—Ex. 2).

Wednesday, May 26, 2004

10:30 a.m. All Employees Meeting (Public Meeting).

1:30 p.m. All Employees Meeting (Public Meeting).

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

**Additional Information**

By a vote of 3–0 on April 9, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Security Issues (Closed—Ex. 1)'' be held April 12, and on less than one week's notice to the public.

"Discussion of Security Issues (Closed—Ex. 1)'' originally scheduled for Wednesday, April 28, 2004 was canceled.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: April 15, 2004.

**Dave Gamberoni,**

*Office of the Secretary.*

[FR Doc. 04–9106 Filed 4–19–04; 9:37 am]

BILLING CODE 7590–01–M

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### April 22, 2004, Public Hearing

OPIC's Sunshine Act notice of its public hearing was published in the **Federal Register** (Volume 69, Number 64, Page 17458) on April 2, 2004. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing in conjunction with OPIC's April 29, 2004 Board of Directors meeting scheduled for 2 p.m. on April 22, 2004 has been cancelled.

*Contact Person for Information:* Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov.*

Dated: April 19, 2004.

**Connie M. Downs,**

*OPIC Corporate Secretary.*

[FR Doc. 04–9116 Filed 4–19–04; 10:10 am]

BILLING CODE 3210–01–M

## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 98–7

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 98–7, We Need Important Information About Your Eligibility for Social Security Disability Benefits, is used by OPM to verify receipt of Social Security Administration (SSA) disability benefits, to lessen or avoid overpayment to Federal Employees Retirement System (FERS) disability retirees. It notifies the annuitant of the responsibility to notify OPM if SSA benefits begin and the overpayment that will occur with the receipt of both benefits.

Comments are particularly invited: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection or other forms of information technology.

Approximately 3,000 RI 98–7 forms will be completed annually. The form takes approximately 5 minutes to complete. The annual burden is 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, Fax (202) 418–3251 or via E-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 60 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415–3540.

*For Information Regarding Administrative Coordination, Contact:* Cyrus S. Benson, Team Leader, Publications Team, Administrative Services Branch, (202) 606–0623.

Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 04–8957 Filed 4–20–04; 8:45 am]

BILLING CODE 6325–38–P

## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Collection; Comment Request for Review of a Revised Information Collection: Standard Form 2808

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. SF 2808, Designation of Beneficiary: Civil Service

Retirement System (CSRS), is used by persons covered by CSRS to designate a beneficiary to receive the lump sum payment due from the Civil Service Retirement and Disability Fund in the event of their death.

Comments are particularly invited on: Whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 2,000 forms will be completed annually. The form takes approximately 15 minutes to complete. The annual burden is estimated at 500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, fax (202) 418–3251 or via e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 60 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—Ronald W. Melton, Chief, Operation Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415–3540.

**FOR FURTHER INFORMATION CONTACT:** Cyrus S. Benson, Team Leader, Publications Team, Support Group, (202) 606–0623.

Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 04–8958 Filed 4–20–04; 8:45 am]

**BILLING CODE 6325–38–U**

## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 25–51

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 25–51, Civil Service Retirement System (CSRS) Survivor Annuitant Express Pay Application for Death Benefits, will be used by the Civil Service Retirement System solely to pay benefits to the widow(er) of an annuitant. This application is intended for use in immediately authorizing payments to an annuitant's widow or widower, based on the report of death, when our records show the decedent elected to provide benefits for the applicant.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 34,800 RI 25–51 forms are completed annually. The form takes approximately 30 minutes to complete. The annual burden is 17,400 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, fax (202) 418–3251 or via e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 60 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415–3540.

**FOR FURTHER INFORMATION CONTACT:** Cyrus S. Benson, Team Leader, Publications Team, Support Group, (202) 606–0623.

Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 04–8959 Filed 4–20–04; 8:45 am]

**BILLING CODE 6325–38–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Collection; Comment Request for Review of Revised Information Collection: RI 38–31

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 38–31, Request for Information About Your Missing Payment, is sent in response to a notification by an individual of the loss or non-receipt of a payment from the Civil Service Retirement and Disability Fund. This form requests the information needed to enable OPM to trace and/or reissue payment. Missing payments may also be reported to OPM by a telephone call.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 8,000 RI 38–31 forms are completed annually. We estimate it takes approximately 10 minutes to complete the form. The annual burden is 1,300 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, fax (202) 418–3251 or via e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 60 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415–3540.

**FOR FURTHER INFORMATION CONTACT:** Cyrus S. Benson, Team Leader, Publications Team, Administrative Services Branch, (202) 606–0623.

Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 04–8960 Filed 4–20–04; 8:45 am]

**BILLING CODE 6325–38–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27834]**

## Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

April 14, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 10, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 10, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

### The Southern Company (70–10215)

*Notice of Proposal To Issue Securities; Order Authorizing Solicitation of Proxies*

The Southern Company (''Southern''), 270 Peachtree Street, NW., Atlanta, Georgia 30303, a holding company registered under the Public Utility Holding Company Act of 1935, as amended (''Act''), has filed a declaration under sections 6(a), 7 and 12(e) of the Act and rules 54, 62 and 65 under the Act.

Southern proposes, from time to time through May 26, 2014, to issue shares of its common stock, par value $5.00 per share (''Common Stock''), in accordance with the Outside Directors Stock Plan for The Southern Company and Certain of its Subsidiaries (''Plan''). The Plan is a consolidation of the Outside Directors Stock Plan for The Southern Company (''Southern Stock Plan'') and the Outside Directors Stock Plan for Subsidiaries of The Southern Company (''Subsidiaries Stock Plan'').

The Board of Directors of Southern has adopted the Plan, subject to stockholder approval. The Plan is intended to provide a mechanism for non-employee directors to increase their ownership of Common Stock automatically and thereby further align their interests with those of Southern's stockholders.

The Plan will be administered by Southern's Governance Committee (''Committee''), which will have exclusive authority to interpret the Plan. The Plan provides for a portion of the retainer fee for non-employee directors of Southern and any subsidiary of Southern that the Board of Directors of Southern determines to bring under the Plan and that adopts the Plan (''Subsidiaries'') to be paid in unrestricted shares of Common Stock and permits each non-employee director to elect to have all or a portion of the remainder of the director fee to be paid in shares of Common Stock instead of cash. Southern expects that the initial Subsidiaries will be Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company and that the approximate number of participants under the Plan will initially be 50. The portion of the director fee paid in Common Stock to Southern's non-employee directors in accordance with the Plan will automatically be deferred in accordance with the terms of the deferred compensation plan maintained by Southern. The non-employee directors of each Subsidiary may elect to have the portion of the director fee paid in Common Stock in accordance with the Plan deferred in accordance with the terms of the deferred compensation plan maintained by each Subsidiary for its directors.

One million shares of Common Stock and the unissued shares of Common Stock previously authorized and registered for issuance under the Southern Stock Plan and Subsidiaries Stock Plan (approximately 1,700,000 shares) will be available for payment to the participants under the Plan.

The Board of Directors of Southern may terminate or amend the Plan at any time except that without shareholder approval no amendment may be made that would, absent that shareholder approval, disqualify the Plan for coverage under rule 16b–3, as promulgated by the Commission under the Securities and Exchange Act of 1934, as amended. The Plan will terminate May 26, 2014, unless terminated sooner by the Board of Directors.

Southern further proposes to submit the Plan for consideration and action by its stockholders at the annual meeting of such stockholders to be held on May 26, 2004, and to solicit proxies from its stockholders in anticipation of that meeting. In addition, in the event that Southern considers it desirable to do so, it may employ professional proxy solicitors to assist in the solicitation of proxies and pay their expenses and compensation for that assistance, which, it is estimated, will not exceed $10,000.

Approval of the Plan requires the affirmative vote of the holders of a majority of the shares of Common Stock represented in person or by proxy at the annual meeting.

The proposed transactions are subject to rule 53 under the Act, which provides that in determining whether to approve the issue or sale of a security for purposes of financing the acquisition of an exempt wholesale generator (''EWG'') or foreign utility company (''FUCO''), the Commission shall not make certain adverse findings if the conditions set forth in rule 53(a)(1) through (a)(4) are met, and are not otherwise made inapplicable by the existence of any of the circumstances described in rule 53(b).

Southern currently meets all of the conditions of rule 53(a), except for clause (1). At December 31, 2003, Southern's ''aggregate investment,'' as defined in rule 53(a)(1), in EWGs and FUCOs was approximately $304 billion, or approximately 5.83% of Southern's ''consolidated retained earnings,'' also as defined in rule 53(a)(1), as of December 31, 2003 ($5.213 billion). With respect to rule 53(a)(1), however, the Commission has determined that Southern's financing of investments in EWGs and FUCOs in an amount greater than the amount that would otherwise be allowed by rule 53(a)(1) would not have either of the adverse effects set forth in rule 53(c). (*See* The Southern Company, HCAR No. 16501, (April 1, 1996); and HCAR No. 26646, (January 15, 1997).

In addition, Southern has complied and will continue to comply with the record-keeping requirements of rule 53(a)(2), the limitation of rule 53(a)(3) on the use of operating company personnel to render services to EWGs

and FUCOs and the requirements of rule 53(a)(4) concerning the submission of copies of certain filings under the Act to retail rate regulatory commissions. Further, none of the circumstances described in rule 53(b) has occurred. Finally, rule 53(c) is, by its terms, inapplicable since the requirements of paragraphs 53(a) and 53(b) are satisfied.

It appears to the Commission that the declaration, to the extent that it relates to the proposed solicitation of proxies, should be permitted to become effective immediately under rule 62(d).

*It is ordered,* that the declaration, to the extent that it relates to the proposed solicitation of proxies be, and hereby is, permitted to become effective immediately under rule 62 and subject to the terms and conditions prescribed in rule 24 under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–8964 Filed 4–20–04; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49563; File No. SR–CBOE–2003–40]**

## Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Relating to Options on Certain CBOE Volatility Indexes

April 14, 2004.

### I. Introduction

On September 12, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or "Exchange''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain of its rules to provide for the listing and trading of options on the following volatility indexes: the CBOE Volatility Index ("VIX''), the CBOE Nasdaq 100 Volatility Index ("VXN''), and the CBOE Dow Jones Industrial Average Volatility Index ("VXD''). On November 18, 2003, the CBOE filed Amendment No. 1 to the proposed rule change.[3] On December 22, 2003, the CBOE filed Amendment No. 2 to the proposed rule change.[4]

The proposed rule change was published for comment in the **Federal Register** on November 26, 2003.[5] The Commission received one comment letter from the Chicago Mercantile Exchange ("CME'') on the proposal.[6]

### II. Description of the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style options on the VIX, VXN, and VXD. The calculation of each index is based on a recently developed methodology that builds upon the calculation of the original CBOE Market Volatility Index, which was based on S&P 100 Index option quotes. Introduced by CBOE in September 2003, the revised VIX is an index that uses the quotes of certain S&P 500 Index ("SPX'') option series to derive a measure of the volatility of the U.S. equity market. It provides investors with up-to-the-minute market estimates of expected volatility by extracting implied volatilities from real-time index option bid/ask quotes. The VIX is quoted in percentage points per annum. For example, an index level of 30.34 (the closing value from December 31, 2002) represents an annualized volatility of 30.34%. This new methodology will also be used to calculate VXN and VXD values.

Each index—VIX, VXN, and VXD—will be calculated using real-time quotes of the nearby and second nearby index puts and calls of the SPX, the Nasdaq 100 Index ("NDX''), and the Dow Jones Industrial Index ("DJX''), respectively. For options on each respective volatility index, the nearby index option series are defined as the series with the shortest time to expiration, but with at least eight (8) calendar days to expiration. The second nearby index option series are the series for the subsequent expiration month. Thus, with eight days left to expiration, an index will "roll'' to the second and third contract months. For each contract month, CBOE will determine the at-the-money strike price. It will then select the at-the-money and out-of-the money series with non-zero bid prices and determine the midpoint of the bid-ask quote for each of these series. The midpoint quote of each series is then weighted so that the further away that series is from the at-the-money strike, the less weight that is accorded to the quote. Then, to compute the index level, CBOE will calculate a volatility measure for the nearby options and then for the second nearby options using the weighted mid-point of the prevailing bid-ask quotes for all included option series with the same expiration date. These volatility measures are then interpolated to arrive at a single, constant 30-day measure of volatility.

Strike prices will be set to bracket the index in 2½ point increments; thus, the interval between strike prices will be no less than $2.50. The minimum tick size for series trading below $3 will be 0.05 and for series trading above $3 the minimum tick will be 0.10. The proposed options on each index will expire 30 days prior to the expiration date of the options used in the calculation of that index. Exercise will result in delivery of cash on the business day following expiration. VIX, VXN and VXD options will be A.M.-settled. The exercise settlement value will be determined by a Special Opening Quotation ("SOQ'') of each respective volatility index calculated from the sequence of opening prices of the options that comprise that index. The opening price for any series in which there is no trade shall be the average of that option's bid price and ask price as determined at the opening of trading. The exercise-settlement amount is equal to the difference between the exercise-settlement value and the exercise price of the option, multiplied by $100.

The position limits for options on each volatility index will be 25,000 contracts on either side of the market and no more than 15,000 of such contracts may be in series in the nearest expiration month.[7]

Except as modified herein, the Exchange Rules in Chapter XXIV will be applicable to the VIX, VXN, and VXD options. Each volatility index will be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jim Flynn, Attorney, CBOE, to Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division''), Commission, dated November 18, 2003 ("Amendment No. 1''). Amendment No. 1 revised the original rule filing by defining the reporting authority and terms of these index option contracts, including that the interval between strike prices shall be no less than $2.50.

[4] *See* letter from Jim Flynn, Attorney, CBOE, to Florence Harmon, Senior Special Counsel, Division, Commission, dated December 18, 2003 ("Amendment No. 2''). Amendment No. 2 made a technical change to a paragraph contained in a sub-section ("Exercise and Settlement'') in Item 3 of the Form 19b–4 originally filed by CBOE and made corresponding changes to Exhibits B, C, and D. Specifically, Amendment No. 2 clarified that "the options on each respective volatility index will expire on the Wednesday immediately prior to the third Friday of the month that immediately precedes the month in which the options used in the calculation of that index expire.''

[5] *See* Securities Exchange Act Release No. 48807 (November 19, 2003), 68 FR 66516 (November 26, 2003).

[6] *See* letter dated December 17, 2003 from Craig S. Donohue, CME, Office of the CEO, to Jonathan G. Katz, Secretary, Commission ("CME Letter'').

[7] This is consistent with CBOE Rule 24.4 (Position Limits for Broad-Based Index Options).

classified as a "broad-based index'' and, under CBOE margin rules, specifically, Exchange Rule 12.3(c)(5)(A), the margin requirement for a short put or call on the respective volatility indexes shall be 100% of the current market value of the contract plus up to 15% of the respective underlying index value.

Additionally, CBOE affirms that it possesses the necessary systems capacity to support new series that would result from the introduction of VIX, VXN and VXD options. CBOE also has been informed that OPRA has the capacity to support such new series.[8]

## III. Summary of Comment

The Commission received one comment letter from the CME on the proposal.[9] The CME contends that by proposing the position limits, exercise limits, and margin requirements applicable to options on broad-based indexes, as defined in CBOE's rules, the CBOE's proposed rule change implicitly requests the Commission to acknowledge that these volatility indexes should be classified as "broad-based'' security indexes for purposes of the definition of narrow-based security index in the Act and the Commodity Exchange Act ("CEA'').[10] The CME further argues that the volatility indexes are narrow-based security indexes under these statutory definitions. As the CME notes, the definition of narrow-based security index was established by the Commodity Futures Modernization Act of 2000 ("CFMA'') for purposes of determining whether futures on indexes are security futures subject to the jurisdiction of the Commission and the Commodity Futures Trading Commission ("CFTC'').

## IV. Commission's Findings and Order Granting Accelerated Approval of Amendment No. 2.

After careful review, the Commission finds that the CBOE's proposal to permit trading in options based on certain volatility indices (VIX, VXN, and VXD), as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[11] and, in particular, the requirements of section 6 of the Act[12] and the rules and regulations thereunder. The Commission believes that the CBOE's proposal gives options investors the ability to make an additional investment choice in a manner consistent with the requirements of section 6(b)(5) of the Act.[13] The Commission further believes that trading options on these volatility indexes provides investors with an important trading and hedging mechanism.

The Commission finds that it is consistent with the Act for the CBOE to apply its rules for trading of broad-based index options to apply to the VIX, VXN and VXD. The Commission believes that because these three volatility indexes are composed of the puts and calls on indexes which the Commission has previously determined are appropriate to treat as broad-based for purposes of CBOE's rules,[14] it is appropriate to apply to the volatility index options the position limits, exercise limits and margin requirements that apply to CBOE's component index options.

The Commission also finds that CBOE has adequate surveillance procedures in place to monitor for manipulation of the volatility index options. The Exchange states that it will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in options on each volatility index. The Exchange represents that these surveillance procedures are adequate to monitor the trading of options on these volatility index. For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the pertinent underlying securities.

The Commission also finds the CBOE's trading rules and other product specifications appropriate, including strike prices that will be set to bracket the index in 2½ point increments and minimum tick size. Because the exercise of these options will be cash settled, VIX, VXN and VXD options will be A.M.-settled on the business day following expiration, in a manner that will deter manipulation.

The Commission also finds determinative CBOE's representations that it possesses the necessary systems capacity to support new series that would result from the introduction of VIX, VXN and VXD options and that CBOE also has been informed that OPRA has the capacity to support such new series.

In its comment letter, the CME expressed concern that approval of the CBOE's proposal would imply that the Commission believed that the VIX, VXN and VXD volatility indexes were not "narrow-based security indexes'' as defined in the Act and the CEA. The CFMA established a regulatory framework under which the Commission and the CFTC jointly regulate futures on single securities and narrow-based security indexes ("security futures''). To distinguish between security futures on narrow-based security indexes, which are jointly regulated by the CFTC and the Commission, and futures contracts on broad-based security indexes, which are under the exclusive jurisdiction of the CFTC, the CEA and the Act, each includes an objective definition of the term "narrow-based security index.'' A futures contract on an index that meets the definition of a narrow-based security index is a security future. A futures contract that does not meet the definition of a narrow-based security index is a futures contract on a broad-based security index.[15]

In approving the CBOE's proposed rule change, the Commission is not determining whether the volatility indexes are "narrow-based'' security indexes as that term is defined in the Act. Moreover, the Commission notes that the CEA does not apply to the volatility index options CBOE proposes to list and trade.[16]

The Commission finds good cause, consistent with section 19(b)(2) of the Act,[17] to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerating the approval of the changes proposed in Amendment No. 2 is appropriate because the changes are technical in nature, are provided for the purpose of clarification and to eliminate confusion among investors, and because the amendment raises no new issues.

## V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the Amendment No. 2, including whether Amendment No. 2 is consistent with the Act.

[8] *See,* Exhibit E to the proposed rule change filed by CBOE, which set out the contract specifications for each product.

[9] *See* CME Letter, *supra* note 6.

[10] *See* Section 3(a)(55)(B) of the Exchange Act and Section 1a(25) of the Commodity Exchange Act ("CEA'').

[11] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] See Securities Exchange Act Release Nos. 40969 (January 22, 1999), 64 FR 4911 (February 1, 1999); 44994, (October 26, 2001), 66 FR 55772 (November 2, 2001).

[15] See 17 CFR 41.1(c).

[16] Separately, the Commission and the CFTC issued an order excluding from the definition of the term "narrow-based security index'' certain indexes comprised of options series on broad-based security indexes. See Securities Exchange Act Release No. 49469 (March 25, 2004).

[17] 15 U.S.C. 78s(b)(2).

Comments may be submitted by any of the following methods:

*Electronic comments:*

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an E-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2003–40 on the subject line.

*Paper comments:*

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–CBOE–2003–40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2003–40 and should be submitted on or before May 12, 2004.

## VI. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (File No. SR–CBOE–2003–40), as amended, be, and it hereby is, approved.

[18] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–9003 Filed 4–20–04; 8:45 am]

BILLING CODE 8010–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49567; File No. SR–CHX–2004–12]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to the Implementation of a Fully-Automated Functionality for the Handling of Particular Orders Called CHXpress

April 15, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 20, 2004, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 8, 2004, the Exchange amended the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend CHX Article XX, Rule 37 to implement a new automated functionality for handling particular orders, called CHXpress. Below is the text of the proposed rule change.[4] Proposed new language is in *italics.*

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[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 7, 2004, and the attached Form 19b–4, which replaced the original filing in its entirety ("Amendment No. 1").

[4] With the Exchange's consent, the Commission has made technical corrections to the text of the proposed rule change, which the Exchange has committed to correct formally by filing an amendment. Telephone conversation between Ellen J. Neely, Senior Vice President and General Counsel, CHX, and David Hsu, Attorney, Division, Commission, on April 15, 2004.

**ARTICLE XX**

Regular Trading Sessions

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Guaranteed Execution System and Midwest Automated Execution System

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**Rule 37.**

(a) Guaranteed Executions. The Exchange's Guaranteed Execution System (the BEST System) shall be available, during the Primary Trading Session and the Post Primary Trading Session, to Exchange member firms and, where applicable, to members of a participating exchange who send orders to the Floor through a linkage pursuant to Rule 39 of this Article, in all issues in the specialist system which are traded in the Dual Trading System and Nasdaq/NM Securities. System orders shall be executed pursuant to the following requirements, *subject to section (b)(11) of this Rule 37:*

* * * * *

(b) Automated Executions. The Exchange's Midwest Automated Execution System (the MAX System) may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule (Article XX, Rule 37(a)) and certain other orders. In the event that an order that is subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the BEST Rule and the following. In the event that an order that is not subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the following:

* * * * *

(8) All orders sent through MAX shall include the appropriate account type designator. The following are acceptable account types:

"P"—Principal/Professional Order
"D"—Program Trade, index arbitrage for Member/Member Organization
"A"—Agency
"C"—Program Trade, non-index arbitrage for Member/Member Organization
"I"—Individual Investor
"J"—Program Trade, index arbitrage for Individual Customer
"K"—Program Trade, index arbitrage for other agency
"U"—Program Trade, non-index arbitrage for Individual Customer
"Y"—Program Trade, non-index arbitrage for other agency
"E"—CHXpress Order
"Z"—Professional Order—Automatic Execution

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*(11) CHXpress Orders. This section applies to the execution and display of orders through CHXpress, an automated functionality offered by the Exchange. All other rules of the Exchange are applicable, unless expressly superseded by this section.*

*(A) Only an unconditional round lot limit order is eligible for entry as a CHXpress order. A CHXpress order may not be entered until an order has been executed on the primary market in the subject issue. A CHXpress order is good only for the day on which it is submitted and will be automatically cancelled at the end of each day's trading session.*

*(B) A CHX specialist may not place a CHXpress order on hold or otherwise prevent an order-sending firm from cancelling the order. A CHX specialist may not cancel a CHXpress order.*

*(C) A CHXpress order to buy will be executed immediately against same or better-priced sell order(s) represented in the CHX specialist's book (or against the specialist), and a CHXpress order to sell will be executed immediately against same or better-priced buy order(s) represented in the CHX specialist's book (or against the specialist), unless:*

*i. the execution would trade through another ITS market; or*

*ii. trading in the subject issue has been halted.*

*If the execution of an inbound CHXpress order would cause an improper trade-through of another ITS market, the CHXpress order will be automatically cancelled.*

*(D) If a CHXpress order cannot be immediately executed, it will be placed in the specialist's book for display or later execution, in accordance with CHX rules. A CHXpress order will be instantaneously displayed, when it constitutes the best bid or offer in the CHX book. A CHXpress order, however, will not be displayed, if its display would improperly lock or cross another ITS market. If the display of an inbound CHXpress order would improperly lock or cross another ITS market, the CHXpress order will be automatically cancelled.*

*(E) CHXpress orders will not be eligible for SuperMAX automated price improvement, which is governed by Article XX, Rule 37(d).*

*(F) CHXpress orders will not be eligible for execution based on quotes in the national market system or activity in the primary market, as otherwise provided in Article XX, Rule 37(a)(2) and (3). As a result, an order eligible for execution based on quotes or trading activity in other markets may be filled even though a CHXpress order having a higher priority in the book is not filled.*

*(G) CHX specialists must integrate their handling of CHXpress orders with any manual executions that occur at the post by honoring manual trades that have been agreed upon, but not have yet been entered into the Exchange's systems.*

* * * * *

(d) SuperMAX 2000

SuperMAX 2000 shall be a voluntary automatic execution program within the MAX System. *Subject to section (b)(11) of this Rule 37,* SuperMAX 2000 shall be available for any security trading on the Exchange in decimal price increments. A specialist may choose to enable this voluntary program within the MAX System on an issue-by-issue basis.

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## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to implement a new automated functionality called CHXpress for certain orders. The Exchange represents that the CHXpress functionality, built into the Exchange's MAX® system, is designed to provide additional opportunities for the Exchange's members and their customers to seek and receive liquidity through automated executions of orders at the Exchange.[5]

*Eligible orders.* Under the proposed rules, only unconditional, round-lot limit orders could be designated as CHXpress orders.[6] CHXpress orders could be submitted in an issue only after an order has been executed on the primary market in that issue and would be automatically cancelled at the end of each trading day, if they remain unexecuted.[7]

*Execution of CHXpress orders.* CHXpress orders could be routed into the MAX system by the Exchange's order-sending firms or by CHX floor brokers. All orders would be required to be specifically designated as CHXpress orders to ensure appropriate handling in the Exchange's automated systems.[8]

CHXpress orders would be executed immediately and automatically against same or better-priced orders in the specialist's book, or against the specialist, unless those executions would trade through another Intermarket Trading System ("ITS'') market or unless trading in the issue has been halted.[9] If a CHXpress order could not be immediately executed, it would be placed in the specialist's book for instantaneous display or later execution.[10] CHXpress orders, like all other orders at the Exchange, would not be eligible for automated display if that display would improperly lock or cross another ITS market.[11] CHX specialists would be required to integrate their handling of these orders with any executions that occur at the post with floor brokers or market makers.[12]

*Execution guarantees provided to CHXpress orders.* Under the proposed rules, CHXpress orders primarily are designed to match against orders in the specialist's book.[13] As a result, CHX specialists would not provide CHXpress orders with the execution guarantees that might otherwise be available to agency limit orders.[14] Specifically, these orders would not be eligible for automated price improvement, or execution based on quotes in the

[5] The MAX system provides automated display and execution for orders sent to the Exchange's specialists for execution.

[6] *See* CHX Article XX, Rule 37(b), proposed section 11(A).

[7] *Id. See also* CHX Article XX, Rule 37(b), proposed section 11(B).

[8] *See* proposed addition to CHX Article XX, Rule 37(b)(8).

[9] If the execution of a CHXpress order would cause an improper trade-through of another ITS market, the CHXpress order would be automatically cancelled. *See* CHX Article XX, Rule 37(b), proposed section (11)(C). The Exchange would handle trading halts in CHXpress orders just as it does for all other types of orders in securities traded on the Exchange.

[10] A CHXpress order would be instantaneously and automatically displayed when it constitutes the best bid or offer in the CHX book. *See* CHX Article XX, Rule 37(b), proposed section 11(D).

[11] The Exchange's MAX system does not permit the automatic display of any order greater than 100 shares where that order would lock or cross another ITS market.

[12] For example, if the specialist is in the process of manually executing a floor broker order at the displayed bid, but a CHXpress order automatically executes against that bid—before the specialist is able to complete the transaction with the floor broker order—the specialist would still be required to honor the trade with the floor broker order at the displayed bid price, even if that displayed interest is no longer available.

[13] A specialist could participate in filling a CHXpress order, but could not do so if that execution would cause the specialist to trade ahead of any other order in the book.

[14] *See* CHX Article XX, Rule 37(b), proposed sections 11(E) and (F).

national market system or prints in the primary market for a security.[15] CHX specialists also would not act as agent for the orders in other markets. The Exchange believes that CHXpress orders would be used by order-senders that want either immediate executions against available interest or instantaneous order display, but do not want their orders to be placed on hold while a specialist seeks liquidity in other markets nor require that a specialist provide order execution guarantees of the type otherwise available to agency orders.

The Exchange has designed the CHXpress functionality to permit specifically-designated orders to immediately access available liquidity at the Exchange. The Exchange believes that this functionality would provide an important new way for eligible orders to interact within the Exchange's systems and that it would protect investors and the public interest by providing fair, automatic execution of those orders.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act[16] in general, and furthers the objectives of section 6(b)(5) of the Act[17] in particular, because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change, as amended, 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*

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

[15] Under the Exchange's existing rules, a specialist can engage an automated functionality in the MAX system to provide price improvement to eligible agency orders and can use automated functionalities to provide agency orders with protection against trades in the primary market for both listed and Nasdaq/NM securities. *See* CHX Article XX, Rule 37(d) (describing the SuperMAX price improvement functionality) and Rule 37(a)(3) (setting out the limit order protections otherwise guaranteed to limit orders, such as protections against primary market trades at or through a limit order's price).

[16] 15 U.S.C. 78(f)(b).

[17] 15 U.S.C. 78f(b)(5).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic comments:*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX–2004–12 on the subject line.

*Paper comments:*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CHX–2004–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2004–12 and should be submitted on or before May 12, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–9004 Filed 4–20–04; 8:45 am]

**BILLING CODE 8001–01–P**

[18] 17 CFR 200.30–3(a)(12).

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. WTO/DS–309]**

## WTO Dispute Settlement Proceeding Regarding China—Value-Added Tax on Integrated Circuits

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice that on March 18, 2004, in accordance with the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement), the United States requested consultations with the People's Republic of China (China) regarding its value-added tax (VAT) on integrated circuits (ICs).

USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before May 17, 2004, to be assured of timely consideration by USTR.

**ADDRESSES:** Comments should be submitted (i) electronically, to FR0419@ustr.gov, with "China VAT (DS309)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to *FR0419@ustr.gov,* in accordance with the requirements for submissions set out below.

**FOR FURTHER INFORMATION CONTACT:** David L. Weller, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3582.

**SUPPLEMENTARY INFORMATION:** Section 127(b) of the Uruguay Round

Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding (DSU). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meeting in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

**Major Issues Raised by the United States**

On March 18, 2004, the United States requested consultations with the Government of China pursuant to Articles 1 and 4 of the DSU, Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), and Article XXII:1 of the General Agreement on Trade in Services (GATS) regarding China's VAT on ICs.

China provides for a 17 percent VAT on ICs. However, USTR understands that enterprises in China are entitled to a partial refund of the VAT on ICs that they have produced, resulting in a lower VAT rate on their products. China therefore appears to be subjecting imported ICs to higher taxes than applied to domestic ICs and to be according less favorable treatment to imported ICs.

In addition, USTR understands that China allows for a partial refund of VAT for domestically-designed ICs that, because of technological limitations, are manufactured outside of China. China thus appears to be providing for more favorable treatment of imports from one Member than another, and discriminating against services and service suppliers of other Members.

USTR understands that China implements its preferential tax for domestically-produced or designed ICs through the following measures:

- Document 18 (June 24, 2000), Notice of the State Council Regarding Issuance of Certain Policies Concerning the Development of the Software Industry and Integrated Circuit Industry;
- Document 25 (September 22, 2000), Notice of the Ministry of Finance, State Administration of Taxation, and General Administration of Customs on Relevant Tax Policy Issues Concerning Encouraging the Development of the Software Industry and the Integrated Circuit Industry;
- Document 86 (March 7, 2002), Notice of the Ministry of Information Industry Regarding Issuance of Regulations on Certification of Integrated Circuit Design Enterprises and Products;
- Document 70 (October 10, 2002), Notice of the Ministry of Finance, State Administration of Taxation Regarding Furthering Tax Policies to Encourage the Development of the Software Industry and Integrated Circuit Industry;
- Document 140 (October 25, 2002), Notice of the Ministry of Finance, State Administration of Taxation Regarding Tax Policies for Imports of Integrated Circuit Products Domestically Designed and Fabricated Abroad; and
- Document 1384 (December 23, 2003), Notice of the State Administration of Taxation Regarding Issuance of the Catalogue of Integrated Circuit Products Enjoying Preferential Tax (First Batch); as well as any amendments, related measures, or other implementing measures.

USTR therefore believes that these measures are inconsistent with the obligations of China under Articles I and III of the GATT 1994, the Protocol on the Accession of the People's Republic of China to the WTO, and Article XVII of the GATS.

**Public Comment: Requirements for Submissions**

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Persons submitting comments may either send a copy by fax to Sandy McKinzy at (202) 395–3640, or transmit a copy electronically to *FR0419@ustr.gov,* with "China VAT (DS309)'' in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly designated as such and "BUSINESS CONFIDENTIAL'' must be marked at the top and bottom of the cover page and each succeeding page.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–309, China VAT Dispute) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday.

**Daniel E. Brinza,**

*Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. 04–9035 Filed 4–20–04; 8:45 am]

BILLING CODE 3190–W3–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed the Week Ending April 9, 2004

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 after the filing of the application.

*Docket Number:* OST–2004–17512.

*Date Filed:* April 7, 2004.

*Parties:* Members of the International Air Transport Association.

*Subject:* CAC/32/Meet/005/04 dated March 23, 2004; Expedited Resolutions; Resolutions 801re (r–1) and 809 (r2); Minutes relevant to the two resolutions are included in CAC/32/Meet/005/04; Intended effective date: expedited May 1, 2004.

**Andrea M. Jenkins,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. 04–9059 Filed 4–20–04; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent to Request Renewal From the Office of Management and Budget (OMB) of One Current Public Collection of Information

**AGENCY:** Federal Aviation Administration (FAA), DoT

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on one currently approved public information collection which will be submitted to OMB for renewal.

**DATES:** Comments must be received on or before June 21, 2004.

**ADDRESSES:** Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Street at the above address or on (202) 267–9895.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the FAA solicits comments on the following current collection of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearance of the following information collection.

1. 2120–0668, National Airspace System (NAS) Data Release Request. The information collected is needed to evaluate the validity of a user's request for NAS data from FAA systems and equipment. This data collection is the genesis for granting approval to release filtered NAS data to vendors. The information provided by respondents sets the criteria for the FAA Data Release Request Committee (DRRC) to approve or reject individual requests for NAS data. The current estimated annual reporting burden is 27 hours.

Issued in Washington, DC, on April 15, 2004.

**Judith D. Street,**

*FAA Information Collection Clearance Officer, APF–100.*

[FR Doc. 04–9078 Filed 4–20–04; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on a Request To Amend a Passenger Facility Charge (PFC) at Hartsfield Jackson Atlanta International Airport, Atlanta, GA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on a request to amend an application to use at the Hartsfield Jackson Atlanta International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before May 21, 2004.

**ADDRESSES:** Comments on this request may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, College Park, Georgia 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Arthur L. Bacon, Director of Finance of the City of Atlanta, Department of Aviation at the following address: City of Atlanta, Department of Aviation, PO Box 20509, Atlanta, Georgia 30320–2509.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Atlanta, Department of Aviation under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Terry R. Washington, P.E, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, College Park, Georgia 30337–2747, Telephone Number 404–305–7143. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to amend the application to use a PFC at Hartsfield Atlanta International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 9, 2004, the FAA determined that the application to amend the PFC use submitted by The City of Atlanta was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 10, 2004. The following is a brief overview of the amendment request.

*PFC Amendment Application No.:* 00–02–U–01–ATL.

*Level of the proposed PFC:* $4.50.

*Proposed charge effective date:* May 1, 1997.

*Proposed charge expiration date:* May 1, 2008.

Capital $309,354,130

Finance and Interest $209,862,277

$519,216,407

*Brief Description of projects:* Design and Construction of Eastside Terminal.

Design and Construction of road way improvements (No Change).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Atlanta's Department of Aviation.

Issued in College Park, Georgia on April 14, 2004.

**Troy R. Butler,**

*Acting Manager, Atlanta Airports District Office, Southern Region.*

[FR Doc. 04–9079 Filed 4–20–04; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number 2004 17579]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel WILLORYDER.

**SUMMARY:** As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17579 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before May 21, 2004.

**ADDRESSES:** Comments should refer to docket number MARAD–2004 17579. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel WILLORYDER is:

*Intended Use:* "Dive charters, conveyance of passenger for hire.''

*Geographic Region:* "Great Lakes.''

Dated: April 14, 2004.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 04–8999 Filed 4–20–04; 8:45 am]

BILLING CODE 4910–81–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34489]**

### Stillwater Central Railroad, Inc.—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

Pursuant to a trackage rights agreement dated December 15, 2001, between The Burlington Northern and Santa Fe Railway Company (BNSF) and Stillwater Central Railroad, Inc. (SCRR),[1] BNSF has agreed to grant restricted overhead trackage rights to SCRR over a line of railroad located between BNSF milepost 426.9, at Cherokee Yard in Tulsa, OK, and BNSF milepost 437.0, at Sapulpa, OK, a distance of 10.1 miles.[2]

The transaction was scheduled to be consummated on or after the April 8, 2004 effective date of the exemption.

The purpose of the trackage rights is to allow SCRR to interchange unit trains of cement with its affiliate, the South Kansas & Oklahoma Railroad, at BNSF's Cherokee Yard.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34489, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: April 14, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 04–9010 Filed 4–20–04; 8:45 am]

BILLING CODE 4915–01–P

[1] Although the trackage rights agreement was signed on December 15, 2001, the parties indicate that, due to an oversight, SCRR failed to file a notice of exemption with the Board at that time. SCRR states that it recently became aware of this oversight while negotiating an extension of the agreement.

[2] A redacted version of the trackage rights agreement between BNSF and SCRR was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for a protective order. A protective order was served on April 14, 2004.

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34493]**

### Old Augusta Railroad, LLC—Acquisition and Operation Exemption—Assets of Old Augusta Railroad Company

Old Augusta Railroad, LLC (OARLLC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31[1] to acquire and operate a short line railroad currently operated by the Old Augusta Railroad Company (OARC). OARLLC indicates that, on February 26, 2004, Koch Cellulose (Koch), the parent corporation of OARLLC, entered into an agreement with Georgia Pacific Corporation (Georgia Pacific) and various subsidiaries of Georgia Pacific to acquire Georgia Pacific's non-integrated market and fluff pulp operations. In connection with this transaction, Koch will also acquire Georgia Pacific's Leaf River Pulp

[1] The Board's notice served and published in *Old Augusta Railroad, LLC—Acquisition and Operation Exemption—Assets of Old Augusta Railroad Company,* STB Finance Docket No. 34482 (STB served Apr. 2, 2004) (69 FR 17471) is vacated and is superseded by this notice. OARLLC erroneously filed that notice under 49 CFR 1150.41, the regulation applicable to acquisitions or operations by existing Class III rail carriers.

Mill in New Augusta, MS, and substantially all of the assets of OARC, including OARC's 2.5-mile short line railroad that it currently operates between the Leaf River Pulp Mill and the Canadian National Railway Company interchange. Before the closing of the transaction, Koch will assign to OARLLC its right to acquire the assets of OARC, and, upon the closing of the transaction, OARLLC will acquire and operate OARC's short line railroad.

OARLLC certifies that its projected annual revenues will not exceed those that would qualify it as a Class III rail carrier and will not result in the creation of a Class II or Class I rail carrier.

OARLLC states that it expects to consummate the transaction in the first week of May 2004.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34493, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Raffaele G. Fazio, Senior Counsel, Koch Industries, Inc., PO Box 2256, Wichita, KS 67201.

Board decisions and notices are available on the Board's Web site at *http://www.stb.dot.gov.*

Decided: April 14, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 04–8901 Filed 4–20–04; 8:45 am]

BILLING CODE 4915–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1118

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1118, Foreign Tax Credit—Corporations.

**DATES:** Written comments should be received on or before June 21, 2004, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Foreign Tax Credit—Corporations.

*OMB Number:* 1545–0122.

*Form Number:* Form 1118.

*Abstract:* Form 1118 and separate Schedules I and J are used by domestic and foreign corporations to claim a credit for taxes paid to foreign countries. The IRS uses Form 1118 and related schedules to determine if the corporation has computed the foreign tax credit correctly.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 30,950.

*Estimated Time Per Respondent:* 140 hours, 39 minutes.

*Estimated Total Annual Burden Hours:* 4,235,389.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 15, 2004.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–9060 Filed 4–20–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[IA–120–86]**

### Proposed Collection; Comment Request for Regulation Project.

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–120–86 (TD 8584), Capitalization of Interest (§§ 1.263A–8(b)(2)(iii), 1.263A–9(d)(1), 1.263A–9(e)(1), 1.263A–9(f)(1)(ii), 1.263A–9(f)(2)(iv), 1.63A–9(g)(2)(iv)(C), 1.263A–9(e)(I) and 1.263A–9(g)(3)(iv)).

**DATES:** Written comments should be received on or before June 21, 2004 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue

Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Capitalization of Interest.

*OMB Number:* 1545–1265.

*Regulation Project Number:* IA–12–120–86.

*Abstract:* Internal Revenue Code section 263A(f) requires taxpayers to estimate the length of the production period and total cost of tangible personal property to determine if Interest capitalization is required. This regulation requires taxpayers to maintain contemporaneous written records of production period estimates, to file a ruling request to segregate activities in applying the interest capitalization rules, and to request the consent of the Commissioner to change their methods of accounting for the capitalization of interest.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved approval.

*Affected Public:* Individuals or households, and business or other for-profit organizations.

*Estimated Number of Respondents:* 50.

*Estimated Time Per Respondent:* 2 hours.

*Estimated Total Annual Burden Hours:* 100 hours.

*Estimated Number of Recordkeepers:* 500,000.

*Estimated Time Per Recordkeeper:* 14 minutes.

*Estimated Total Annual Recordkeeping Hours:* 116,667.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2004.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–9061 Filed 4–20–04; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form W–5

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–5, Earned Income Credit Advance Payment Certificate.

**DATES:** Written comments should be received on or before June 21, 2004 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

**SUPPLEMENTARY INFORMATION:** *Title:* Earned Income Credit Advance Payment Certificate.

*OMB Number:* 1545–1342.

*Form Number:* Form W–5.

*Abstract:* Form W–5 is used by employees to see if they are eligible for the earned income credit and to request part of the credit in advance with their pay. Eligible employees who want advance payments must give Form W–5 to their employers. The employer uses the information on the form to compute the amount of the advance payment to include with the employee's pay.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Pubic:* Individuals or households.

*Estimated Number of Respondents:* 183,450

*Estimated Time per Respondent:* 44 minutes.

*Estimated Total Annual Burden Hours:* 135,753.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2004.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–9062 Filed 4–20–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8834

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8834, Qualified Electric Vehicle Credit.

**DATES:** Written comments should be received on or before June 21, 2004 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

**SUPPLEMENTARY INFORMATION:**

*Title:* Qualified Electric Vehicle Credit.

*OMB Number:* 1545–1374.

*Form Number:* Form 8834.

*Abstract:* Internal Revenue Code section 30 allows a 10% tax credit, not to exceed $4,000, for qualified electric vehicles placed in service after June 30, 1993. Form 8834 is used to compute the allowable credit. The IRS uses the information on the form to determine that the credit is allowable and has been properly computed.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Pubic:* Individuals or households and businesses or other for-profit organizations.

*Estimated Number of Respondents:* 500.

*Estimated Time Per Respondent:* 8 hours, 47 minutes.

*Estimated Total Annual Burden Hours:* 4,395.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2004.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–9063 Filed 4–20–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1099–S

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–S, Proceeds From Real Estate Transactions.

**DATES:** Written comments should be received on or before June 21, 2004, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Proceeds From Estate Transactions.

*OMB Number:* 1545–0997.

*Form Number:* Form 1099–S.

*Abstract:* Internal Revenue Code section 6045(e) and the regulations thereunder require persons treated as real estate brokers to submit an information return to the IRS to report the gross proceeds from real estate transactions. Form 1099–S is used for this purpose. The IRS uses the information on the form to verify compliance with the reporting rules regarding real estate transactions.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals or households.

*Estimated Number of Responses:* 3,646,110.

*Estimated Time Per Response:* 8 minutes.

*Estimated Total Annual Burden Hours:* 510,456.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the

request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 7, 2004.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–9064 Filed 4–20–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1099–B

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–B, Proceeds From Broker and Barter Exchange Transactions.

**DATES:** Written comments should be received on or before June 21, 2004, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Proceeds From Broker and Barter Exchange Transactions.

*OMB Number:* 1545–0715.

*Form Number:* Form 1099–B.

*Abstract:* Internal Revenue Code section 6045 requires the filing of an information return by brokers to report the gross proceeds from transactions and by barter exchanges to report exchanges of property or services. Form 1099–B is used to report proceeds from these transactions to the Internal Revenue Service.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals.

*Estimated Number of Responses:* 117,611,875.

*Estimated Time Per Response:* 19 minutes.

*Estimated Total Annual Burden Hours:* 36,459,682.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 7, 2004.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–9065 Filed 4–20–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[PS–74–89]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–74–89 (T.D. 8282), Election of Reduced Research Credit (§ 1.280C–4).

**DATES:** Written comments should be received on or before June 21, 2004, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Election of Reduced Research Credit.

*OMB Number:* 1545–1155.

*Regulation Project Number:* PS–74–89.

*Abstract:* This regulation relates to the manner of making an election under section 280C(c)(3) of the Internal Revenue Code. This election enables a taxpayer to claim a reduced income tax credit for increasing research activities and thereby avoid a reduction of the section 174 deduction for research and experimental expenditures.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals and business or other for-profit organizations.

*Estimated Number of Respondents:* 200.

*Estimated Time Per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 50.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 8, 2004.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–9066 Filed 4–20–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 5498

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5498, IRA Contribution Information.

**DATES:** Written comments should be received on or before June 21, 2004, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* IRA Contribution Information.

*OMB Number:* 1545–0747.

*Form Number:* Form 5498.

*Abstract:* Form 5498 is used by trustees and issuers to report contributions to, and the fair market value of, an individual retirement arrangement (IRA). The information on the form will be used by the IRS to verify compliance with the reporting rules under regulation section 1.408–5 and to verify that the participant in the IRA has made the contribution for which he or she is taking a deduction.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 81,208,141.

*Estimated Time Per Respondent:* 12 minutes.

*Estimated Total Annual Burden Hours:* 16,241,629.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 7, 2004.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–9067 Filed 4–20–04; 8:45 am]

**BILLING CODE 4830–01–P**

# Corrections

Federal Register

Vol. 69, No. 77

Wednesday, April 21, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

*Correction*

In notice document 04–8346, beginning on page 19411, in the issue of Tuesday, April 13, 2004, make the following correction:

On page 19411, in the third column, nine lines from the bottom,

"*Type of Review:* Reinstatement.

*Title:* Report of Children with Disabilities Exiting Special Education During the School Year.''

should read

"*Type of Review:* Extension.

*Title:* Personnel Employed to Provide Special Education and Related Services for Children with Disabilities.''.

[FR Doc. C4–8346 Filed 4–20–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
April 21, 2004

# Part II

# Environmental Protection Agency

**40 CFR Parts 51, 78, and 97**

**Interstate Ozone Transport: Response to Court Decisions on the $NO_X$ SIP Call, $NO_X$ SIP Call Technical Amendments, and Section 126 Rules; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 51, 78, and 97**

**[FRL–7644–7]**

**RIN 2060–AJ16**

## Interstate Ozone Transport: Response to Court Decisions on the $NO_X$ SIP Call, $NO_X$ SIP Call Technical Amendments, and Section 126 Rules

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** In today's action, EPA is establishing the final full nitrogen oxides ($NO_X$) budgets for States subject to the $NO_X$ State implementation plan (SIP) Call. This final rule requires States that submitted SIPs to meet the Phase I $NO_X$ SIP Call budgets to submit Phase II SIP revisions as needed to achieve the necessary incremental reductions of $NO_X$. It also requires Georgia and Missouri to submit SIP revisions meeting the full $NO_X$ SIP Call budgets since they were not required to submit Phase I SIPs. These SIPs are necessary to prohibit specified amounts of emissions of $NO_X$—one of the precursors to ozone (smog) pollution—for the purposes of reducing $NO_X$ and ozone transport across State boundaries in the eastern half of the United States.

In today's action, we are amending two related final rules we issued under sections 110 and 126 of the Clean Air Act (CAA) related to interstate transport of $NO_X$. We are responding to the March 3, 2000 decision of the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) in which the Court largely upheld the $NO_X$ SIP Call, but remanded four narrow issues to us for further rulemaking action; the related decision by the DC Circuit on June 8, 2001, concerning the rulemakings providing technical amendments to the $NO_X$ SIP Call in which the Court, among other things, vacated and remanded an issue for further rulemaking; the decision by the DC Circuit on May 15, 2001, concerning the related Section 126 rulemaking in which the Court, among other things, vacated and remanded an issue for further rulemaking; and the related decision by the DC Circuit on August 24, 2001, concerning the Section 126 Rule, in which the Court remanded an issue.

We are also taking final action on modifications that were proposed on June 13, 2001 to the Appeal Procedures and to the Federal $NO_X$ Budget Trading Program. Today's final rule completes action on the June 13, 2001 proposed rule revisions for sources subject to the Federal $NO_X$ Budget Trading Program under the Section 126 final rule.

The specific issues addressed in this action are described below under **SUPPLEMENTARY INFORMATION.**

**DATES:** This rule is effective June 21, 2004.

**FOR FURTHER INFORMATION CONTACT:** General questions concerning today's action should be addressed to Jan King, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, C539–02, Research Triangle Park, NC, 27711, telephone (919) 541–5665, e-mail *king.jan@epa.gov*. Technical questions concerning electric generating units (EGUs) should be directed to Kevin Culligan, Office of Atmospheric Programs, Clean Air Markets Division, (6204M), 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 564–9172, e-mail *culligan.kevin@epa.gov*; technical questions concerning stationary internal combustion (IC) engines should be directed to Doug Grano, Office of Air Quality Planning and Standards, C539–02, Research Triangle Park, North Carolina 27711, telephone (919) 541–3292, e-mail *grano.doug@epa.gov;* legal questions should be directed to Winifred Okoye, Office of General Counsel, (2344A), 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 564–5446, e-mail *okoye.winifred@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

A. Today's action addresses the issues remanded or vacated by the DC Circuit in *Michigan* v. *EPA,* 213 F.3d 663 (DC Cir., 2000), *cert. denied,* 121 S. Ct. 1225, 149 L. ED. 135 (2001), which concerned the $NO_X$ SIP Call (the "SIP Call case"); *Appalachian Power* v. *EPA,* 251 F.3d 1026 (DC Cir. 2001), which concerned the technical amendments rulemakings for the $NO_X$ SIP Call (the "Technical Amendments case"); and *Appalachian Power* v. *EPA,* 249 F.3d 1042 (DC Cir. 2001).

Today's action establishes the second phase or Phase II of the $NO_X$ SIP Call by:

(1) Finalizing the definition of EGU as applied to certain small cogeneration units,

(2) Setting the control levels for stationary IC engines,

(3) Excluding portions of Georgia, Missouri, Alabama and Michigan from the $NO_X$ SIP Call,

(4) Revising statewide emissions budgets in the $NO_X$ SIP Call to reflect the disposition of the first three issues above,

(5) Setting a SIP submittal date,

(6) Setting the compliance date for implementation of control measures, and

(7) Excluding Wisconsin from $NO_X$ SIP Call requirements.

For more detailed discussions of the issues addressed in this action, *see* section II below.

Ground-level ozone has long been recognized to affect public health. Ozone induces 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 lungs, and possible long-term damage to the lungs. Each year, ground-level ozone is also responsible for crop yield losses. Ozone also causes noticeable foliar damage in many crops, trees, and ornamental plants (*i.e.*, grass, flowers, shrubs, and trees) and causes reduced growth in plants. Studies indicate that current ambient levels of ozone are responsible for damage to forests and ecosystems (including habitat for native animal species).

B. How Can I Get Copies of Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OAR–2001–0008; it has also been incorporated by reference in the docket for the Section 126 Rule under Docket ID No. OAR–2001–0009. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Documents in the official public docket are listed in the index list in EPA's electronic public docket and comment system, EDOCKET. Documents may be available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copy documents may be viewed at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone

number for the Air Docket is (202) 566–1742; fax (202) 566–1741. A reasonable fee may be charged for copying.

2. *Electronic Access.* You may access this Federal Register document electronically through the EPA Internet under the "Federal Register'' listings at *http://www.epa.gov/fedrgstr/* or the federal wide eRulemaking site at *http://www.regulations.gov.*

An electronic version of the public docket is available through EDOCKET. You may use EDOCKET at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Publicly available docket materials that are not available electronically may be viewed at the docket facility identified in Unit I.B. Once in the system, select "search,'' then key in the appropriate docket identification number.

## Public Hearing

We held a public hearing in Washington, DC on March 15, 2002. Four people presented comments at the hearing. The public also had an opportunity to submit written testimony within approximately 45 days after the hearing date.

### Outline


I. Background
- A. What Was Contained in the $NO_X$ SIP Call?
- B. What Were the Court Decisions on the $NO_X$ SIP Call?
  - 1. What Was the Decision of the Court on the 8-Hour Ozone NAAQS?
  - 2. What Effect Did the Court Decision Have on the 8-Hour Portion of the $NO_X$ SIP Call?
  - 3. What Was the DC Circuit Decision on the Stay of the SIP Submittal Schedule for the $NO_X$ SIP Call?
  - 4. What Was the Court's Decision on the $NO_X$ SIP Call?
  - 5. How Did the Court Respond to Our Request To Lift the Stay of the 1-Hour SIP Submission Schedule?
  - 6. What Was the Court's Order for the Compliance Date?
- C. What Was Contained in the Section 126 Rule?
  - 1. What Was the DC Circuit Decision on the Section 126 Rule?
- D. What Were the Technical Amendments Rulemakings?
  - 1. What Was the DC Circuit Decision on the Technical Amendments?
- E. What Is the Overview of DC Circuit Remands/Vacaturs?
- F. What Is Our Process for Addressing the Remands/Vacaturs?

II. What Is the Scope of this Action?
- A. How Do We Treat Cogeneration Units and Non-Acid Rain Units?
  - 1. What Is the Historical Definition of Utility Unit?
  - 2. What Was the $NO_X$ SIP Call Definition of EGU?
  - 3. What Is the Rationale for the Final Rule's Treatment of Cogeneration Units?
  - 4. What Revisions Are Being Made to the Definition of EGU in the $NO_X$ SIP Call and the Section 126 Rule?
  - 5. What Is the Effect on Cogeneration Unit Classification of Applying "One-Third Potential Electrical Output Capacity/25 MWe Sales'' Criteria, Rather Than the Same Methodology as Used for Other Units?
- B. What Are the Control Levels and Budget Calculations for Stationary Reciprocating Internal Combustion Engines (IC Engines)?
  - 1. Determination of Highly Cost-Effective Reductions and Budgets
  - 2. What Are the Key Comments We Received Regarding IC Engines?
- C. What Is Our Response to the Court Decision on Georgia and Missouri?
- D. What Are We Finalizing for Alabama and Michigan in Light of the Court Decision on Georgia and Missouri?
- E. What Modifications Are Being Made to the $NO_X$ Emissions Budgets?
- F. How Will the Compliance Supplement Pools Be Handled?
- G. Will the EGU Budget Changes Affect the States Included in the Three-State Memorandum of Understanding?
- H. How Does the Term "Budget'' Relate to Conformity Budgets?
- I. How Will Partial-State Trading Be Administered?
  - 1. How Will Flow Control Be Handled for Georgia and Missouri?
- J. What Is the Phase II SIP Submittal Date?
- K. What Are the Phase II Compliance Dates?
  - 1. How Are We Handling Non-Acid Rain EGUs and Any Cogeneration Units That Were Previously Classified as EGUs, and Whose Classification Changed to Non-EGUs Under Today's Rule?
  - 2. What Compliance Date Are We Finalizing for IC Engines and What Is the Technical Feasibility of This Date?
  - 3. What Compliance Date Are We Finalizing for Georgia and Missouri?
- L. What Action Are We Taking on Wisconsin?
- M. How Are the 8-Hour Ozone NAAQS Rules Affected by This Action?
- N. What Modifications Are Being Made to Parts 51, 78, and 97?

III. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act (RFA)
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer Advancement Act
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act


## I. Background

### *A. What Was Contained in the $NO_X$ SIP Call?*

By notice dated October 27, 1998 (63 FR 57356), we took final action to prohibit specified amounts of emissions of one of the main precursors of ground-level ozone, $NO_X$, in order to reduce ozone transport across State boundaries in the eastern half of the United States. Based on extensive air quality modeling and analyses, we found that sources in 22 States and the District of Columbia (DC) (23 States) emit $NO_X$ in amounts that significantly contribute to nonattainment of the 1-hour ozone national ambient air quality standards (NAAQS) in downwind States. We set forth requirements for each of the affected upwind States to submit SIP revisions prohibiting those amounts of $NO_X$ emissions which significantly contribute to downwind air quality problems. We established statewide $NO_X$ emissions budgets for the affected States. The budgets were calculated by assuming the emissions reductions that would be achieved by applying available, highly cost-effective controls to source categories of $NO_X$. States have the flexibility to adopt the appropriate mix of controls for their State to meet the $NO_X$ emissions reductions requirements of the $NO_X$ SIP Call. A number of parties, including certain States as well as industry and labor groups, challenged our $NO_X$ SIP Call Rule.

Independently, we also found that sources and emitting activities in 22 States and the District of Columbia emit $NO_X$ in amounts that significantly contribute to nonattainment of the 8-hour ozone NAAQS. In response to the court decisions, on September 18, 2000 (65 FR 56245), we stayed the findings in the $NO_X$ SIP Call based on the 8-hour ozone NAAQS. However, we are evaluating the process for lifting the stay in light of recent EPA actions on the 8-hour ozone standard.

### *B. What Were the Court Decisions on the $NO_X$ SIP Call?*

#### 1. What Was the Decision of the Court on the 8-Hour Ozone NAAQS?

On May 14, 1999, the DC Circuit issued an opinion which, in relevant parts, questioned the constitutionality of the CAA as applied by EPA in its 1997 revision of the ozone NAAQS. *See American Trucking Ass'n* v. *EPA,* 175

F.3d 1027 (DC Cir. 1999). The Court's ruling curtailed our ability to require States to comply with a more stringent ozone NAAQS.

On October 29, 1999, the DC Circuit granted in part and denied in part our rehearing request. *American Trucking Ass'n* v. *EPA,* 194 F.3d 4 (DC Cir. 1999). In May 2000, the Supreme Court granted our petition and certain petitioners' cross-petitions of certiorari. On February 27, 2001, the Supreme Court handed down its decision in *Whitman* v. *American Trucking Association,* 531 U.S. 457 (2001). In vacating the DC Circuit's holding on the point, the Supreme Court held that the CAA was not unconstitutional in its delegation of authority for us to promulgate a revised ozone NAAQS. The case was remanded to the DC Circuit to consider challenges to the revised ozone NAAQS on other grounds.

2. What Effect Did the Court Decision Have on the 8-Hour Portion of the $NO_X$ SIP Call?

The litigation created uncertainty with respect to our ability to rely upon the 8-hour ozone standards as an alternative basis for the $NO_X$ SIP Call. As a result, we stayed indefinitely the findings of significant contribution based on the 8-hour standard, pending further developments in the NAAQS litigation (65 FR 56245, September 18, 2000). Because the $NO_X$ SIP Call Rule was based independently on the 1-hour standards, a stay of the findings based on the 8-hour standards had no effect on the remedy required by the 1998 $NO_X$ SIP Call. That is, the stay does not affect our findings based on the 1-hour standards.

3. What Was the DC Circuit Decision on the Stay of the SIP Submittal Schedule for the $NO_X$ SIP Call?

The $NO_X$ SIP Call Rule required States to submit SIP revisions by September 30, 1999. State petitioners challenging the $NO_X$ SIP Call filed a motion requesting the Court to stay the submission schedule until April 27, 2000. In response, the DC Circuit issued a stay of the SIP submission deadline pending further order of the Court. *Michigan* v. *EPA,* 213 F.3d 663 (DC Cir. 2000) (May 25, 1999 order granting stay in part).

4. What Was the Court's Decision on the $NO_X$ SIP Call?

On March 3, 2000, the DC Circuit issued its decision on the $NO_X$ SIP Call, ruling in our favor on the issues that affected the rulemaking as a whole, but ruling against us on several issues. *Michigan* v. *EPA,* 213 F.3d 663 (DC Cir. 2000). The Court's decision in *Michigan* v. *EPA,* 213 F.3d 663 (DC Cir. 2000) concerns only the 1-hour basis for the $NO_X$ SIP Call, and not the 8-hour basis. The requirements of the $NO_X$ SIP Call, including the findings of significant contribution by the 23 States, the emissions reductions that must be achieved, and the requirement for States to submit SIPs meeting statewide $NO_X$ emissions reductions requirements, are fully and independently supported by our findings under the 1-hour NAAQS alone. The Court denied petitioners' requests for rehearing or rehearing *en banc* on July 22, 2000. Specifically, the Court found in our favor on the following claims:

(1) We could call for the SIP revisions without convening a transport commission;

(2) We undertook a sufficiently State-specific determination of ozone contribution;

(3) We did not unlawfully override past precedent regarding "significant'' contribution;

(4) Our consideration of the cost of $NO_X$ emissions reductions as part of the determination of significant contribution is consistent with the statute and judicial precedent;

(5) Our scheme of uniform emissions reductions requirements is reasonable;

(6) Our interpretation of CAA section 110(a)(2)(D)(i)(I) does not violate the nondelegation doctrine;

(7) We did not intrude on the statutory rights of States to fashion their SIPs;

(8) We properly included South Carolina in the $NO_X$ SIP Call; and

(9) We did not violate the Regulatory Flexibility Act (RFA).

However, the Court ruled against us on four specific issues. Specifically, the Court:

(1) Remanded and vacated the inclusion of Wisconsin because emissions from Wisconsin did not show a significant contribution to downwind nonattainment of the NAAQS;

(2) Remanded and vacated the inclusion of Georgia and Missouri in light of the Ozone Transport Assessment Group (OTAG) conclusions that emissions from coarse grid portions did not merit controls;

(3) Held that we failed to provide adequate notice of the change in the definition of EGU as applied to cogeneration units that supply electricity to a utility power distribution system for sale in amounts of either one-third or less of their potential electrical output capacity or 25 megawatts or less per year (small cogeneration units); and

(4) Held that we failed to provide adequate notice of the change in control level assumed for large stationary IC engines.

The Court remanded the last two matters for further rulemaking.

5. How Did the Court Respond To Our Request To Lift the Stay of the 1-Hour SIP Submission Schedule?

On April 11, 2000, we filed a motion with the Court to lift the stay of the SIP submission date. We requested that the Court lift the stay as of April 27, 2000. We recognized, however, that at the time the stay was issued, States had approximately 4 months (128 days) remaining to submit SIPs. Therefore, our motion to lift the stay indicated that we would allow States until September 1, 2000 to submit SIPs addressing the $NO_X$ SIP Call and provided that States could submit only those portions of the $NO_X$ SIP Call upheld by the Court (Phase I SIPs). The existing record in the $NO_X$ SIP Call rulemaking provides a breakdown of the data on which the original budgets were developed sufficient to allow States to develop Phase I SIPs. However, we reviewed the record and for the convenience of the States and in letters to the State Governors and State Air Directors, dated April 11, 2000, we identified an adjusted Phase I $NO_X$ budget for each State for which the $NO_X$ SIP Call applies.

On June 22, 2000, the Court granted our request in part. The Court ordered that we allow the States 128 days from the June 22, 2000 date of the order to submit their SIPs. Therefore, SIPs in response to the $NO_X$ SIP Call were due October 30, 2000.[1]

In our motion to lift the stay, we informed the Court that the Agency asked 19 States and the District of Columbia, in letters to the Governors dated April 11, 2000, to submit SIPs subject to the Court's response to our motion to lift the stay. The 19 States are: Alabama, Connecticut, Delaware, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia and West Virginia. Rather than submit a SIP that fully met the $NO_X$ SIP Call, we allowed these 19 States and the District of Columbia to submit SIPs that cover all of the $NO_X$ SIP Call requirements except for a small part of the EGU portion and large IC engine portions of the budget. We refer to these partial plans that addressed the portion of the rule unaffected by the Court's remand as

[1] October 30, 2000 was the first business day following expiration of the 128-day period.

the "Phase I'' SIPs.[2] Because the $NO_X$ SIP Call was vacated with respect to Georgia, Missouri, and Wisconsin, those States were not obligated to submit any SIPs by October 30, 2000. The SIPs that cover the portion of the rule affected by the Court decision—and the subject of today's action—are termed, the "Phase II'' SIPs.

6. What Was the Court's Order for the Compliance Date?

In response to a motion filed by the industry/labor petitioners, on August 30, 2000, the DC Circuit ordered that the court order filed on June 22, 2000, be amended to extend the deadline for full implementation of the $NO_X$ SIP Call from May 1, 2003 to May 31, 2004. This extension was calculated in the same manner used by the Court in extending the deadline for SIP submissions, so that sources in States subject to the $NO_X$ SIP Call would have 1,309 days for implementing the SIP as provided in the original $NO_X$ SIP Call.

*C. What Was Contained in the Section 126 Rule?*

We have also addressed interstate $NO_X$ transport in a final rule (Section 126 Rule) that responds to petitions submitted by eight Northeast States under section 126 of the CAA (65 FR 2674, January 18, 2000)(the Section 126 Rule). In this rule, we made findings that 392 sources in 12 States and the District of Columbia are significantly contributing to 1-hour ozone nonattainment problems in the petitioning States of Connecticut, Massachusetts, New York, and Pennsylvania. The upwind States with sources affected by the Section 126 Rule are: Delaware, Indiana, Kentucky, Maryland, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, and the District of Columbia.[3] The types of sources affected are large EGUs[4] and large industrial boilers and turbines (non-EGUs). The rule established Federal $NO_X$ emissions limits for the affected sources and set a May 1, 2003 compliance date.[5] We promulgated a $NO_X$ cap and trade program as the control remedy. All of the sources affected by this Section 126 Rule are located in States that are subject to the $NO_X$ SIP Call.

The Section 126 Rule includes a provision to coordinate the Section 126 Rule with State actions under the $NO_X$ SIP Call. This provision automatically withdraws the Section 126 findings and control requirements for sources in a State if the State submits, and we give final approval to, a SIP revision meeting the full $NO_X$ SIP Call requirements, including the originally promulgated May 1, 2003 compliance deadline [40 CFR 52.34(i)]. The Court changed the $NO_X$ SIP Call compliance deadline to May 31, 2004 after we had promulgated and justified the automatic withdrawal provision based on approval of a SIP with a May 1, 2003 compliance date (64 FR 28274–76, May 25, 1999; 65 FR 2679–2684, January 18, 2000). As described below, as the result of a court decision, the Section 126 Rule was delayed. On April 30, 2002, we published, "Section 126 Rule: Revised Deadlines; Final Rule,'' (67 FR 21522) which reset the compliance date and other related dates, such as the monitoring certification date. The new compliance date is May 31, 2004. This action harmonized the dates in the Section 126 Rule with those in the $NO_X$ SIP Call.

On April 30, 2002, we published a proposal to revise the Section 126 Rule withdrawal provision so that it would continue to function based on the new compliance dates and on a Phase I SIP (67 FR 21522).

1. What Was the DC Circuit Decision on the Section 126 Rule?

On May 15, 2001, a panel of the DC Circuit largely upheld the Section 126 Rule in *Appalachian Power* v. *EPA*, 249 F.3d 1032 (2001). (*Appalachian Power-Section 126*). However, the Court remanded the method for determining growth to the year 2007 in heat input utilization by EGUs. This calculation is important for determining the requirements for EGUs. In addition, the Court vacated and remanded to us the portion of the rule classifying as EGUs small cogeneration units. Although in the *Michigan* decision (concerning the $NO_X$ SIP Call rulemaking), the DC Circuit remanded this issue on the procedural ground of inadequate notice, in the *Appalachian Power-Section 126* decision, the Court vacated and remanded on grounds that we did not justify our classification of small cogeneration units as EGUs. In an order dated August 24, 2001, the DC Circuit, in *Appalachian Power-Section 126 Case*, remanded the Section 126 Rule with regard to the classification of any cogeneration units as EGUs and tolled (suspended) the date for EGUs to implement controls pending our resolution of the EGU growth factor remand.

During the course of the litigation on the Section 126 Rule, individual sources or groups of sources challenged the rule on grounds that our allocations of allowances were improper. We resolved these cases with several of those sources with our agreement to propose a rulemaking revising the allocations.

*D. What Were the Technical Amendments Rulemakings?*

When we promulgated the $NO_X$ SIP Call Rule, we decided to reopen public comment on the source-specific data used to establish each State's 2007 EGU budget (63 FR 57427, October 28, 1998). We extended this comment period by notice dated December 24, 1998 (63 FR 71220). We indicated that we would entertain requests to correct the 2007 EGU budgets to take into account errors or updates in some of the underlying emissions inventory and certain other specified data.

Following our review of the comments received, we published a rulemaking providing Technical Amendments to, among other things, the 2007 EGU budgets (64 FR 26298, May 14, 1999). In response to additional comments received, we published a second rulemaking, making additional Technical Amendments to the 2007 EGU budgets (65 FR 11222, March 2, 2000). (These two rulemakings may be referred to, together, as the Technical Amendments Rule.) In promulgating the Technical Amendments Rule, we kept intact our method for determining the budgets, including the methods for determining growth to 2007. We simply made adjustments for particular sources concerning whether they were large EGUs or non-EGUs, and adjustments in the appropriate baselines for those sources.

1. What Was the DC Circuit Decision on the Technical Amendments?

On June 8, 2001, the DC Circuit issued its opinion in a case involving the Technical Amendments. *Appalachian Power* v. *EPA*, 251 F.3d 1026 (DC Cir. 2001). (*Appalachian Power-Technical Amendments*). Although largely upholding the Technical Amendments, the court, as in the *Appalachian Power-Section 126* case, remanded the EGU growth factors and vacated and remanded the portion of the rule classifying small cogeneration units as EGUs. In addition, in the *Appalachian*

[2] The Phase I emissions reductions should achieve approximately 90 percent of the total emissions reductions called for by the $NO_X$ SIP Call.

[3] For Indiana, Kentucky, Michigan, and New York, only sources in portions of the State are affected by that rule.

[4] The Section 126 Rule uses the same definition of EGUs that we are finalizing for the $NO_X$ SIP Call in today's action.

[5] As discussed in the next section, on August 24, 2001, the DC Circuit suspended the compliance date for EGUs while we resolved a remanded issue related to EGU growth factors. We published our response to the growth factor issue on May 1, 2002 (67 FR 21868).

*Power-Technical Amendments* decision, the Court remanded and vacated the budget under the Technical Amendments Rule for Missouri under both the 1-hour and 8-hour ozone NAAQS.

*E. What Is the Overview of DC Circuit Remands/Vacaturs?*

In summary, the DC Circuit decisions described above revised or remanded/vacated portions of the $NO_X$ SIP Call, Section 126, and Technical Amendments rulemakings as follows:

(1) Remanded the portion of the $NO_X$ SIP Call requirements based on the assumed control level for stationary IC engines;

(2) Delayed the $NO_X$ SIP Call SIP submittal date to October 30, 2000. *Michigan*;

(3) Delayed the date for implementation of the $NO_X$ SIP Call reductions to May 31, 2004. *Michigan*;

(4) Remanded and vacated the inclusion of Wisconsin. *Michigan*;

(5) Remanded and vacated the $NO_X$ SIP Call budgets for Georgia and Missouri under the 1-hour ozone NAAQS. *Michigan*;

(6) Remanded and vacated the $NO_X$ SIP Call budget, as revised by the Technical Amendments, for Missouri, under the 1-hour and 8-hour ozone NAAQS. *Appalachian Power—Technical Amendments*;

(7) Remanded the EGU growth formula. *Appalachian Power—Section 126, Appalachian Power—Technical Amendments*;

(8) Remanded, or remanded and vacated, the classification of small cogeneration units as EGUs. *Michigan, Appalachian Power—Section 126, Appalachian Power—Technical Amendments*; and

(9) Remanded the classification of any cogeneration units as EGUs. *Appalachian Power—Section 126*.

*F. What Is Our Process for Addressing the Remands/Vacaturs?*

To date, we have responded to these decisions as detailed below:

In letters dated April 11, 2000, to the Governors of the affected States, we advised that the States may submit by October 30, 2000 Phase I SIPs that include a budget allowing more emissions than under the $NO_X$ SIP Call Rule. This budget need not include any reductions from a set of EGUs that we believe includes all of the small cogeneration units or reductions from stationary IC engines. In addition, we advised Wisconsin that it need not submit a $NO_X$ SIP Call SIP revision. Further, we advised Georgia and Missouri that they did not have to submit $NO_X$ SIP Call SIPs at this time. We advised Alabama and Michigan that although the Court upheld the $NO_X$ SIP Call for their entire States, the reasoning of the Court's opinion concerning Georgia and Missouri supported excluding emissions from the coarse-grid portion of their States. We also stated that if they wanted the coarse-grid portion of their States excluded, they could submit a Phase I budget addressing sources in only the fine-grid portion of the State. All States were further advised that the remanded issues would be addressed in a future rulemaking.

Many States did not officially submit complete SIPs as required by October 30, 2000. By notice dated December 26, 2000 (65 FR 81366), we issued findings of failure to submit.[6] All required States have now submitted complete Phase I SIPs and the sanctions clocks have effectively been turned off.

On February 22, 2002, we proposed our response to the court decisions described above, except for the EGU growth remand. Today's action finalizes the second phase or Phase II of the $NO_X$ SIP Call by addressing the remanded and vacated issues as described above. In addition, we are modifying the budgets for Alabama and Michigan based on inclusion of only the fine grid portion of those States. Further, we are excluding Wisconsin from the 1-hour basis of the $NO_X$ SIP Call.

Any additional emissions reductions required as a result of this rulemaking are reflected in the Phase II portion of the State's emissions budget. The emissions reductions required in Phase II are relatively small, representing less than 10 percent of total reductions required by the $NO_X$ SIP Call. Partial State budgets for Georgia and Missouri and the due date for the SIPs meeting the resulting State emissions budgets ("Phase II'' SIPs) are discussed below in sections II.E and II.J, respectively.

Today's rulemaking does not address the EGU growth remand. We responded to that issue in an action entitled, "Response to Court Remand on $NO_X$ SIP Call and Section 126 Rule,'' which was published in the **Federal Register** on May 1, 2002 (67 FR 21868). Our response to the growth remand was challenged in the DC Circuit. All parties filed briefs in May 2003 and oral argument was held on September 15, 2003. The Agency expects a decision by the Court in the January to March 2004 timeframe.

[6] All required States have submitted final SIPs. We have published final approval for 16 States and the District of Columbia. We have published final conditional approvals for two States.

Today's rulemaking does not address $NO_X$ SIP Call or Section 126 Rule issues related to the 8-hour ozone NAAQS. Although we stayed the findings on the $NO_X$ SIP Call based on the 8-hour ozone standard to address a prior remand of the standard by the DC Circuit (65 FR 56245, September 18, 2000), we are now evaluating lifting the stay in light of our recent response to the Court remand. In the meantime, on June 2, 2003 we published a proposed rulemaking for implementation of the 8-hour ozone NAAQS (68 FR 32801).

**II. What Is the Scope of This Action?**

In this action, we are finalizing specific changes in response to the Court's rulings on the $NO_X$ SIP Call, Section 126, and Technical Amendments rulemakings. Specifically, we are finalizing the following:

(1) Certain aspects of the definitions of EGU and non-EGU. We are addressing the definition of EGU as applied to cogeneration units by finalizing an EGU definition that excludes certain small cogeneration units for purposes of the $NO_X$ SIP Call and Section 126 rulemakings. We are also finalizing a non-EGU definition that includes such cogeneration units. [**Note** that a cogeneration unit may be owned by a utility or a non-utility and is a unit that uses energy sequentially to produce both useful thermal energy (heat or steam) used for industrial, commercial, or heating or cooling purposes; and electricity.]

(2) The control level assumed for large stationary IC engines in the $NO_X$ SIP Call. We proposed a range of possible control levels (82 percent to 91 percent) to the IC engine portion of the budget. We are setting the control limit for large natural gas-fired stationary IC engines in the $NO_X$ SIP Call at 82 percent, and for diesel and dual fuel stationary IC engines at 90 percent.

(3) Partial State budgets for Georgia, Missouri, Alabama, and Michigan in the $NO_X$ SIP Call.

(4) Changes to the statewide $NO_X$ budgets in the $NO_X$ SIP Call to reflect the appropriate increments of emissions reductions that States should be required to achieve with respect to the three remanded issues (discussed above in numbers 1, 2, 3).

(5) The SIP submittal dates for the required States to address the Phase II portion of the budget, and for Georgia and Missouri to submit full SIPs meeting the $NO_X$ SIP Call. We proposed a range of dates 6 months through 1 year from promulgation of this rule, but no later than April 1, 2003. Based on comments and the delay in finalizing

this rule, we are setting a SIP submittal date 1 year from signature of this rule.

(6) The compliance date for all covered sources to meet Phase II of the $NO_X$ SIP Call. We proposed a compliance date of May 31, 2004 (or, if later, the date on which the source commences operation) for all sources except those in Georgia and Missouri. We proposed May 1, 2005 for sources in those States. We are setting the compliance date as May 1, 2007 (or, if later, the date on which the source commences operation) for sources States choose to control under Phase II, including IC engines and sources in Georgia and Missouri. Sources already controlled in an approved Phase I SIP are required to meet the compliance date stipulated in that SIP, including non-Acid Rain EGUs and any cogeneration units that were previously classified as EGUs and, whose classification changed to non-EGUs under today's rule.

(7) The exclusion of Wisconsin from the $NO_X$ SIP Call.

*A. How Do We Treat Cogeneration Units and Non-Acid Rain Units?*

By way of background, in light of the *Michigan* decision concerning the $NO_X$ SIP Call, we adopted the view that the States should proceed with developing and submitting SIPs (termed "Phase I'' SIPs) reflecting the level of required reductions that was not affected by the Court's ruling. Accordingly, we determined that the Phase I SIPs, under the Court's ruling, by October 30, 2000, should reflect all reductions required under the $NO_X$ SIP Call, except those reductions attributable to parts of the rule that the Court remanded or vacated, such as reductions by small cogeneration units.

At the time, we were uncertain as to which specific units were small cogeneration units and what total emissions were attributable to small cogeneration units. Even so, we were aware that, although most of the EGUs that were subject to the $NO_X$ SIP Call were also subject to the Acid Rain Program, none of the small cogeneration units were subject to the Acid Rain Program. Accordingly, we erred on the side of caution by authorizing States, in their Phase I SIPs, to exclude the required reductions from all non-Acid Rain units.

In the February 22, 2002 proposal, as applied to small cogeneration units, we proposed to retain the EGU definition in the Section 126 Rule and to retain the basic EGU definition used in the $NO_X$ SIP Call Rule with minor, technical revisions to make it consistent with the definition in the Section 126 Rule. In today's action, we are finalizing an EGU definition that excludes certain small cogeneration units. All other cogeneration units and other non-Acid Rain units are EGUs if the other criteria in the EGU definition are met. Further, we are finalizing a non-EGU definition that includes certain small cogeneration units. As a result, we are setting Phase II budgets that include reductions from small cogeneration units and non-Acid Rain EGUs.

However, our review of the SIPs submitted in response to the $NO_X$ SIP Call indicates that the States already included the non-Acid Rain units in their Phase I SIPs as EGUs or non-EGUs.[7] In addition, for today's final rule, with the possible exception of one source, we have not identified any specific small cogeneration units that were originally treated by EPA, and by States in their Phase I SIPs, as EGUs and which now are defined as non-EGUs because, in general, commenters did not provide specific information identifying any such units. The only exception involves one commenter that claimed that its units (located at the Tobaccoville facility) classified as EGUs should be classified as non-EGUs. However, the commenter did not provide sufficient information (*e.g.*, information supporting the maximum design heat input asserted by the commenter) for us to make a final determination regarding the proper classification of the units. Therefore, today's change does not result in any change to the originally finalized SIP Call budgets (which included reductions from both Phase I and Phase II units).

Nevertheless, it is still possible that some cogeneration units that we classified as EGUs are small cogeneration units that should actually be treated as non-EGUs. To the extent any such units are subsequently identified to EPA, we will make any further revisions to the budgets of particular States during the SIP approval process. Similarly, we will consider, during the SIP approval process, the proper classification of the four units at the Tobaccoville facility identified by the commenter discussed above. Because we anticipate that few, if any, existing units treated as EGUs qualify as small cogeneration units, we expect few, if any, such revisions to the budgets will be necessary and that any such revisions that are necessary will be relatively small and will not affect most States.

We are also finalizing certain technical changes to the EGU definition in the $NO_X$ SIP Call to make it consistent with aspects of the definition of EGU used in the Section 126 Rule. In addition, since the EGU definition establishes the dividing line between the EGU and non-EGU categories, the changes to the EGU definition result in corresponding changes to the non-EGU definition in the $NO_X$ SIP Call. In the process of correcting the EGU and non-EGU definitions, we are also finalizing some minor changes to the terminology, and minor corrections of awkward or inconsistent wording and grammatical errors in the applicability provisions.

To begin, we provide a discussion of what preceded today's final decision on the treatment of cogeneration units. Under the $NO_X$ SIP Call, the amount of a State's significant contribution to nonattainment in another State included the amount of highly cost-effective reductions that could be achieved for large EGUs (*i.e.*, EGUs serving generators with nameplate capacity exceeding 25 MWe) and large non-EGUs (non-EGUs with maximum design heat input capacity exceeding 250 mmBtu/hr) in the State. No reductions for small EGUs or small non-EGUs were included. We determined that reductions by large EGUs to 0.15 lb $NO_X$/mmBtu and by large non-EGUs to 60 percent of uncontrolled emissions are highly cost effective. In developing the States' budgets, we applied definitions of EGU and non-EGU and determined which sources were large EGUs or large non-EGUs.

In its *Michigan* decision, the DC Circuit upheld this approach, but determined that we did not provide sufficient notice and opportunity to comment for one aspect of our definition of EGU and remanded the rule to us for further consideration. Specifically, a petitioner claimed, and the Court agreed, that "EPA did not provide sufficient notice and opportunity for comment on [the] revision'' of the EGU definition to remove the exclusion, from the EGU category, of cogeneration units that supply one-third or less of their potential electrical output capacity, or 25 megawatts (MWe) or less, to any utility power distribution system for sale. *Michigan* v. *EPA*, 213 F.3d at 691–92. (These thresholds are herein referred to as the "one-third potential electrical output capacity/25 MWe criteria;'' cogeneration units that meet such criteria are herein referred to as "small cogeneration units.'') According to the Court, "two months after the

[7] This is based on both a review of the applicability provisions in the $NO_X$ SIP Call SIPs and the budget demonstrations for those SIPs. For more detailed discussion, see section K.1 of today's preamble.

promulgation of the [$NO_X$ SIP Call] rule, EPA redefined an EGU as a unit that serves a 'large' generator (greater than 25 MWe) that sells electricity.'' *Id.* Application of the exclusion for cogeneration units from the definition of EGU would result in treating as non-EGUs those cogeneration units meeting the "one-third potential electrical output capacity/25 MWe'' criteria and treating as EGUs those cogeneration units not meeting these criteria. *See* Brief of Petitioner Council of Industrial Boiler Owners (CIBO) at 4 (submitted in *Michigan*).

The petitioner argued that, under the $NO_X$ SIP Call, we should apply these criteria for excluding cogeneration units from treatment as EGUs. According to the petitioner, the criteria had been established under the regulations implementing new source performance standards (NSPS) and under title IV of the CAA and the regulations implementing the Acid Rain Program under title IV. The petitioner also stated that section 112 of the CAA defines "electricity steam generating unit'' to exclude cogeneration units meeting the same thresholds.

The Court found that, in failing to apply the "one-third potential electrical output capacity/25 MWe'' criteria for cogeneration units, EPA "was departing from the definition of EGUs as used in prior regulatory contexts'' and "was not explicit about the departure from the prior practice until two months after the rule was promulgated.'' *Michigan*, 213 F.3d at 692. Further, the Court found that:

> it is an exaggeration to state that some general "theme'' of the regulatory consequences of deregulation of the utility industry throughout rulemaking meant that EPA's last-minute revision of the definition of EGU should have been anticipated by industrial boilers as a "logical outgrowth'' of EPA's earlier statements.

*Id.* The Court therefore remanded the rulemaking to us for further consideration of this issue.

In its decisions on the Section 126 Rule and the Technical Amendments Rulemakings, the DC Circuit, after considering the merits of the issue, vacated and remanded our classification of small cogeneration units as EGUs.

*Appalachian Power—Section 126* and *Appalachian Power—Technical Amendments.* The Court held that we had failed to justify this classification and to base it on adequate record support comparing the $NO_X$ reduction costs of cogeneration units to those of other EGUs or demonstrating that there is no relevant physical or technological difference between small cogeneration units and other units treated as EGUs. The Court also remanded our classification of any cogeneration units as EGUs.

In response to the Court's decisions, we addressed the cogeneration unit issue in the February 22, 2002 proposed rule. In the proposed rule, we noted that, in prior regulatory programs, we sought to distinguish between utilities (regulated monopolies in the business of producing and selling electricity) and non-utilities (*e.g.*, independent power producers and industrial companies). In order to make this distinction, we applied the "one third potential electrical output capacity/25 MWe sales'' criteria. These criteria were not always applied only to cogeneration units and did not uniformly result in less stringent regulation for units meeting the criteria. In the proposed rule, we stated that, with the development of competitive markets for electricity generation and sale, we believed that these criteria no longer distinguish between units in the business of producing and selling electricity (*i.e.*, EGUs) and non-EGUs. In addition, we explained that there are no relevant differences between the way cogeneration units and non-cogeneration units are built and operated that justify continuing to use these criteria or that affect the general ability of cogeneration units to control $NO_X$.

In response to the February 22, 2002 proposed rule, most commenters again argued that, under the $NO_X$ SIP Call, we should apply the "one third potential electrical output capacity/25 MWe sales'' criteria to exclude cogeneration units from treatment as EGUs. The comments included arguments that: Classification of small cogeneration units reverses EPA precedent, contradicts Congressional intent, and will discourage new industrial cogeneration; and it is technically and economically more difficult to control $NO_X$ emissions from non-utility units. A few commenters supported treatment of small cogeneration units as EGUs.

Under today's final rulemaking, we are finalizing an EGU definition that excludes certain small cogeneration units and a corresponding non-EGU definition that includes these units. We still maintain that, with the development of competitive markets for electricity generation and sale, the "one third potential electrical output capacity/25 MWe sales'' criteria no longer distinguishes between units in the business of producing and selling electricity (*i.e.*, EGUs) and non-EGUs. We also continue to believe that there are no relevant differences between the way cogeneration units and non-cogeneration units are built and operated that justify continuing to use these criteria or that affect the general ability of cogeneration units to control $NO_X$. However, at this time, we do not believe we have adequate record information comparing the $NO_X$ reduction costs of all types of industrial cogeneration units to those of other units that are treated as EGUs.

Our discussion below begins with some background on the historical definition of utility unit and the definition of EGU in the $NO_X$ SIP Call and the Section 126 rulemaking. We then discuss today's final rule, including our final decision on the treatment of cogeneration units and the specific revisions to the definition of EGU and corresponding revisions to the definition of non-EGU.

1. What Is the Historical Definition of Utility Unit?

As discussed in the February 22, 2002 proposed rule (67 FR 8402–3), in prior regulatory programs, we have used variations of the "one-third potential electrical output capacity/25 MWe sales'' criteria to distinguish between utilities and non-utilities. The Agency began using these criteria in 1978, in 40 CFR part 60, subpart Da. Subpart Da established NSPS for "electric utility steam generating units'' capable of combusting more than 250 mmBtu/hr of fossil fuel. "Electric utility steam generating unit'' was defined as a unit "constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MWe electrical output to any utility power distribution system for sale'' (40 CFR 60.41a). In that case, the criteria were not used to exempt units entirely from NSPS. Rather, the criteria were used to classify units capable of combusting more than 250 mmBtu/hr of fossil fuel as either "electric utility steam generating units'' subject to the requirements under subpart Da or to classify them as non-utility "steam generating units'' that, depending on the date of construction, continued to be subject to the requirements for "Fossil-Fuel-Fired Steam Generators'' under subpart D or subsequently became subject to the requirements for "Industrial-Commercial-Institutional Steam Generating Units'' under subpart Db. *See* 40 CFR 60.41a (definitions of "steam generating unit'' and "electric utility steam generating unit''), § 60.40b(a) (stating that subpart Db applies to "steam generating units'' with heat input capacity of more than 100 mmBtu/hr), and § 60.40b(e) (stating that "electric steam generating units'' subject to subpart Da are not subject to subpart

Db). Depending on the specific circumstances (*e.g.*, type of equipment and fuel) of the unit involved, some of the emission limits in subpart Db may be the same as or more stringent than those in subpart D or Da.

We explained that we were distinguishing, in subpart Da, between "electric utility steam generating units'' and "industrial boilers'' because "there are significant differences between the economic structure of utilities and the industrial sector'' (44 FR 33580, 33589, June 11, 1979). The "one-third potential electrical output capacity/25 MWe sales'' criteria were used as a proxy for utility vs. industrial/commercial/institutional (*i.e.*, non-utility) ownership of the units; utility-owned units were covered by subpart Da, while non-utility-owned units were covered by subpart D or Db.

A similar type of distinction between utility and non-utility units (using the "one-third potential electrical output capacity/25 MWe sales'' criteria) continued under the CAA Amendments of 1990, in both title IV and section 112 of title I, but was applied only to cogeneration units. Title IV established the Acid Rain Program whose requirements apply to "utility units.'' Section 402(17)(C) excludes a cogeneration unit from the definition of "utility unit'' unless the unit "is constructed for the purpose of supplying, or commences construction after the date of enactment of [title IV] and supplies, more than one-third of its potential electric output capacity and more than 25 MWe electrical output to any utility power distribution system for sale.'' 42 U.S.C. 7651a(17)(C). *See also* 40 CFR 72.6(b)(4). Section 112 of the CAA, which addresses hazardous air pollutants, excludes from the definition of "electric utility steam generating unit'' cogeneration units (but not non-cogeneration units) that meet the "one-third potential electrical output capacity/25 MWe sales'' criteria [42 U.S.C. 7412(a)(8)]. Under section 112, emission limits established by the Administrator for the pollutants listed in section 112(b) apply generally to stationary sources but apply to "electric utility steam generating units'' only if the Administrator makes a specific finding. The Administrator must conduct a study of the "hazards to public health reasonably anticipated to occur'' from emissions from such units and determine if regulation of "electric utility steam generating units'' is "appropriate and necessary.'' 42 U.S.C. 7412(n)(1)(A). In summary, the above-described provisions vary as to both: (1) The application of the "one-third potential electrical output capacity/25 MWe sales'' criteria, which apply to all units in some provisions and only to cogeneration units in other provisions; and (2) the consequences of a unit meeting the criteria, which results in the unit being subject to more stringent regulation under some provisions and less stringent or later regulation under other provisions.

2. What Was the $NO_X$ SIP Call Definition of EGU?

In the $NO_X$ SIP Call rulemaking, we continued the general approach, described above, of distinguishing between units in the electric generation business (here, EGUs) and units in the industrial sector (here, non-EGUs). However, we adopted a different method of defining which units are in the electric generation business by changing the definition of EGU. We defined EGU by applying to all fossil fuel-fired units the methodology described in detail below and did not apply to cogeneration units the "one-third potential electrical output/25 MWe sales'' criteria. Under the methodology applied to all units, after determining the date on which a unit commenced operation (*i.e.*, commenced combusting fuel), we determined whether the unit should be classified as an EGU or a non-EGU by applying the appropriate criteria depending on the commencement of operation date. Then we classified the unit as a large or small EGU or a large or small non-EGU.

Specifically, we noted in a December 24, 1998 supplemental action that the $NO_X$ SIP Call used the following methodology for classifying all units (including cogeneration units) in the States subject to the $NO_X$ SIP Call as EGUs or non-EGUs (63 FR 71220, 71223). We applied this methodology to cogeneration units and not the "one-third potential electrical output capacity/25 MWe sales'' criteria. *Id.*

(a)(i) For units commencing operation before January 1, 1996, we classified as an EGU any unit serving a generator producing any electricity for sale under firm contract to the electric grid. In the December 24, 1998 supplemental action, we did not define the term "electricity for sale under firm contract to the electric grid.'' [8]

(ii) For units commencing operation before January 1, 1996, we classified as a non-EGU any unit not serving a generator producing electricity for sale under firm contract to the grid.

(iii) For units commencing operation on or after January 1, 1996, we classified as an EGU any unit serving a generator producing any amount of electricity for sale, except as provided in paragraph (a)(iv) below.

(iv) For units commencing operation on or after January 1, 1996, we classified as non-EGUs the following: any unit not serving a generator producing electricity for sale; or any unit serving a generator with a nameplate capacity equal to or less than 25 MWe, producing electricity for sale, and with the potential to use 50 percent or less of the usable energy of the unit. In the December 24, 1998 supplemental action, we did not define the term "usable energy.'' [9] (b)(i) For a unit classified as an EGU under paragraph (a)(i) or (a)(iii) above, we then classified it as a small or large EGU. An EGU serving a generator with a nameplate capacity greater than 25 MWe is a large EGU. An EGU serving a generator with a nameplate capacity equal to or less than 25 MWe is a small EGU. In the December 24, 1998 supplemental action, we did not expressly define the term "nameplate capacity.'' [10]

(ii) For a unit classified as a non-EGU under paragraph (a)(ii) or (a)(iv) above, we then classified it as a small or large non-EGU. A non-EGU with a maximum design heat input greater than 250 mmBtu/hour is a large non-EGU. A non-EGU with a maximum design heat input equal to or less than 250 mmBtu/hour is a small non-EGU. But see 63 FR 71224 (explaining procedures used if data on boiler heat input capacity were not available). In the December 24, 1998 supplemental action, we did not expressly

[8] For purposes of the January 18, 2000 Section 126 final rule, we defined "electricity for sale under firm contract to the electric grid'' as where "the capacity involved is intended to be available at all times during the period covered by the guaranteed commitment to deliver, even under adverse conditions'' (65 FR 2694 and 2731). In the February 22, 2002 proposed rule, we proposed to adopt the definition for the term provided in the January 18, 2000 Section 126 final rule. This definition was based on language from the *Glossary of Electric Utility Terms*, Edison Electric Institute, Publication No. 70–40 (definition of "firm'' power). Generally, capacity "under firm contract to the electricity grid'' is included on Energy Information Administration (EIA) form 860A (called EIA form 860 before 1998) or is reported as capacity projected for summer or winter peak periods on EIA form 411 (Item 2.1 or 2.2, line 10).

[9] For purposes of the January 18, 2000 Section 126 final rule, we used the more familiar term "potential electrical output capacity,'' rather than the term "usable energy.'' We defined "potential electrical output'' using the longstanding definition of the latter term as "33 percent of a unit's maximum design heat input'' (65 FR 2694 and 2731). In the February 22, 2002 proposed rule, we proposed to adopt the same term and definition used in the January 18, 2000 Section 126 final rule. "Potential electrical output capacity'' is used, and defined in this way, in part 72 of the Acid Rain Program regulations (40 CFR 72.2 and 40 CFR part 72, appendix D) and in the new source performance standards (40 CFR 60.41a).

[10] In the part 96 model rule in the $NO_X$ SIP Call (63 FR 57356, 57514–38, October 27, 1998), and subsequently for purposes of the January 18, 2000 Section 126 final rule (65 FR 2729 and 2731), we adopted the long-standing definition of "nameplate capacity'' as "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.'' In the February 22, 2002 proposed rule, we proposed to adopt the same definition used in the January 18, 2000 Section 126 final rule. The term is defined in this way in part 72 of the Acid Rain Program regulations (40 CFR 72.2).

define the term "maximum design heat input.'' [11] The term is analogous to the term "nameplate capacity'' in that it uses the manufacturer's specifications to categorize the size of the equipment (the generator, in the case of an EGU or the boiler or turbine or combined-cycle system, in the case of non-EGU).[12]

As stated previously, we defined the term "EGU'' by applying to all units, including cogeneration units, the methodology in paragraphs (a)(i) and (a)(iii) above and used the methodology in paragraphs (a)(ii) and (a)(iv) above to define units as non-EGUs. We did not use, for cogeneration units, the "one-third potential electrical output capacity/25 MWe sales'' criteria in the cogeneration exclusion. It was the fact that we did not apply these criteria to cogeneration units that petitioners challenged in *Michigan.* As discussed further below, we are adopting essentially these criteria in today's final rule.

3. What Is the Rationale for the Final Rule's Treatment of Cogeneration Units?

a. *Distinction between units in the electric generation business and units in the industrial sector.* Distinguishing between units producing electricity for sale and units producing electricity for internal use or producing steam is a long-standing approach in setting emission limits. In the $NO_X$ SIP Call, the Section 126 Rule, and today's final rule, we continue to take this general approach by setting different emission limits for units producing electricity for sale (EGUs) and units that do not produce electricity for sale (non-EGUs).

We are retaining this general approach for several reasons. First, this is a long-standing approach, and few, if any, commenters in the $NO_X$ SIP Call and Section 126 rulemakings supported abandoning the distinction between units in the electric generation business and units in the industrial sector. Second, after organizing the units into these two categories, we found that there was some difference in the average compliance costs of the two groups. *See* 65 FR 2677, January 18, 2000 (estimating average large EGU control costs as $1,432 per ton in 1990 dollars in 1997 and average large non-EGU costs as $1,589 per ton). Third, this approach tends to result in units that directly compete in the electric generation business having to meet the same emission limit, and that result seems reasonable.

In the May 15, 2001 decision in the Section 126 case, the DC Circuit expressed concern that, under the Section 126 Rule, a cogenerator that produces electricity for sale may be treated as an EGU, a cogenerator that produces electricity for internal use only may be treated as a non-EGU, and thus two units that are "identical physically'' may be subject to different emission reduction requirements. *Appalachian Power,* 249 F.3d at 1062. We note that this issue is not unique to cogeneration units and is inherent in any regulatory program that distinguishes between units in the electric generation business and units that are in the industrial sector and sets different emission limits for the two groups.[13] As previously discussed, we are continuing to use the general approach of distinguishing between units in the electric generation business and units in the industrial sector in the $NO_X$ SIP Call and Section 126 Rule. We recognize that this may result in units that are physically identical being regulated differently based on whether or not electricity—particularly electricity for sale—is produced by the unit. However, before abandoning the long-standing approach of distinguishing between units on this basis—an action that few, if any, commenters in the $NO_X$ SIP Call and Section 126 rulemakings have advocated—we believe that it is prudent to gain experience in operating the trading program under the $NO_X$ SIP Call and Section 126 Rule. We note that we have already begun the process of treating these units similarly because EGUs and non-EGUs will participate in one trading program and will trade the same $NO_X$ allowances. After we have gained experience with the $NO_X$ SIP Call and Section 126 trading program, we intend to consider whether to treat as the same all large boilers, whether they produce electricity or not.

b. *Effect of electricity competition and electric power restructuring on distinction between utilities and non-utilities.* As discussed in the February 22, 2002 proposed rule (*see* 67 FR 8405–06), the increasingly competitive nature of the electric power industry and the significant and increasing participation of non-utilities (*e.g.*, an independent power producer or an industrial company) in competitive electricity markets support similar treatment of utilities and non-utilities. In the proposed rule, we stated that, with these changes in the electric power industry and electricity markets, there is no longer a factual basis for excluding cogeneration units from treatment as EGUs by using the "one-third potential electrical output capacity/25 MWe sales'' criteria.

Many industry commenters argued that EGU should be defined to exclude a cogeneration unit meeting the "one-third potential electrical output capacity/25 MWe sales'' criteria. They raised several issues in support of their argument of not including small cogeneration units in the definition of EGU. First, commenters argued that the classification of cogeneration units as EGUs reversed our precedent in previous regulations and contradicts Congressional intent underlying the CAA. They also argued that new industrial cogeneration, and the potential emissions and energy efficiency benefits that could result, would be discouraged. In addition, commenters maintained that the costs of any $NO_X$ controls for these units would be reflected in the market for the products produced by the industrial company that uses energy from the cogeneration unit and not in the electricity market. Commenters maintained that a manufacturing company can engage in sales of electricity without being in the business of selling electricity. Sometimes such a company exports electricity to the local utility, even though it remains a net importer of electricity over the long-term. Furthermore, commenters argued that we justified our definition on deregulation and have failed to consider the halt on deregulation efforts that California's electricity crisis spurred in other States.

c. *Differences between the design and operation of cogeneration units and*

[11] In the part 96 model rule in the $NO_X$ SIP Call (63 FR 57516) and subsequently for purposes of the January 18, 2000 Section 126 final rule (65 FR 2729), we defined "maximum design heat input'' as "the ability of a unit to combust a stated maximum amount of fuel per hour (in mmBtu/hr) on a steady state basis, as determined by the physical design and physical characteristics of the unit.'' In the February 22, 2002 proposed rule, we proposed to adopt the same definition used in the January 18, 2000 Section 126 final rule.

[12] For example, in establishing the State budgets for large EGUs and large non-EGUs, we identified existing units as being large or small based on nameplate capacity (for EGUs) or maximum design heat input (for non-EGUs), determined each unit's baseline heat input (using 1995 or 1996) and, after calculating total heat input for large EGUs and for large non-EGUs, grew the total amounts out to 2007 using heat input growth rates to account for new units and increased utilization. There was no provision for modifying the budgets to remove a unit initially qualifying as a large EGU or large non-EGU if the unit changed its generating or heat input capacity.

[13] In fact, use of the "one-third potential electrical output capacity/25 MWe sales'' criteria for cogeneration units distinguishes between EGU cogeneration units and non-EGU cogeneration units based on the cogenerator's amount of electricity sales and raises the same issue. Under these criteria, two physically identical cogeneration units could have different emission limits simply because one produces and sells the requisite amount of electricity and the other produces more electricity for internal use and does not sell the requisite amount.

*non-cogeneration units.* In the February 22, 2002 proposed rule, we stated that there appear to be no physical, operational, or technological differences between cogeneration units producing electricity for sale and non-cogeneration units producing electricity for sale that would prevent cogeneration units classified as EGUs from achieving average $NO_X$ reductions, and incurring average reduction costs, similar to those achieved by non-cogeneration units. We concluded in the proposed rule that there appear to be no such differences that would justify using the "one-third potential electrical output capacity/25 MWe sales'' criteria for classifying cogeneration units as EGUs or non-EGUs, rather than the classification methodology used for all other units. We still believe that there are no relevant differences between the way cogeneration units and non-cogeneration units are built and operated that affect the general ability of cogeneration units to control $NO_X$. However, at this time, we do not believe we have adequate record support comparing the $NO_X$ reduction costs of all types of industrial cogeneration units to those of other units that are treated as EGUs.

As discussed in the February 22, 2002 proposed rule, cogeneration units under the $NO_X$ SIP Call or the Section 126 Rule operate in two basic configurations.[14] The first is a boiler followed by a steam turbine-generator. In this configuration, steam is generated by a boiler. The steam is first used to power a steam turbine-generator, while the remaining steam is used for an industrial application or for heating and cooling. The boiler that generates the steam used in this manner is designed and operated in essentially the same way as a boiler that generates steam used only to power a steam turbine-generator. Therefore, any controls that could be used on a boiler used to produce only electricity could also be used on a boiler used for cogeneration. In each case, the boiler emits the same amount of $NO_X$.

The second typical configuration for a cogeneration unit is a gas-fired combined cycle system. Combined cycle system plant refers to a system composed of a gas turbine, heat recovery steam generator, and a steam turbine. Combined cycle units that cogenerate are designed and operated in essentially the same way as combined cycle units that generate only electricity. The waste heat from the gas turbine serves as the heat input (possibly supplemented by a duct burner) to the heat recovery steam generator that is used to power the steam turbine. Both the gas turbine and the steam turbine are connected to generators to produce electricity. The gas turbine generator and the heat recovery steam generator portions can be adapted to supply process steam as well as electricity. These units typically emit at $NO_X$ levels well below 0.15 lbs/mmBtu even without the use of post-combustion controls. Furthermore, selective catalytic reduction (SCR) has been used extensively on combined cycle units that are used for cogeneration and those used for generation of electricity only and results in $NO_X$ emissions at levels well below 0.15 lb/mmBtu. (*See GE Combined-Cycle Product Line and Performance,* GE Power Systems, October 2000, Docket No. OAR–2001–0008, Item No. XII–L–04 at 10–11.)

Both cogeneration configurations identified above are used at utility and non-utility facilities that produce electricity for sale. The steam generated at these facilities is divided between powering a steam turbine and serving process uses or heating and cooling. The cogeneration units with the same configuration at these facilities are almost identical in design, except that a non-utility facility may use more of the steam for process uses or heating and cooling and less for electricity generation.

Further, in comparison to a non-cogeneration system that generates electricity for sale, either type of cogeneration system looks essentially the same as such a non-cogeneration system except for the addition of valves and piping to send the steam for process use or heating and cooling. In both the cogeneration and non-cogeneration systems that generate electricity for sale, all the flue gas (containing the $NO_X$ emissions) exiting the combustion process can be directed through the pollution control devices and then through a stack. Because the cogeneration and non-cogeneration systems are of essentially the same design and the flue gas exits the systems in the same manner, the control of $NO_X$ emissions can be achieved in the same manner. Any post-combustion pollution control device used for $NO_X$ control in either system is located in the same place and operated in the same manner.[15] As discussed in the February 22, 2002 proposed rule and the technical support document,[16] post-combustion $NO_X$ control technologies, *i.e.*, selective non-catalytic reduction (SNCR) and SCR, are available for use on both non-cogeneration and cogeneration units producing electricity for sale. The technical support document and the other documents cited in the proposed rule support the following conclusions:

(1) Selective non-catalytic reduction is a fully commercial technology that uses reagent injected into the boiler above the combustion zone to reduce $NO_X$ to elemental nitrogen and water. Because the $NO_X$ reduction takes place above the combustion zone, boiler type has an insignificant impact on the ability to use SNCR. Selective non-catalytic reduction has been demonstrated on a wide range of boiler types and sizes (including cogeneration units) and on a wide range of fuels (including bio-mass, wood, or combinations of fuels such as bark, paper sludge, and fiber waste). Selective non-catalytic reduction has been used at a wide range of temperatures (*e.g.*, from 1250 degrees F to 2600 degrees F) and has been designed to handle a wide range of load variation (*e.g.*, 33 percent to 100 percent of a unit's maximum continuous rating).

(2) Selective catalytic reduction is a fully commercial technology that uses both ammonia injected after the flue gases exit the boiler or the combustion turbine and catalyst in a reactor to reduce $NO_X$ to elemental nitrogen and water. Because the $NO_X$ reduction takes place in a reactor outside the combustion and heat transfer zones, boiler type has an insignificant impact on the ability to use SCR. The SCR has been demonstrated on a wide range of boiler types and sizes and on combined cycle systems. The SCR has been used at a wide range of temperatures (*e.g.*, 450 degrees F to 1100 degrees F) and

[14] These two configurations are for cogeneration units in topping cycle cogeneration facilities, where energy is used sequentially, first to produce electricity and then to produce thermal energy for process use or heating and cooling. In bottoming cycle cogeneration facilities, energy is used sequentially first to produce thermal energy and then to produce electricity. (*See Cogeneration Applications Considerations,* R.W. Fisk and R.L. VanHousen, GE Power Systems, 1996, Docket No. OAR–2001–0008, Item No. XII–L–04 at 1–2.) The cogeneration units subject to the $NO_X$ SIP Call and the Section 126 Rule are boilers, turbines, or combined cycle systems and so are likely to operate in topping cycle cogeneration facilities.

[15] For examples and discussion of how post-combustion controls apply to cogeneration units, see Docket No. OAR–2001–0008 (Legacy Docket No. A–96–56), Item Nos. XII–L–02; XII–L–03; and XII–L–05 at 10–11 and 13 (Figure 15). In fact, this is also true for boilers that do not serve any generator. Boilers with or without a generator and with or without the capability to cogenerate are of essentially the same design, and the flue gas exits the systems in the same manner. Any post-combustion pollution control device used for $NO_X$ control in either system is located in the same place and operated in the same manner.

[16] "Lack of Relevant Physical or Technological Differences Between Cogeneration Units and Utility Electricity Generating Units,'' September 25, 2000, Docket No. OAR–2001–0008, Item No. XII–K–47.

has been designed to handle a wide range of load variation.

In the February 22, 2002 proposed rulemaking, we requested comment on, and specific information supporting or contradicting, our conclusions that there are no relevant physical, operational, or technological differences and no significant difference in average control retrofit cost for cogeneration versus non-cogeneration units producing electricity for sale. In response to the proposed rule, commenters raised concerns that it is technically and economically more difficult to control $NO_X$ in industrial cogeneration units than in non-utility units because they are smaller sized than utility boilers, fire multiple fuels and often co-fire two or more fuels, operate in a load-following mode, have lower annual operating load or capacity factor, and have boiler temperature profiles and other factors that affect pollution control devices. A few commenters supplied data or indicated the cost of control for certain units. One commenter stated that reasonably available control technology (RACT) analysis for an unidentified, 350 million British thermal units (mmBtus)/hr coal-fired stoker boiler indicated that the only technically feasible $NO_X$ control identified by boiler and $NO_X$ control experts was conversion to fluidized bed combustion at a cost of over $11,000/ton based on year-round operation and over $26,000/ton considering only the ozone season. Another commenter cited EPA's "Alternative Control Techniques Document: $NO_X$ Emissions from Industrial/Commercial/Institutional Boilers' (March 1994) (1994 ACT), indicating cost effectiveness of SCR for a 400 mmBtu/hr pulverized coal boiler of $3,400–$4,200/ton and cost effectiveness of SNCR for a 470 mmBtu pulverized coal boiler (with low $NO_X$ burners and a 50 percent load factor) of more than $1,800/ton. An additional commenter indicated costs in excess of $2,500 per seasonal ton at the Tobaccoville facility (in 1990 dollars).

In light of the limited control cost data provided by commenters, we conclude that at this time we lack sufficient cost data to show whether there is a significant difference in the average cost of controlling $NO_X$ emissions from cogeneration units, as compared to non-cogeneration units. The 1994 ACT costs cited by one commenter are not relevant because the boilers involved were not cogeneration units. In addition, the cited costs were early estimates by the Agency on the cost of SCR and SNCR and have been superceded by later data and documents. Further, the commenters' indicated that costs at the coal-fired stoker and at the Tobaccoville facility do not necessarily support the claim that average costs of controlling $NO_X$ at cogeneration units are higher than such costs at non-cogeneration units. Due to economies of scale, smaller units, like some industrial cogeneration units and smaller utility units, may have costs that are higher than the average costs. We acknowledge that the actual cost impacts will vary from unit to unit, with the costs being lower for some and higher for others. In our analysis, we presented average costs of control and understood that some units may have higher costs than the average. We note that units may participate in a trading program that allows for the buying of allowances for units that have more difficulty controlling $NO_X$ emissions.

Furthermore, we note that we have cost information on one other cogeneration unit. In our cost analysis of EGUs, we used an average capital cost of $69.70 to $71.80 per kilowatt for SCR on a 200 MWe coal-fired EGU. *See* "Analyzing Electric Power Generation Under the CAAA,'' U.S. EPA, March 1998, Docket No. OAR–2001–0008, Item No. V–C–03 at A5–7 (Table A5–5). The record shows a capital cost of $58 per kilowatt for SCR on a new coal-fired cogeneration unit. *See* "Status Report on $NO_X$ Control Technologies and Cost Effectiveness for Utility Boilers,'' Northeast States for Coordinated Air Use Management and Mid-Atlantic Regional Air Management Association, June 1998, Docket No. OAR–2001–0008, Item No. VI–B–05 at 151–53. We maintain that this cost is reasonably consistent with the average cost that we determined for all EGUs.[17] However, as commenters noted, industrial cogeneration units cover a wide range of firing types and fire a wide range of fuels. Since the cogeneration unit used as part of the basis for the control costs for EGUs was a medium-size, pulverized coal plant very similar to many coal-fired utility boilers, it is not necessarily representative of other types of boilers used for industrial cogeneration units such as stoker boilers firing a combination of fuels. Since we have limited control cost data for such other types of industrial cogeneration units, we believe that we do not have a sufficient record at this time to show whether there is a significant difference in the average cost of controlling $NO_X$ emissions from these units.

4. What Revisions Are Being Made to the Definition of EGU in the $NO_X$ SIP Call and the Section 126 Rule?

In today's final rule, we are addressing three aspects of the EGU definition. First, for purposes of the $NO_X$ SIP Call and the Section 126 Rule and in a change from the February 22, 2002 proposed rule (*see* 67 FR 8401–8410), we are finalizing an EGU definition that applies to cogeneration units the "one-third potential electrical output/25 MWe sales'' criteria in classifying the units as EGUs or non-EGUs. For all other units, we are continuing to apply the basic approach used in the $NO_X$ SIP Call Rule, described in the December 24, 1998 supplemental action (63 FR 71233), and the approach in the Section 126 Rule for such classification. Second, we are finalizing some minor changes to the categorization (based on dates of commencement of operation) of units under the $NO_X$ SIP Call definition of EGU (set forth in section II.A.2 above) for purposes of applying the firm-contract criterion used to classify units as EGUs. While the $NO_X$ SIP Call categorizes units as those commencing operation before January 1, 1996 and those commencing operation on or after January 1, 1996, today's final rule categorizes units as those commencing operation before January 1, 1997, those commencing operation in 1997 or 1998, and those commencing operation on or after January 1, 1999. These new categories based on commencement of unit operation are the same as the categories adopted in the January 18, 2000 Section 126 final rule, under which units commencing operation before 1999 and generating electricity for sale, but not for sale under a firm contract to the grid (*i.e.,* not under a guaranteed commitment to provide the electricity), were classified as non-EGUs and units commencing operation in 1999 or thereafter and generating any electricity for sale were generally classified as EGUs. Today's final rule uses this same approach to classify units as EGUs or non-EGUs, except for the application to cogeneration units of the "one-third potential electrical output/25 MWe sales'' criteria. Third, we are also finalizing some minor changes to the terminology, and minor corrections of awkward or inconsistent wording and grammatical errors in the applicability provisions. For example, we are adopting the term "potential electrical output capacity'' and the definitions of the terms "electricity for sale under firm contract to the electric grid,'' "potential

[17] We also note that the dollar per ton cost for this installation is $2,800 to $3,000 per ton of $NO_X$ removed. This is higher than the average cost for EGUs because the unit started at a low $NO_X$ rate (0.16 lb/mmBtu) and controls down to 0.07–0.08 lb/mmBtu, not because the unit is a cogenerator. If the unit only generated electricity and had the same starting $NO_X$ rate, the cost would be the same.

electrical output capacity,'' ''nameplate capacity,'' and ''maximum design heat input'' used in the January 18, 2000 Section 126 Rule.

a. *Application of the ''one-third potential electrical output/25 MWe sales'' criteria, in lieu of the firm-contract criterion, to cogeneration units.* As explained in the $NO_X$ SIP Call Rule, described in the December 24, 1998 supplemental action (63 FR 71233), and the Section 126 Rule, we adopted the approach of using the firm-contract criterion for units (non-cogeneration and cogeneration units) that commenced operation before 1999. We stated that the criterion provides a reasonable transitional means of making the EGU/non-EGU classification since, for units commencing operation in 1999 or thereafter, a unit that generates any electricity for sale is classified as an EGU. We explained that the firm-contract criterion provides a reasonable way of identifying which cogeneration units have been significantly enough involved in the business of generating electricity for sale that their owners have provided guaranteed commitments to provide electricity from the units to one or more customers. We also stated that the historical information necessary to apply the firm-contract criterion to cogeneration units (and other units) is already available to us. Capacity involved in sales of electricity ''under firm contract to the electricity grid'' has been generally included on EIA form 860A (called EIA form 860 before 1998) or reported to EIA as capacity projected for summer or winter peak periods on EIA form 411 (Item 2.1 or 2.2, line 10). The historical information from these forms is publicly available.

Nevertheless, in today's final rule, we are adopting the ''one-third potential electrical output/25MWe sales'' criteria for classifying cogeneration units as EGUs or non-EGUs. The reasons for this approach are discussed below in II.A.4. Regardless of when a cogeneration unit commenced or commences operation, a cogeneration unit supplying more than one-third of its potential electrical output and more than 25 MWe to a utility power distribution system for sale during any year in the relevant period is classified as an EGU, and a cogeneration unit that does not meet these criteria is classified as a non-EGU. As stated above, criteria are used in order to determine whether a cogeneration unit is exempt from the Acid Rain Program under section 402(17)(C) of the CAA, as implemented under § 72.4(b)(4) of the Acid Rain regulations. *See* 40 CFR 72.4(b)(4); and 58 FR 15634, 15636–38 (1993). Consequently, in implementing the use of the ''one-third'' potential electrical output/25 MWe sales'' criteria for classifying cogeneration units in the $NO_X$ SIP Call and in the Section 126 Rule, today's final rule references § 72.4(b)(4). Thus, in general, a cogeneration unit that meets the criteria for an unaffected unit in the Acid Rain Program under § 72.4(b)(4) for the relevant time period is defined as a non-EGU, while a cogeneration unit that fails to meet the criteria for such exemption for the relevant time period is defined as an EGU. Moreover, for cogeneration units commencing operation before January 1, 1997, the relevant period is 1995–1996; for cogeneration units commencing operation during 1997–1998 the relevant period is 1997–1998; and for units commencing operation on or after January 1, 1999, the relevant period is 1999 and thereafter. These same periods or categories are used in classifying non-cogeneration units as EGUs or non EGUs. We are adopting the categories so that a consistent set of categories applies to all units (either cogeneration or non-cogeneration units), which will simplify and facilitate the categorization of units by EPA, States, and others.[18] As discussed below, we are continuing to apply the firm-contract criterion (for units commencing operation before 1999) or the electricity sales criterion (for units commencing operation in or after 1999) for classifying non-cogeneration units as EGUs or non-EGUs.

b. *Application of the firm-contract criterion to non-cogeneration units.* As noted above, in the $NO_X$ SIP Call Rule [as described in the December 24, 1998 supplemental action (63 FR 71233)] and the Section 126 Rule, we adopted the approach of using the firm-contract criterion for non-cogeneration units (as well as for cogeneration units) that commenced operation before 1999. In the February 22, 2002 proposed rule, we did not reconsider that general approach for non-cogeneration units, but only for cogeneration units. However, we did propose minor changes in the categorization of non-cogeneration units based on their date of commencement of operation. We proposed to adopt commencement of operation before 1999 or on or after January 1, 1999 as the dividing line between units to which the firm-contract criterion are applied and those to which the electricity sales criterion are applied. Further, for application of the firm-contract criterion, we proposed to distinguish between units commencing operation before 1997 and those commencing operation in 1997 or 1998. Some commenters on the proposed rule argued for the keeping of the ''firm contract'' language for units commencing operation in 1999 or later, especially if we would continue with our proposed definition of EGUs with regard to cogeneration units.

In today's final rule, we are finalizing, for non-cogeneration units, the categorization of units under the $NO_X$ SIP Call as those units commencing operation before January 1, 1997, those commencing operation in 1997 or 1998, and those commencing operation on or after January 1, 1999.

The firm-contract criterion is not applied to non-cogeneration units commencing operation on or after January 1, 1999. The classification of units commencing operation on or after January 1, 1999 will be based on whether the unit produces any electricity for sale. In general, any non-cogeneration unit that produces electricity for sale will be an EGU, except that the non-EGU classification will apply to a unit serving a generator that has a nameplate capacity equal to or less than 25 MWe, from which any electricity is sold, and that has the potential (determined based on nameplate capacity) to use 50 percent or less of the potential electrical output capacity of the unit.

As discussed in the February 22, 2002 proposed rule, for several reasons, we are establishing January 1, 1999 as the cutoff date for applying EGU and non-EGU definitions based on electricity sales under firm contract to the grid and the start date for applying EGU and non-EGU definitions based on electricity sales. First, information is available to us on electricity sales on a calendar year basis only. Consequently, the classification of units based on whether the generators that they serve are involved in firm-contract electricity sales must be made on a calendar year basis, and any cutoff must start on January 1. Second, use of the January 1,

[18] While we wish to be as consistent as possible in the definitions used in the $NO_X$ SIP Call and the definitions used in the Section 126 Rule, there is an important difference in the reason for categorizing units in the two rulemakings. In the $NO_X$ SIP Call, the definitions are used to set the State budgets and therefore need to focus on 1995 and 1996, the base years used for developing budgets. State-specific growth rates were used to take into account units commencing operation after the base years. The $NO_X$ SIP Call model rule (in part 96) did not use these definitions in the applicability and allowance allocation provisions, and States adopted their own applicability and allowance allocation provisions in their SIPs. Thus, the portion of the definitions that affects the $NO_X$ SIP Call is the portion pertaining to units in operation before January 1, 1997. In the Section 126 Rule, the definitions are used for purposes of determining applicability and allocating allowances. Thus, in the Section 126 Rule, the definitions must address units commencing operation after 1996, as well as those operating in 1995 and 1996.

1999 cutoff date for the $NO_X$ SIP Call is consistent with the use of that same cutoff date in the Section 126 Rule. Third, the January 1, 1999 cutoff date will limit the ability of owners or operators of new units that might otherwise qualify as large non-EGUs from obtaining small EGU classification for the units and thereby avoiding all emission reduction requirements. For example, since the cutoff date and the relevant period for determining electricity sales are past, the owner of a large new unit that would otherwise not serve a generator will not be able to obtain small EGU classification simply by adding a very small generator (*e.g.*, 1 MWe) to the unit and selling a small amount of electricity under firm contract to the grid.

c. *Application of Section 126 terms and definitions and correction of awkward or inconsistent wording and grammatical errors.* We also are finalizing for use in the $NO_X$ SIP Call the same term "potential electrical output capacity,'' and the same definitions of the terms "electricity for sale under firm contract to the electric grid,'' "potential electrical output capacity,'' "nameplate capacity,'' and "maximum design heat input,'' adopted in the January 18, 2000 Section 126 final rule and used in the EGU definition in the regulations (*i.e.*, part 97) implementing the Section 126 program. The basis for these terms and definitions is set forth above.

In addition, we are correcting some awkward or inconsistent wording and grammatical errors without making any substantive change in the EGU and non-EGU definitions. For example, instead of referring to units commencing operation "on or after January 1, 1997 and before January 1, 1999'' as in the February 22, 2002 proposed rule, the final regulations refer to units commencing operation "in 1997 or 1998.''

By further example, with regard to units classified as EGUs, the proposed rule refers to a unit commencing operation before January 1, 1997 or in 1997 or 1998 that "had'' a nameplate capacity greater than 25 MWe and refers to a unit commencing operation on or after January 1, 1999 "with'' the requisite nameplate capacity. With regard to units classified as non-EGUs, the proposed rule refers to a unit commencing operation before January 1, 1997 or in 1997 or 1998 that "has'' a maximum design heat input greater than 250 mmBtu/hr and refers to a unit commencing operation on or after January 1, 1999 "with'' the requisite maximum design heat input. This inconsistent wording concerning nameplate capacity and maximum design heat input, where sometimes the past tense, sometimes the present tense, and sometimes no tense are used for units that had already commenced commercial operation in the past, is confusing. The final regulations consistently reference nameplate capacity and maximum design heat without using past or present tense. The regulations refer to generators "with'' the requisite nameplate capacity and units "with'' the requisite maximum design heat input.

By further example, the proposed rule refers to EGUs that "commenced operation'' before January 1, 1997 or in 1997 or 1998 serving a generator that "produced electricity for sale'' and to EGUs that "commence operation'' on or after January 1, 1999 that serve a generator that "produces electricity for sale.'' The proposed rule also refers to non-EGUs that "commenced operation'' before January 1, 1997 or in 1997 or 1998 that "did not serve'' a generator "producing electricity for sale'' and to non-EGUs that "commence operation'' on or after January 1, 1999 that "at no time serves'' or "at any time serves'' a generator "producing electricity for sale.'' This inconsistent wording and use of past and present tenses is also confusing. For example, some units in the category of 1999 or later commencement of operation have already commenced operation while others will commence operation in the future. Yet, the present tense is used in reference to all such units. The final regulations consistently reference commencement of operation and production of electricity without using past or present tense.

d. *Final EGU and non-EGU definitions.* For the reasons discussed above, we are adopting the following definitions of EGU and non-EGU for the $NO_X$ SIP Call and the proposed definitions discussed above (in footnotes 9, 10, 11, and 12) for the terms "electricity for sale under firm contract to the electric grid,'' "potential electrical output capacity,'' "nameplate capacity,'' and "maximum design heat input'' used in the EGU and non-EGU definitions. (The EGU and non-EGU definitions, and definitions for related terms, adopted today for the Section 126 Rule are set forth below in the revised rule language accompanying this preamble.)

(a) The following units are classified as EGUs:

(1) For non-cogeneration units—

(A) For units commencing operation before January 1, 1997, a unit serving during 1995 or 1966 a generator producing electricity for sale under a firm contract to the electric grid.

(B) For units commencing operation in 1997 or 1998, a unit, serving during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid.

(C) For units commencing operation on or after January 1, 1999, a unit serving at any time a generator producing electricity for sale.

(2) For cogeneration units—

(A) For units commencing operation before January 1, 1997, a unit that fails to qualify as an unaffected unit under 40 CFR 72.6(b)(4) for 1995 or 1996 under the Acid Rain Program.

(B) For units commencing operation in 1997 or 1998, a unit that fails to qualify as an unaffected unit under 40 CFR 72.6(b)(4) for 1997 or 1998 under the Acid Rain Program.

(C) For units commencing operation on or after January 1, 1999, a unit that fails to qualify as an unaffected unit under 40 CFR 72.6(b)(4) for any year under the Acid Rain Program.

(b) The following units are classified as non-EGUs:

(1) For non-cogeneration units—

(A) For units commencing operation before January 1, 1997, a unit not serving during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid.

(B) For units commencing operation in 1997 or 1998, a unit not serving during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid.

(C) For units commencing operation on or after January 1, 1999, a unit:

(i) At no time serving a generator producing electricity for sale; or

(ii) At any time serving a generator with a nameplate capacity of 25 MWe or less producing electricity for sale, and with the potential to use no more than 50 percent of the potential electrical output capacity of the unit.

(2) For cogeneration units—

(A) For units commencing operation before January 1, 1997, a unit that qualifies as an unaffected unit under 40 CFR 72.6(b)(4) for 1995 and 1996 under the Acid Rain Program.

(B) For units commencing operation in 1997 or 1998, a unit that qualifies as an unaffected unit under 40 CFR 72.6(b)(4) for 1997 and 1998 under the Acid Rain Program.

(C) For units commencing on or after January 1, 1999, a unit that qualifies as an unaffected unit under 40 CFR 72.6(b)(4) for each year under the Acid Rain Program.

(c) Units classified as EGUs or non-EGUs under paragraphs (a) and (b) are classified as large or small as follows:

(1) A unit under paragraph (a) serving a generator with a nameplate capacity greater than 25 MWe is a large EGU.

(2) A unit under paragraph (a) serving a generator with a nameplate capacity equal to or less than 25 MWe is a small EGU.

(3) A unit under paragraph (b) with a maximum design heat input greater than 250 mmBtu/hour is a large non-EGU.

(4) A unit under paragraph (b) with a maximum design heat input equal to or less than 250 mmBtu/hour is a small non-EGU.

5. What Is the Effect on Cogeneration Unit Classification of Applying "One-Third Potential Electrical Output Capacity/25 MWe Sales'' Criteria, Rather Than the Same Methodology as Used for Other Units?

The petitioner in *Michigan* who successfully challenged the lack of application of the "one-third potential electrical output capacity/25 MWe sales'' criteria to cogeneration units claimed that the failure to apply such criteria would result in "sweeping previously unaffected non-EGUs into the EGU category.'' Brief of Petitioner CIBO at 4 (submitted in *Michigan*). The petitioner further suggested that, without the application of these criteria, "any sale of electricity will make a non-EGU a more stringently regulated EGU.'' Reply Brief of Petitioner CIBO at 1 (submitted in *Michigan*).

As discussed above, large EGUs and large non-EGUs are included in the determination of the amount of a State's significant contribution to nonattainment in another State. No reductions by small EGUs or small non-EGUs are included in that determination.

Neither the petitioner nor any party that commented in the $NO_X$ SIP Call or the Section 126 rulemakings identified any specific, existing cogeneration units that, without the application of the "one-third potential electrical output capacity/25 MWe sales'' criteria, would be classified as large EGUs but that, with the application of such criteria, would be classified as either large or small non-EGUs. In fact, one commenter supporting the "one-third potential electrical output capacity/25 MWe'' sales criteria stated that applying the criteria to the $NO_X$ SIP Call "would not alter the Agency's baseline emissions inventory, since cogeneration units were, for the most part, classified correctly as non-EGUs in EPA's current data base.'' *See* Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final $NO_X$ SIP Call (63 FR 57356, October 27, 1998), May 1999 at 9. In our proposed rule in response to the Court's decision, we again asked commenters to identify any specific, existing cogeneration units that, without the application of the "one-third potential electrical output capacity/25 MWe sales'' criteria, would be classified as large EGUs but that, with the application of such criteria, would be classified as either large or small non-EGUs. One commenter stated that up to 16 cogeneration units in the paper and pulp industry units would be affected by the change in EGU definition. However, the commenter not only failed to provide the names of any specific units but also stated that it lacked sufficient information to determine whether any of the units were selling electricity under firm contract to the grid. In short, the commenter did not really know whether the 16 units would actually be treated as EGUs if the "one-third potential electrical output capacity/25 MWe sales'' criteria were not applied.

For today's final rule, in light of the lack of such specific information in the comments, we were unable to identify any small cogeneration units whose classification as EGUs or non-EGUs will change in light of the changes in the EGU and non-EGU definitions adopted in the final rule. The only exception may be for units at the Tobaccoville facility, which are addressed above. However, for the reasons discussed above, we will consider reclassification of these units during the SIP revision approval process. Further, it is conceivable that there are other small cogeneration units that need to be reclassified from EGUs to non-EGUs and that, therefore, further adjustments to the budgets of particular States may be necessary. We will also make such further adjustments during the SIP approval process when we receive the information necessary to support such reclassifications of small cogeneration units. Because we anticipate that few, if any, units currently treated in the budgets as EGUs qualify as small cogeneration units, we expect few, if any, revisions to the budgets resulting from today's final rule, and if any revisions do result, we anticipate that they will be very small and will not affect most States.

In order to facilitate the SIP approval process, we request participants in the process of developing SIP revisions in response to today's final rule to identify by name, location, and plant and point identification any cogeneration unit that they believe should be classified as a large or small non-EGU under the methodology in today's final rule and that would have been classified differently as a large or small EGU under the methodology in the proposed rule. We also request identification by name, location, and plant and point identification of any cogeneration unit that should be classified as a large or small EGU under today's final rule methodology and that would have been classified as a large or small non-EGU under the proposed methodology. In addition, we request information supporting any claimed EGU, non-EGU, large, or small classification of each identified unit.

Persons that identify units as cogeneration units or small cogeneration units (under the "one-third potential electrical output capacity/25 MWe sales'' criteria) should submit the following information to confirm their identification:

(1) A description of the facility to demonstrate that the facility meets the definition of a "cogeneration unit'' under 40 CFR 72.2.

(2) Data describing the annual electricity sales from the unit for every year from the unit's commencement of operation through the present. To provide this information, persons should submit the same form as they used to report the information to the EIA, or if they have not reported the information to EIA, provide the same information on annual electricity sales as was or would have been required to be reported to EIA.

(3) Information stating and supporting the value of the unit's maximum design heat input.

*B. What Are the Control Levels and Budget Calculations for Stationary Reciprocating Internal Combustion Engines (IC Engines)?*

In the February 22, 2002 action, we proposed that highly cost-effective controls are available for stationary IC engines. We proposed to assign a 90 percent emissions decrease on average for large natural gas-fired rich-burn, diesel, and dual fuel IC engines. For large natural gas-fired lean-burn IC engines, we proposed to assign a percent reduction from within the range of 82 to 91 percent. Based on available data regarding demonstrated costs, effectiveness, availability, and feasibility of low emission combustion (LEC) technology, and consideration of comments received in response to the proposal, we stated that we would determine a percent reduction number to use in calculating this portion of the $NO_X$ SIP Call budget decrease.

Today, we are recalculating the budgets to reflect a control level of 82 percent for the natural gas-fired lean-burn IC engines. Because the vast majority of large natural gas-fired IC engines are lean burn, we are applying the 82 percent reduction to all large natural gas-fired IC engines for the

purpose of setting this portion of the budget. For the other IC engine subcategories (diesel and dual fuel) we are using 90 percent control, as proposed.

1. Determination of Highly Cost-Effective Reductions and Budgets

As described in the $NO_X$ SIP Call final rule, after determining the degree to which $NO_X$ emissions, as a whole from the particular upwind States, contribute to downwind nonattainment or maintenance problems, we determined whether any amounts of the $NO_X$ emissions may be eliminated through controls that, on a cost-per-ton basis, may be considered to be highly cost effective. By examining the cost effectiveness of $NO_X$ controls, we determined that an average of approximately $2,000 per ton removed is highly cost effective. We first projected the total amount of $NO_X$ emissions that sources in each covered State would emit, accounting for their projected growth and measures required under the CAA, in 2007. We then projected the total amount of $NO_X$ emissions that each of those States would emit in 2007 if each State applied the highly-cost effective measures (the State's budget). The difference between the 2007 base inventory and the budget for each State is that State's "significant contribution'' to downwind nonattainment. For a more detailed discussion of the determination of cost-effective reductions and budgets, see the October 27, 1998 $NO_X$ SIP Call (63 FR 57399–57403 and 57405, respectively).

2. What Are the Key Comments We Received Regarding IC Engines?

The following describes key comments regarding IC engines and provides our responses. Additional comments and responses are contained in the Response to Comments (RTC) document associated with this rulemaking. Related information is also contained in the Technical Support Document (TSD) (revised version) associated with this rulemaking.

a. Level of $NO_X$ Control

(1) $NO_X$ uncontrolled emission rate.

*Comment:* Several commenters suggested that we should rely on the July 2000 AP–42 emission factor documents (Docket No. OAR–2001–0008, Item Nos. XII–D–09 and XII–D–10) for the average uncontrolled emission rates [11.7 g/bhp-hr (grams per brake horsepower-hour) for 2-stroke engines and 15.1 g/bhp-hr for 4-stroke engines]. The commenters object to our use of a higher value (16.8 g/bhp-hr) as the uncontrolled level.[19] The commenters state that the July 2000 AP–42 factors are best because:

- They are based on actual engine emission tests;
- The engines tested are similar to "large'' $NO_X$ SIP call engines;
- They are not based on horsepower categories;
- They tested both 2- and 4-stroke engines; and
- They have documented quality control.

*Response:* We reviewed the data used to update AP–42. In order to focus on the large engines addressed in the $NO_X$ SIP Call, as suggested by commenters, we examined test data from those engines greater than 2,000 horsepower (hp) operating at greater than 90 percent load. The large engines in this data base cover only 2 engine models and 8 tests; both models are 4-stroke engines. According to comments from the Interstate Natural Gas Association of America (INGAA), about 85 percent of the large engines in the $NO_X$ SIP Call area are 2-stroke. Furthermore, as described in the July 2000 AP–42 document, the data presented do not differentiate between uncontrolled lean-burn engines and engines that may be turbocharged.[20] Thus, the average "uncontrolled'' emissions reported may include some engines with lower $NO_X$ emissions due to the turbocharging. We conclude that this data base is helpful but too limited to stand by itself considering the large amount of data available from other sources. Instead, the AP–42 data must be reviewed along with other data as described below.

*Comment:* Commenters state that our 16.8 g/bhp-hr average is derived from "mostly'' new engine models in 1991, not the entire, current population of existing engines. According to commenters, the 1994 ACT document numbers are not representative of older $NO_X$ SIP Call type engines, the details of the data are unavailable, and the 16.8 value cannot be replicated. The commenters indicate that our weighted average approach does not correspond to engine models in the $NO_X$ SIP Call population, that the $NO_X$ 1994 ACT reflects 1991 manufacturer's letters for new, 4-stroke engines, and that we need to make these letters available.

*Response:* We have examined data from the pipeline industry, data recently collected by the Agency, and data from the 1994 ACT document (see RTC or TSD for details). These include data from large engines covered by the $NO_X$ SIP Call as suggested by some commenters. We believe the data support the 16.8 value proposed, as described below.

Emissions data compiled by three pipeline industry companies provide support to the 16.8 g/bhp-hr value proposed by us or a slightly higher value. Test data are contained in two letters to the Ozone Transport Commission (OTC) in November 2000. Based on a survey of LEC retrofit installation in $NO_X$ SIP Call States, two pipeline companies in a November 20, 2000 letter to the OTC,[21] presented data on pre-LEC and post-LEC emissions for 86 engines in $NO_X$ SIP Call States. Most of the engines are relatively large, at 2000 hp or greater. Table 1 of the letter summarizes the data and states that the average uncontrolled $NO_X$ emissions level for these 86 engines is 16.8 g/bhp-hr, identical to the level we proposed. Considering only those engines greater than or equal to 2,000 hp, there are 66 engines with an average uncontrolled emissions rate of 18.2 g/hp-hr (see RTC or TSD for details). Additional data in the same letter provide pre-LEC and post-LEC data for 20 engines. The letter states that the average uncontrolled $NO_X$ emissions for the 20 engines is 14.1 g/bhp-hr. Another major pipeline company also sent a letter (November 22, 2000) to the OTC presenting uncontrolled and RACT emission rates for 62 engines retrofit with LEC (see RTC or TSD for details). The average uncontrolled emission rate, considering all 62 engines from this data set, is 17.6 g/bhp-hr. The weighted average of these three data sets is 17.5 g/bhp-hr.[22]

In response to comments, we collected additional test data to better determine controlled and uncontrolled emission levels from the current population of large engines in the $NO_X$ SIP Call area. Forty-two data points were collected (see RTC or TSD for details). The average uncontrolled $NO_X$ level from this data is 16.7 g/bhp-hr, nearly identical to the proposed level of 16.8 g/bhp-hr.

As suggested by commenters, we also examined the available data separately for 2- and 4-stroke engines. The test data for the large IC engines in the $NO_X$ SIP Call area indicate uncontrolled levels of 16.4 and 18.9, respectively, for the 2-

[19] **Note:** Use of a higher uncontrolled value would result in a higher overall percentage control value. For example, assuming a control level of 3.0 g/bhp-hr the percentage control value would be 82 percent using 16.8 g/bhp-hr as the uncontrolled level and 75 percent using 12.0 as the uncontrolled level.

[20] See footnotes "(a)'' to Tables 3.2–1 and 3.2–2 in the July 2000 AP–42 document.

[21] The letter addressed concerns regarding the OTC's development of a set of model $NO_X$ rules, including rules for stationary IC engines.

[22] The weighted average was calculated as follows: $(66 \times 18.2 + 14 \times 14.1 + 62 \times 17.6)$ divide sum by 142 = 17.5.

and 4-stroke engines. Using information from the pipeline industry that about 85 percent of the engines in the $NO_X$ SIP Call area are 2-stroke, the weighted average of the 16.4 and 18.9 values is 16.8, identical to our proposed value.[23]

As described in the 1994 ACT document for stationary IC engines, uncontrolled emission levels were provided to us by several engine manufacturers. Most manufacturers provided emission data only for current production engines, but some included older engine lines as well. The manufacturers' letters were placed in the docket. These emission levels were tabulated and averaged for engines with similar power ratings. For engines greater than 2000 hp, the average uncontrolled emission rate from 55 engines is approximately 16.8 g/bhp-hr. As noted in the TSD, there are several reasons to use the 1994 ACT document data. Using the applicable 1994 ACT document is consistent with how we treated other non-EGU source categories in the $NO_X$ SIP Call rulemaking. The 1994 ACT document provides a comprehensive look at the IC engine class and has the advantage of using a consistent data set for uncontrolled emissions, costs, and controls. The 1994 ACT document uses a large data set from which to draw conclusions. The 1994 ACT document test data are available in several horsepower size categories which is important since we chose not to calculate emissions reductions from the smaller IC engines.

In summary, based on the 1994 ACT document data, the data contained in the industry letters to OTC and data we recently collected, there is considerable agreement with the 16.8 g/bhp-hr uncontrolled emission rate value that we proposed. The data do not support commenters suggestion for a lower value, namely 11.7 g/bhp-hr for 2-stroke engines and 15.1 g/bhp-hr for 4-stroke engines. Therefore, we conclude that use of the 16.8 g/bhp-hr level is appropriate to represent average, uncontrolled emissions.

(2) $NO_X$ controlled emission rate with LEC technology.

*Comment:* Appendix B to INGAA's April 22, 2002 comment letter lists 226 lean-burn large and small IC engines in the $NO_X$ SIP Call States that are retrofit with LEC technology and for which they could obtain State $NO_X$ permit limits. The average post-control $NO_X$ permit levels for 2-stroke and 4-stroke engines are reported to be 5.0 and 3.7, respectively. The INGAA states that $NO_X$ permit limits are appropriate for use in calculating the average post-control emission rate for lean-burn engines in the $NO_X$ SIP Call area for the following reasons:

- These engines are located in the $NO_X$ SIP Call States, and represent the same makes and models as the large $NO_X$ SIP Call engines,
- These engines operate under State permit limits that reflect the emission control achieved by LEC on actual and identified individual engines,
- The emission control limits were established as the result of a formal regulatory process conducted by the State permitting agencies, and
- The LEC retrofits are consistent with the technology and costs identified by our $NO_X$ SIP Call TSDs.

*Response:* We disagree that permit limits are appropriate for determining the post-control emission rate. Permit limits generally do not reflect the actual emission rate and, thus, are not appropriate to determine the emission rates to be expected from installation of LEC technology. For example, State records indicate permit limits of 18 and 8 even though LEC technology is in place and the target emission rate in the State RACT plan is 3 for both engines.[24] In another case, the permit level is 3.0, but the actual rate is reported as 1.7.[25] The permit limits for six engines at a station in one State are 3.0 g/bhp-hr while the test data show emissions at less than 1.1 g/bhp-hr for each engine.[26] We agree with the comment that LEC retrofits are consistent with the costs identified by our $NO_X$ SIP Call TSDs.

Further, if we were to use permit rates, it makes no sense to ignore permit limits set in areas outside the $NO_X$ SIP Call region. California and Texas permits, for example, have very low emission rates for IC engines.[27] The permit levels suggested by commenters are limited because the permits generally reflect RACT requirements. However, highly cost-effective controls under the $NO_X$ SIP Call are not limited to RACT-level stringency and should take into account improvements in control efficiency and cost effectiveness that have occurred over the last several years since the RACT generation of controls.

*Comment:* Commenters state that data we used to support the proposed controlled levels[28] are for new or rebuilt engines—not retrofits—and therefore, cannot be relied upon. They suggest we should use $NO_X$ limits for engines retrofit with LEC in State permits and that the permits suggest no more than a 70 percent reduction.[29] Several commenters indicate it is important to examine the specific engines in the $NO_X$ SIP Call States to determine whether the reductions we assumed are achievable. Comments suggest that industry experience through RACT retrofits, has demonstrated that the stringent emission rates of 1.5 to 3.0 g/bhp-hr are not achievable on many engines and the average emission reduction to be expected for LEC retrofits is 70 percent. Comments from the New Hampshire Department of Environmental Services expressed support for a 90 percent control level.

*Response:* The commenters and EPA agree that LEC technology is a proven technology for natural gas-fired lean-burn engines.[30] There is not agreement, however, on the appropriate level of control to assume from installation of the LEC technology. In response to comments, we collected additional test data, including data representative of emissions from large engines in the $NO_X$ SIP Call area. To determine the appropriate level of control, we examined all available data, including data from State permits and test data on new, rebuilt, and retrofit engines with LEC technology. These data were placed in the docket. A summary of the data is provided below. As suggested by commenters, the data have been organized to show LEC retrofit test data

[23] For large lean-burn IC engines in the $NO_X$ SIP Call States, 2-stroke engines represent 83 percent of the total large engines and 85 percent of the total large engine horsepower. (From INGAA's April 22, 2002 comments, pages 2 and 10.) (Docket No. OAR–2001–0008, Item No. XII–D–09).

[24] See docket for e-mail from John Patton dated May 30, 2002 and attachments. (Docket No. OAR–2001–0008, Item No. 0917).

[25] See Docket No. OAR–2001–0008, Item No. XII–M–01 for November 20, 2000 letter, appendices A & B.

[26] See Docket No. OAR–2001–0008, Item No. 0921 for June 5, 2002 fax from Randy Hamilton.

[27] Ventura County Rule 74.9 (in effect September 1989 to December 1993) applied to engines greater than or equal to 100 hp and required 125 ppm (1.7 g/bhp-hr) or 80 percent control. Current Ventura County Rule 74.9 requires 45 ppmv (0.6 g/bhp-hr) or 94 percent control. For best available retrofit control technology, California Air Resources Board selected for engines greater than or equal to 100 hp 65 ppm (0.9 g/bhp-hr) or 90 percent control, based on Sacramento Air Quality Management Division Rule 412. In Texas, requirements applicable in Houston are 0.5–0.6 g/bhp-hr for lean-burn engines.

[28] We proposed to select a value within the range of 82 to 91 percent control (1.5-3.0 g/bhp-hr controlled level assuming 16.8 uncontrolled level) based primarily on information in the 1994 ACT document.

[29] This equates to a 5.0 g/bhp-hr limit, assuming an uncontrolled level of 16.8 g/bhp-hr.

[30] For example, November 30, 1998 letter from INGAA to EPA (Docket No. OAR–2001–0008, Item No. 0919), February 16, 1999 memo from INGAA to Tom Helms, EPA (Docket No. OAR–2001–0008, Item No. XII–K–38), and April 26, 2002 comment letter from Kinder Morgan (Natural Gas Pipeline Company of America) (Docket No. OAR–2001–0008, Item No. XII–D–24).

for large engine models found in the $NO_X$ SIP Call area.

The INGAA in their April 22, 2002 comments, identified the most common models of large natural gas transmission engines in the $NO_X$ SIP Call area. In addition, INGAA identified engines that had been retrofit with LEC in the $NO_X$ SIP Call area. In response to these comments, we contacted the various EPA Regional Offices to obtain information on specific large lean-burn engines used by the gas pipeline industry that have been retrofit with LEC in the $NO_X$ SIP Call area. Data from the EPA Regional Offices and other emission test results were obtained. The results for large engines in the $NO_X$ SIP Call area show that 43 of the 58 tests have $NO_X$ emission levels at or below 3.0 g/bhp-hr (see RTC or TSD for details). The LEC technology retrofit on these large engines achieved, on average, an emission rate of 2.3 g/bhp-hr.

As suggested by commenters, we also examined the available data separately for 2- and 4-stroke engines (see TSD for details). Test data for the large IC engines in the $NO_X$ SIP Call area indicate controlled levels of 2.3 and 2.5, respectively, for the 2- and 4-stroke engines. Assuming 85 percent of the engines in the $NO_X$ SIP Call area are 2-stroke, the weighted average of the 2.3 and 2.5 values is 2.3.

As described in the TSD, looking at a broader set of data yields similar results. That is, considering data from large engines both inside and outside the $NO_X$ SIP Call area shows that 60 of the 79 tests have $NO_X$ emission levels at or below 3.0 g/bhp-hr (see TSD for details). The LEC technology retrofit on these large engines achieved, on average, an emission rate of 2.2 g/bhp-hr. Considering the similarity of the resulting average controlled emission rates and the ample set of data for large engines in the $NO_X$ SIP Call area, we agree with commenters that it is reasonable to focus on the set of data for large engines in the $NO_X$ SIP Call area.

The set of data for large engines in the $NO_X$ SIP Call area cover 80 percent of the engine models in the $NO_X$ SIP Call area. However, emission rates for some of the engine models for which test data are not available are likely to be higher than the 2.3 average value. For example, Worthington and Nordberg engines are known to be difficult to retrofit. One vendor reported achieving a level of 6 g/bhp-hr for certain Worthington engines.[31] As noted in the TSD, a Worthington UTC 165 in New York reduced $NO_X$ emissions to 4.4 g/hp-hr. A pipeline company commented that they operate six Worthington engines and that 4.0 g/bhp-hr is their targeted emission reduction level, based on vendor projections.[32] Thus, it appears that a 4.0 to 6.0 g/bhp-hr level is achievable on these difficult to retrofit Worthington engines. At this time, we believe that 5.0 g/bhp-hr is a reasonable emission rate, on average, for engines known to be difficult to retrofit. Although not all of the 20 percent of engine models for which test data are not available are likely to be difficult to retrofit, we believe it is reasonable to treat these engines as one group and to conservatively assume that this group of engines would achieve a 5.0 level, on average.

In summary, based on the available test data, we believe it is reasonable to assume about 80 percent of the large engines in the $NO_X$ SIP Call area are able to meet a 2.3 level, on average, and that 20 percent are able to meet a 5.0 level, on average with LEC technology. Thus, calculating the weighted average for installation of LEC technology retrofit on all of these large IC engines results in a 2.8 g/bhp-hr limit.

*Comment:* In their letter of October 25, 2002, INGAA commented that the additional data we collected includes data on 27 lean-burn engines and the data indicate that the average retrofit LEC technology level is 2.7 g/bhp-hr for 2-stroke engines, which represent the bulk of the engine horsepower in the $NO_X$ SIP Call area. In addition, INGAA commented that the data reported on the IC engines retrofit with LEC have a number of problems, including scarcity of before-and-after tests on the same engine, and the absence of data on load or other operating conditions of the tested engines. The INGAA also commented that the vendor references we cited indicate that the retrofit LEC technology is intended to result in emissions to meet a 3 g/bhp-hr limit.

*Response:* We agree that test data cited by INGAA and the vendor estimates indicate that the average retrofit LEC technology level is in the 2.7 to 3.0 g/bhp-hr range. We also note that these comments are fairly consistent with a November 20, 2000 letter to the OTC from two pipeline companies which recommended a limit of no less than 3.0 g/bhp-hr, with an alternative standard of no more than 80 percent reduction. This range is also consistent with the available test data for large engines in the $NO_X$ SIP Call area which indicate an average value of 2.8 g/bhp-hr.

As INGAA points out, there is some uncertainty in the test data due, for example, to lack of data on operating load in some cases. In addition, there is some uncertainty because of the lack of data for all engine models. Due to this uncertainty, we believe it is appropriate to consider a minor adjustment to the control level suggested by the test data. The difference between selecting a 2.8 value (suggested primarily by the test data) or a 3.0 value (suggested by some pipeline companies and vendor comments) for the controlled emission rate is very small, only a 1 percent difference. That is, the two values result in either an 82 percent or 83 percent control level, assuming a 16.8 g/bhp-hr uncontrolled value. Thus, while our analysis of the test data indicates a 2.8 value is reasonable, in view of the recommended 3.0 level from some industry and vendor comments, and considering the uncertainties in the data and the small difference in the resultant control level, we believe it is appropriate to select the upper range of the control levels proposed, namely 3.0 g/bhp-hr.

(3) Level of $NO_X$ control to assume for budget calculation.

*Comment:* In the proposed rule we invited comment on how many of the large natural gas-fired IC engines are from lean-burn operation and how many are from rich-burn. The INGAA commented that 156 of the 168 large engines listed in the $NO_X$ SIP Call Inventory that have Standard Industrial Classification codes associated with the natural gas transmission industry are lean-burn models, with one exception. For the purposes of calculating the IC engine portion of the $NO_X$ SIP Call State budgets, INGAA recommended that we should assume that all the large natural gas-fired stationary engines in the inventory are lean burn. Comments from the State of Indiana indicated there are no large, rich-burn engines in the State.

*Response:* As pointed out by the commenters, the vast majority of large IC engines in the $NO_X$ SIP Call inventory are natural gas-fired lean-burn engines. Furthermore, the emission inventory does not contain sufficient detail to determine exactly which engines are lean burn and which are not. For these reasons, we agree with the comment that it is reasonable to assume that all the large natural gas stationary engines in the inventory are lean burn for the purposes of calculating the IC engine portion of the $NO_X$ SIP Call State budgets.

[31] "Stationary Reciprocating Internal Combustion Engines: Updated Information on $NO_X$ Emissions and Control Techniques," EC/R Incorporated, September 1, 2000, page 4–5 (Docket No. OAR–2001–0008, Item No. XII–K–43).

[32] Docket No. OAR–2001–0008, Item No. XII–D–24.

*Comment:* As discussed above, we received comments on the uncontrolled and controlled levels for natural gas-fired engines. Several commenters recommended no more than 70 percent reduction, based primarily on permit data. One State recommended 90 percent reduction.

*Response:* The percent reduction determination is based primarily on two factors—the uncontrolled and controlled levels—which are discussed above. We reviewed information submitted by commenters and collected additional data in response to concerns raised by commenters. Considering all of the available data, we have determined that the appropriate uncontrolled and controlled values are 16.8 and 3.0, respectively. As a result, we believe that application of highly cost-effective controls on large natural gas-fired IC engines will achieve, on average, an 82 percent reduction. Therefore, 82 percent is used for purposes of calculating this portion of the $NO_X$ SIP Call budget.

b. Flexibility/Averaging

*Comment:* Several commenters noted that the response of IC engines to retrofit $NO_X$ controls is highly variable and that the average $NO_X$ reduction used to calculate the $NO_X$ SIP Call budgets is not necessarily the level that all large engines can achieve. Because of this variability, these commenters suggest that State air agencies should assign $NO_X$ reductions to the owners or operators of IC engines, but not attempt a uniform definition of the required control technology, or specification of a single compliance limit. The commenters suggest that we include language in the final rule stating that we recommend, and will approve, SIPs which provide that owners or operators of large engines in the $NO_X$ SIP Call inventory develop company-specific compliance plans to demonstrate achievement of $NO_X$ reductions. In addition to describing the standards for emissions reductions averaging in the final rule, commenters suggested that we issue a guidance letter to the States urging them to provide flexibility for IC engines and explaining how to do that. The industry lists a number of advantages to the company compliance plan approach to meeting the engine $NO_X$ reductions in the $NO_X$ SIP Call Rule:

- Engine owners and operators would accept enforceable and verifiable measures to control engines to meet assigned $NO_X$ SIP Call reductions.
- Based on the company compliance plans, States would be able to clearly demonstrate to us their compliance with Phase II of the $NO_X$ SIP Call.
- The EPA, States, and regulated companies would not have to work through the technical confusion of definitions of lean-burn and rich-burn engines, and whether individual engines could in fact achieve certain control levels with a prescribed control technology.
- Compliance with $NO_X$ SIP Call requirements could be achieved with minimum impacts on cost, natural gas capacity, and operational reliability.

One pipeline company stated that we should encourage States implementing the engine portion of the $NO_X$ SIP Call to focus primarily on the population of large engines which emitted more than 1 ton per day during the 1995 ozone season and which formed the basis for our calculation of the desired emissions reductions. Retrofitting this population of engines is more feasible and is the most cost-effective method for achieving reductions due to economies achieved by controlling larger sources.

*Response:* We addressed this issue in a guidance memorandum dated August 22, 2002. As discussed in the reference memorandum,[33] where States choose to regulate large IC engines, we encourage the States to allow owners and operators of large IC engines the flexibility to achieve the $NO_X$ tons/season reductions by selecting from among a variety of technologies or a combination of technologies applied to various sizes and types of IC engines. Flexibility would be helpful as companies take into account that individual engines or engine models may respond differently to control equipment. That is, while certain controls are known to have a specific average control effectiveness for an engine population, some individual engines that install the controls would be expected to be above and some below that average control level, simply because it is an average. Although the issue of flexibility does not affect the setting of the $NO_X$ SIP Call budget, it is an important issue as States take steps to meet their $NO_X$ SIP Call requirements.

During the SIP development process, the States may establish an $NO_X$ tons/season emissions decrease target for individual companies and then provide the companies with the opportunity to develop a plan that would achieve the needed emissions reductions. The companies may select from a variety of control measures to apply at their various emission units in the State, or portion of the State, affected under the $NO_X$ SIP Call. These control measures would be adopted as part of the SIP and must yield enforceable and demonstrable reductions equal to the $NO_X$ tons/season reductions required by the State. What is important from our perspective is that the State, through a SIP revision, demonstrate that all the control measures contained in the SIP are collectively adequate to provide for compliance with the State's $NO_X$ budget during the 2007 ozone season.

c. New Source Review (NSR) Exclusion

*Comment:* Some commenters stated that the final rule should provide an exemption from NSR regulations for IC engines that install $NO_X$ controls for compliance with the $NO_X$ SIP Call. According to the commenters, installation of the required emission controls will likely result in increases in emissions of carbon monoxide (CO) and/or volatile organic compounds (VOC); the resulting emission increases could exceed the "significant'' levels for CO or VOC, thereby subjecting those facilities to either prevention of significant deterioration (PSD) or nonattainment NSR permit requirements; and, this would increase the compliance costs. Pipeline industry comments request that we expressly state in our final remand response that installing controls on IC engines to meet $NO_X$ SIP Call requirements will not trigger NSR for $NO_X$ under the "actual-to-potential'' test. Commenters also request that we state that installing retrofit controls is an "environmentally beneficial'' action that qualifies for an NSR exclusion for any collateral increases of other criteria pollutants.

*Response:* As discussed in the earlier referenced memorandum,[34] where sources choose to install combustion modification technology to reduce emissions of $NO_X$ at natural gas-fired lean-burn IC engines, we believe this action should be considered by permitting authorities for exclusion from major NSR as a pollution control project. Further, the memo indicates that, unless information regarding a specific case indicates otherwise, installation of combustion modification technology for the purpose of reducing $NO_X$ emissions at natural gas-fired lean-burn IC engines can be presumed, by its nature, to be environmentally beneficial. We recently stated our intent to modify

[33] August 22, 2002 memo from Lydia Wegman to EPA Regional Air Directors providing guidance on issues related to stationary IC engines and the $NO_X$ SIP Call (Docket No. OAR–2001–0008, Item No. XII–C–115).

[34] August 22, 2002 memo from Lydia Wegman to EPA Regional Air Directors providing guidance on issues related to stationary IC engines and the $NO_X$ SIP Call (Docket No. OAR–2001–0008, Item No. XII–C–115).

the "actual to potential'' test.[35] In most cases, we believe that LEC retrofit technology will not increase emissions of CO or VOC to the extent that NSR is triggered; in many cases, emissions of CO and VOC will decrease with the installation of LEC technology (see RTC document for details). Thus, we believe that the permit process will not hamper efforts to install controls.

d. Early Reductions

*Comments:* Industry comments recommend that we provide specific guidance in the final rule that directs States to recognize emissions reductions that companies have made since 1995, and that companies should be allowed credit for emissions reductions achieved since 1995 for determining compliance with their portion of the States' emissions reductions required to meet the emissions budgets.

*Response:* We addressed this issue in the above mentioned guidance memorandum. As discussed in the memo, we agree that creditable reductions with respect to the $NO_X$ SIP Call may include emission controls in place during or prior to 1995, as well as after 1995 for the large engines. In addition, States generally may use emissions reductions achieved after 1995 at the smaller engines as part of their $NO_X$ SIP Call budget demonstration.

e. Presumptive Technology

*Comment:* Because of the variability of gas pipeline engines in the $NO_X$ SIP Call area, industry commenters suggest that State air agencies should assign $NO_X$ reductions to the owners or operators of IC engines, but not attempt a uniform definition of the required control technology, or specification of a single compliance limit. There is significant variability both in the pre-controlled emission levels of lean-burn engines and in the response of any particular engine to the retrofit installation of LEC technology.

*Response:* As suggested, we have dropped from the final rulemaking the definition of LEC retrofit technology and the presumption of $NO_X$ reduction effectiveness. The definition and presumption are not necessary to establish the $NO_X$ budget. Nevertheless, we believe that, on average, LEC technology achieves an 82 percent reduction from uncontrolled emissions.

f. Monitoring

*Comment:* Industry comments recommended that we should specify in the final rule the types of monitoring that will be acceptable.

*Response:* We addressed this issue in the August 22, 2002 guidance memorandum. As discussed in the memo, acceptable monitoring is not limited to those monitoring methods such as continuous or predictive emissions measurement systems that rely on automated data collection from instruments. Non-automated monitoring may provide a reasonable assurance of compliance for IC engines provided such periodic monitoring is sufficient to yield reliable data for the relevant time periods determined by the emission standard.

g. Emission Factors for 2- and 4-Stroke Engines

*Comment:* Some commenters asked us to use separate emission factors for 2- and 4-stroke engines.

*Response:* As described above, we examined "uncontrolled'' emissions from 2- and 4-stroke engines separately and concluded that the data support the 16.8 value we proposed. We also examined the available "controlled'' data separately for 2- and 4-stroke engines. Test data for the large IC engines in the $NO_X$ SIP Call area indicate controlled levels of 2.3 and 2.5, respectively, for the 2- and 4-stroke engines. Assuming 85 percent of the engines in the $NO_X$ SIP Call area are 2-stroke, the weighted average of the 2.3 and 2.5 values is 2.3. Thus, because the 2-stroke engines dominate the $NO_X$ SIP Call inventory and the controlled value for the 4-stroke engines is nearly identical, there is no benefit from using separate emission factors. Furthermore, our emission inventory is not detailed enough to identify which engines are 2- or 4-stroke engines; thus, we need to use an average value to represent the combined population of large, lean-burn engines. We believe the difference between the two values is relatively small, there is a great deal of overlap, some key industry reports also use a single value, the available data for 2- and 4-stroke engines support the value we proposed, control techniques are the same, and we have already subdivided the category of IC engines. For these reasons, we have chosen not to further subdivide the IC engines category.

*C. What Is Our Response to the Court Decision on Georgia and Missouri?*

In today's final action, we are finalizing our inclusion of only certain portions of Georgia and Missouri in the $NO_X$ SIP Call and revising their statewide budgets to reflect our inclusion of only sources in the fine grid parts of both States.

As stated in the final $NO_X$ SIP Call Rule, air pollution travels across county and State lines and it is essential for State governments and air pollution control agencies to cooperate to solve the problem. Ozone transport is a regional problem and we believe that $NO_X$ emissions reductions across the region in amounts achievable by cost-effective controls is a reasonable step to take to mitigate ozone nonattainment in downwind States (63 FR 57362). These emissions reductions, in combination with other measures, will enable attainment and maintenance of the 1-hour ozone NAAQs in the OTAG region.[36] Since the problem is a regional one, we believe that all States in the $NO_X$ SIP Call area must cooperate to solve the problem.

By way of background, we took final action on October 27, 1998, in the $NO_X$ SIP Call Rule, to prohibit those amounts of $NO_X$ emissions which significantly contribute to downwind nonattainment. *See,* $NO_X$ SIP Call Rule, 63 FR 57356. We determined the amount of emissions that significantly contribute to downwind nonattainment by evaluating:

(1) The overall nature of the ozone problem (*i.e.* "collective contribution''); (2) the extent of the downwind nonattainment problems to which the upwind State's emissions are linked, including the ambient impact of controls required under the CAA or otherwise implemented in the downwind areas; (3) the ambient impact of the emissions from the upwind State's sources on the downwind nonattainment problems; and (4) the availability of highly cost-effective control measures for upwind emissions. (63 FR 57376, October 27, 1998).

As part of our analyses of the air quality factors we considered the OTAG modeling and our State-specific modeling. Id. at 57384.

In its modeling, OTAG used grids drawn across most of the eastern half of the United States. The "fine grid'' has grid cells of approximately 12 kilometers on each side (144 square kilometers). The "coarse grid'' extends beyond the perimeter of the fine grid and has cells with 36 kilometer

[35] In the **Federal Register** on December 31, 2002, EPA codified/finalized the Pollution Prevention Project exclusion. In Table 2, Environmentally Beneficial Pollution Control Projects, LEC for IC engines is mentioned. However, for the present time, the regulatory changes generally only affect States with delegation authority to implement the Federal PSD program which became effective on March 3, 2003. For States continuing to implement their existing programs for another 2 to 3 years, the August 22, 2002 guidance memo mentioned above, is appropriate.

[36] OTAG Policy Paper approved by the Policy Group on December 4, 1995.

resolution. The fine grid includes the area encompassed by a box with the following geographic coordinates as shown in Figure 1, below: Southwest Corner: 92 degrees West longitude, 32 degrees North latitude; Northeast Corner: 69.5 degrees West longitude, 44 degrees North latitude (OTAG Final Report, chapter 2). The OTAG could not include the entire Eastern U.S. within the fine grid because of computer hardware constraints.

It is important to note that there were three key factors directly related to air quality which OTAG considered in determining the location of the fine grid-coarse grid line.[37] (OTAG Technical Supporting Document, chapter 2, pg. 6; also available at the following Web site: *http://www.epa.gov/ttn/naaqs/ozone/rto/otag/finalrpt/*). Specifically, the fine grid-coarse grid line was drawn to:

(1) Include within the fine grid as many of the 1-hour ozone nonattainment problem areas as possible and still stay within the computer and model run time constraints, (2) avoid dividing any individual major urban area between the fine grid and coarse grid, and (3) be located along an area of relatively low emissions density. As a result, the fine grid-coarse grid line did not track State boundaries, and Missouri and Georgia were among several States that were split between the fine and coarse grids. Eastern Missouri and northern Georgia were in the fine grid while western Missouri and southern Georgia were in the coarse grid.

The analysis OTAG conducted found that the emission controls they examined, when modeled in the entire coarse grid (*i.e.,* all States and portions of States in the OTAG region that are in the coarse grid) had little impact on high 1-hour ozone levels in the downwind ozone problem areas of the fine grid.[38] The OTAG also concluded from its modeling that the closer an upwind area is to the downwind area, the greater the benefits in the downwind area from controls in the upwind area.

Examining the 2007 Base Case[39] $NO_X$ emissions for Georgia indicates that the amount of $NO_X$ emissions per square mile in the fine grid portion of the State is over 60 percent greater than in the coarse grid part. In Missouri, the amount of $NO_X$ emissions per square mile in the fine grid portion of the State is more than 100 percent greater (*i.e.,* more than double) than in the coarse grid part.

A number of parties, including certain States as well as industry and labor groups challenged the $NO_X$ SIP Call Rule. Specifically, Georgia and Missouri industry petitioners claimed that our record supported inclusion of only eastern Missouri and northern Georgia as contributing significantly to downwind nonattainment. The DC Circuit Court upheld our finding of significant contribution for almost all jurisdictions covered by the $NO_X$ SIP Call, but vacated and remanded our inclusion of Georgia and Missouri. *Michigan* v. *EPA,* 213 F. 3d 663 (DC Cir. 2000), cert. denied, 121 S. Ct. 1225 (2001) (*Michigan*). The Court found that the $NO_X$ budgets for these States "not only encompass the whole state but are calculated on the basis of hypothesized cutbacks from areas that have *not* been shown to have made significant contributions.'' Id. at 684 (emphasis in original). The Court also found that "*EPA must first establish that there is a measurable contribution*'' from the coarse grid portion of the State before holding the coarse grid portion of the State responsible for the significant contribution of downwind ozone nonattainment in another state. Id. at 683–84 (emphasis in original).

Subsequently, we made revisions to the $NO_X$ SIP Call Rule emissions budgets in the Technical Amendments Rulemakings (64 FR 26298, May 14, 1999); (65 FR 11222, March 2, 2000). A group of Missouri Utilities and the City of Independence, Missouri challenged our budget for the State of Missouri and requested the Court to vacate the entire budget under both the 1-hour and 8-hour ozone standards. In its decision, the Court found "it prudent to vacate and remand the TAs [technical amendments] insofar as they include[d] a budget for Missouri under any ozone standard.'' *Appalachian Power Company* v. *EPA,* 251 F. 3d 1026, 1041 (2001). The Court also found that "[w]here the agency's own data inculpate part of a state and not another, EPA should honor the resulting findings.'' Id. at 1040.

In response to the Court's decisions, we issued the February 22, 2002 rule proposing to include only fine grid parts of Georgia and Missouri in the $NO_X$ SIP Call. We explained that the Court in *Michigan* did not call into question our "proposition that the fine grid portion of each State should be considered to make a significant contribution downwind.'' (67 FR 8413).

We stated that based on OTAG's modeling and recommendations, the technical support documents for the $NO_X$ SIP Call rulemaking, and emissions data, we believed that emissions in the fine grid parts of Georgia and Missouri comprise a measurable or material portion of the entire State's significant contribution to downwind nonattainment. In addition, we explained that we had performed State-by-State modeling for Georgia and Missouri as part of the final $NO_X$ SIP Call rulemaking. The results of this modeling showed that emissions in both Georgia and Missouri make a significant contribution to nonattainment in other States. Moreover, we explained that the Court pointed out that the fine grid portion of each State lies closer to downwind nonattainment areas. *Michigan* v. *EPA,* 213 F. 3d at 683.

We further explained that for purposes of determining budgets for the fine grid portion, we believed that OTAG modeling should be used with an adjustment for counties that straddle the line separating the fine grid and coarse grid. We also explained that we would base our overall $NO_X$ emissions budgets on all counties which lie wholly contained in the fine grid, as a result of the difficulties and uncertainties associated with accurately dividing the fine and coarse grid for individual counties. Counties that straddle the fine grid-coarse grid line or which are completely within the coarse grid would be excluded from the budget calculations for Georgia and Missouri. As a result, we proposed to revise the $NO_X$ budgets for Georgia and Missouri to include only the fine grid portions of these States.

In response to our proposal, several commenters asserted that our inclusion of the fine grid portions of the States of Georgia and Missouri was not supported by reliable data in light of the Court's ruling in *Michigan* and requested additional air quality modeling for these portions. A couple of commenters submitted air quality modeling and one commenter requested reconsideration of our inclusion of sources that lie "just inside the fine grid.'' Other commenters argued that no $NO_X$ SIP Call exists for the States of Georgia and Missouri in light of the Court's holdings in *Michigan* and *Appalachian Power* (Technical Amendments Case). They further argued that the Agency must make independent findings of significant contribution for both eastern Missouri and northern Georgia, respectively. One commenter also contended that we could not base our findings on existing data but must

[37] In addition to these three factors, OTAG considered three other factors in establishing the geographic resolution, overall size, and the extent of the fine grid. These other factors dealt with the computer limitations and the resolution of available model inputs.

[38] The OTAG recommendation on Major Modeling/Air Quality Conclusions approved by the Policy Group, June 3, 1997 (62 FR 60318, appendix B, November 7, 1997).

[39] The 2007 Base Case includes all control measures required by the CAA.

consider new circumstances and any changes in air quality since promulgation of the $NO_X$ SIP Call Rule. Another commenter requested that we not exclude sources in any county that partially lies within the coarse grid area in the affected States.

Under today's final rulemaking, we are finalizing our proposal to include the fine grid portions of Georgia and Missouri as contributing significantly to downwind nonattainment. We believe this is consistent with the Court's pronouncements in *Michigan.* Specifically, the Court found that "[t]he fine grid modeling of *parts* of Missouri and Georgia showed emissions in the aggregate meeting the EPA's threshold 'contribution' criteria.'' Michigan, 213 F.3d at 683 (emphasis in original). The Court also found that it was "no mere techno-fortuity that the fine grid included enough of Missouri to include the city of St. Louis and enough of Georgia to include Atlanta: [because] the fine grid portions of both states are closest to other nonattainment areas, such as Chicago and Birmingham, and generally higher ozone density.'' *Id.*

We see no reason to revise the existing determination that sources in the fine grid parts of Georgia and Missouri contribute significantly to downwind nonattainment. As explained in our proposal, the basis for our determination continues to be: (1) The results of our State-by-State modeling; (2) the relatively high amount of $NO_X$ emissions per square mile in the fine grid portions of each State; and (3) the closeness of the fine grid portions of each State to downwind nonattainment areas compared to the coarse grid portions (67 FR 8414).

Additionally, we note that Georgia and Missouri industry petitioners maintained, as we believe, that there was record support for inclusion of emissions from the eastern half of Missouri and the northern-two thirds of Georgia as contributing to downwind ozone problems. As the Court stated, "[a]ccordingly, they say the $NO_X$ Budget for Missouri and Georgia should be based solely on those emissions.'' *Michigan* 213 F.3d at 684. We have also evaluated the modeling submitted by one commenter and we find that this modeling does not refute our conclusion that sources in the fine grid portions of Georgia and Missouri contribute significantly to downwind nonattainment, as discussed below.

Accordingly, consistent with the Court's finding in *Michigan,* we have revised the $NO_X$ emissions budgets for Georgia and Missouri to include only the fine grid portions of these States. The counties that are included in the calculation of $NO_X$ budgets for each of these States are listed in Table 1.

TABLE 1.—FINE GRID COUNTIES IN GEORGIA AND MISSOURI

| |
|---|
| **Georgia:** |
| Baldwin Co |
| Banks Co |
| Barrow Co |
| Bartow Co |
| Bibb Co |
| Bleckley Co |
| Bulloch Co |
| Burke Co |
| Butts Co |
| Candler Co |
| Carroll Co |
| Catoosa Co |
| Chattahoochee Co |
| Chattooga Co |
| Cherokee Co |
| Clarke Co |
| Clayton Co |
| Cobb Co |
| Columbia Co |
| Coweta Co |
| Crawford Co |
| Dade Co |
| Dawson Co |
| De Kalb Co |
| Dooly Co |
| Douglas Co |
| Effingham Co |
| Elbert Co |
| Emanuel Co |
| Evans Co |
| Fannin Co |
| Fayette Co |
| Floyd Co |
| Forsyth Co |
| Franklin Co |
| Fulton Co |
| Gilmer Co |
| Glascock Co |
| Gordon Co |
| Greene Co |
| Gwinnett Co |
| Habersham Co |
| Hall Co |
| Hancock Co |
| Haralson Co |
| Harris Co |
| Hart Co |
| Heard Co |
| Henry Co |
| Houston Co |
| Jackson Co |
| Jasper Co |
| Jefferson Co |
| Jenkins Co |
| Johnson Co |
| Jones Co |
| Lamar Co |
| Laurens Co |
| Lincoln Co |
| Lumpkin Co |
| McDuffie Co |
| Macon Co |
| Madison Co |
| Marion Co |
| Meriwether Co |
| Monroe Co |
| Morgan Co |
| Murray Co |
| Muscogee Co |

TABLE 1.—FINE GRID COUNTIES IN GEORGIA AND MISSOURI—Continued

| |
|---|
| Newton Co |
| Oconee Co |
| Oglethorpe Co |
| Paulding Co |
| Peach Co |
| Pickens Co |
| Pike Co |
| Polk Co |
| Pulaski Co |
| Putnam Co |
| Rabun Co |
| Richmond Co |
| Rockdale Co |
| Schley Co |
| Screven Co |
| Spalding Co |
| Stephens Co |
| Talbot Co |
| Taliaferro Co |
| Taylor Co |
| Towns Co |
| Treutlen Co |
| Troup Co |
| Twiggs Co |
| Union Co |
| Upson Co |
| Walker Co |
| Walton Co |
| Warren Co |
| Washington Co |
| White Co |
| Whitfield Co |
| Wilkes Co |
| Wilkinson Co |
| **Missouri:** |
| Bollinger Co |
| Butler Co |
| Cape Girardeau Co |
| Carter Co |
| Clark Co |
| Crawford Co |
| Dent Co |
| Dunklin Co |
| Franklin Co |
| Gasconade Co |
| Iron Co |
| Jefferson Co |
| Lewis Co |
| Lincoln Co |
| Madison Co |
| Marion Co |
| Mississippi Co |
| Montgomery Co |
| New Madrid Co |
| Oregon Co |
| Pemiscot Co |
| Perry Co |
| Pike Co |
| Ralls Co |
| Reynolds Co |
| Ripley Co |
| St. Charles Co |
| St. Genevieve Co |
| St. Francois Co |
| St. Louis Co |
| St. Louis City |
| Scott Co |
| Shannon Co |
| Stoddard Co |
| Warren Co |
| Washington Co |
| Wayne Co |

We are not making a finding today as to whether sources in the coarse grid portions of Georgia and/or Missouri make a measurable or material part of the significant contribution of each of these States, respectively. In addition, apart from our findings relating to the $NO_X$ SIP Call, a State may, of course, assess the in-State impacts of $NO_X$ emissions from its coarse grid area, and impose additional $NO_X$ reductions, beyond the $NO_X$ SIP Call requirements in the fine grid, as necessary to demonstrate attainment or maintenance of the ozone NAAQS in the State.

*Comment:* Several commenters supported our inclusion of the fine grid portions of Missouri and Georgia. One commenter requested that we not exclude sources within any county that partially lies within the coarse grid area in the affected States.

*Response:* Today's action is in response to the court's decision that vacated our inclusion of the entire States of Georgia and Missouri. *Michigan* v. *EPA*, 213 F.3d 663. (DC Cir. 2000), *cert. denied*, 121 S. Ct. 1225 (2001) (*Michigan*). "*EPA must first establish that there is a measurable contribution''* from the coarse grid portion of the State before holding the coarse grid portion responsible for the significant contribution of downwind ozone nonattainment in another state. Id. at 683–84 (emphasis in original).

As explained in our February 22, 2002 proposal, "because of difficulties and uncertainties with accurately dividing emissions between the fine and coarse grid of individual counties for the purpose of setting overall $NO_X$ emissions budgets, we believe that the calculation of the emissions budgets should be based on all counties which are wholly contained within the fine grid.'' (67 FR 8415). We believe this is consistent with the Court's ruling. Thus, we are finalizing the budgets for Georgia and Missouri to include only those counties that lie wholly within the fine grid portions of both States as described above.

*Comment:* One commenter requested the reconsideration of our inclusion of sources that are "just inside the fine grid.'' This commenter based its request on modeling showing that sources in Georgia south of 32.67 degrees latitude do not significantly contribute to nonattainment ozone areas in downwind States.

*Response:* We have evaluated the modeling submitted by this commenter and found that the modeling does not refute the overall conclusions we have drawn concerning the impacts of $NO_X$ emissions in the relevant geographic areas. The commenter quantified the contribution from those emissions in Georgia south of 32.67 degrees latitude (*i.e.*, southern Georgia) by modeling the four OTAG episodes with emissions in southern Georgia removed (*i.e.*, zero-out). The results of this modeling, as presented by the commenter, suggest that emissions in southern Georgia contribute less than 2 parts per billion (ppb) to the peak daily 1-hour ozone in 1-hour nonattainment areas outside of Georgia in each of the four episodes. In view of these results, the commenter contends that the contribution from southern Georgia to all downwind nonattainment areas is not significant since the contribution is less than the 2 ppb screening criteria used by EPA in the $NO_X$ SIP Call to identify those upwind State-to-downwind nonattainment area linkages that were clearly not significant. However, the commenter misinterpreted the definition of EPA's 2 ppb screening criteria by limiting the analysis of contribution to just the episode peak concentration in the downwind areas. By doing so, the contractor did not consider or present any data to evaluate the contribution from southern Georgia to other ozone exceedances (*i.e.*, less than the peak value but exceeding the NAAQS) predicted in each downwind area. For example, southern Georgia may not impact the predicted episode peak for the 1-hour ozone standard in Birmingham by 2 ppb, but southern Georgia could have contributed at least 2 ppb to one or more of the other 88 exceedances in Birmingham. Unfortunately, the commenter did not provide any data to permit an examination of the contribution of emissions from southern Georgia to all exceedances in downwind nonattainment areas. Thus, the comment that southern Georgia does not significantly contribute to downwind nonattainment because they did not examine all contributions above 2 ppb.

Thus, to the extent that the sources are modeled by the commenter in a county that falls within the fine grid part of Georgia, we do not believe we should reconsider its inclusion in the $NO_X$ SIP Call.

*Comment:* Several commenters stated that our inclusion of portions of the State of Georgia was not supported by reliable data and sound science especially in light of *Michigan*, "that remanded and vacated in its entirety [the inclusion of whole states of Georgia and Missouri],'' due to "EPA's unsupportable determination of significant contribution.'' Several commenters also stated that we had failed to provide data to support the inclusion of portions of the State of Georgia that are within the fine grid. Another commenter argued that we had failed to provide information to support inclusion of affected sources in Georgia.

*Response:* In *Michigan*, the DC Circuit Court held that [t]he fine grid modeling of parts of Missouri and Georgia showed emissions in the aggregate meeting the EPA's threshold contribution criteria.'' *Michigan*, 213 F.3d at 683 (emphasis in original). The Court noted that "EPA's explanation and technique make clear that emissions from the fine grid areas may have been the sole source of the finding.'' *Id.*

The Court also found that it was "no mere techno-fortuity that the fine grid included enough of Missouri to include the city of St. Louis and enough of Georgia to include Atlanta: the[se] fine grid portions of both states are closest to other nonattainment areas, such as Chicago and Birmingham, and generally higher ozone density.'' *Id.* However, the Court vacated and remanded the $NO_X$ SIP Call budgets for the States of Georgia and Missouri finding that the budgets "not only encompass the whole state but are calculated on the basis of hypothesized cutbacks from areas that have *not* been shown to have made significant contributions.'' Id at 684. (emphasis in original). The Court further held that "EPA must first establish that there is a measurable contribution'' from the coarse grid portion of the State before holding the coarse grid portion of the State responsible for the significant contribution of downwind ozone nonattainment in another State. *Id.* In *Appalachian Power Company* v. *EPA*, 251 F. 3d 1026, 1040–1 (2001), the Court found that "insofar as the TAs [technical amendments] include a statewide Missouri emission budget they are unlawful under *Michigan*.''

Thus, the Court did not call into question the proposition that the fine grid portions of Georgia and Missouri should be considered as making a significant contribution to downwind nonattainment. We also note that Georgia and Missouri industry petitioners maintained that, as we believe, there was record support for inclusion of emissions from the eastern half of Missouri and the northern-two thirds of Georgia as contributing to downwind ozone problems. *Michigan*, 213 F. 3d at 681.

In addition, in the $NO_X$ SIP Call Rule, we found that "[s]ources that are closer to the nonattainment area tend to have much larger effects on the air quality than sources that are far away.'' (63 FR 25919.) Further, OTAG's technical findings and recommendations concluded that areas located in the fine grid should receive additional controls

because they contribute to ozone in other areas within the fine grid.

Today's rulemaking finalizes our revision of the budgets for Georgia and Missouri to reflect the Court's pronouncements in *Michigan*. This is also consistent with OTAG's recommendations and findings. We have revised neither our existing determination nor our bases for the determination that sources in the fine grid portion of Georgia and Missouri are contributing significantly to downwind nonattainment. We are revising the $NO_X$ budgets for Georgia and Missouri to reflect the inclusion of only the sources that are within the fine grid portions of both States. Accordingly, we also continue to rely on the Technical Support Document and Notice of Data Availability which are the underlying documents for the $NO_X$ SIP Call Rule.

*Comment:* One commenter argued that the Court vacated our determination of significant contribution for all of Missouri in *Michigan*, and therefore, we no longer have a basis for including any portion of Missouri in the $NO_X$ SIP Call. The commenter also argued that we made no significant contribution finding for eastern Missouri but rather based our findings on emissions from the whole State.

*Response:* We disagree with the comment. As stated elsewhere in this rule, with respect to the fine grid parts of Georgia and Missouri, the Court found that "the fine grid modeling of parts of Missouri and Georgia showed emissions in the aggregate meeting the EPA's threshold contribution criteria.'' *Michigan*, 213 F.3d. at 683. We also note that Georgia and Missouri industry petitioners maintained that there was record support for inclusion of emissions from the eastern half of Missouri and the northern-two thirds of Georgia as contributing to downwind ozone problems. *Id.*, at 681. The OTAG's recommendations and findings concluded that areas located in the fine grid should receive additional controls because they contribute to ozone in other areas within the fine grid. In addition, our modeling showed that emissions in both Georgia and Missouri make a significant contribution to nonattainment in other areas. Therefore, we believe there is record support for inclusion of eastern Missouri.

*Comment:* One commenter argued that as a result of the vacatur in *Michigan*, we have to justify the inclusion of eastern Missouri in the $NO_X$ SIP Call taking into consideration facts in existence at the time of our proposal.

*Response:* We disagree. As stated earlier, the Court found that the modeling showed that emissions from the fine grid portions of the States of Georgia and Missouri met EPA's "threshold 'contribution' criteria.'' The Court also let stand OTAG's modeling analyses (except with respect to Wisconsin). Thus, the inclusion of eastern Missouri accords with the Court pronouncements on the fine grid/coarse grid.

In today's rulemaking, we see no reason to revise the existing determination that sources in the fine grid parts of Missouri contribute significantly to nonattainment downwind. The basis for this determination continues to be: (1) The results of our State-by-State modeling; (2) the relatively high amount of $NO_X$ emissions per square mile in the fine grid portions of the State; and (3) the closeness of the fine grid portions of the State to downwind nonattainment areas compared to the coarse grid part.

*Comment:* One commenter stated that it was erroneous to continue using data that was 4 years old as our basis for the inclusion of eastern Missouri in the $NO_X$ SIP Call in light of data showing that areas receiving measurable contributions from Missouri sources are now in attainment of the 1-hour ozone standards.

*Response:* We disagree with the comment that downwind ozone nonattainment areas have achieved attainment of the 1-hour ozone standards. More specifically, Chicago has not yet attained the 1-hour ozone standard. Chicago's attainment demonstration relies, in part, on implementation of Missouri's statewide $NO_X$ rule, approved by EPA into the SIP. The NOX SIP Call reductions in Missouri are needed for Chicago to attain/maintain the 1-hour standard.

Although the attainment plan was approved, we believe it is important to point out that there are inherent uncertainties in the plan, including hourly emission estimates and emissions growth projections. Further, without the $NO_X$ SIP Call, Missouri may come under increased pressure to relax the existing State rule, which could jeopardize attainment in Chicago. Additionally, the SIP-approved State rule has not yet been implemented and was, in fact, recently revised by the State.

The reductions are highly cost effective and would also help offset emissions from a number of large sources locating upwind of St. Louis and avoid very costly local controls in the future.

We disagree that a new emissions inventory is necessary that takes into account Missouri's statewide $NO_X$ rule and other post-1998 CAA rules. Because SIPs are constantly changing, it is impractical to revise emission inventories and modeling analyses each time changes are made. For example, the $NO_X$ limits the commenter cites have since been revised by the State and are yet to be approved by EPA.

Further, completing the $NO_X$ SIP Call in Missouri is an equitable approach. It would be inequitable to use 2003 air quality analysis for Missouri but to hold other $NO_X$ SIP Call States to the 1998 analysis. It should also be noted that we intend to review the $NO_X$ SIP Call Rule and will make adjustments if necessary (63 FR 57428).

This program is the single most important measure to reduce interstate pollution in the short term. Reductions of $NO_X$ emissions from the program will enhance the protection of public health for over 100 million people in the eastern half of the United States—including people in Missouri. It is a centerpiece of the clean air plans for many cities, including the Chicago area.

*Comments:* Another commenter stated that the current State of Missouri control regulations would achieve greater $NO_X$ emissions and greater improvements than the $NO_X$ SIP Call.

*Response:* We disagree. Missouri adopted and, in December 2000, we approved a statewide $NO_X$ rule which requires emissions reductions in the eastern third of the State and lesser reductions in the remainder of the State for large EGUs. While we approved this rule because it helped address the ozone nonattainment issue in St Louis, we did not find that this rule addressed the significant transport of $NO_X$ to other areas that we had identified in the $NO_X$ SIP Call. Revisions to the statewide $NO_X$ rule were adopted on April 24, 2003 and were submitted as a SIP revision on September 18, 2003.

Both the SIP-approved statewide $NO_X$ rule and the revisions to the rule submitted to EPA would achieve less $NO_X$ emissions reductions than implementation of the $NO_X$ SIP Call. Missouri's current and proposed revised $NO_X$ rules are less stringent than the $NO_X$ SIP Call requirements. The emissions reductions under the $NO_X$ SIP Call are greater by about 20 percent statewide and 40 percent in the fine grid compared to the SIP-approved Missouri rule. The $NO_X$ SIP Call also offers the advantages of a cap and trade program, including certainty of emissions reductions; the State rules have no emissions cap. While the current State rule and the SIP revisions may

accomplish reductions similar to those under the $NO_X$ SIP Call in the short-term, without an emissions cap there is no assurance that the required reductions will continue in the long-term.

Reductions are more effective in preventing interstate transport to key downwind areas under the $NO_X$ SIP Call as they must occur in the eastern part of Missouri and trading is not allowed between eastern and western Missouri EGUs. The Missouri rules spread the requirement for $NO_X$ reductions throughout the entire State. Thus, the emissions reductions are not focused in the geographical area of interest.

The $NO_X$ SIP Call budget also includes reductions in emissions from large cement kilns, industrial boilers, and stationary IC engines. The $NO_X$ SIP Call would allow fewer emissions statewide, as shown in Table 2 below.

TABLE 2.—COMPARISON OF OZONE REDUCTIONS IN THE $NO_X$ SIP CALL AND THE MISSOURI STATEWIDE RULE

| EGU emissions (tons per ozone season) | Fine grid | Statewide |
|---|---|---|
| Actual 2001 Emissions | 30,872 | 60,102 |
| $NO_X$ SIP Call | 13,400 cap | 37,600 [a] in 2001 [b c] |
| MO current SIP-approved rule | 23,100 in 2001 [c] | 46,900 in 2001 [c] |
| MO revised rule | 19,100 in 2001d [c] | 49,600 in 2001 [c] |

[a.] Assuming Missouri's current SIP-approved rule remains effective in the coarse grid (reductions from rule are included in the attainment demonstrations for St. Louis and Chicago).
[b.] The table only compares EGU emissions; the $NO_X$ SIP Call requires 2,900 tons additional $NO_X$ reductions due to controls on cement, industrial boilers and engines in the fine grid.
[c.] Estimated emissions based on actual 2001 heat input; emissions after 2001 would be higher as the State rule has no cap.

Further, we informed the State of some problem areas in their recent rule revisions. In addition to the issues above, there are other SIP-approvability concerns with the Missouri statewide rule which make it likely that the rule would have to undergo further revision. These include concerns about the credibility of early reduction credits which appear not to be actual surplus.

*D. What Are We Finalizing for Alabama and Michigan in Light of the Court Decision on Georgia and Missouri?*

We calculated Alabama's and Michigan's budgets in the same manner as we did for Georgia and Missouri, as described above. While no petitioners raised any issues concerning the inclusion of only parts of Alabama and Michigan in the $NO_X$ SIP Call, the Court's reasoning regarding Georgia and Missouri applies equally to Alabama and Michigan. Based on the information in the record, we revised the $NO_X$ budgets for Alabama and Michigan to reflect reductions only in the fine grid portions of these States.[40] Again, like Georgia and Missouri, we see no reason to disturb the determination that sources in the fine grid contribute significantly to nonattainment downwind; the fine grid portions of both Alabama and Michigan are closer to downwind 1-hour ozone nonattainment areas than the coarse grid parts of these States. Also, the amount of $NO_X$ emissions per square mile in the fine grid portion of Alabama is nearly 60 percent greater than in the coarse grid part; and in Michigan the fine grid $NO_X$ emissions per square mile are more than 500 percent greater than emissions per square mile in the coarse grid portion of the State. Counties in Michigan and Alabama which straddle the fine grid-coarse grid are excluded from the budget calculations as described above for Georgia and Missouri. We believe this approach is consistent with the holding in *Michigan* concerning Georgia and Missouri and is justified as provided above.[41]

The counties in Alabama and Michigan that are included in the calculation of $NO_X$ budgets for each of these States are listed in Table 3.

TABLE 3.—FINE GRID COUNTIES IN ALABAMA AND MICHIGAN

**Alabama:**
Autauga Co
Bibb Co
Blount Co
Calhoun Co
Chambers Co
Cherokee Co
Chilton Co
Clay Co
Cleburne Co
Colbert Co
Coosa Co
Cullman Co
Dallas Co
De Kalb Co

TABLE 3.—FINE GRID COUNTIES IN ALABAMA AND MICHIGAN—Continued

Elmore Co
Etowah Co
Fayette Co
Franklin Co
Greene Co
Hale Co
Jackson Co
Jefferson Co
Lamar Co
Lauderdale Co
Lawrence Co
Lee Co
Limestone Co
Macon Co
Madison Co
Marion Co
Marshall Co
Morgan Co
Perry Co
Pickens Co
Randolph Co
Russell Co
St. Clair Co
Shelby Co
Sumter Co
Talladega Co
Tallapoosa Co
Tuscaloosa Co
Walker Co
Winston Co

**Michigan:**
Allegan Co
Barry Co
Bay Co
Berrien Co
Branch Co
Calhoun Co
Cass Co
Clinton Co
Eaton Co
Genesee Co
Gratiot Co
Hillsdale Co
Ingham Co
Ionia Co
Isabella Co
Jackson Co
Kalamazoo Co

[40] Both Georgia and Missouri submitted Phase I SIPs which included only the fine grid portion of the States.

[41] Pursuant to the court's order lifting the stay of the SIP submission obligation, the 20 States, including Alabama, Michigan, and the District of Columbia, were required to submit SIPs in response to the $NO_X$ SIP Call by October 30, 2000. As discussed above, in letters dated April 11, 2000 to State Governors, we informed the States that remained subject to the $NO_X$ SIP Call that they could choose to submit SIPs meeting only the Phase I emissions budget for each State. With respect to Alabama and Michigan, we also provided that they could choose to submit SIPs that address emissions only in the fine grid portion of the State. Alabama and Michigan submitted Phase I SIPs which included only the fine grid portion of the States.

TABLE 3.—FINE GRID COUNTIES IN ALABAMA AND MICHIGAN—Continued

| |
|---|
| Kent Co |
| Lapeer Co |
| Lenawee Co |
| Livingston Co |
| Macomb Co |
| Mecosta Co |
| Midland Co |
| Monroe Co |
| Montcalm Co |
| Muskegon Co |
| Newaygo Co |
| Oakland Co |
| Oceana Co |
| Ottawa Co |
| Saginaw Co |
| St. Clair Co |
| St. Joseph Co |
| Sanilac Co |
| Shiawassee Co |
| Tuscola Co |
| Van Buren Co |
| Washtenaw Co |
| Wayne Co |

*E. What Modifications Are Being Made to the $NO_X$ Emissions Budgets?*

In today's final action, in a change from the proposed rule, we are excluding certain small cogeneration units from the definition of EGU. All other cogeneration units and other non-acid rain units will remain as EGUs. As a result, it makes sense to require States to include in their Phase II SIPs the anticipated emissions reductions from non-Acid Rain units. However, since, as discussed below, States seem to have already included non-Acid Rain units in the Phase I SIPs, today's action concerning the EGU definition will have little or no effect on State budgets and required reductions.

We are also finalizing technical changes to the EGU definition in the $NO_X$ SIP Call to make it consistent with the definition of EGU used in the Section 126 Rule. Since the EGU definition establishes the dividing line between the EGU and non-EGU categories, the changes to the EGU definition result in corresponding changes to the non-EGU definition in the $NO_X$ SIP Call, which make it consistent with the non-EGU definition in the Section 126 Rule. Today's action concerning these definitions does not result in any specific revisions to the budgets established under the final $NO_X$ SIP Call and the Technical Amendments.

We are recalculating the budgets to reflect a control level of 82 percent for the natural gas-fired lean-burn IC engines. For the other IC engine subcategories (diesel and dual fuel) we are using 90 percent control, as proposed.

We are calculating the budgets for Georgia, Missouri, Alabama, and Michigan assuming controls in all counties that are fully located in the fine grid, as discussed in sections II.C. and II.D. The partial State budgets for Georgia, Missouri, Alabama, and Michigan in today's action are calculated using IC engine control, as well as the definition of EGUs as described above.

Our budgets are shown in Tables 4 and 5. For States that are required to submit Phase I SIPs, Table 6 shows the Phase I and final budgets and the incremental difference between the two budgets. We are requiring States that have submitted SIPs that meet only the Phase I budget to supplement their control plans with rules that will meet the Phase II increment.

The budget numbers in Tables 4 and 5 are based on the $NO_X$ SIP Call emission inventory as revised in the "Technical Amendment to the Finding of Significant Contribution and Rulemaking for Certain States for Purposes of Reducing Regional Transport of Ozone,'' which was published on March 2, 2000. The EPA first published minor changes to the $NO_X$ SIP Call emission inventory in a Technical Amendment published May 14, 1999, in response to comments on the 2007 baseline sub-inventory in the $NO_X$ SIP Call published October 27, 1998. After the first Technical Amendment was published, EPA received further comments stating that the baseline sub-inventory contained errors. In response to these comments, EPA published the second Technical Amendment on March 2, 2000, in which changes were made to the baseline inventory and budgets for the $NO_X$ SIP Call for submitted data which was determined to be technically justified.

In some cases, States have made minor corrections to their $NO_X$ SIP Call emission inventory as part of their response to the $NO_X$ SIP Call requirements. States making corrections include, for example, Kentucky, Illinois, and Indiana. The EPA has evaluated these corrected emission inventories on a case-by-case basis and, as appropriate, approved the corrections as part of the rulemaking on the State's $NO_X$ SIP Call submittal. Today's rulemaking on the Phase II $NO_X$ SIP Call requirements is based on the corrections to the $NO_X$ SIP Call emission inventory published March 2, 2000 and does not take into account these corrections made in the individual State rulemaking actions. Furthermore, additional corrections may be made in the future to certain State emission inventories due, for example, to the change in the definition of EGU. As stated in the $NO_X$ SIP Call, "[t]he control measures that the State chooses to require will become the enforceable mechanism under the $NO_X$ SIP Call'' (63 FR 57426, October 27, 1998). The reader should refer to both this final rule and individual rulemaking actions on each State's SIP revision in response to the $NO_X$ SIP Call for more information.

In cases where the Phase I budget in a State's approved SIP revision differs from the EPA budget, due to changes in sources approved by EPA, the State is required to achieve the incremental Phase II reductions shown in Table 6 in order to meet the full $NO_X$ SIP Call. In cases where the State has voluntarily submitted, and EPA has approved Phase I SIPs with budgets more stringent than required by EPA, the State is required to achieve the final budgets shown in Table 6.

TABLE 4.—STATE EMISSIONS BUDGETS AND PERCENT REDUCTION

[tons/season]

| State | Final base | Final budget | Tons reduced | Percent reduction |
|---|---|---|---|---|
| Connecticut | 46,015 | 42,850 | 3,165 | 7 |
| Delaware | 23,797 | 22,862 | 935 | 4 |
| District of Columbia | 6,471 | 6,657 | −186 | −3 |
| Illinois | 368,870 | 271,091 | 97,779 | 27 |
| Indiana | 340,654 | 230,381 | 110,273 | 32 |
| Kentucky | 237,413 | 162,519 | 74,894 | 32 |
| Maryland | 103,476 | 81,947 | 21,529 | 21 |
| Massachusetts | 87,095 | 84,848 | 2,247 | 3 |
| New Jersey | 105,489 | 96,876 | 8,613 | 8 |
| New York | 255,658 | 240,322 | 15,336 | 6 |

TABLE 4.—STATE EMISSIONS BUDGETS AND PERCENT REDUCTION—Continued

[tons/season]

| State | Final base | Final budget | Tons reduced | Percent reduction |
|---|---|---|---|---|
| North Carolina | 224,696 | 165,306 | 59,390 | 26 |
| Ohio | 373,222 | 249,541 | 123,681 | 33 |
| Pennsylvania | 345,203 | 257,928 | 87,275 | 25 |
| Rhode Island | 9,463 | 9,378 | 85 | 1 |
| South Carolina | 152,805 | 123,496 | 29,309 | 19 |
| Tennessee | 256,765 | 198,286 | 58,479 | 23 |
| Virginia | 210,786 | 180,521 | 30,265 | 14 |
| West Virginia | 176,699 | 83,921 | 92,778 | 53 |

TABLE 5.—STATE EMISSIONS BUDGETS AND PERCENT REDUCTION

[tons/season]

| State | Final base | Final budget | Tons reduced | Percent reduction |
|---|---|---|---|---|
| Georgia | 209,914 | 150,656 | 59,258 | 28 |
| Missouri | 92,697 | 61,406 | 31,291 | 34 |
| Alabama | 169,156 | 119,827 | 49,329 | 29 |
| Michigan | 245,929 | 190,908 | 55,021 | 22 |

TABLE 6—COMPARISON OF PHASE I AND PHASE II STATE $NO_X$ BUDGETS COMPARISON

[tons/season]

| State | Phase I budget | Final budget | Phase II incremental difference |
|---|---|---|---|
| Alabama | 124,795 | 119,827 | 4,968 |
| Connecticut | 42,891 | 42,850 | 41 |
| Delaware | 23,522 | 22,862 | 660 |
| District of Columbia | 6,658 | 6,657 | 1 |
| Illinois | 278,146 | 271,091 | 7,055 |
| Indiana | 234,625 | 230,381 | 4,244 |
| Kentucky | 165,075 | 162,519 | 2,556 |
| Maryland | 82,727 | 81,947 | 780 |
| Massachusetts | 85,871 | 84,848 | 1,023 |
| Michigan | 191,941 | 190,908 | 1,033 |
| New Jersey | 95,882 | 96,876 | −994 |
| New York | 241,981 | 240,322 | 1,659 |
| North Carolina | 171,332 | 165,306 | 6,026 |
| Ohio | 252,282 | 249,541 | 2,741 |
| Pennsylvania | 268,158 | 257,928 | 10,230 |
| Rhode Island | 9,570 | 9,378 | 192 |
| South Carolina | 127,756 | 123,496 | 4,260 |
| Tennessee | 201,163 | 198,286 | 2,877 |
| Virginia | 186,689 | 180,521 | 6,168 |
| West Virginia | 85,045 | 83,921 | 1,124 |

*F. How Will the Compliance Supplement Pools Be Handled?*

The compliance supplement pool (CSP) is a pool of allowances that can be used in the beginning of the program to provide affected sources additional compliance flexibility. The CSP was created to address concerns raised by commenters on the $NO_X$ SIP Call proposal regarding electric reliability during the initial years of the program. In the $NO_X$ SIP Call Rule, the CSP may be used in the years 2003 and 2004 (*see* 63 FR 57428–57430, October 27, 1998, for further discussion of the CSP). In *Michigan,* the DC Circuit Court ruled that May 31, 2004, rather than May 1, 2003, is the date by which sources must install controls to comply with the $NO_X$ SIP Call. Consequently, to be consistent with the original 2-year window specified in the $NO_X$ SIP Call in which we allowed the CSP allowances to be used, we are finalizing an extension of the time that allowances from the CSP can be used from September 30, 2004 to September 30, 2005 for sources with a May 31, 2004 compliance date, and to September 30, 2008 for sources with a May 1, 2007 compliance date. We are also including CSPs for Georgia and Missouri. As under the original $NO_X$ SIP Call, Georgia and Missouri may distribute the allowances in their respective pools either based on early reductions, directly to sources based on a demonstrated need, or by some combination of the two methods. (For a more complete discussion of how CSP allowances may be distributed under the $NO_X$ SIP Call, *see* 63 FR 57429.) The allowances from Georgia's and Missouri's CSPs may be used to account for emissions during the 2007 and 2008 ozone seasons, the first 2 years' ozone

seasons that sources in those States are required to comply.

We are not changing the individual State CSP values that were finalized in the March 2, 2000 technical corrections to the emission budgets (65 FR 11222) with the exception of Alabama, Georgia, Michigan, Missouri, and Wisconsin. Changing the State CSPs to reflect the State budget changes made in this action would result in minimal impacts on the size of any State's CSP. Therefore, we have decided to maintain the CSPs at the levels determined in the March 2, 2000 technical amendment (with the exception of Alabama, Georgia, Michigan, Missouri, and Wisconsin).

Since required reductions in Georgia, Missouri, Alabama, and Michigan finalized under today's final rule are less than the required reductions of the October 27, 1998 $NO_X$ SIP Call reflecting full State emissions budgets, we are making corresponding decreases to the CSPs for the portion of each State that is still subject to the $NO_X$ SIP Call. We have calculated the partial-State CSPs by prorating the size of the full-State CSP by the ratio of the reductions that we are finalizing for the partial State to the reductions that we required in the March 2, 2000 Technical Amendment (65 FR 11222). However, even though we are finalizing an 82 percent reduction requirement from large natural gas-fired IC engines, to be consistent with the way the CSP was calculated in the other States, we assumed a 90 percent reduction from all large IC engines for purposes of calculating the CSP. In addition, since Wisconsin is not being required to make reductions at this time, Wisconsin is no longer receiving a share of the CSP. (Wisconsin's original CSP was 6,920 tons.) For these reasons, the total CSP is now less than 200,000 tons. The revised CSPs for Georgia, Missouri, Alabama, and Michigan are shown in Table 7.

TABLE 7.—COMPLIANCE SUPPLEMENT POOLS (CSP)

| | Full State tons reduced (from March 2, 2000 FR) | Partial State tons reduced with 90 percent IC engine control | Full State low | Partial State CSP with 90 percent IC engine control |
|---|---|---|---|---|
| GA | 63,582 | 57,623 | 11,440 | 10,728 |
| MO | 62,242 | 31,291 | 11,199 | 5,630 |
| AL | 64,954 | 49,806 | 11,687 | 8,962 |
| MI | 63,118 | 55,064 | 11,356 | 9,907 |

One commenter (EL Paso Corporation, OAR–2001–0008, XII–D–10), commented that IC engines should be allowed to receive reductions from the CSP. The commenter asserts that we have failed to recognize that the CSP contains $NO_X$ allocations generated by IC engines. The commenter also claims that because IC engines will also have to be retrofitted to comply with the $NO_X$ SIP Call they could also have reliability problems and, therefore, should be able to receive allowances from the CSP.

Under the $NO_X$ SIP Call, the CSP is limited to use by the large boilers and turbines that are in the $NO_X$ Budget Trading Program. Because IC engines are not in the $NO_X$ Budget Trading Program, they are not eligible to receive allowances from the CSP. States have two options for making the pool available to sources in the trading program. One option is to distribute some or all of the pool to sources that generate early reductions during ozone seasons prior to May 1, 2003. The second option is to run a public process to provide tons to sources that demonstrate a need for a compliance extension. The pool was created to help that group of sources meet compliance deadlines without jeopardizing electric reliability. It was not created to address reliability problems in other sectors.

*G. Will the EGU Budget Changes Affect the States Included in the Three-State Memorandum of Understanding?*

In February 1999, Connecticut, Massachusetts, Rhode Island, and EPA signed a Memorandum of Understanding (the three-State MOU). The three-State MOU redistributed Connecticut, Massachusetts, and Rhode Island's EGU emissions budgets to minimize the size differential between their EGU budgets under the $NO_X$ SIP Call and Phase III of the OTC $NO_X$ Budget program. It also reallocated the three States' CSPs.

Under the three-State MOU, Connecticut, Massachusetts, and Rhode Island would collectively be meeting their $NO_X$ SIP Call reduction responsibilities because the budget redistribution did not result in a higher combined overall EGU budget for the three States. We took action to implement the three-State MOU and concurrently published proposed and direct final rules on September 15, 1999 (64 FR 50036 and 49987). We subsequently withdrew the direct final rule on November 1, 1999 due to the receipt of adverse comment (64 FR 58792). The EGU budgets in today's action will not affect the EGU budgets for Connecticut, Massachusetts, and Rhode Island that we proposed in response to the three-State MOU. We did not finalize the proposal to act on the three State MOU. Instead, we proposed to approve the three States' $NO_X$ SIP Call SIP submittals, with budgets that reflected the three-State MOU, as collectively meeting their $NO_X$ SIP Call budgets. We did not receive any comments on the proposed approval of these three State's SIPs and finalized approval of them on December 27, 2000.

*H. How Does the Term "Budget'' Relate to Conformity Budgets?*

We wish to clarify that the use of the term "budget'' in this action does not refer to the transportation conformity rule's use of the term "motor vehicle emissions budget,'' defined at 40 CFR 93.101. The budgets finalized today do not set budgets for specific ozone nonattainment areas for the purposes of transportation conformity. Transportation conformity budgets cannot be tied directly to the $NO_X$ SIP Call budgets because the latter are for all or a large part of the State and the former are nonattainment-area-specific. For nonattainment or maintenance areas in a State covered by the $NO_X$ SIP Call, transportation conformity budgets must reflect the mobile source controls assumed in the $NO_X$ SIP Call budgets to the extent that the attainment SIP ultimately relies upon those controls.

*I. How Will Partial-State Trading Be Administered?*

In the final $NO_X$ SIP Call, we offered to administer a multi-State $NO_X$ Budget Trading Program for States affected by

the $NO_X$ SIP Call. In today's action, we are including only partial State budgets for Alabama, Georgia, Michigan, and Missouri. Therefore, we will administer a trading program for the $NO_X$ SIP Call region that, for these four States, includes only the portion of the States we are including in the $NO_X$ SIP Call. In the final $NO_X$ SIP Call, as well as the January 18, 2000 final rulemaking on the original eight Section 126 petitions, we authorized sources in States affected by either the $NO_X$ SIP Call or the Section 126 rulemaking to trade with each other through the mechanisms of the $NO_X$ Budget Trading Program provided certain criteria were met. These criteria included that States must be subject to the $NO_X$ SIP Call and that States must meet the emission control level under the final rule for the $NO_X$ SIP Call. The justification for allowing trading across States is the test of significant contribution which underlies both the Section 126 rulemaking and the $NO_X$ SIP Call. Therefore, at this time, only sources in the portions of the States for which a finding of significant contribution has been made and budgets have been established are allowed to participate in trading with sources in States which are subject to either the $NO_X$ SIP Call or the Section 126 rulemaking.

1. How Will Flow Control Be Handled for Georgia and Missouri?

The $NO_X$ SIP Call (63 FR 57356) includes a limitation (referred to as "flow control'') on the use of banked allowances for compliance with the requirement to hold allowances covering emissions from affected units.[42] In the $NO_X$ SIP Call, we noted that banking of allowances may inhibit or prohibit achievement of the desired emissions budget in a given [ozone] season since the use of banked allowances for compliance for a specific ozone season may result in total emissions for affected units exceeding the trading budget for that ozone season (63 FR 25902, 25935; May 11, 1998). The trading budget reflects the emissions reductions mandated, and found to be highly cost effective, under the $NO_X$ SIP Call in order to prevent significant contribution to nonattainment in downwind States. Flow control addresses the potential problem caused by banking by continuing to allow unlimited banking of unused allowances but discouraging the "excessive use'' of banked allowances for compliance. Id.; *see also* 63 FR 57473.

Flow control discourages the excessive use of banked allowances by discounting the use of banked allowances for compliance over a specified threshold. This threshold was set at 10 percent in the $NO_X$ SIP Call and applies to the entire $NO_X$ SIP Call region. The number of banked allowances held in all allowance tracking system (ATS) accounts under the trading program is tabulated when each ozone season is completed to determine what percentage banked allowances comprise of the total multi-State trading budget for the next ozone season. If this percentage is greater than 10 percent, flow control is triggered, and a withdrawal ratio is established for that next ozone season. The withdrawal ratio is calculated by dividing 10 percent of the total multi-state trading program budget for that next ozone season by the total number of banked allowances at the end of the completed ozone season. The ratio is then applied to each ATS compliance account that holds banked allowances at the end of that next ozone season. A unit can use banked allowances for compliance without restriction (*i.e.*, on a one-allowance-to-one ton basis) in an amount not exceeding the amount in the unit's compliance account times the withdrawal ratio. Banked allowances used for compliance in an amount exceeding that determined using the withdrawal ratio must be used on a two-allowances-for-one ton basis.

The $NO_X$ SIP Call provided that flow control provisions apply starting in the second year of the $NO_X$ SIP Call program. (The first ozone season in which flow control applies and can be triggered is referred to as the "flow control date.'') Specifically, the $NO_X$ SIP Call established May 1, 2003 as the commencement date for the $NO_X$ SIP Call program and required the flow control provisions to apply starting in the second year (*i.e.*, 2004). *See* 40 CFR 51.121(b)(1)(ii) and (b)(2)(ii)(E). Subsequent to the initial $NO_X$ SIP Call rulemaking, the D.C. Circuit delayed the commencement date for the $NO_X$ SIP Call program to May 31, 2004, and so the second year of the program—and the required flow control date—for State programs beginning in 2004 became 2005. While the regulations (§ 51.121 and part 96) were not revised, we have implemented the new flow control date through the notice and comment rulemakings for approval of the SIPs. We have approved rules under the $NO_X$ SIP Call for 17 States and the District of Columbia. The approved rules provide for a flow control date of 2004 or 2005,[43] and, as a practical matter the earliest date that flow control can be triggered in any of these States and the District of Columbia is 2005.[44]

It is our general intent to treat affected units in Georgia and Missouri in essentially the same manner as affected units under Phase I of the $NO_X$ SIP Call. Once Georgia and Missouri submit SIPs in accordance with today's rule, we will review these SIPs in light of our general intent. As we did in the case of the SIPs submitted by States under Phase I of the $NO_X$ SIP Call, we will address, in the context of reviewing Georgia's and Missouri's SIPs, such issues as the flow control provisions and the flow control date and are not revising the flow control date in § 51.121 and part 96.

However, we note that if the flow control provisions in the initial $NO_X$ SIP Call Rule were applied to Georgia and Missouri, potential problems could arise because the units in those States would have a flow control date, *i.e.*, the second year (2008) of those States' programs, that is 3 years later than the effective 2005 flow control date for units in States in Phase I of the $NO_X$ SIP Call. We will consider and resolve these potential problems when we review Georgia's and Missouri's SIPs rather than in today's rule. In order to provide guidance to Georgia and Missouri in the development of their SIPs, we are discussing below these potential problems.

The potential problems in applying the flow control provision in § 51.121

[42] Banked allowances are those allowances that are not used in the ozone season for which they are allocated and that are therefore carried into the next ozone season. Allowances from the CSP are considered banked at the start of the second year of the program. *See* 40 CFR 51.121(b)(2)(ii)(D).

[43] In approving trading program rules for Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, New Jersey, New York, and Rhode Island, we approved flow control dates of 2004 based on the initial $NO_X$ SIP Call Rule, under which the program started May 1, 2003. (We note that we erroneously approved 2005 as the flow control date for Pennsylvania, whose program also begins in 2003.) After the Court established May 31, 2004 as the commencement date for the $NO_X$ SIP Call program, we approved 2005 as the flow control date for States (*i.e.*, Alabama, Illinois, Indiana, Kentucky, North Carolina, South Carolina, Tennessee, and West Virginia) whose programs begin in 2004. We also approved $NO_X$ SIP Call rules for two States (Ohio and Virginia) on the condition that a 2005 flow control date be adopted.

[44] Although we approved several State programs with a 2004 flow control date (see footnote number 43), 2005 is the earliest year that flow control is likely to be triggered for those States. For 2004, the calculation for triggering flow control is the total number of banked allowances in accounts as of December 1, 2003 (*i.e.*, only the unused allowances allocated for 2003 plus the CSP allowances for those States with programs beginning in 2003) divided by the total trading budgets for the States with programs in effect in 2004 (*i.e.*, virtually all States in the $NO_X$ SIP Call region). Because, for this calculation for 2004, the number of States reflected in the numerator is so much smaller than the number of States reflected in the denominator, 2005 is effectively the flow control date for all States whose programs begin in 2003.

and part 96 to Georgia and Missouri are as follows. Allowing 2008 to be the flow control date in Georgia (or Missouri) could result in an unfair advantage for units in that State over units in other States with an effective 2005 flow control date. Specifically, for the 2007 ozone season when the Georgia (or Missouri) programs begin, banked allowances held for Georgia (or Missouri) units or by Georgia (or Missouri) companies as of November 30, 2006 could be a contributing factor for triggering flow control in 2007 for all other States with programs that are in effect. If Georgia (or Missouri) units were to help trigger flow control in 2007 but would not be subject to the flow control limitation on use of banked allowances in 2007, this would give Georgia (or Missouri) units an unfair advantage over units in the other States.

Further, should a 2008 flow control date be approved for Georgia (or Missouri), this would allow some companies to circumvent the earlier flow control dates established by other States. A company with affected units in both Georgia (or Missouri) and a State with an effective 2005 flow control date would be particularly advantaged in this regard. Such a company could circumvent the earlier flow control date by exchanging banked allowances held for its units in the State with the 2005 flow control date for 2007 allowances held for its units in Georgia (or Missouri). All of these banked allowances could be used in Georgia (or Missouri) in 2007 without application of flow control. Moreover, a company with only units in States with earlier flow control dates could also circumvent, to some extent, the flow control provisions of those States. To the extent that the latter company could purchase 2007 allowances and sell banked allowances, it could also avoid the application of the flow control limitation in 2007. In short, allowing a 2008 flow control date for Georgia (or Missouri) would allow erosion of the effectiveness of flow control for States with an effective 2005 flow control date and would give an unfair advantage to some companies.

We believe these potential problems might be avoided if, under Georgia's and Missouri's SIPs, flow control is effective starting in the first year (2007) of their programs while CSP allowances for those States continue to be treated as banked allowances starting in the second year (2008) of their programs. This approach would appear to prevent companies from being able to circumvent the effective 2005 flow control dates in other States' programs since banked allowances—whether held by units or companies in Georgia or Missouri or in other States—would be subject to flow control in 2007. Transferring banked allowances to Georgia or Missouri units or companies would not avoid flow control if it is triggered.

It also appears that applying flow control in the first year of the program in Georgia and Missouri would not disadvantage units and companies in Georgia and Missouri with regard to their CSP allowances. The $NO_X$ SIP Call established that the CSP could be used in the first 2 years of a State's trading program without the application of flow control to the CSP allowances in the first year. Under the approach discussed above, the allowances from Georgia's and Missouri's CSPs (like the CSPs for other States) would be available for use in the first and second years (2007 and 2008 for Georgia and Missouri). Because the CSP allowances would not be considered banked until 2008, these allowances could be used in the first year of the program (2007) without being affected by flow control. Thus, the Georgia and Missouri CSP allowances could be used in 2007 without limit regardless of whether flow control is triggered at the end of the 2006 ozone season and could not trigger flow control at the end of 2007.

As noted above, today's rule does not establish a flow control date for Georgia and Missouri. Instead, we are indicating how we intend to address this issue when we review the Georgia and Missouri SIPs, and we will consider, in conducting those reviews, the approach discussed above and any other approach that is proposed for addressing the issue.

*J. What Is the Phase II SIP Submittal Date?*

In today's action, we are setting a date for States to submit SIPs meeting the Phase II $NO_X$ budgets and the partial State budgets for Georgia and Missouri. We believe that an adequate timeframe for SIP submittal is 12 months from signature date of this rulemaking. We believe that this schedule will allow adequate time for States to promulgate rules, and for sources affected by a State's Phase II $NO_X$ strategy and by Georgia and Missouri's $NO_X$ strategy to comply with the regulations by the dates in this action. Please see section K, below, for a discussion of the compliance dates.

*Comment:* Several commenters contend that the range of proposed SIP submittal dates (*i.e.,* 6 months to a year from final promulgation of this rulemaking, but no later than April 1, 2003) does not allow enough time for States to develop a SIP. They noted that this is due to the fact that the proposal was published on February 22, 2002 and the comment period was scheduled to end on April 15, 2002, and that the final rule would not be promulgated in time to allow adequate time for States to complete their rulemaking processes. These commenters fell into several categories based on their recommendation for a SIP submittal date: (1) EPA is not allowing enough time for SIP submittal; (2) EPA should set a SIP submittal date 12 months from the date of final promulgation of this rule; (3) EPA should allow more than 12 months for States to submit SIPs; and (4) EPA should allow 18 months for SIP submittal as authorized in section 110(k)(5).

*Response:* After considering these comments, we are requiring that SIP revisions be submitted within 12 months after the date of signature of this final rule. We believe this is adequate time for States to submit SIP revisions reflecting the reductions required by this phase of the $NO_X$ SIP Call. In response to the court decision in *Michigan* v. *EPA,* 213 F.3d 663 (DC Cir. 2000), *cert. denied,* 121 S. Ct. 1225 (2001), we divided the $NO_X$ SIP Call into two phases—Phase I which accounted for 90 percent of the total reductions required by the $NO_X$ SIP Call, and Phase II which will achieve approximately 10 percent of the total reductions required by the $NO_X$ SIP Call. Thus, because Phase II of the $NO_X$ SIP Call requires relatively smaller $NO_X$ emissions reductions and because it applies to a much smaller subset of sources, we believe that 12 months is adequate time for States to develop and submit the required SIP revisions. In addition, as earlier stated, this action is being taken under section 110(k)(5) which requires SIP revisions within a specified period but "not to exceed 18 months'' after a finding of inadequacy by the Agency.

Initially we had allowed States 12 months for submittal of SIPs meeting the full $NO_X$ SIP Call, with September 30, 1999 as the submission date. On May 25, 1999, in response to a request by States challenging the $NO_X$ SIP Call, the DC Circuit issued a stay of the SIP submission deadline pending further order of the Court. *Michigan,* 213 F. 3d 663 (DC Cir. 2000), *cert. denied*, 121 S. Ct. 1225 (2001) (May 25, 1999 order granting stay in part). Subsequently, we filed a motion on April 11, 2000, requesting the court to lift the stay of the SIP submission date and on June 22, 2000, the court lifted the stay and established October 30, 2000, as the new SIP submission date. Thus, by setting this submission date, the Court

recognized the 12-month submission schedule required in the $NO_X$ SIP Call.

In setting this timeframe, we also recognize that the proposed $NO_X$ SIP submittal date of 6 months to 1 year from final promulgation of this rulemaking, but no later than April 1, 2003, is no longer appropriate due to the February 22, 2002 publication date of the proposed rule. We are also aware that some States have lengthy rulemaking processes that may require longer than 12 months for full adoption of regulations. However, States have the ability to set their rulemaking procedures and can provide adequate mechanisms to adopt regulations to address interstate transport. Many States already have emergency or other shortened procedures in place in order to bypass regular rulemaking procedures in certain circumstances. We also note that some States have already adopted SIPs that comply fully with the $NO_X$ SIP Call.

Moreover, we note that States that fail to submit SIPs within 12 months are not precluded from submitting plans after that date. Areas will not be subject to mandatory sanctions under section 179 of the CAA until 18 months after we find that the State failed to submit a plan in response to the $NO_X$ SIP Call. Furthermore, if the State makes a late submission, our approval of that program would serve to replace any Federal plan that may have taken effect in the interim. We note that States can submit draft plans (*i.e.*, plans that have not completed the final steps in the State administrative process) for parallel processing. *See* 47 FR 2703 (June 23, 1982). While this type of submission may not preclude a finding of failure to submit, it can help ensure that the State program is approved as a SIP revision and as a replacement for any promulgated Federal implementation plan in the most expeditious manner. Also, as we did for the Phase I $NO_X$ SIP submittals, the EPA Regional Offices and Headquarters will work closely with the States to ensure that approvability issues are quickly resolved in order to allow SIPs to be submitted as expeditiously as possible.[45] (Section II.J, OAR–2001–0008, comments XII–D–28, XII–D–29).

*K. What Are the Phase II Compliance Dates?*

We are setting a Phase II compliance date of May 1, 2007. This date is 24 months after the SIP submittal date plus the days until the next ozone season begins. However, sources already controlled in an approved Phase I SIP are required to meet the compliance date stipulated in that SIP, including non-Acid Rain EGUs and any cogeneration units that were previously classified as EGUs and whose classification changed to non-EGUs under today's rule.

In this section, it is important to note that although compliance dates are discussed for certain EGUs, non-EGUs, and IC engines, States may choose to control other sources. As stated in the original $NO_X$ SIP Call:

> States are not constrained to adopt measures that mirror the measures EPA used in calculating the budgets. In fact, EPA believes that many control measures not on the list relied upon to develop EPA's proposed budgets are reasonable—especially those, like enhanced vehicle inspection and maintenance programs, that yield both $NO_X$ and VOC emissions reductions. Thus, one State may choose to primarily achieve emissions reductions from stationary sources while another State may focus emission reductions from the mobile source sector. (63 FR 57378, October 27, 1998).

1. How Are We Handling Non-Acid Rain EGUs and Any Cogeneration Units That Were Previously Classified as EGUs and Whose Classification Changed to Non-EGUs Under Today's Rule?

We proposed a compliance date of May 31, 2004 (or, if later, the date on which the source commences operation) for all Phase II EGUs and non-EGUs in Alabama, Connecticut, District of Columbia, Delaware, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia. We also proposed a compliance date of May 1, 2005 (or, if later, the date on which the source commences operation) for all sources in Georgia and Missouri. The compliance dates mark the beginning of the periods during which units in the trading program must hold at least enough $NO_X$ allowances to cover their ozone season $NO_X$ emissions.

The proposed compliance date of May 31, 2004 (or, if later, the date on which the source commences operation) was designed to provide Phase II EGUs and non-EGUs a little over 12 months after the deadline for State submission of Phase II SIPs covering such units to install any necessary emission controls. In today's rule, we are finalizing a deadline of April 1, 2005 for submission of Phase II SIPs. However, we believe that for all of the States (except Georgia and Missouri, which are addressed separately below), non-Acid Rain EGUs and any cogeneration units that were previously classified as EGUs and whose classification changed to non-EGUs under today's rule were included in the Phase I SIPs that were already submitted.[46] Several States (*i.e.*, Connecticut, District of Columbia, Delaware, Massachusetts, Maryland, New Jersey, New York, Pennsylvania, and Rhode Island) have submitted SIPs that cover non-Acid Rain EGUs and any cogeneration units whose classification changed from EGUs to non-EGUs under today's rule, as well as Phase I EGUs and non-EGUs, and require compliance with the allowance holding requirement starting May 1, 2003 (or, if later, the date on which the source commences operation). The remaining States other than Georgia and Missouri (*i.e.*, Alabama, Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, South Carolina, Tennessee, Virginia, and West Virginia) have submitted SIPs that cover non-Acid Rain EGUs and any cogeneration units whose classification changed from EGUs to non-EGUs under today's rule, as well as Phase I EGUs and non-EGUs and require compliance starting May 31, 2004 (or, if later, the date on which the source commences operation). The coverage of non-Acid Rain EGUs and any cogeneration units whose classification changed from EGUs to non-EGUs under today's rule is reflected both in the applicability provisions in the various SIPs—which provisions cover EGUs and non-EGUs without assuming any non-Acid Rain units or any cogeneration units—and in the State budget demonstrations and allowance allocations—which list the affected units including the non-Acid Rain EGUs and any cogeneration units whose classification changed from EGUs to non-EGUs under today's rule. Although, elsewhere in today's final rule, we are revising the definition of EGU and non-EGU, we believe that these revisions will require the reclassification of few, if any, units as EGUs and non-EGUs and will not make any additional units subject to the $NO_X$

[45] Technical Support Document, "Responses to Significant Comments on the Proposed Finding of Significant Contribution and Rulemaking for Certain States in the OTAG Region for Purposes of Reducing Regional Transport of Ozone,'' Docket No. A–96–56, Item No. VI–C–01, September 1998.

[46] We note that the non-EGU classification of those cogeneration units that have been consistently treated as non-EGUs in the $NO_X$ SIP Call and the Section 126 Rule was not remanded and vacated by the Court, and we maintain that the May 31, 2004 compliance date for such units is not at issue in today's rulemaking. However, even assuming *arguendo* that their compliance date were at issue, there would be no basis for establishing a later compliance date since these units (like, *e.g.*, the non-Acid Rain EGUs) are already subject to the May 31, 2004 date under the Phase I SIPs.

SIP Call. *See* section II.A.4 of this preamble.[47]

Since all Phase II non-Acid Rain EGUs and any cogeneration units whose classification changed from EGUs to non-EGUs under today's rule in these States are already subject to a compliance date of May 1, 2003 or May 31, 2004 (or, if later, the date on which the source commences operation), we see no basis for extending the $NO_X$ SIP Call compliance deadline beyond the date stipulated in the Phase I SIPs under which these units are covered. The CAA rests on an "overarching'' principle that the NAAQS be achieved as expeditiously as possible (63 FR 57356, 57449, October 27, 1998). For example, under section 181 of the CAA, the "primary standard attainment date for ozone shall be as expeditiously as practicable but not later than [certain statutorily prescribed attainment dates].'' 42 U.S.C. 7511; *see also* 42 U.S.C. 7502(a)(2)(A). The State trading budgets under the $NO_X$ SIP Call reflect the emissions reductions mandated under the $NO_X$ SIP Call in order to prevent significant contribution to nonattainment in downwind States. Under these circumstances, we believe that the CAA's overarching objective of expeditious as practicable attainment applies to these units.

A number of commenters (including several States that have adopted SIPs with May 31, 2004 compliance dates for non-Acid Rain EGUs and any cogeneration units whose classification changed from EGUs to non-EGUs under today's rule) suggested that a compliance date of May 31, 2004 did not provide sources enough time to install emission controls. Some commenters suggested that units should be given 2 years after submittal of SIPs to comply. Several other commenters suggested that a compliance deadline should be set 1,309 days after the required SIP submittal date to be consistent with the DC Circuit's August 30, 2000 order related to compliance dates under the $NO_X$ SIP Call. As explained above, we do not believe it is necessary or appropriate to extend the compliance date beyond May 31, 2004 because the States involved have already adopted rules requiring non-Acid Rain EGUs and any cogeneration units whose classification changed from EGUs to non-EGUs under today's rule to comply by that date or earlier. It should also be noted that, even if the units had not already been included in the State's Phase I SIPs, the 1,309-day period used for setting the May 31, 2004 compliance date for Phase I SIPs would not be appropriate for those units. The Court's decision to provide units 1,309 days after submittal of SIPs was based on the amount of time that we provided units to comply with the original $NO_X$ SIP Call, which had a compliance deadline of May 1, 2003. The original $NO_X$ SIP Call required States to make significantly more emissions reductions (*i.e.*, all the reductions that were subsequently designated as either Phase I or Phase II reductions in response to the Court's decision) than the reductions (*i.e.*, only the Phase II reductions for non-Acid Rain EGUs and any cogeneration units whose classification changed from EGUs to non-EGUs under today's rule) addressed here. Greater emissions reductions require the installation of more emission controls, which in turn requires more resources such as boiler-makers and cranes. The analysis that we performed for the proposed Phase II rule shows that less time is required to install emission controls for the smaller number of Phase II units than the significantly larger number of Phase I units in the trading program.

2. What Compliance Date Are We Finalizing for IC Engines and What is the Technical Feasibility of This Date?

We are setting a compliance date for IC engines of May 1, 2007 (or, if later, the date on which the source commences operation). This date is 24 months after the SIP submittal date plus the days until the next ozone season begins.

*Comment:* Several commenters from the pipeline industry suggest the need to stagger or phase-in the compliance activities over several years. Additional comments from the pipeline industry state that we ignore time needed to get permits; that we assume 160 engines would be off-line in the same winter heating season; and that we failed to consider the problem of having multiple engines at one facility subject to retrofit requirements during the same short compliance timeframe.

Comments from 22 citizen groups recommend the May 2004 and May 2005 dates (or, if later, the date on which the source commences operation), as proposed. One State supports the May 2005 compliance deadline proposed. All other commenters request that we provide more time than was proposed. Another State believes that a minimum of 24 months from the date of final SIP submittals is needed for sources to complete the necessary construction and installation of controls to comply with the Phase II provisions. A third State recommends the compliance date be 1,309 days after the SIP submittal date. Pipeline industry comments generally recommend May 2007 or 36 to 43 months from SIP submittal. These commenters refer to the 1998 $NO_X$ SIP Call Rule which gave 43 months from SIP submittal. Utility group comments also recommend we should apply the same 1,309-day compliance period for the Phase II $NO_X$ SIP Call requirements that applies to sources for the Phase I compliance pursuant to the original $NO_X$ SIP Call Rule schedule.

*Response:* The pipeline industry has considerable experience with the installation of LEC technology. While there is some evidence that installation of controls on a few engines within 1 year is reasonable, installing controls on many engines in a narrow timeframe is more problematic. As discussed below, we believe that the proposed timeframe of about 13 months should be extended to a minimum of 24 months from the SIP submittal date and the initial compliance date should occur within the ozone season.

We obtained additional information regarding this issue. One manufacturer estimated the time between request for cost proposal and contract to be 2 to 5 months and typically 3 to 4 months. It then takes 4 to 5 months for delivery and an additional 1 month to install and commence operation. This adds up to a total of 7 to 11 months.[48] Another manufacturer estimated the time between cost proposal and contract is 2 to 4 weeks to obtain bids; 2 to 3 months for selection of bids; 12 to 20 weeks for parts delivery to site; and 2 weeks to 1½ months for field installation. Another manufacturer estimated from request for cost bids to shipping of parts takes 6 to 8 months for delivery and an additional 2 to 4 weeks to install and commence operation. This adds up to a total of 6 to 9 months.[49] Information from the Ventura County Air Pollution Control District in California estimated 2 weeks to 1 month to install LEC and the total time estimated from request for cost proposal and commencing operation of LEC was 6 to 9 months. A gas pipeline company, CMS Energy, stated that a compliance schedule of 11 months was easy to meet for one to two engines but would put a stress on the system for 200 engines. Columbia Gas Transmission Corporation installed controls on two engines in Bedford County,

[47] To the extent that the revisions of the EGU and non-EGU definitions have such an impact on any specific units, we will address the matter in connection with our review of the relevant State Phase II SIP provisions.

[48] See Docket No. OAR–2001–0008, Item No. XII–E–01.

[49] See Docket No. OAR–2001–0008, Item No. XII–E–02.

Pennsylvania in 3 days, meeting the 3.0 g/bhp-hr standard set by the State.[50] Thus, there is some agreement that the necessary compliance period for installation of controls on a small number of engines is less than 1 year.

We disagree with the comment that 160 engines would be off-line at the same time. We expect some companies to choose to phase-in installation of the control equipment over a 2-year period (or longer if the companies begin retrofit activities sooner) and that installation activities would occur primarily in the summer along with normally scheduled maintenance activities. Further, as noted below, not all of the potentially affected IC engines should be expected to need LEC retrofits and not in the same timeframe.

In response to Phase II of the $NO_X$ SIP Call, some States may seek emissions reductions from source categories other than IC engines. Other States have already met their $NO_X$ budgets and do not need to further control IC engines for purposes of the $NO_X$ SIP Call. Still other States have met at least a portion of the Phase II $NO_X$ SIP Call reductions due to emissions reductions affecting other source categories contained in their 1-hour ozone nonattainment area plans. This reduces the need to retrofit IC engines in those States.

In many cases, companies may use "early reductions" achieved at IC engines due to other requirements, such as RACT.[51] For example, many IC engines were previously controlled to meet RACT requirements in many of the $NO_X$ SIP Call States. These emissions reductions help States meet their $NO_X$ budgets and, thus, decrease the amount of additional reductions needed. According to information submitted by INGAA, a 1996–97 survey determined that 245 lean burn engines in the $NO_X$ SIP Call area have LEC.[52] Many engines in the $NO_X$ SIP Call area already have decreased $NO_X$ emissions at rich-burn engines through non-selective catalytic reduction (NSCR).[53] States may choose to credit these reductions instead of requiring new reductions at other engines in order to meet the SIP budget. Many more $NO_X$ reductions are likely to result from future maximum achievable control technology (MACT) controls at IC engines.[54] These factors also reduce the need to retrofit IC engines in some States.

We agree with industry comments that pipeline companies will phase-in the control equipment over a multi-year timeframe. Some companies may choose to stagger installation of the controls, beginning even before completion of our rulemaking.[55] Stretching out the installation timeframe in this manner would help the companies achieve the results on time. Further, companies might choose to install controls early in some of their engines in a timeframe that coincides with the engine rebuild cycle.[56] In another case, installation of the LEC retrofit kit was estimated to span 3 to 4 weeks and the installation was not expected to impact the normal maintenance interval.[57] These approaches will help reduce the time needed to install the controls.

We believe the industry has demonstrated that multiple engines at compressor stations can be successfully retrofitted over a 24-month timeframe. For example, in Kentucky, the Jefferson Town Compressor Station's RACT compliance plan of April 2000 describes the installation of LEC using a phased approach over a 2-year period. Four engines were retrofitted during the summer of 2001 and the remaining five engines were retrofitted in the summer of 2002. Each engine was expected to be out of service for approximately 6 weeks and, due to heavy demand during the winter heating season, all engines were expected to be operable from October to April. Two additional cases show installation on multiple engines in short time periods. Southern California Gas Company completed testing of one engine in 1995 and installed precombustion chambers on six engines in its Mojave Desert operating area. The conversion of the first unit was completed in October 1995 and the conversion of the sixth unit was completed in November 1996. The engines met the 2.0 g/bhp-hr standard set by the Mojave Air District. Furthermore, as cited in a case study in Vidor, Texas, six engines in the Beaumont/Port Arthur area were retrofitted in the summer of 1999.[58]

As shown below, we also examined historic timeframes allowed by the Congress and various regulatory agencies to achieve compliance with $NO_X$ requirements following State/local rule adoption. These timeframes generally illustrate the successful implementation of past regulatory programs involving the installation of $NO_X$ controls.

In the 1990 Amendments to the CAA, Congress added RACT requirements for major sources of $NO_X$. All categories of major $NO_X$ sources in certain areas of the nation were required to install RACT as expeditiously as practicable or no later than May 31, 1995. Thus, Congress allowed a maximum of 30 months from the SIP submittal deadline of November 15, 1992 for a much larger number of sources than affected by this rulemaking.

Subsequent to the initial set of $NO_X$ RACT SIP revisions, we approved $NO_X$ RACT SIP submittals in some areas which had been exempt from the requirements. For example, in Dallas, SIP rules required RACT as expeditiously as practicable or 24 months from the State adoption date (rule adopted March 21, 1999). The State of Texas, on December 31, 1997, implemented a requirement for all major $NO_X$ sources in the Houston area to implement RACT; the State adopted a compliance date of November 15, 1999 for this program (22.5 months). In a recent case, the State of Louisiana allowed up to a 3-year period in Baton Rouge, coinciding with their attainment deadline.

For engines subject to RACT limits, the California Air Resources Board guidance document on IC engines recommends final compliance within 2 years of district rule adoption.[59] The guidance states that this time period should be sufficient to evaluate control options, place purchase orders, install equipment, and perform compliance verification testing. The Sacramento Air District in California required compliance within 2 years of rule adoption (June 1995).

Regarding the need to obtain permits, we believe that States will process permits expeditiously, especially those permits associated with pollution control projects. We have specifically encouraged States in a recent memo (see NSR exclusion discussion in section

[50] See *http://www.dieselsupply.com/dscartic.htm* for reprint of article from May 1998 of "American Oil & Gas Reporter."

[51] Memo from Lydia Wegman, Director, Air Quality Strategies and Standards Division, U.S. EPA to Air Division Directors, U.S. EPA Regions I–V, VII (August 22, 2002), providing guidance on issues related to stationary IC engines and the $NO_X$ SIP Call.

[52] "IC Engine OTAG Questions" document prepared by INGAA, February 17, 2000. Many of these engines are smaller than the "large" engines identified in the $NO_X$ SIP Call.

[53] Alpha Gamma memo of June 19, 2002 (Docket No. OAR–2001–0008, Item No. 0917).

[54] See proposed rule at 67 FR 77845.

[55] INGAA letter of July 16, 2002 (Docket No. OAR–2001–0008, Item No. 0918).

[56] A top-end overhaul is generally recommended between 8,000 and 30,000 hours of operation that entails a cylinder head and turbocharger rebuild (see Table 4 from "Technology Characterization: Reciprocating Engines" prepared by Energy Nexus Group for EPA, 2–02).

[57] GRI 12–98 report "$NO_X$ Control for Two-Cycle Pipeline Reciprocating Engines," page 4–11. (Docket No. OAR–2001–0008, Item No. XII–K–24.)

[58] See *http://www.enginuityinc.com.*

[59] "Determination of RACT and BARCT for Stationary Spark-Ignited Internal Combustion Engines," California Air Resources Board, November 2001, pg. IV–15. (Docket No. OAR–2001–0008, Item No. XII–K–71.)

II.B.2.c of this final rule) to consider exempting pollution control projects from certain permitting requirements. Further, by moving the compliance date to at least 24 months after the SIP submittal date, we believe that the time needed to revise permits will not adversely affect the compliance schedule.

Further, the CAA contains an overarching principle that downwind areas attain the ozone NAAQS "as expeditiously as practicable.'' [Sections 191(a), 172(a)]. The emissions reductions from today's rulemaking reflect the emissions reductions mandated under the $NO_X$ SIP Call in order to prevent significant contribution to nonattainment in downwind States. Thus, we are setting an implementation date that will assure that the downwind States realize the air quality benefits of $NO_X$ reductions in order to achieve attainment or reasonable further progress toward attainment (63 FR 57449–50).

Although we provided a compliance date of 1,309 days for Phase I sources from the SIP submittal date, we do not believe that a similar compliance period is needed for the sources affected by today's rulemaking. This is because today's rulemaking affects a smaller subset of sources than Phase I sources, and these sources have been aware of the applicability of the $NO_X$ SIP Call since 1998. In addition, as discussed earlier, States are free to choose which sources to regulate in compliance with the $NO_X$ SIP Call requirements. Also, some States have already adopted SIPs that meet the full $NO_X$ SIP Call requirements.

In summary, several factors described above will serve to minimize the number of large IC engines that would need to be scheduled for LEC retrofit. Further, companies that phase-in compliance activities over several years would also reduce the number of IC engines needing LEC retrofit per year. It is important to note that RACT experience shows that companies can install LEC retrofit over a 2-year timeframe, even where multiple engines are located at the same compressor station. In recent RACT compliance time decisions, State/local regulatory agencies generally specified 24-month periods to install controls. The Congress in its 1990 CAA Amendments allowed a maximum of 30 months for all major $NO_X$ sources across the nation to install RACT; this was a much larger task than installation of controls at IC engines in certain States. As a result, we believe that a 2-year period after the SIP submittal due date is adequate for the installation of controls.

Further, because the $NO_X$ SIP Call is directed at emissions during the ozone season, we believe that the initial month where compliance is required should occur during the ozone season. Therefore, the compliance date is May 1, 2007 (or, if later, the date on which the source commences operation).

3. What Compliance Date Are We Finalizing for Georgia and Missouri?

For all sources in Georgia and Missouri, we proposed a compliance date of May 1, 2005 (or, if later, the date on which the source commences operation). This compliance date was based on a proposed SIP submittal deadline of April 1, 2003 and would have provided sources 25 months after SIP submittal to install controls. Based on the April 1, 2005 SIP submittal deadline being finalized in today's final rule, providing sources with 25 months to install controls would result in a compliance deadline of May 1, 2007. Because this would be after the 2006 ozone season, we are finalizing a compliance deadline of May 1, 2007 (or, if later, the date on which the source commences operation). As we explained in the $NO_X$ SIP Call, we believe a 25-month compliance timeframe is reasonable given the amount of controls that need to be installed. If Missouri and/or Georgia elect to control large EGUs under a trading program, we project that the most time-consuming control installation will require installation of two SCRs and one SNCR. We also project that this can be done in 25 months (67 FR 8395).

Several commenters suggested that a May 1, 2005 compliance date was reasonable for Georgia and Missouri if the rule were finalized in time to give States 1 year to develop a regulation and SIPs were due by April 1, 2003. One commenter added that many EGUs will be installing controls before 2005 in order to comply with a State ozone attainment plan. We agree that the proposed compliance deadline was reasonable when it was proposed. However, we are adopting a May 1, 2007 compliance deadline to take into account the delay in finalizing today's rule.

One commenter suggested that providing units in Georgia and Missouri 25 months to comply was not enough time. This commenter provided documentation from an engineering firm suggesting that it would take at least 36 months to install SCR on one unit. The commenter further asserted that it would take even longer to install SCR on two units at a single plant and suggested that Missouri sources be given at least 43 months to install controls. We disagree with this commenter. Many SCR projects have been completed in significantly less time. For instance, a SCR was installed on the AES Somerset Plant in New York in 9 months from contract award to completion. Reliant Energy completed construction of two SCRs on two 900 MW units at their Keystone Plant in Pennsylvania in 46 weeks. Even assuming that the engineering and permitting took a year, this job was completed in less than 24 months. It should also be noted that this job was completed in 2003. This was part of the peak construction period for SCRs under Phase I of the $NO_X$ SIP Call. Projects in Georgia and Missouri, being constructed after the bulk of the SCRs for the $NO_X$ SIP Call have been installed, should have much less competition for resources. The commenter provided no explanation of why this project should take so long when so many other projects have been completed in less time. Furthermore, the $NO_X$ SIP Call provides Missouri with CSP allowances that Missouri may use to address situations when installation cannot be completely finished by the compliance date. It should also be noted that while we believe that the SCRs can be installed within 25 months, if Missouri completes its SIP by December 31, 2005, they will actually have 29 months to install the SCRs. This assumes that the company does not begin any work on the SCRs until after the SIP is finalized. Since the company should have a strong indication as to whether they will need to install the SCRs before the SIP is completed, they will actually have more than 29 months to install the SCRs.

*L. What Action Are We Taking on Wisconsin?*

In Michigan, the Wisconsin industry petitioners argued that the emissions from Wisconsin do not contribute significantly to nonattainment in any other State. Section 110(a)(2)(D)(i)(I)requires that a State "contribute significantly to nonattainment in * * * any other State'' in order to be included in the challenged $NO_X$ SIP Call. 42 U.S.C. 7410(a)(2)(D)(i)(I). The Court held that "EPA erroneously included Wisconsin in the $NO_X$ SIP Call because EPA failed to explain how Wisconsin contributes to nonattainment in any other State,'' *Michigan*, 213 F.3d at 681 (emphasis in original). The Court noted that the record showed only that emissions from Wisconsin contribute to violations of the standard over Lake Michigan.

Our "zero-out'' modeling of Wisconsin emissions using UAM-V shows that emissions from Wisconsin impact ozone

levels in neighboring States, but not during exceedances of the 1-hour NAAQS (*i.e.*, these impacts occur when ozone levels are below the NAAQS). For the OTAG episodes we modeled, the ozone impacts of Wisconsin on 1-hour nonattainment are predicted in the northwestern part of Lake Michigan near the shore line of Wisconsin. In the $NO_X$ SIP Call rulemaking, we concluded that impacts over the lake should be considered as contributions to States bordering the lake (*i.e.*, Michigan, Indiana, and Illinois) because of lake breeze effects (63 FR 57386, October 27, 1998). The Court found that we had not provided adequate support for this determination and vacated the rule's application to Wisconsin for the 1-hour standard. Michigan, 213 F.3d at 681.

We agree that additional modeling would be necessary in order to find that Wisconsin significantly contributes to downwind 1-hour nonattainment in any other State and to include Wisconsin in the $NO_X$ SIP Call at this time. We do not currently have the modeling necessary to take such action, therefore, we are excluding the entire State of Wisconsin from the requirements of the 1-hour basis of the $NO_X$ SIP Call to conform to the Court's decision. In addition, we received only one comment on excluding Wisconsin from the $NO_X$ SIP Call and it supported our proposal to do so.

We are not, however, determining that Wisconsin's emissions do not contribute significantly to nonattainment downwind. We have not completed the additional modeling analysis for the States that are part of the OTAG region but were not included in the final $NO_X$ SIP Call. Although we stayed the 8-hour basis of the $NO_X$ SIP Call Rule on September 18, 2000 (65 FR 56245), we are in the process of evaluating lifting the stay. Today's action to exclude Wisconsin from the 1-hour basis of the $NO_X$ SIP Call does not address whether Wisconsin should remain subject to the 8-hour basis of the $NO_X$ SIP Call. We will address that issue at the time we lift the stay as it applies to Wisconsin.

*M. How Are the 8-hour Ozone NAAQS Rules Affected by This Action?*

As noted above, the revisions to the $NO_X$ SIP Call in today's action respond to the Court's decision in *Michigan*. The Court's decision and today's action concern issues arising under only the 1-hour ozone NAAQS, and not the 8-hour ozone NAAQS. Accordingly, none of the actions finalized today—the definitions of EGU and non-EGU and the control requirements for IC engines, and implications for the State budgets; the SIP submission dates; compliance dates; the revised emissions budgets for Alabama, Georgia, Michigan, and Missouri; and the exclusion of Wisconsin—have any effect on any requirements of the $NO_X$ SIP Call on States under the 8-hour ozone NAAQS. Because of the litigation concerning the 8-hour ozone NAAQS, we stayed all of the requirements of the $NO_X$ SIP Call under the 8-hour ozone NAAQS, ranging from the SIP submission dates to the control requirements (65 FR 56245, September 18, 2000). Since then, the Supreme Court has held that the CAA authorizes EPA to revise the ozone NAAQS. *Whitman* v. *American Trucking Ass'ns.*, 121 S. Ct. 903 (2001).

At this time, we are evaluating the process for lifting the 8-hour stay. Originally, the $NO_X$ SIP Call requirements under the 1-hour and 8-hour standards were the same. As a result of court actions, some parts of the 1-hour $NO_X$ SIP Call are being modified in this rule.

For the Interstate Air Quality Rule (IAQR), which we proposed on January 30, 2004 (FR 69 4566), we reassessed the 8-hour transport following the approach used in the $NO_X$ SIP Call, but using an updated model and updated inputs that reflect current requirements, including the $NO_X$ SIP Call. The IAQR proposes additional control requirements for 2010 and 2015 to address the transport that remains in later years after the implementation of the $NO_X$ SIP Call. For a more detailed discussion of how the $NO_X$ SIP Call and the IAQR would interact, see the IAQR proposal.

*N. What Modifications Are Being Made to Parts 51, 78, and 97?*

Today's action makes certain modifications to 40 CFR Part 51, the implementing regulations for the $NO_X$ SIP Call Rule, that were promulgated on October 28, 1998. These modifications, which include clarifications, definitions, and minor changes, are being made in response to the various court decisions on the $NO_X$ SIP Call, (*Michigan* v. *EPA*, 213 F. 3d 663 (DC Cir. 2000), *cert denied*, 121 S. Ct. 1225 (2001)), the $NO_X$ SIP Call Technical Amendments (*Appalachian Power* v. *EPA*, 251 F. 3d 1026 (DC Cir. 2001)), and the Section 126 Rule (*Appalachian Power* v. *EPA*, 249 F. 3d 1042 (DC Cir. 2001)).

In response to the court decision in *Michigan*, the Agency divided the $NO_X$ SIP Call into two phases (Phase I and Phase II), thereby enabling the Agency to proceed with those portions of the $NO_X$ SIP Call that were upheld by the Court. Phase II addresses issues that were either remanded or remanded and vacated by the Court. As a result of the various court challenges and decisions referenced above, most of the applicable dates are no longer correct. States are now complying or have complied with dates either set by the Court or dates triggered by the court decisions. Today's action modifies the applicable provisions to reflect the revised applicable dates. In most instances, today's revisions do not include specific dates but rather specify a timeframe, either during the first or second ozone season, in relation to when the Phase I and Phase II sources are subject to control measures and other applicable requirements. New § 51.121(a)(3) defines "Phase I'' and "Phase II.''

Section 51.121(b)(1)(ii) is modified to specify the new dates for implementation of required control measures under Phase I and Phase II. All subsequent sections are modified to align with these new implementation dates. Section 51.121(b)(2)(ii)(B) is modified to reflect the period during which States may accumulate early reduction credits that may be subsequently utilized for compliance with the $NO_X$ SIP Call requirements. Section 51.121(b)(2)(ii)(C) is also modified to specify the new period during which States may bank emissions credits. Section 51.121(b)(2)(ii)(D) is modified to reflect the new period when banked allowances will not be affected by the limitation on the use of banked emissions reductions credits or emissions allowances or the flow control provisions. Compliance supplement pool credits are considered banked at the start of the second year of the $NO_X$ SIP Call program and are therefore, subject to the flow control provisions.

Section 51.121(b)(2)(ii)(E) is modified to reflect the new period when flow control provisions will be triggered. The compliance date for the initial $NO_X$ SIP Call program was May 1, 2003, and the flow control provisions were to begin in the second year of the program, *i.e.*, 2004. However, in *Michigan*, the Court ruled that May 31, 2004, rather than May 1, 2003, is the compliance date for sources now covered under Phase I. Since then, we have implemented the new flow control dates through notice and comment rulemakings for approval of State $NO_X$ SIP Call SIPs, except for Georgia and Missouri. Flow control issues for Georgia and Missouri will be addressed in the context of reviewing their SIPs, as discussed in section I.1. of this rule.

Section 51.121(c), which specifies the States subject to the $NO_X$ SIP Call with respect to the 1-hour ozone NAAQS, is modified by adding sections

51.121(c)(1) and (c)(2). New § 51.121(c)(1) specifies States that all areas of the State are subject to the $NO_X$ SIP Call, and § 51.121(c)(2) specifies those States that only areas of the State that lie within the fine grid portions are subject to the $NO_X$ SIP Call. Section 51.121(c)(2) also defines the fine grid for purposes of the $NO_X$ SIP Call.

Section 51.121(d) is modified to reflect dates by which all the States subject to the $NO_X$ SIP Call must submit required SIP revisions to EPA for Phase I and Phase II. This revision reflects the Phase I SIP submittal date of October 30, 2000, which was set by the Court in *Michigan*. Phase II SIPs are now due by April 1, 2005.

Section 51.121(e)(2) is renumbered and modified to reflect the revised $NO_X$ budgets for each State. Section 51.121(e)(2)(i) contains the modified table reflecting changes to the State-by-State $NO_X$ budgets. New § 51.121(e)(2)(ii) (A)–(D) specifies counties, which lie within the fine grid, in the States of Alabama, Georgia, Michigan, and Missouri that are subject to the $NO_X$ SIP Call requirements.

Section 51.121(e)(3) is being renumbered as § 51.121(e)(4). A new § 51.121(e)(3)(i) is added to define the portion of the $NO_X$ budget that may be included in a Phase II SIP submission for each State.

In § 51.121(e)(4)(i) the period within which sources may use CSP credits to demonstrate compliance with the $NO_X$ SIP Call requirements is modified. This revision is consistent with the original 2-year window specified in the $NO_X$ SIP Call (63 FR 57428–57430, October 27, 1998). Allowances from the CSP must be used by September 30, 2005 and September 20, 2008, for Phase I and Phase II sources, respectively. Section 51.121(e)(4)(ii) is modified by revising the date after which sources may not use CSP credits. Section 51.121(e)(4)(iii) is modified to show the revised State-by-State CSP amounts. Section 51.121(e)(4)(iv)(A) is modified by revising the period during which sources must implement emissions reductions to receive CSP credits. Section 51.121(e)(4)(iv)(A)(1) is modified by revising the date by which States are to complete issuance of CSP credits to sources covered by the $NO_X$ SIP Call. Section 51.121(e)(4)(iv)(A)(3) is modified by revising the period during which emissions reductions must occur for sources to qualify for CSP credits. Section 51.121(e)(4)(iv)(B) is modified by revising the former control implementation date to reflect the new control implementation dates. Section 51.121(e)(4)(iv)(B)(1) is modified to reflect new dates by which States must initiate the issuance of CSP credits. Section 51.121(e)(4)(iv)(B)(2) is modified by revising the date by which the States are to complete issuance of CSP credits. Sections 51.121(e)(4)(iv)(B)(3)(i) and (ii) are modified to reflect the new control implementation dates.

Section 51.121(e)(4) is renumbered as section 51.121(e)(5).

Sections 51.122 (g)(1) and (2) are modified to reflect the beginning and frequency of annual and triennial emissions reporting by States. A new Table is inserted. Section 51.122 (h)(1) is modified to specify the address for submission of the required reports.

Today's action also finalizes modifications to 40 CFR parts 78 and 97 that were proposed on June 13, 2001. The modifications to part 78 were proposed so that affected sources under the Federal $NO_X$ Budget Trading Program would have the same right of administrative appeal as affected sources under the Acid Rain Program. We received no comments on the revisions to part 78. The proposed revisions to part 97 were made in order to align monitoring and reporting requirements with modification to part 75 made after the promulgation of part 97 and to correct certain grammatical and technical errors. We received two comments, one supporting a proposed revision to part 97 and the other suggesting a change that was addressed in the June 12, 2002 final revisions to part 75 (in § 75.19).

We are finalizing the proposed modifications to parts 78 and 97 as proposed, with only three exceptions of any significance.[60] The final revisions to § 97.61(b) differ from the proposed revisions in that the final revisions use language consistent with language in the analogous provision in § 96.61(b) of the model rule for the $NO_X$ Budget Trading Program under the $NO_X$ SIP Call. In particular, the final revisions refer to "the control period to which the $NO_X$ allowance transfer deadline applies," rather than referencing "the control period in the same year as the $NO_X$ allowance transfer deadline." We believe that the language in the final revisions to § 97.61(b) is clearer and more accurate than the language in the proposed revisions, as well as being analogous to the language in § 96.61(b).

Further, the final revisions to § 97.70(b)(5) and (6) differ from the proposed revisions in that the final revisions use language consistent with language in the analogous provision in § 75.4(e) of the Acid Rain Program emission monitoring regulations. In particular, the final revisions add, to the language "a new stack or flue," a reference to new "add-on $NO_X$ emission controls." As a result, § 97.70(b)(5) and (6) contain the same references to new stacks, flues, or add-on $NO_X$ emission controls as § 75.4(e). Similarly, the final revisions to § 97.71(c) differ from the proposed revisions in that the final revisions use language consistent with language in the analogous provision in § 75.20(h)(3) of the Acid Rain Program emission monitoring regulations. In particular, the final revisions [similar to § 75.20(h)(3)] provide that provisional certification status for the low mass emission excepted methodology is tied to receipt of a "complete" certification application.

[60] In addition, the final revisions correct, without any substantive changes, a few minor, technical errors in the proposed revisions or that were inadvertently left out of the proposed revisions.

## III. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This action, which responds to the court decisions in *Michigan* v. *EPA,* 213 F.3d 663 (DC Cir. 2000) ($NO_X$ SIP Call); *Appalachian Power* v. *EPA,* 249 F.3d 1032 (DC Cir. 2001) (Section 126 Rule), and *Appalachian Power* v. *EPA,* 251 F.3d 1026 (DC Cir. 2001) ($NO_X$ SIP Call Technical Amendments), is a "significant regulatory action" under Executive Order 12866 because it raises novel legal or policy issues and is, therefore, subject to review by OMB.

Because this is a "significant regulatory action,'' a Regulatory Impact Analysis (RIA) is required. We are using the original RIAs prepared for the three actions at issue in the cases listed above ["Regulatory Impact Analysis for the $NO_X$ SIP Call, FIP, and Section 126 Petitions'' (Docket OAR–2001–0008)] and ["Regulatory Impact Analysis for the Final Section 126 Rule'' (Docket A–97–43)], which contain cost and benefit analyses and economic impact analyses reflecting requirements of those rules. In addition, for IC engines, we are using an update to some of the information in the final $NO_X$ SIP Call RIA entitled, "$NO_X$ Emissions Control Costs for Stationary Reciprocating Internal Combustion Engines in the $NO_X$ SIP Call States'' (August 11, 2000) and "Stationary Reciprocating Internal Combustion Engines: Updated Information on $NO_X$ Emissions and Control Techniques,'' (September 1, 2000). This analysis indicates that there is less cost incurred per engine than shown in the original RIA which was prepared for the final $NO_X$ SIP Call. These documents are available for public inspection in Docket OAR–2001–0008 which is listed in the **ADDRESSES** section of this preamble. Although the original RIA estimated costs for controls on IC engines of $100 million, we now estimate a cost of less than $33 million due to fewer sources affected, lower cost per ton, and a lower average control level ($1990, ozone season). In addition, we now estimate the costs for controls in Georgia and Missouri to be approximately $136 million. Due to today's action to remove Wisconsin and portions of Alabama, Georgia, Michigan, and Missouri from the 1998 $NO_X$ SIP Call rule, the costs estimated in the 1998 RIA are lowered by about $146 million).

*B. Paperwork Reduction Act*

Today's action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and therefore is not subject to these requirements.

*C. Regulatory Flexibility Act (RFA)*

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 12.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. This final rule responds to the court decisions in *Michigan* v. *EPA,* 213 F.3d 663, *Appalachian Power* v. *EPA,* 249 F.3d 1032 (DC Cir. 2001), and *Appalachian Power* v. *EPA,* 251 F.3d 1026 (DC Cir. 2001) (decisions on the $NO_X$ SIP Call, Section 126 Rule, and $NO_X$ SIP Call Technical Amendments, respectively). The RIA for the original final $NO_X$ SIP Call included impacts to small entities presuming the application of the control strategies we modeled as surrogates for what the States would actually employ in their $NO_X$ SIPs. We also prepared an analysis of impacts to small entities affected by the Section 126 Rule. This analysis is summarized in the RIA for the final Section 126 Rule and included in the docket for that rule. This action does not impose any requirements on small entities nor will there be impacts on small entities beyond those, if any, required by or resulting from the $NO_X$ SIP Call and the Section 126 Rules.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rules with "Federal mandates'' that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. A "Federal mandate'' is defined to include a "Federal intergovernmental mandate'' and a "Federal private sector mandate'' [2 U.S.C. 658(6)]. A "Federal intergovernmental mandate,'' in turn, is defined to include a regulation that "would impose an enforceable duty upon State, local, or tribal governments,'' [2 U.S.C. 658(5)(A)(i)], except for, among other things, a duty that is "a condition of Federal assistance'' [2 U.S.C. 658(5)(A)(I)]. A "Federal private sector mandate'' includes a regulation that "would impose an enforceable duty upon the private sector,'' with certain exceptions [2 U.S.C. 658(7)(A)].

The EPA prepared a statement for the final $NO_X$ SIP Call that would be required by UMRA if its statutory provisions applied. Today's action does not create any additional requirements beyond those of the final $NO_X$ SIP Call, therefore, no further UMRA analysis is needed.

An Unfunded Mandates Analysis was prepared for the proposed Section 126 Rule which was published on May 25, 1999. The EPA updated this analysis for the final Section 126 Rule (January 18, 2000). This "Government Entity Analysis for the Final Section 126 Petitions Under the Clean Air Act Amendments Title I,'' is available for public inspection in Docket A–97–43 which is listed in the **ADDRESSES** section of this preamble. This analysis determined that the final Section 126 rulemaking contained no regulatory requirements that might significantly or uniquely affect small governments. Today's action imposes no new additional requirements above those established in the final Section 126 Rule.

*E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' "Policies that have federalism implications'' is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action addressing the $NO_X$ SIP Call and Section 126 Rules does not have federalism implications. It will not

have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

In issuing the $NO_X$ SIP Call, EPA acted under section 110(k)(5), which requires the Agency to require a State to correct a deficiency that EPA has found in the SIP. In October 1998, EPA issued its final $NO_X$ SIP Call Rule finding that the SIPs for 22 States and the District of Columbia were substantially inadequate because they did not regulate emissions that significantly contribute to downwind nonattainment in other States. On March 3, 2000, the DC Circuit largely upheld that rule but remanded certain minor issues and vacated and remanded other minor issues to the Agency for further consideration. *Michigan* v. *EPA,* 213 F.3d 663 (DC Cir. 2000) ($NO_X$ SIP Call). Today, EPA is finalizing action on these remanded and remanded and vacated portions of the rule. This action also responds to an issue that the court remanded and vacated in the challenge to the $NO_X$ SIP Call Technical Amendments. *Appalachian Power* v. *EPA,* 251 F.3d 1026 (DC Cir. 2001) ($NO_X$ SIP Call Technical Amendments).

With respect to the action concerning the definition of EGU and the level of control for IC engines, action revising the emission budgets for Georgia, Missouri, Alabama, and Michigan, and the SIP submission and source compliance dates, EPA's action does not impose any additional burdens beyond those imposed by the final $NO_X$ SIP Call. Thus, today's action does not alter the relationship established by the final $NO_X$ SIP Call Rule, which remains in place for 19 States (including Alabama and Michigan) and the District of Columbia. Moreover, no aspect of this rule changes the established relationship between the States and EPA under title I of the CAA. Under title I of the CAA, States have the primary responsibility to develop plans to attain and maintain the NAAQS. As found by the court, the States have full discretion under the $NO_X$ SIP Call Rule to choose the control requirements necessary to address the transported emissions identified by EPA in the $NO_X$ SIP Call Rule.

As provided in the final action promulgating the $NO_X$ SIP Call Rule and the Technical Amendments, the $NO_X$ SIP Call Rule will not impose substantial direct compliance costs. While the States will incur some costs to develop the plan, those costs are not expected to be substantial. Moreover, under section 105 of the CAA, the Federal government supports the States' SIP development activities by providing partial funding of State programs for the prevention and control of air pollution. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Today's rule also responds to the Court's decision in *Appalachian Power* v. *EPA,* 249 F.3d 1032 (DC Cir. 2001) (Section 126 Rule). This action imposes no new requirements that impose compliance burdens beyond those that EPA established under the final Section 126 Rule (January 18, 2000).

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' "Policies that have tribal implications'' is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. Today's action does not significantly or uniquely affect the communities of Indian Tribal governments. The EPA stated in the final $NO_X$ SIP Call Rule, the Technical Amendments Rule, and the Section 126 Rule that Executive Order 13084 did not apply because those final rules do not significantly or uniquely affect the communities of Indian Tribal governments or call on States to regulate $NO_X$ sources located on Tribal lands. The same is true of today's action. Thus, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children and it is not economically significant under Executive Order 12866.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This summary of the energy impact analysis report dated October 2, 2001 (Docket No. OAR–2001–0008, Item No. XII–L–06] estimates the energy impacts associated with the Phase II portion of the $NO_X$ SIP Call, in accordance with Executive Order 13211. It covers all large EGUs that do not participate in the Acid Rain Trading Program and large IC engines in the District of Columbia and the 21 States of the $NO_X$ SIP Call region, as well as all $NO_X$ SIP Call sources (cement kilns, utility boilers, industrial boilers, combustion turbines, and IC engines) in the fine grid portions of Georgia and Missouri. This analysis also considered impacts on sources in only the fine grid portions of Michigan and Alabama. We identified applications of control devices appropriate for this analysis that provide high levels of $NO_X$ reduction at relatively low cost, with an average cost of less than $2,000 (1990 dollars) per ozone season ton of $NO_X$ removed, among them: SCR and NSCR, fluid injection (steam or ammonia—termed SNCR), and LEC. Through the analysis, we identified three relevant energy effects that occur during normal operation of these devices: increased energy demands required by certain control devices and equipment, increased energy use due to pressure drop and changes in the stoichiometry of the combustion process, and energy credits from improved combustion. Each of these $NO_X$ controls has at least

one of these energy effects as part of their normal operation.

The United States consumed over 22 quads (quadrillion Btus) of natural gas in 1999.[61] With respect to energy sources, the application of LEC technology to natural gas-driven IC engines amounts to a savings of about 4,000 mmBtus per unit, or about 70 billion Btus for all affected IC engines (about 70 million cubic feet of gas). This amounts to about three tenths of one percent of the nation's annual consumption. Consequently, the application of LEC technology leads to a small savings in natural gas use nationwide by affected sources and their firms, but not a large enough savings to affect the price or distribution of gas in the United States.

The additional coal necessary to compensate for the loss of efficiency from SCR and SNCR controls amounts to about 11 mmBtus per affected coal-fired boiler, or 89 mmBtus per year per source. For all affected utility and industrial coal-fired boilers, this translates to slightly more than 70 billion Btus. The United States also consumed over 22 quads of coal in 1999. Therefore, the net increase in coal consumption necessary for affected boilers to compensate for their efficiency loss amounts to about three ten-thousandths of one percent of the nation's annual demand for coal. The change in demand for coal caused by $NO_X$ control efficiency loss will not be of sufficient magnitude to affect coal prices. In addition, the reduction in electricity output in response to the requirements of the Phase II $NO_X$ SIP Call rulemaking is less than one-half of one percent of predicted nationwide output between 2005 and 2010 (to approximate a 2007 projection). Because utilities constantly adjust their output to match demand, and because demand fluctuates more widely than the predicted reduction in electricity output from the Phase II rulemaking, this report indicates there will be no significant effect on production or the factors of production imposed by the $NO_X$ SIP Call for affected boilers.

Therefore, we conclude that the rule when implemented is not likely to have a significant adverse effect on the supply, distribution, or use of energy. For more information on the results of this analysis, please consult the energy impact analysis report in the public docket for this rule.

We received four comments on this administrative requirement as summarized below (XII–D–07, TX Gas Transmission Corp.; XII–D–09, INGAA; XII–D–10, El Paso Corp.; XII–F–12, NiSource, Inc.).

*Comment:* Executive Order 13211 requires us to analyze the effect of its regulations on the Nation's energy supply, distribution and use. Commenters state that (1) We failed to analyze, or even recognize, its deadline's potential effect on the United States' natural gas transmission system (XII–F–12), (2) the proposal's impractical compliance deadline could compromise much of the Nation's gas transmission and storage system, yet there has been no analysis of this issue, (3) EPA must provide a compliance period that is adequate to avoid these problems, and (4) the Agency must conduct a study that demonstrates (after notice and opportunity for comment) that it has fully considered all of the impacts on energy supply and distribution. (p. 12 of comment XII–D–09 and p. 13 of comment XII–D–10.)

*Response:* We disagree with the comment that we failed to analyze the effect of this rule on the Nation's energy supply, distribution and use. In accordance with Executive Order 13211, we completed an energy impact analysis of this rule, on October 2, 2001. The analysis indicated minimal effects, less than 0.5 percent nationally, on both energy supply, distribution and demand, including natural gas.

We note that the more prevalent LEC retrofit, which has been in use for almost 20 years, is the screw-in precombustion chamber.[62] This kind of retrofit is both less costly and time-consuming than other kinds of LEC retrofit. For example, Columbia Gas Transmission Corporation, using screw-in precombustion chambers, retrofit two IC engines at its Bedford County, Pennsylvania, facility within 3 days.[63] We have also found that most, if not all, natural gas pipeline stations are equipped with multiple IC engines and that not all engines are operated at the same time. Therefore, we believe that LEC retrofits can be phased-in making it less likely for an entire station to go offline for a LEC retrofit. Thus, because a phased-in approach is feasible, we believe that engine stations can continue operating close to their standard level thereby avoiding service interruptions. We also note that the December 1998 Gas Research Institute report concluded that "installation of the [LEC] retrofit kit is not expected to impact the normal maintenance interval."[64] The energy impact analysis also indicated that IC engines retrofit with LEC will experience, on average, an energy savings of half a million BTUs per hour per engine, and therefore savings in operating costs.

The comment that the 11-month compliance deadline could compromise the nation's gas transmission and storage system is no longer an issue because we are allowing more than 24 months from SIP submittal date for implementation of controls. Our response to this comment is fully discussed in section II.K.2 of this rule, "What Compliance Date Are We Finalizing for IC Engines and What is the Technical Feasibility of This Date?"

With the improvements in ease of LEC retrofits that include scheduling retrofits during maintenance cycles, the adequate time we believe exists for implementation, and the flexibility granted to States to meet their $NO_X$ budgets, we do not believe the concerns expressed about effects on natural gas transmission from compliance with the Phase II $NO_X$ SIP Call rule are warranted.

### *I. National Technology Transfer Advancement Act*

The National Technology Transfer Advancement Act of 1997 does not apply because today's action does not require the public to perform activities conducive to the use of voluntary consensus standards under that Act in the $NO_X$ SIP Call, and $NO_X$ SIP Call Technical Amendments. Today's final action also does not impose additional requirements over those in the final Section 126 Rule. The EPA's compliance with these statutes and Executive Orders for the underlying rules, the final $NO_X$ SIP Call (63 FR 57477, October 27, 1998), the $NO_X$ SIP Call Technical Amendments (64 FR 26298, May 14, 1999; 65 FR 11222, March 2, 2000), and the final Section 126 Rule (65 FR 2674, January 18, 2000) is discussed in more detail in the citations shown above.

### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

This action does not involve special consideration of environmental justice related issues as required by Executive

[61] National Energy Foundation Web page: *http://www.nef1.org/ea/eastats.html.*

[62] Stationary Reciprocating Internal Combustion Engines Updated Information on $NO_X$ Emissions and Control Techniques, Revised Final Report, prepared by Ec/R, Inc. for EPA, p. 4–2, September 1, 2000, available on the Internet at *http://www.epa.gov/ttn/naaqs/ozone/rto/fip/data/rfic_engine.pdf.*

[63] Found in reprint of article in "American Gas & Oil Reporter," May 1998, available on the Internet at *http://www.dieselsupply.com/dscartic.htm.*

[64] "$NO_X$ Control for Two-Cycle Pipeline Reciprocating Engines," p. 4–11, December 1998.

Order 12898 (59 FR 7629, February 16, 1994). For the final $NO_X$ SIP Call and Section 126 Rules, the Agency conducted general analyses of the potential changes in ozone and particulate matter levels that may be experienced by minority and low-income populations as a result of the requirements of these rules. These findings were presented in the RIA for each of these rules. Today's action does not affect these analyses.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A "major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This action is a "major rule'' as defined by 5 U.S.C. § 804(2). This rule will be effective June 21, 2004.

**List of Subjects**

*40 CFR Part 51*

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

*40 CFR Part 78*

Air pollution control, Nitrogen oxides, Ozone, Acid Rain Program, Trading budget, Compliance supplement pool.

*40 CFR Part 97*

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: April 1, 2004.

**Michael O. Leavitt,**

*Administrator.*

■ For the reasons set out in the preamble, title 40 chapter of the Code of Federal Regulations is amended as follows:

## PART 51—[Amended]

■ 1. The Authority citation for part 51 continues to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. Section 51.121 is amended:
■ a. By adding paragraph (a)(3).
■ b. By revising paragraphs (b)(1)(ii), (b)(2)(ii)(B), (b)(2)(ii)(C), (b)(2)(ii)(D), and (b)(2)(ii)(E) introductory text.
■ c. By revising paragraph (c).
■ d. By revising paragraph (d)(1).
■ e. By revising paragraphs (e)(1) and (e)(2).
■ f. By redesignating paragraphs (e)(3) and (e)(4) as (e)(4) and (e)(5).
■ g. By adding a new paragraph (e)(3).
■ h. By revising newly designated paragraphs (e)(4)(i), (e)(4)(ii), (e)(4)(iii), (e)(4)(iv)(A) introductory text, (e)(4)(iv)(A)*(1)*, (e)(4)(iv)(A)*(3)*, (e)(4)(iv)(B) introductory text, (e)(4)(iv)(B)*(1)*, (e)(4)(iv)(B)*(2)*, (e)(4)(iv)(B)*(3)(i)*, (e)(4)(iv)(B)*(3)(ii)*, (e)(4)(iv)(B)*(3)(iii)*.

The revisions and additions read as follows:

**§ 51.121 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen.**

(a) * * *

(3)(i) For purposes of this section, the term "Phase I SIP Submission'' means those SIP revisions submitted by States on or before October 30, 2000 in compliance with paragraph (b)(1)(ii) of this section. A State's Phase I SIP submission may include portions of the $NO_X$ budget, under paragraph (e)(3) of this section, that a State is required to include in a Phase II SIP submission.

(ii) For purposes of this section, the term "Phase II SIP Submission'' means those SIP revisions that must be submitted by a State in compliance with paragraph (b)(1)(ii) of this section and which includes portions of the $NO_X$ budget under paragraph (e)(3) of this section.

(b) * * *

(1) * * *

(ii) Requires full implementation of all such control measures by no later than May 31, 2004 for the sources covered by a Phase I SIP submission and May 1, 2007 for the sources covered by a Phase II SIP submission.

(2) * * *

(ii) * * *

(B) Emissions reductions occurring prior to the first year in which any sources covered by Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section may be used by a source to demonstrate compliance with the SIP revision for the first and second ozone seasons in which any sources covered by a Phase I or Phase II SIP submission are subject to such control measures, provided the SIPs provisions regarding such use comply with the requirements of paragraph (e)(4) of this section.

(C) Emissions reductions credits or emissions allowances held by a source or other person following the first ozone season in which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section or any ozone season thereafter that are not required to demonstrate compliance with the SIP for the relevant ozone season may be banked and used to demonstrate compliance with the SIP in a subsequent ozone season.

(D) Early reductions created according to the provisions in paragraph (b)(2)(ii)(B) of this section and used in the first ozone season in which any sources covered by Phase I or Phase II submissions are subject to the control measures under paragraph (b)(1)(i) of this section are not subject to the flow control provisions set forth in paragraph (b)(2)(ii)(E) of this section.

(E) Starting with the second ozone season in which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section, the SIP shall include provisions to limit the use of banked emissions reductions credits or emissions allowances beyond a predetermined amount as calculated by one of the following approaches:

* * * * *

(c) The following jurisdictions (hereinafter referred to as "States'') are subject to the requirement of this section:

(1) With respect to the 1-hour ozone NAAQS: Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia.

(2) With respect to the 1-hour ozone NAAQS, the portions of Missouri, Michigan, Alabama, and Georgia within the fine grid of the OTAG modeling domain. The fine grid is the area encompassed by a box with the following geographic coordinates: Southwest Corner, 92 degrees West longitude and 32 degrees North latitude; and Northeast Corner, 69.5 degrees West longitude and 44 degrees North latitude.

(d) * * *

(1) The SIP submissions required under paragraph (a) of this section must be submitted to EPA by no later than

October 30, 2000 for Phase I SIP submissions and no later than April 1, 2005 for Phase II SIP submissions.

* * * * *

(e)(1) Except as provided in paragraph (e)(2)(ii) of this section, the $NO_X$ budget for a State listed in paragraph (c) of this section is defined as the total amount of $NO_X$ emissions from all sources in that State, as indicated in paragraph (e)(2)(i) of this section with respect to that State, which the State must demonstrate that it will not exceed in the 2007 ozone season pursuant to paragraph (g)(1) of this section.

(2)(i) The State-by-State amounts of the $NO_X$ budget, expressed in tons, are as follows:

| State | Final budget |
|---|---|
| Alabama | 119,827 |
| Connecticut | 42,850 |
| Delaware | 22,862 |
| District of Columbia | 6,657 |
| Georgia | 150,656 |
| Illinois | 271,091 |
| Indiana | 230,381 |
| Kentucky | 162,519 |
| Maryland | 81,947 |
| Massachusetts | 84,848 |
| Michigan | 190,908 |
| Missouri | 61,406 |
| New Jersey | 96,876 |
| New York | 240,322 |
| North Carolina | 165,306 |
| Ohio | 249,541 |
| Pennsylvania | 257,928 |
| Rhode Island | 9,378 |
| South Carolina | 123,496 |
| Tennessee | 198,286 |
| Virginia | 180,521 |
| West Virginia | 83,921 |
| Total | $3,031,527 |

(ii) (A) For purposes of paragraph (e)(2)(i) of this section, in the case of each State listed in paragraphs (e)(2)(ii)(B) through (E) of this section, the $NO_X$ budget is defined as the total amount of $NO_X$ emissions from all sources in the specified counties in that State, as indicated in paragraph (e)(2)(i) of this section with respect to the State, which the State must demonstrate that it will not exceed in the 2007 ozone season pursuant to paragraph (g)(1) of this section.

(B) In the case of Alabama, the counties are: Autauga, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Colbert, Coosa, Cullman, Dallas, De Kalb, Elmore, Etowah, Fayette, Franklin, Greene, Hale, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Macon, Madison, Marion, Marshall, Morgan, Perry, Pickens, Randolph, Russell, St. Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Winston.

(C) In the case of Georgia, the counties are: Baldwin, Banks, Barrow, Bartow, Bibb, Bleckley, Bulloch, Burke, Butts, Candler, Carroll, Catoosa, Chattahoochee, Chattooga, Cherokee, Clarke, Clayton, Cobb, Columbia, Coweta, Crawford, Dade, Dawson, De Kalb, Dooly, Douglas, Effingham, Elbert, Emanuel, Evans, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer, Glascock, Gordon, Greene, Gwinnett, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Jackson, Jasper, Jefferson, Jenkins, Johnson, Jones, Lamar, Laurens, Lincoln, Lumpkin, McDuffie, Macon, Madison, Marion, Meriwether, Monroe, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Peach, Pickens, Pike, Polk, Pulaski, Putnam, Rabun, Richmond, Rockdale, Schley, Screven, Spalding, Stephens, Talbot, Taliaferro, Taylor, Towns, Treutlen, Troup, Twiggs, Union, Upson, Walker, Walton, Warren, Washington, White, Whitfield, Wilkes, and Wilkinson.

(D) In the case of Michigan, the counties are: Allegan, Barry, Bay, Berrien, Branch, Calhoun, Cass, Clinton, Eaton, Genesee, Gratiot, Hillsdale, Ingham, Ionia, Isabella, Jackson, Kalamazoo, Kent, Lapeer, Lenawee, Livingston, Macomb, Mecosta, Midland, Monroe, Montcalm, Muskegon, Newaygo, Oakland, Oceana, Ottawa, Saginaw, St. Clair, St. Joseph, Sanilac, Shiawassee, Tuscola, Van Buren, Washtenaw, and Wayne.

(E) In the case of Missouri, the counties are: Bollinger, Butler, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Lewis, Lincoln, Madison, Marion, Mississippi, Montgomery, New Madrid, Oregon, Pemiscot, Perry, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Genevieve, St. Francois, St. Louis, St. Louis City, Scott, Shannon, Stoddard, Warren, Washington, and Wayne.

(3) The State-by-State amounts of the portion of the $NO_X$ budget provided in paragraph (e)(1) of this section, expressed in tons, that the States may include in a Phase II SIP submission are as follows:

| State | Phase II incremental budget |
|---|---|
| Alabama | 4,968 |
| Connecticut | 41 |
| Delaware | 660 |
| District of Columbia | 1 |
| Illinois | 7,055 |
| Indiana | 4,244 |
| Kentucky | 2,556 |
| Maryland | 780 |
| Massachusetts | 1,023 |
| Michigan | 1,033 |
| New Jersey | −994 |
| New York | 1,659 |
| North Carolina | 6,026 |
| Ohio | 2,741 |
| Pennsylvania | 10,230 |
| Rhode Island | 192 |
| South Carolina | 4,260 |
| Tennessee | 2,877 |
| Virginia | 6,168 |
| West Virginia | 1,124 |
| Total | 56,644 |

(4)(i) Notwithstanding the State's obligation to comply with the budgets set forth in paragraph (e)(2) of this section, a SIP revision may allow sources required by the revision to implement $NO_X$ emission control measures to demonstrate compliance in the first and second ozone seasons in which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section using credit issued from the State's compliance supplement pool, as set forth in paragraph (e)(4)(iii) of this section.

(ii) A source may not use credit from the compliance supplement pool to demonstrate compliance after the second ozone season in which any sources are covered by a Phase I or Phase II SIP submission.

(iii) The State-by-State amounts of the compliance supplement pool are as follows:

| State | Compliance supplement pool (tons of $NO_X$) |
|---|---|
| Alabama | 8,962 |
| Connecticut | 569 |
| Delaware | 168 |
| District of Columbia | 0 |
| Georgia | 10,728 |
| Illinois | 17,688 |
| Indiana | 19,915 |
| Kentucky | 13,520 |
| Maryland | 3,882 |
| Massachusetts | 404 |
| Michigan | 9,907 |
| Missouri | 5,630 |
| New Jersey | 1,550 |
| New York | 2,764 |
| North Carolina | 10,737 |
| Ohio | 22,301 |
| Pennsylvania | 15,763 |
| Rhode Island | 15 |
| South Carolina | 5,344 |
| Tennessee | 10,565 |
| Virginia | 5,504 |
| West Virginia | 16,709 |
| Total | 182,625 |

(iv) * * *

(A) The State may issue some or all of the compliance supplement pool to sources that implement emissions reductions during the ozone season beyond all applicable requirements in the first ozone season in which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section.

(*1*) The State shall complete the issuance process by no later than the commencement of the first ozone season in which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section.

* * * * *

(*3*) The emissions reductions must be verified by the source as actually having occurred during an ozone season between September 30, 1999 and the commencement of the first ozone season in which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section.

* * * * *

(B) The State may issue some or all of the compliance supplement pool to sources that demonstrate a need for an extension of the earliest date on which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section according to the following provisions:

(*1*) The State shall initiate the issuance process by the later date of September 30 before the first ozone season in which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section or after the State issues credit according to the procedures in paragraph (e)(4)(iv)(A) of this section.

(*2*) The State shall complete the issuance process by no later than the commencement of the first ozone season in which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section.

(*3*) * * *

(*i*) For a source used to generate electricity, compliance with the SIP revision's applicable control measures by the commencement of the first ozone season in which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section, would create undue risk for the reliability of the electricity supply. This demonstration must include a showing that it would not be feasible to import electricity from other electricity generation systems during the installation of control technologies necessary to comply with the SIP revision.

(*ii*) For a source not used to generate electricity, compliance with the SIP revision's applicable control measures by the commencement of the first ozone season in which any sources covered by a Phase I or Phase II SIP submission are subject to control measures under paragraph (b)(1)(i) of this section would create undue risk for the source or its associated industry to a degree that is comparable to the risk described in paragraph (e)(4)(iv)(B)(*3*)(*i*) of this section.

(*iii*) For a source subject to an approved SIP revision that allows for early reduction credits in accordance with paragraph (e)(4)(iv)(A) of this section, it was not possible for the source to comply with applicable control measures by generating early reduction credits or acquiring early reduction credits from other sources.

* * * * *

■ 3. Section 51.122 is amended by:

■ a. revising paragraphs (g)(1), and (g)(2),

■ b. removing paragraph (g)(3) and redesignating paragraph (g)(4) as (g)(3),

■ c. revising paragraph (h)(1).

The revisions read as follows:

**§ 51.122 Emissions reporting requirements for SIP revisions relating to budgets for $NO_X$ emissions.**

* * * * *

(g) * * *

(1) Data collection is to begin during the ozone season 1 year prior to the State's $NO_X$ SIP Call compliance date.

(2) Reports are to be submitted according to paragraph (b) of this section and the schedule in Table 1. After 2008, trienniel reports are to be submitted every third year and annual reports are to be submitted each year that a trienniel report is not required.

TABLE 1.—SCHEDULE FOR SUBMITTING REPORTS

| Data collection year | Type of report required |
|---|---|
| 2002 | Trienniel. |
| 2003 | Annual. |
| 2004 | Annual. |
| 2005 | Trienniel. |
| 2006 | Annual. |
| 2007 | Year 2007 Report. |
| 2008 | Trienniel. |

* * * * *

(h) * * *

(1) States are required to report emissions data in an electronic format to one of the locations listed in this paragraph (h). Several options are available for data reporting. States can obtain information on the current formats at the following Internet address: *http://www.epa.gov/ttn/chief,* by calling the EPA Info CHIEF help desk at (919) 541–1000 or by sending an e-mail to *info.chief@epa.gov.* Because electronic reporting technology continually changes, States are to contact the Emission Factor and Inventory Group (EFIG) for the latest specific formats.

* * * * *

## PART 78—APPEAL PROCEDURES FOR ACID RAIN PROGRAM

■ 1. The authority citation for part 78 is revised to read as follows:

**Authority:** 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

■ 2. Section 78.1 is amended in paragraph (a)(1) by removing the words "parts 72, 73, 74, 75, 76, and 77 of this chapter'' and adding in its place the words "parts 72, 73, 74, 75, 76, or 77 of this chapter or part 97 of this chapter''; and adding a new paragraph (b)(6) to read as follows:

**§ 78.1 Purpose and scope.**

(b) * * *

(6) Under part 97 of this chapter:

(i) The adjustment of the information in a compliance certification or other submission and the deduction or transfer of $NO_X$ allowances based on the information, as adjusted, under § 97.31 of this chapter;

(ii) The decision on the allocation of $NO_X$ allowances to a $NO_X$ Budget unit under § 97.41(b), (c), (d), or (e) of this chapter;

(iii) The decision on the allocation of $NO_X$ allowances to a $NO_X$ Budget unit from the compliance supplement pool under § 97.43 of this chapter;

(iv) The decision on the deduction of $NO_X$ allowances under § 97.54 of this chapter;

(v) The decision on the transfer of $NO_X$ allowances under § 97.61 of this chapter;

(vi) The decision on a petition for approval of an alternative monitoring system;

(vii) The approval or disapproval of a monitoring system certification or recertification under § 97.71 of this chapter;

(viii) The finalization of control period emissions data, including retroactive adjustment based on audit;

(ix) The approval or disapproval of a petition under § 97.75 of this chapter;

(x) The determination of the sufficiency of the monitoring plan for a $NO_X$ Budget opt-in unit;

(xi) The decision on a request for withdrawal of a $NO_X$ Budget opt-in unit from the $NO_X$ Budget Trading Program under § 97.86 of this chapter;

(xii) The decision on the deduction of $NO_X$ allowances under § 97.87 of this chapter; and

(xiii) The decision on the allocation of $NO_X$ allowances to a $NO_X$ Budget opt-in unit under § 97.88 of this chapter.

* * * * *

**§ 78.2 [Amended]**

■ 3. Section 78.2 is amended by removing the words "shall apply to this part'' and adding in its place the words "shall apply to appeals of any final decision of the Administrator under parts 72, 73, 74, 75, 76, or 77 of this chapter.''

■ 4. Section 78.3 is amended:

■ a. In paragraph (b)(3)(i) by adding, after the word "petitioner)'', the words "or the $NO_X$ authorized account representative under paragraph (a)(3) of this section (unless the $NO_X$ authorized account representative is the petitioner)'';

■ b. In paragraph (c)(7) by adding, after the words "title IV of the Act'', the words "or part 97 of this chapter, as appropriate'';

■ c. Redesignating paragraphs (d)(2) and (d)(3) as paragraphs (d)(3) and (d)(4) respectively;

■ d. In newly designated paragraph (d)(3) by adding, after the words "Acid Rain Program'' the words "or on an account certificate of representation submitted by a $NO_X$ authorized account representative or an application for a general account submitted by a $NO_X$ authorized account representative under the $NO_X$ Budget Trading Program''; and

■ e. Adding new paragraphs (a)(3) and (d)(2).

The additions and revisions read as follows:

**§ 78.3 Petition for administrative review and request for evidentiary hearing.**

(a) * * *

(3) The following persons may petition for administrative review of a decision of the Administrator that is made under part 97 of this chapter and that is appealable under § 78.1(a) of this part:

(i) The $NO_X$ authorized account representative for the unit or any $NO_X$ Allowance Tracking System account covered by the decision; or

(ii) Any interested person.

* * * * *

(d) * * *

(2) Any provision or requirement of part 97 of this chapter, including the standard requirements under § 97.6 of this chapter and any emission monitoring or reporting requirements under part 97 of this chapter.

* * * * *

■ 5. Section 78.4 is amended by adding two new sentences after the third sentence in paragraph (a) to read as follows:

**§ 78.4 Filings.**

(a) * * * Any filings on behalf of owners and operators of a $NO_X$ Budget unit or source shall be signed by the $NO_X$ authorized account representative. Any filings on behalf of persons with an interest in $NO_X$ allowances in a general account shall be signed by the $NO_X$ authorized account representative. * * *

* * * * *

**§ 78.12 [Amended]**

■ 6. Section 78.12 is amended in paragraph (a)(2) by adding, after the words "Acid Rain permit'' the words "$NO_X$ Budget permit, or other federally enforceable permit.''

## PART 97—FEDERAL NOX BUDGET TRADING PROGRAM

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7403, 7426, and 7601.

■ 2. Section 97.2 is amended by:

■ a. Revising the definition of "Continuous emission monitoring system or CEMS'';

■ b. In the definition of "Fossil fuel fired'' by revising the first occurrence of the word "combination'' in paragraphs (1), (2), and (3)(i) to read "combustion'';

■ c. In the definition of "Most stringent State or Federal $NO_X$ emissions limitation'' by removing the words ", with regard to a $NO_X$ Budget opt-in unit,'';

■ d. In the third sentence of the definition of "$NO_X$ allowance'' by adding the reference "§ 97.40,'' after the word "except'';

■ e. In the definition of "$NO_X$ Budget unit'' by removing the words "Trading Program'';

■ f. In the definition of "owner'' by adding the word "the'' before the final occurrence of the word "$NO_X$'' in paragraph (4) of the definition; and

■ g. In the definition of "Percent monitor data availability'' by revising the words "§ 94.84(b)'' to read "§ 97.84(b)'', revising the words "3,672 hours per'' to read "the total number of unit operating hours in the'', and by revising the symbol "%'' to read "percent''.

The revisions and additions read as follows:

**§ 97.2 Definitions.**

* * * * *

*Continuous emission monitoring system* or *CEMS* means the equipment required under subpart H of this part to sample, analyze, measure, and provide, by means of readings taken at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen oxides ($NO_X$) emissions, stack gas volumetric flow rate or stack gas moisture content (as applicable), in a manner consistent with part 75 of this chapter. The following are the principal types of continuous emission monitoring systems required under subpart H of this part:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated DAHS. A flow monitoring system provides a permanent, continuous record of stack gas volumetric flow rate, in units of standard cubic feet per hour (scfh);

(2) A nitrogen oxides concentration monitoring system, consisting of a $NO_X$ pollutant concentration monitor and an automated DAHS. A $NO_X$ concentration monitoring system provides a permanent, continuous record of $NO_X$ emissions in units of parts per million (ppm);

(3) A nitrogen oxides emission rate (or $NO_X$-diluent) monitoring system, consisting of a $NO_X$ pollutant concentration monitor, a diluent gas ($CO_2$ or $O_2$) monitor, and an automated DAHS. A $NO_X$ concentration monitoring system provides a permanent, continuous record of: $NO_X$ concentration in units of parts per million (ppm), diluent gas concentration in units of percent $O_2$ or $CO_2$ (percent $O_2$ or $CO_2$), and $NO_X$ emission rate in units of pounds per million British thermal units (lb/mmBtu); and

(4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter. A moisture monitoring system provides a permanent, continuous record of the stack gas moisture content, in units of percent $H_2O$ (percent $H_2O$).

* * * * *

**§ 97.4 [Amended]**

■ 3. Section 97.4 is amended by:

■ a. Revising paragraph (a).

■ b. Amending the first sentence of paragraph (b)(1) by adding, after the words "federally enforceable permit that'', the words "restricts the unit to combusting only natural gas or fuel oil (as defined in § 75.2 of this chapter)

during a control period''; and removing "and that'', following "25 tons or less'', and adding in their place ", and'';

■ c. In paragraph (b)(4)(i) by adding, after the words "with the restriction on'', the words "fuel use and''; and

■ d. In paragraph (b)(4)(iv) by adding, after both occurrences of the words "restriction on'', the words "fuel use or'';

■ e. In paragraph (b)(4)(vi)(A) by adding, after the words "restriction on'', the words "fuel use or'';

■ f. In paragraph (b)(4)(vi)(B) by adding, after the words "the restriction on'', the words "fuel use or''.

The revisions and additions read as follows:

**§ 97.4 Applicability.**

(a) The following units in a State shall be a $NO_X$ Budget unit, and any source that includes one or more such units shall be a $NO_X$ Budget source, subject to the requirements of this part:

(1)(i) For units other than cogeneration units—

(A) For units commencing operation before January 1, 1997, a unit serving during 1995 or 1996 a generator—

*(1)* With a nameplate capacity greater than 25 MWe and

*(2)* Producing electricity for sale under a firm contract to the electric grid.

(B) For units commencing operation in 1997 or 1998, a unit serving during 1997 or 1998 a generator—

*(1)* With a nameplate capacity greater than 25 MWe and

*(2)* Producing electricity for sale under a firm contract to the electric grid.

(C) For units commencing operation on or after January 1, 1999, a unit serving at any time a generator—

*(1)* With a nameplate capacity greater than 25 MWe and

*(2)* Producing electricity for sale.

(ii) For cogeneration units—

(A) For units commencing operation before January 1, 1997, a unit serving during 1995 or 1996 a generator with a nameplate capacity greater than 25 MWe and failing to qualify as an unaffected unit under § 72.6(b)(4) of this chapter for 1995 or 1996 under the Acid Rain Program.

(B) For units commencing operation in 1997 or 1998, a unit serving during 1997 or 1998 a generator with a nameplate capacity grater than 25 MWe and failing to qualify as an unaffected unit under § 72.6(b)(4) of this chapter for 1997 or 1998 under the Acid Rain Program.

(C) For units commencing operation on or after January 1, 1999, a unit serving at any time a generator with a nameplate capacity greater than 25 MWe and failing to qualify as an unaffected unit under § 72.6(b)(4) of this chapter under the Acid Rain Program for any year.

(2)(i) For units other than cogeneration units—

(A) For units commencing operation before January 1, 1997, a unit—

*(1)* With a maximum design heat input greater than 250 mmBtu/hr and

*(2)* Not serving during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid.

(B) For units commencing operation in 1997 or 1998, a unit—

*(1)* With a maximum design heat input greater than 250 mmBtu/hr and

*(2)* Not serving during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid.

(C) For units commencing on or after January 1, 1999, a unit with a maximum design heat input greater than 250 mmBtu/hr:

*(1)* At no time serving a generator producing electricity for sale; or

*(2)* At any time serving a generator with a nameplate capacity of 25 MWe or less producing electricity for sale and with the potential to use no more than 50 percent of the potential electrical output capacity of the unit.

(ii) For cogeneration units—

(A) For units commencing operation before January 1, 1997, a unit with a maximum design heat input greater than 250 mmBtu/hr and qualifying as an unaffected unit under § 72.6(b)(4) of this chapter under the Acid Rain Program for 1995 and 1996.

(B) For units commencing operation in 1997 or 1998, a unit with a maximum design heat input greater than 250 mmBtu/hr and qualifying as an unaffected unit under § 72.6(b)(4) under the Acid Rain Program for 1997 and 1998.

(C) For units commencing on or after January 1, 1999, a unit with a maximum design heat input greater than 250 mmBtu/hr and qualifying as an unaffected unit under § 72.6(b)(4) of this chapter under the Acid Rain Program for each year.

* * * * *

■ 4. Section 97.5 is amended by:

■ a. In paragraph (c)(6)(i) by removing the word "or''

■ b. In paragraph (c)(6)(ii) by removing the period and replacing it with "; or''; and

■ c. Adding a new paragraph (c)(6)(iii).

The addition reads as follows:

**§ 97.5 Retired unit exemption.**

* * * * *

(c) * * *

(6) * * *

(iii) The date on which the unit resumes operation, if the unit is not required to submit a $NO_X$ permit application.

* * * * *

**§ 97.40 [Amended]**

■ 5. Section 97.40 is amended by removing the word "program''.

**§ 97.42 [Amended]**

■ 6. Section 97.42 is amended by:

■ a. In paragraph (d)(4) by revising the words "a control period'' to read "the control period'';

■ b. In paragraph (e)(1) by adding, before the words 0.15 lb/mmBtu'' and "0.17 lb/mmBtu'' in the formulas, the words "the lesser of'' and by adding, after the words "0.15 lb/mmBtu'' and 0.17 lb/mmBtu'' in the formulas, the words "the unit's most stringent State or Federal emission limitation.''

■ c. In paragraph (e)(2) by revising the words "paragraph (c)(1)'' to read "paragraph (e)(1)''.

**§ 97.43 [Amended]**

■ 7. Section 97.43 is amended by removing paragraph (c)(8).

**§ 97.51 [Amended]**

■ 8. Section 97.51 is amended by revising paragraph (b)(1)(i)(D) by adding, after the words "with respect to'', the word "$NO_X$''.

■ 9. Section 97.54 is amended in paragraph (f) introductory text by removing the colon after the words "as follows'' and by adding a period in its place and by adding a new sentence to the end of the paragraph to read as follows:

**§ 97.54 Compliance.**

* * * * *

(f) * * * For each State $NO_X$ Budget Trading Program that is established, and approved and administered by the Administrator pursuant to § 51.121 of this chapter, the terms "compliance account'' or "compliance accounts'', "overdraft account'' or "overdraft accounts'', "general account'' or "general accounts'', "States'', and "trading program budgets under § 97.40'' in paragraphs (f)(1) through (f)(3) of this section shall be read to include respectively: A compliance account or compliance accounts established under such State $NO_X$ Budget Trading Program; an overdraft account or overdraft accounts established under such State $NO_X$ Budget Trading Program; a general account or general accounts established under such State $NO_X$ Budget Trading Program; the State or portion of a State covered by such State $NO_X$ Budget Trading Program; and the trading program budget of the State

or portion of a State covered by such State $NO_X$ Budget Trading Program.

* * * * *

**§ 97.61 [Amended]**

■ 10. Section 97.61 is amended in paragraph (b) by revising the words "in a prior year or the same year as the NOX allowance transfer deadline'' to read "prior to or the same as the control period to which the $NO_X$ allowance transfer deadline applies'' and by revising the words "the control period in the same year as the $NO_X$ allowance transfer deadline'' to read "the control period in the fourth year after the control period to which the $NO_X$ allowance transfer deadline applies.''

■ 11. Section 97.70 is amended by:

■ a. In paragraph (a)(1) by removing the words "§§ 75.72 and §§ 75.76''and adding in its place the words "§§ 75.71 and 75.72'';

■ b. Revising paragraph (b)(3);

■ c. Revising paragraph (b)(4);

■ d. Removing paragraphs (b)(5) and (b)(6);

■ e. Redesignating paragraphs (b)(7), (b)(8) and (b)(9) as paragraphs (b)(5), (b)(6), and (b)(7), respectively;

■ f. Revising newly redesignated paragraphs (b)(5) and (b)(6); and

■ g. Revising paragraph (c).

The revisions read as follows:

**§ 97.70 General requirements.**

* * * * *

(b) * * *

(3) For the owner or operator of a $NO_X$ Budget unit under § 97.4(a) that commences operation on or after January 1, 2003 and that reports on an annual basis under § 97.74(d) by the following dates:

(i) The earlier of 90 unit operating days after the date on which the unit commences commercial operation or 180 calendar days after the date on which the unit commences commercial operation; or

(ii) May 1, 2003, if the compliance date under paragraph (b)(3)(i) of this section is before May 1, 2003.

(4) For the owner or operator of a $NO_X$ Budget unit under § 97.4(a) that commences operation on or after January 1, 2003 and that reports on a control period basis under § 97.74(d)(2)(ii), by the following dates:

(i) The earlier of 90 unit operating days or 180 calendar days after the date on which the unit commences commercial operation, if this compliance date is during a control period; or

(ii) May 1 immediately following the compliance date under paragraph (b)(4)(i) of this section, if such compliance date is not during a control period.

(5) For the owner or operator of a $NO_X$ Budget unit that has a new stack or flue or add-on $NO_X$ emission controls for which construction is completed after the applicable deadline under paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this section or under subpart I of this part and that reports on an annual basis under § 97.74(d), by the earlier of 90 unit operating days or 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on $NO_X$ emission controls.

(6) For the owner or operator of a $NO_X$ Budget unit that has a new stack or flue or add-on $NO_X$ emission controls for which construction is completed after the applicable deadline under paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this section or under subpart I of this part and that reports on a control period basis under § 97.74(d)(2)(ii), by the following dates:

(i) The earlier of 90 unit operating days or 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on $NO_X$ emission controls, if this compliance date is during a control period; or

(ii) May 1 immediately following the compliance date under paragraph (b)(6)(i) of this section, if such compliance date is not during a control period.

* * * * *

(c) *Commencement of data reporting.* (1) The owner or operator of $NO_X$ Budget units under paragraph (b)(1) or (b)(2) of this section shall determine, record and report $NO_X$ mass emissions, heat input rate, and any other values required to determine $NO_X$ mass emissions (*e.g.,* $NO_X$ emission rate and heat input rate, or $NO_X$ concentration and stack flow rate) in accordance with § 75.70(g) of this chapter, beginning on the first hour of the applicable compliance deadline in paragraph (b)(1) or (b)(2) of this section.

(2) The owner or operator of a $NO_X$ Budget unit under paragraph (b)(3) or (b)(4) of this section shall determine, record and report $NO_X$ mass emissions, heat input rate, and any other values required to determine $NO_X$ mass emissions (*e.g.,* $NO_X$ emission rate and heat input rate, or $NO_X$ concentration and stack flow rate) and electric and thermal output in accordance with § 75.70(g) of this chapter, beginning on:

(i) The date and hour on which the unit commences operation, if the date and hour on which the unit commences operation is during a control period; or

(ii) The first hour on May 1 of the first control period after the date and hour on which the unit commences operation, if the date and hour on which the unit commences operation is not during a control period.

(3) Notwithstanding paragraphs (c)(2)(i) and (c)(2)(ii) of this section, the owner or operator may begin reporting $NO_X$ mass emission data and heat input data before the date and hour under paragraph (c)(2)(i) or (c)(2)(ii) of this section if the unit reports on an annual basis and if the required monitoring systems are certified before the applicable date and hour under paragraph (c)(1) or (c)(2) of this section.

* * * * *

■ 12. Section 97.71 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. In paragraphs (b)(1), (b)(2), and (b)(3)(ii) by adding the word "emission'' before the words "monitoring system'' in each occurrence in paragraph (b)(1), in both occurrences in the first sentence of paragraph (b)(2), and in the one occurrence in paragraph (b)(3)(ii); and by revising the word "a'' to read "an'' after the word "installs'' in the second sentence of paragraph (b)(1);

■ c. In paragraphs (b)(3)(iii) and (b)(3)(iv)(C) by removing each occurrence of the words "or component thereof''; and

■ d. Revising the second sentence of paragraph (c), adding two new sentences to the end of paragraph (c), and removing paragraphs (c)(i) through (iii).

The revisions and additions read as follows:

**§ 97.71 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 for $NO_X$-diluent CEMS, flow monitors, $NO_X$ concentration CEMS, or excepted monitoring systems under appendix E of part 75 of this chapter for $NO_X$, under appendix D for heat input, or under § 75.19 for $NO_X$ and heat input, except that:

* * * * *

(c) * * * The owner or operator of such a unit shall also meet the applicable certification and recertification procedures of paragraph (b) of this section, except that the excepted methodology shall be deemed provisionally certified for use under the $NO_X$ Budget Trading Program as of the date on which a complete certification application is received by the

Administrator. The methodology shall be considered to be certified either upon receipt of a written notice of approval from the Administrator or, if such notice is not provided, at the end of the Administrator's 120 day review period. However, a provisionally certified or certified low mass emissions excepted methodology shall not be used to report data under the $NO_X$ Budget Trading Program prior to the applicable commencement date specified in § 75.19(a)(1)(ii) of this chapter.

* * * * *

■ 13. Section 97.72 is amended by:

■ a. In paragraph (a) by adding the word "emission'' before the words "monitoring system'' and the words "subpart H,'' before "appendix D''; and

■ b. In paragraph (b) by revising the words "a monitoring system'' in the first sentence to read "an emission monitoring system'', by removing each occurrence of the words "or component'' in the paragraph, and by adding a sentence to the end of the paragraph.

The revisions read as follows:

**§ 97.72 Out of control periods.**

* * * * *

(b) * * * The owner or operator shall follow the initial certification or recertification procedures in § 97.71 for each disapproved system.

■ 14. Section 97.74 is amended by revising paragraphs (a)(1), (d)(1), and (d)(2)(ii) to read as follows:

**§ 97.74 Recordkeeping and reporting.**

(a) * * *

(1) The $NO_X$ authorized account representative shall comply with all recordkeeping and reporting requirements in this section, with the recordkeeping and reporting requirements under § 75.73 of this chapter, and with the requirements of § 97.10(e)(1).

* * * * *

(d) * * *

(1) If a unit is subject to an Acid Rain emission limitation or if the owner or operator of the $NO_X$ budget unit chooses to meet the annual reporting requirements of this subpart H, the $NO_X$ authorized account representative shall submit a quarterly report for each calendar quarter beginning with:

(i) For a unit for which the owner or operator intends to apply or applies for the early reduction credits under § 97.43, the calendar quarter that covers May 1, 2000 through June 30, 2000. The $NO_X$ mass emission data shall be recorded and reported from the first hour on May 1, 2000; or

(ii) For a unit that commences operation before January 1, 2003 and that is not subject to paragraph (d)(1)(i) of this section, the calendar quarter covering May 1, 2003 through June 30, 2003. The $NO_X$ mass emission data shall be recorded and reported from the first hour on May 1, 2003; or

(iii) For a unit that commences operation on or after January 1, 2003:

(A) The calendar quarter in which the unit commences operation, if unit operation commences during a control period. The $NO_X$ mass emission data shall be recorded and reported from the date and hour when the unit commences operation; or

(B) The calendar quarter which includes May 1 through June 30 of the first control period following the date on which the unit commences operation, if the unit does not commence operation during a control period. The $NO_X$ mass emission data shall be recorded and reported from the first hour on May 1 of that control period; or

(iv) A calendar quarter before the quarter specified in paragraph (d)(1)(i), (d)(1)(ii), or (d)(1)(iii)(B) of this section, if the owner or operator elects to begin reporting early under § 97.70(c)(3).

(2) * * *

(ii) Submit quarterly reports, documenting $NO_X$ mass emissions from the unit, only for the period from May 1 through September 30 of each year and including the data described in § 75.74(c)(6) of this chapter. The $NO_X$ authorized account representative shall submit such quarterly reports, beginning with:

(A) For a unit for which the owner or operator intends to apply or applies for the early reduction credits under § 97.43, the calendar quarter that covers May 1, 2000 through June 30, 2000. The $NO_X$ mass emission data shall be recorded and reported from the first hour on May 1, 2000; or

(B) For a unit that commences operation before January 1, 2003 and that is not subject to paragraph (d)(2)(ii)(A) of this section, the calendar quarter covering May 1, 2003 through June 30, 2003. The $NO_X$ mass emission data shall be recorded and reported from the first hour on May 1, 2003; or

(C) For a unit that commences operation on or after January 1, 2003 and during a control period, the calendar quarter in which the unit commences operation. The $NO_X$ mass emission data shall be recorded and reported from the date and hour when the unit commences operation; or

(D) For a unit that commences operation on or after January 1, 2003 and not during a control period, the calendar quarter which includes May 1 through June 30 of the first control period following the date on which the unit commences operation. The $NO_X$ mass emission data shall be recorded and reported from the first hour on May 1 of that control period.

* * * * *

**§ 97.87 [Amended]**

■ 15. Section 97.87 is amended in the second sentence of paragraph (b)(1)(iii)(A) by adding the word "be'' after the words "shall not''.

■ 16. Subpart J consisting of § 97.90 is added to part 97 to read as follows:

## Subpart J—Appeal Procedures

**§ 97.90 Appeal procedures.**

The appeal procedures for the $NO_X$ Budget Trading Program are set forth in part 78 of this chapter.

[FR Doc. 04–7973 Filed 4–20–04; 8:45 am]

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# Part III

# Securities and Exchange Commission

**17 CFR Part 230, et al.**

**Use of Form S–8 and Form 8–K by Shell Companies; Proposed Rule**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 230, 239, 240 and 249

**[Release Nos. 33–8407; 34–49566; File No. S7–19–04]**

**RIN 3235–AH88**

## Use of Form S–8 and Form 8–K by Shell Companies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission is proposing rule amendments relating to filings by reporting shell companies. We propose to define a "shell company'' as a company with no or nominal operations, and with no or nominal assets or assets consisting solely of cash and cash equivalents. We also propose to prohibit the use of Form S–8 under the Securities Act of 1933 by a shell company. In addition, we propose to amend Form 8–K under the Securities Exchange Act of 1934 to require a shell company, when reporting an event that causes it to cease being a shell company, to file with the Commission the same type of information that it would be required to file to register a class of securities under the Exchange Act. These proposals are intended to protect investors by deterring fraud and abuse in our securities markets through the use of reporting shell companies.

**DATES:** Comments should be received on or before June 7, 2004.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic comments:*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–19–04 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

*Paper comments:*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number S7–19–04. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/proposed.shtml)*. Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Gerald J. Laporte, Chief, or Kevin M. O'Neill, Special Counsel, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0310, (202) 942–2950.

**SUPPLEMENTARY INFORMATION:** We are requesting public comment on proposals designed to protect investors by deterring fraud and abuse in our securities markets through the use of shell companies. We propose to amend Form S–8 [1] under the Securities Act of 1933[2] to prohibit use of the form by reporting shell companies.[3] We also propose to amend the requirements of Form 8–K [4] under the Securities Exchange Act of 1934 [5] as they apply to shell companies. The Form 8–K amendments would require a shell company, when reporting an event that causes it to cease being a shell company, to file with the Commission the same type of information that it would be required to file to register a class of securities on Form 10 [6] or Form 10–SB [7] under the Exchange Act. In addition, we propose to amend Rule 405 [8] under the Securities Act and Rule 12b–2 [9] under the Exchange Act to define "shell company'' and amend Rule 12b–2 to revise the definition of "succession.''

In proposing these rules, we are not addressing the relative merits of shell companies. We recognize that companies and their professional advisors use shell companies, often called "corporate shells'' in this context, for many legitimate corporate structuring purposes. Our proposed definition of the term "shell company'' is not intended to imply that all shell companies are fraudulent. Rather, the proposals in this release target regulatory problems that we have identified where shell companies have been used as vehicles to commit fraud and abuse our regulatory processes.

### I. Background and Summary

Today's proposals represent the Commission's latest effort in its ongoing campaign against fraud and abuse in the market for highly speculative securities, especially securities that trade at low share prices. This campaign dates to our earliest days, when the Commission moved to help clean up the "bucket shops'' of New York City remaining from the 1920s.[10] It continued through our efforts to quell speculation in uranium mining stocks in the Cold War years of the 1950s and our attacks on "boiler rooms'' of the 1960s and 1970s. In the 1980s and 1990s, we focused on what we called the "penny stock market'' and "microcap company fraud.'' [11] In 1990, Congress passed the Securities Enforcement Remedies and Penny Stock Reform Act,[12] which gave us new authority and tools to protect investors and deter fraud and abuse in this market. We have used this authority to carry out the intent of Congress.[13]

[1] 17 CFR 239.16b.

[2] 15 U.S.C. 77a *et seq.*

[3] Only certain reporting companies are eligible to use Form S–8. In this release, we use the term "reporting companies'' to refer to companies that have an obligation to file reports under section 13 (15 U.S.C. 78m) or 15(d) (15 U.S.C. 78o(d)) of the Securities Exchange Act of 1934.

[4] 17 CFR 249.308.

[5] 15 U.S.C. 78a *et seq.*

[6] 17 CFR 249.210.

[7] 17 CFR 249.210b.

[8] 17 CFR 230.405.

[9] 17 CFR 240.12b–2.

[10] For a discussion of the history of our efforts in this area, see William H. Lash, III, *Loose Change: The Campaign for Penny Stock Reform*, 60 UMKC L. Rev. 1, 1–2 (1991), and the House Committee Report on the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, H.R. Rep. No. 101–617, at 9 (1990), *reprinted* in 1990 U.S.C.C.A.N. 1408, 1411.

[11] "Penny stock'' commonly refers to low-priced, publicly traded securities, generally selling for less than $5 per share. In 1990, a definition of the term "penny stock'' was added to section 3 of the Exchange Act, 15 U.S.C. 78c(a)(51). Pub. L. 101–429 § 503, 104 Stat. 931, 952. In 1995, a definition of the term "penny stock'' was added to section 27A of the Securities Act, 15 U.S.C. 77z–2(i)(3). Pub. L. 104–67 § 102(a), 109 Stat. 737, 749.

Examples of microcap company securities fraud schemes can be found on our Web site at *http://www.sec.gov/hot/microcap.htm* and are described in our press releases entitled "SEC Charges 82 Individuals and Companies in Second Nationwide Microcap Fraud Sweep,'' Press Release 1999–90 (Aug. 3, 1999), and "SEC, U.S. Attorney, and FBI Announce Major Attack Against Microcap Fraud,'' Press Release 2000–81 (June 14, 2000). SEC press releases are available on our Web site at *www.sec.gov*.

[12] Pub. L. 101–429, 104 Stat. 931 (1990).

[13] For example, we adopted Rule 419 under the Securities Act, 17 CFR 230.419, which is discussed later in this release. We also adopted Rule 15g–8 under the Exchange Act, 17 CFR 240.15g–8, which prevents trading of any securities held in a Rule 419 escrow account. In 1993, we adopted the penny stock disclosure rules, 17 CFR 240.15g–1 through 240.15g–9, which require brokers who buy and sell penny stocks for their customers to provide specific information to the customers. Release No. 33–6932 (Apr. 13, 1992) (57 FR 18037). We recently proposed amendments to the penny stock

Although the fraudulent methods used to manipulate the market for highly speculative securities, especially low-priced securities, have changed over time, many of the basic schemes employed have remained fairly constant. One common practice involves the use of reporting shell companies in "pump-and-dump" schemes. This type of scheme generally involves misleading investors. These schemes typically have many of the following characteristics:

- The shell company has no or nominal assets and operations and a small trading market;
- The shell company promoters issue large amounts of securities to themselves or designated nominees, sometimes using Form S–8;
- The shell company acquires or is merged with a private business that the promoters claim has high growth potential;
- Inadequate information is available to investors regarding the post-transaction company;
- The promoters "pump" up the price of the stock to investors through unduly positive press releases on the company and its prospects, exaggerated tout sheets, or fraudulent messages on the Internet;[14]
- The promoters use high-pressure tactics to get people to invest, and also engage in market manipulation to create artificial demand and artificially high prices for the stock of the company; and
- The promoters "dump" their stock in the company by selling it at the artificially high prices their promotional activities have created, halt those activities and move on, allowing the price of the stock to sink in value in the hands of the investors who have been misled into purchasing it.[15]

Many investors have been victimized in variants of the basic shell company scheme over the years.[16]

The Securities Enforcement Remedies and Penny Stock Reform Act directed us to address one type of scheme using shell companies to defraud investors—the registered "blank check" offering. In this scheme, the promoters seek to engage in a primary offering[17] of securities of a shell company. They ask investors to authorize them to invest the proceeds of the offering in whatever way that the promoters decide, in other words, to give the promoters a "blank check."[18] In response to the guidance Congress gave us in the Act as to blank check offerings, we adopted Securities Act Rule 419[19] in 1992. Rule 419 sought to combat fraud and abuse in public blank check offerings by requiring the promoters to deposit the proceeds of the offering in escrow until the blank check company identifies a company to acquire.[20] Once a company is located and proposed to the investors, the promoters must give the investors an opportunity to reaffirm their decision to invest in the blank check company before the offering proceeds can be used to acquire the business. We believe that Rule 419 has been successful in deterring fraud and abuse in public blank check offerings.[21]

The rule and form amendments we propose today address two variations of abusive shell company transactions not covered by Rule 419. The first type of transaction involves the use of Form S–8 registration statements by reporting shell companies to circumvent the registration and prospectus delivery requirements of the Securities Act. Form S–8 may be used only to register securities for offer and sale in connection with employee benefit plans.[22] The use of Form S–8 by registrants to raise capital is prohibited. Some shell companies—which rarely have employees—have used Form S–8 registration statements improperly to register sales of securities that, while fashioned as sales under employee benefit plans, in fact are capital-raising transactions. In form, these transactions are sales of securities by the shell company to employees in a transaction that is registered on Form S–8, and then a resale by the purchasers to the public. In substance, the sale by the company is to purported employees who act as underwriters to distribute the securities to the public without the required registration and prospectus delivery.[23]

Because shell companies do not operate businesses and hence rarely have employees, we see no legitimate basis for shell companies to use Form

disclosure rules designed to address market changes, evolving communications technology and recent legislative developments. Release No. 34–49037 (Jan. 8, 2004) (69 FR 2531).

[14] Examples of schemes involving promotion of shell companies over the Internet can be found in our press release entitled "SEC Charges 33 Companies and Individuals with Fraud for Manipulating Microcap Stocks," Press Release 2000–124 (Sept. 6, 2000).

[15] Joseph Goldstein, Chairman of the Commission's internal Penny Stock Staff Task Force, testified before the House Subcommittee on Telecommunications and Finance on August 21, 1989 that "a common method or [sic] perpetrating penny stock fraud is through the marketing of 'shell' corporations * * * with no operating history, few employees, few or no discernible assets, and no legitimate likelihood of success in the future." H.R. Rep. No. 101–617, at 9 (1990), *reprinted in* 1990 U.S.C.C.A.N. 1408, 1412–13.

[16] For examples of recent enforcement cases involving alleged shell companies, see Melanie A. Chieu, "SEC Charges Four Men with Illegal Stock Sales," e-Securities 10 (Aug. 2002), and "Stock Manipulation Scheme Involving False Anthrax Claims Subject of SEC Enforcement Action," Press Release 2003–127 (Sept. 30, 2003).

[17] In this context, the term "primary offering" refers to an offering of securities by the issuer of the securities.

[18] If the sponsors intend to invest the proceeds of the offering in a particular industry or sector, the offering often is called a "blind pool" offering. Neither blind pool offerings nor blank check offerings are inherently fraudulent. Many responsible businesspersons sponsor legitimate blind pool and blank check offerings.

[19] 17 CFR 230.419.

[20] The Securities Enforcement Remedies and Penny Stock Reform Act and Rule 419 refer to the companies subject to the rule as "blank check companies" and define that term. In general, a "blank check company" is defined as a development stage company that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company. Some market participants, however, have applied the term "blank check company" to a wider group of companies than those making traditional "blank check" offerings. Some have seemingly applied it to all shell companies. We believe that under today's proposals all blank check companies as defined in Rule 419 would be considered shell companies until they acquire an operating business or more than nominal assets. Not all shell companies, however, would be classified as blank check companies under Rule 419. *See* Part II.C below for a discussion of the proposed definition of "shell company."

[21] One commentator has described the rule's practical effect as "mak[ing] blank check offerings much less popular, as promoters will not have immediate access to proceeds and will not know the eventual amount of proceeds available until after the second stage refund period has passed." Stuart Cohn, Securities Counseling for New and Developing Companies, § 18:17, at 73–76 (2003).

[22] When we use the term "employee" in this release to refer to persons to whom securities may be issued legally using Form S–8, we intend to refer both to employees and to consultants and advisors to whom securities legally may be issued using Form S–8.

[23] Examples of shell companies and alleged shell companies improperly raising capital using Form S–8 can be found in *SEC* v. *Cavanaugh*, 1 F. Supp. 2d 377, 344–60 (S.D.N.Y.), *aff'd*, 155 F.3d 129 (2d Cir. 1998) (shell company with no operations, in which only $24,000 had been invested to set up and initially manage company, filed Form S–8 to issue 100% of its stock to four investors who invested $6,000 each); *Sky Scientific, Inc.*, 69 SEC Docket 945 (Mar. 5, 1999) (admin. proceeding), *aff'd*, 77 SEC Docket 1926 (May 17, 2002) (company with minimal revenues from operations and nominal assets used Form S–8 to distribute shares to public, eventually filing 107 registration statements on Form S–8 covering approximately 30 million shares); *Investment Technology, Inc.*, Litigation Release No. 18249 (July 24, 2003) (associates of company that, according to its annual report on Form 10–KSB for the fiscal year ended Dec. 31, 2001, had not commenced principal operations and had only $18,000 in assets, allegedly dumped millions of shares using two Form S–8 registration statements and collectively realized more than $200,000 in unlawful profits); *Hollywood Trenz, Inc.*, Litigation Release No. 17204 and Accounting and Auditing Enforcement Release No. 1472 (Oct. 25, 2001) (distribution through 16 Form S–8 registration statements of 25 million shares of common stock in a company seeking financing to reverse history of operating losses, including a Form S–8 filed three days after its annual report on Form 10–KSB for the fiscal year ended December 31, 1995 indicating that company had no operations and primary asset consisted of capitalized costs of project that could ultimately be charged to operations).

S–8. For this reason, and because of the history of abuse of this form by reporting shell companies, we propose to prohibit shell companies from using Form S–8.

The second type of reporting shell company transaction we address in the proposed rules involves the use of Form 8–K to report "reverse merger'' and other transactions in which a reporting shell company combines with a formerly private operating business, with the surviving entity becoming a reporting company in the business formerly conducted by the private business. The operating business has, in effect, become a reporting company. The conversion generally takes one of two forms:

- In the most common type of transaction, a "reverse merger,'' the private business merges into the shell company, with the shell company surviving and the former shareholders of the private business controlling the surviving company.
- In another type of shell company conversion, a "back-door registration,'' the shell company merges into the formerly private company, with the formerly private company surviving and the shareholders of the shell company becoming shareholders of the surviving entity.[24]

The surviving entity in these transactions generally has an obligation to file current reports on Form 8–K to report both the entry into a material non-ordinary course agreement providing for the transaction and the completion of the transaction.[25] In both types of transaction, the entry into the agreement would require a report under Item 1.01 of Form 8–K.[26] In addition, the completion of the transaction also is reportable under either or both of Item 2.01 of Form 8–K—as the acquisition of a business—and Item 5.01 of Form 8–K—as a change-in-control transaction.[27] Audited financial statements would be required to be filed under Item 9.01 of Form 8–K for transactions reportable under Item 2.01.[28]

The existing Form 8–K disclosure requirements, however, are not tailored for shell company conversion transactions. The Item 2.01 requirements focus on describing a newly acquired business and providing financial information for the new business. The Item 5.01 disclosure requirements focus on identifying the persons who acquired control, the consideration used to acquire control, the transaction that resulted in the change in control, and the beneficial ownership of the company after the change in control. These reporting requirements do not address the reality that a shell company conversion transaction introduces a reporting company with a new operating business to investors and the marketplace for the first time.

The existing Form 8–K disclosure requirements have resulted in an uneven level of disclosure in the reporting of such transactions, and a lack of information available to investors. Some companies attempting to "go public'' in a shell company conversion transaction file reports on Form 8–K containing information similar to the information that they would file to "go public'' under the Securities Act by means of a registration statement on Form S–1 or Form SB–2 [29] or to register a class of securities under the Exchange Act on Form 10 or Form 10–SB. Many companies completing shell company conversion transactions, however, make the sparsest of filings on Form 8–K. These filings often do not contain much of the information useful to investors in making informed decisions about investing in the company, such as the information contained in Management's Discussion and Analysis of the Financial Condition and Results of Operations required by Item 303 of Regulation S–K and Regulation S–B.[30]

Further, some of the information required by Form 8–K may be filed on a delayed basis. Existing rules permit companies acquiring new businesses to wait up to 71 days after the initial filing on Form 8–K reporting completion of the acquisition to file audited financial statements and pro forma financial information reflecting the new financial profile of the company. Both shell and non-shell companies are entitled to this "71-day window'' delayed filing deadline.[31]

We developed the "window'' provision in 1976 to alleviate the difficulties operating companies could encounter if audited financial statements of businesses acquired were required to be filed in a report on Form 8–K within a few days after the acquisition.[32] We recognized that some

[24] This was the type of transaction involved in *Lisa Roberts, Director of NASDAQ Listing Qualifications*, Interpretive Letter (Apr. 7, 2000), which is discussed in footnotes , 54 and 57 below.

[25] Our proposals are not intended to impose any new event filing requirements under Form 8–K. If an event was not reportable under Form 8–K previously, it would not become reportable as a result of adoption of these proposals. For example, if the conversion of a shell company into an operating business is not reportable because the company has previously reported substantially the same information, the company need not file an additional report on Form 8–K. *See* General Instruction B.3 to Form 8–K and footnote 50 below.

[26] Item 1.01 is a new provision of Form 8–K requiring the filing of a current report upon entry into a material definitive agreement. The provision becomes effective on August 23, 2004. *See* Release No. 33–8400 (Mar. 16, 2004) (69 FR 15594).

[27] We recently adopted amendments that transferred the substance of former Item 2 and Item 1 of Form 8–K to Item 2.01 and Item 5.01 of Form 8–K, respectively. We are using the new item numbers in this release. The amendments are effective on August 23, 2004. *Id.*

[28] Item 9.01 requires the filing of financial statements only for "significant'' acquisitions. The significance test states that an acquisition or disposition is deemed significant if (1) the company's and its other subsidiaries' equity in the net book value of the assets or the amount paid or received for the assets exceeded 10% of the total assets of the company and its consolidated subsidiaries, or (2) the transaction involved a business that is significant under Regulation S–X. The acquisition of any business by a shell company would undoubtedly be significant under this test. The substance of Item 9.01 of Form 8–K formerly was contained in Item 7 of Form 8–K. *Id.*

[29] 17 CFR 239.11 or 17 CFR 239.10, respectively.

[30] 17 CFR 229.303 and 17 CFR 228.303. Currently, investors in some cases may not receive information about the nature of a new business until the company files an annual report on Form 10–K or Form 10–KSB, which may be as late as a year or more after completion of the acquisition. For instance, if a reverse merger occurs in the first month of its fiscal year, the company would not be required to file its annual report on Form 10–K or Form 10–KSB until up to 90 days after the end of the current fiscal year, more than 14 months later.

[31] The "window'' provision is contained in Item 9.01 of Form 8–K. The window period recently was modified slightly, effective on August 23, 2004. *See* Release No. 33–8400 (Mar. 16, 2004). The 71 days are calendar days. When added to the four business days that a reporting company has to file its initial report on Form 8–K reporting the completion of the transaction under the newly amended Form 8–K requirements, the amount of time available approximates 75 calendar days, the amount of time available before the recent amendment. Previously, Form 8–K required the initial report of the completion of the transaction to be filed within 15 calendar days. If the company's required audited financial statements and pro forma information was not available, the company was allowed to file them within another 60 calendar days.

In the "back-door registration'' type of transaction, which is reported as a change in control rather than as an acquisition, the staff has indicated that the entire Form 8–K report, including audited financial statements, is due at the time of filing of the report on completion of the transaction. No delayed filing or "window period'' is permitted. *See Lisa Roberts, Director of NASDAQ Listing Qualifications*, Interpretive Letter (Apr. 7, 2000).

[32] Release No. 34–12619 (July 12, 1976) [41 FR 29784]. At first, the extension period was 60 days, was not automatic, and had to be approved by staff of the Division of Corporation Finance after an informal request expressing a need for an extension. The Commission at the time believed that the need for an extension would be infrequent and would only occur in the most complex types of transactions. By the early 1980s, however, the volume was larger than expected and could no longer be administered on a case-by-case basis. In 1985, the Commission amended Form 8–K in Release No. 34–6578 (Apr. 23, 1985) to allow for an automatic 60-day extension if the registrant stated, in the initial Form 8–K filing, that filing of the financial statements with the initial Form 8–K report would be impracticable and that it would file them as soon as possible within the 60-day period.

business combinations involving companies with operations are complex, so that it may not be possible to prepare audited financial statements within a few days. This is especially true in a typical business combination involving the acquisition of an operating business, where the reporting company is not in control of the business to be acquired until the acquisition occurs, and often cannot dictate the timing of audits of the financial statements.

While legitimate reasons exist for providing additional time for the filing of certain financial information involving operating businesses, these reasons do not apply with regard to transactions involving shell companies. The shareholders of the operating business about which investors need more extensive information usually control the surviving entity.

Moreover, the promoters of shell company schemes can take advantage of the lack of adequate financial and other information in the Form 8–K filing during the window period to promote the company and sell their shares at artificially high prices. During this time, the market may have difficulty pricing the securities because of the lack of adequate information.[33] Investors who purchased the securities at artificially high prices while adequate information is unavailable typically lose money when specific and reliable information becomes available, the promotional activities stop, and prices drop. In some cases the financial statements never are filed.[34] The abuses we have witnessed in this area confirm the advisability of requiring the Form 8–K to contain information equivalent to that required in a Form 10 or Form 10–SB under the Exchange Act reflecting the new assets and operations of the company, including audited financial statements of the operating business for the periods specified by Regulation S–X[35] or Item 310 of Regulation S–B,[36] as applicable.

Our proposed amendments to Form 8–K would require a shell company, when reporting an event that causes it to cease being a shell company,[37] to include the same type of information that it would be required to file to register a class of securities under section 12 of the Exchange Act.[38] We would require the report on Form 8–K to be filed within the same filing period as generally is required for other Form 8–K reports, which is within four business days after completion of the transaction, effective August 23, 2004.[39] The window provision for the filing of financial statements and pro forma financial information would be eliminated for shell companies.

We propose to define "shell company'' as a company with no or nominal operations, and with no or nominal assets or assets consisting solely of cash and cash equivalents.[40] We believe that this definition generally reflects the ordinary understanding of the term "shell company'' in the area of corporate finance and defines those companies where the likelihood of abuse is greatest. Finally, as discussed below, we propose to revise the definition of "succession'' to capture certain transactions involving shell companies.

## II. Discussion of Proposals

### *A. Securities Act Form S–8 Proposal*

The proposed amendments to Form S–8 would prohibit the use of that form by a shell company. A company that ceases to be a shell company would become eligible to use Form S–8 to register securities 60 calendar days after it has filed information equivalent to what it would be required to file if it were registering a class of securities on Form 10 or Form 10–SB under the Exchange Act. Ordinarily, that information would be filed in a current report on Form 8–K reporting completion of the transaction that causes it to cease being a shell company. In other cases, the information may be filed in a Form 10 or Form 10–SB, or in a registration statement on Form S–4[41] covering the transaction. Form 10 provides investors with important and valuable information. The 60-day delay would give employees and the market time to absorb the information provided by the company in its Form 8–K or other filing.[42] In this regard, the 60-day period is consistent with the 60-day period that passes before a company's registration of a class of securities on Form 10 or Form 10–SB becomes effective under section 12(g) of the Exchange Act.[43]

The appropriateness of this proposal is supported by the nature of shell companies and the purpose of Form S–8. It is unlikely that use of Form S–8 by a shell company is appropriate or necessary. Shell companies do not have substantial operations with employees to compensate. Further, Form S–8 may not be used to raise capital or to compensate consultants or advisors for providing services in connection with the offer or sale of securities in a capital-raising transaction or services that promote or maintain a market in the issuing company's securities.[44] To the extent a shell company would have any employees, their activities usually involve capital-raising and similar activities. We do not believe a shell company's employees should be able to be compensated for these activities with securities registered on Form S–8 any more than its consultants and advisors.

The amendments proposed today would not prevent a shell company from registering offers and sales of securities pursuant to employee compensation plans under the Securities Act. Rather, the proposals would require the shell company to register that transaction on a form other than Form S–8.[45] Alternatively, the shell company may be able to offer and sell those securities without Securities Act registration pursuant to an available

[33] An example of allegedly fraudulent promotional activities between the time of filing the report on completion of the transaction and filing of financial statements can be found in the case that was the subject of the press release entitled "Stock Manipulation Scheme Involving False Anthrax Claims Subject of SEC Enforcement Action,'' Press Release No. 2003–127 (Sept. 30, 2003). There, a company filed its initial Form 8–K report on July 2, 2001, the promoters conducted an allegedly fraudulent promotional campaign and realized approximately $1.6 million between July 17 and August 16, 2001, and the company filed an amendment to its initial filing on Form 8–K containing audited financial statements on September 4, 2001.

[34] The required financial statements sometimes are not filed because proper disclosure of the true nature of the transaction presumably would end the fraudulent scheme.

[35] 17 CFR 210.1–01 through 210.12–29.

[36] 17 CFR 228.310.

[37] In most cases, this occurs when the shell company acquires or is acquired by an operating business. Under the proposed definition of "shell company,'' it also could occur when the shell company acquires more than nominal assets (except for cash and cash equivalents).

[38] 15 U.S.C. 78l. *See* Part II.D below for a discussion of the treatment of foreign private issuers that are shell companies.

[39] As discussed in footnote 31 above, we recently shortened the time for reporting such transactions on Form 8–K to four business days. Release 33–8400 (Mar. 16, 2004).

[40] Proposed amendments to 17 CFR 230.405 and 17 CFR 240.12b–2. *See* Part II.C below.

[41] 17 CFR 239.25.

[42] By "investors,'' we mean both the employees and other permitted persons to whom the company may sell employee benefit plan securities in transactions registered on Form S–8 and persons who may purchase those securities when resold. Securities sold in transactions registered on Form S–8 are not restricted securities within the meaning of Securities Act rules. *See* 17 CFR 230.144(a)(3). As discussed above, Form S–8 abuses often involve almost immediate distribution of securities that are allegedly not restricted into the open market by purported employees and consultants who are in fact underwriters engaging in a distribution to the public without the required registration.

[43] 15 U.S.C. 78l(g).

[44] General Instruction A.1(a)(1) to Form S–8 specifically states that the form may be used to issue securities to consultants only for bona fide services that "are not in connection with the offer or sale of securities in a capital-raising transaction, and do not directly or indirectly promote or maintain a market for the registrant's securities.''

[45] Form S–1, and perhaps Form SB–2, would be available to register such transactions. *See* 17 CFR 239.11 and 17 CFR 239.10, respectively.

exemption from registration. We are aware that a different registration form may not provide the same ease of registration as Form S–8 and that the securities sold in an exempt transaction likely would be treated differently under Securities Act Rule 144 than securities sold to employees in a registered transaction.[46] These potential disadvantages for shell companies would be more than offset, however, by the likelihood that use of Form S–8 by a shell company would be inappropriate and would pose significant risks to the market for the securities sold in the transactions purported to be registered on that form.

We have seen numerous examples of shell companies using Securities Act Form S–8 to distribute their securities and raise capital in an improper manner. Companies seeking to use these types of schemes prefer Form S–8 because it becomes effective upon filing with the Commission and does not require a prospectus to be filed in the registration statement.[47] Many of the abusive schemes we have seen involve multiple filings of registration statements on Form S–8.[48] Some registration statements involving these schemes cover a very large percentage, even a majority, of the company's outstanding securities. Some involve multiple employee compensation plans for companies that typically have no apparent need for numerous employee plans. Some involve using Form S–8 improperly to register the sale of shares to purported employees or other nominees, who are designated as "consultants'' and "advisors'' but who often do not provide any services for which the company may pay compensation with securities registered on Form S–8. The later, unregistered sales of these securities into the market by purported employees deny the protections of the Securities Act to investors in the company's securities.

Our current proposal to prohibit use of Form S–8 by shell companies is similar to another proposal we issued in 1999 but did not adopt. That proposal would have prohibited shell companies from using Form S–8 until they filed an annual report on Exchange Act Form 10–K or 10–KSB containing audited financial statements reflecting a transaction that provided the company with more than "nominal'' assets.[49] Today's proposal differs from the 1999 proposal in two respects. Under the 1999 proposal, a shell company would have had to wait possibly up to a year before being able to use Securities Act Form S–8. Under our current proposal, a former shell company that promptly files a required report on Form 8–K could be eligible to use Form S–8 in 60 days. In addition, in 1999 we did not propose to define the term "shell company'' or any similar term, as we do today, but applied the proposal to companies "with nominal assets.''

We request specific comment on the following questions:

- Would adoption of the Form S–8 proposal effectively deter fraudulent and abusive use of Form S–8?
- Would prohibiting shell companies from using Form S–8 unduly hinder legitimate shell companies from offering securities to employees?
- Should any shell companies, or companies that have been shell companies within 60 days, be permitted to use Form S–8? If so, under what specific circumstances?
- Is the proposed 60-day waiting period too long? Should it be shorter, such as 30 days?
- Is the proposed 60-day waiting period too short? Should it be longer, such as 90 days?
- Is the waiting period proposed in 1999 preferable?
- Should the waiting period be tied to some event other than filing of Form 10-equivalent information? For instance, should we provide that a shell company may use Form S–8 once a specific period of time has elapsed since completion of the transaction in which it ceases being a shell company, or a specified number of days after it files a periodic report on Form 10–K, Form 10–Q, Form 10–KSB or Form 10–QSB?
- Can you suggest a different waiting period or other alternative condition to Form S–8 availability that would adequately protect the markets and investors without adversely affecting the new business of the company?
- Instead of prohibiting use of Form S–8 by shell companies, could we more effectively deter fraudulent and abusive conduct by shell companies by restricting the use of Form S–8 in other ways?

*B. Exchange Act Form 8–K Proposal*

The amendments to Form 8–K that we propose today would require a shell company to make a more specific and detailed filing on Form 8–K upon completion of a transaction that causes it to cease being a shell company.[50] Following completion of the transaction, the shell company would need to file a current report on Form 8–K containing the information that would be required in a registration statement on Form 10 or Form 10–SB to register a class of securities under section 12 of the Exchange Act. The company would be required to file its report on Form 8–K within four business days after completion of the transaction. As a result of these amendments, shell companies would no longer have a window for filing financial information about the company. Requiring prompt and detailed disclosure in Form 8–K filings would provide investors in operating businesses newly merged with shell companies with a level of information that is equivalent to the information provided to investors in reporting companies that did not originate as shell companies. The filing of this Form 8–K report would decrease significantly the opportunity to engage in fraudulent and manipulative activity.

1. Acquisitions

Currently, reporting shell companies that cease being shell companies because they complete a significant acquisition of a new business are required to report the event under Item 2.01 of Form 8–K as a significant acquisition of assets.[51] Item 2.01

[46] Securities Act Rule 144 (17 CFR 230.144) addresses the issue of when a person is deemed to be an underwriter. Rule 144 "permits the public sale in ordinary trading transactions of limited amounts of securities owned by persons controlling, controlled by or under common control with the issuer and by persons who have acquired restricted securities of the issuer.'' *See* Preliminary Note to Rule 144.

[47] *See* 17 CFR 230.462(a).

[48] *See* footnote for examples of shell companies filing multiple Form S–8 registration statements to distribute shares into the public marketplace.

[49] Release No. 33–7647 (Feb. 25, 1999) (64 FR 1118). Only two commenters addressed the proposal to prohibit shell companies from using Form S–8. One stated that it did not have a strong reaction to the proposal, while the second supported the proposal but wanted a definition of the term "nominal assets.''

[50] Under General Instruction B.3 to Form 8–K, a reporting company is not required to file a report on the form if the information required by the form previously has been filed. A shell company that became an operating business as a result of a merger registered on Form S–4 under the Securities Act, for instance, would have no obligation to file a Form 8–K report containing information on completion of the merger if all the information required by Form 8–K to report completion of the merger has previously been included in an effective registration statement on Form S–4. Because of this, our Form 8–K proposal would not require the filing of additional Form 8–K reports or the reporting of any additional events, although the proposal would require provision of additional information in Form 8–K reports already required to be filed.

[51] Reporting shell companies are not subject to different treatment in this regard. All reporting companies that complete significant acquisitions of assets not in the ordinary course of business are required to file a current report on Form 8–K covering the transaction. In addition, reporting companies also may be required to disclose material information in a Form 8–K filed at the time of entering into the transaction under Item 1.01 of Form 8–K. *See also* Regulation FD, 17 CFR 243.100 through 243.103.

requires the company to furnish information about the date and manner of the acquisition and a "brief description'' of the assets. Form 8–K does not require specifically that the company disclose the information that would be required to register a class of securities under section 12 of the Exchange Act. Item 9.01 of Form 8–K, however, requires that the filing contain audited financial statements of the business acquired.[52] Currently, reporting companies may file the financial statements with the initial Exchange Act Form 8–K filing; however, they also have the option to file the financial statements not later than 71 days after the due date of the initial filing.[53]

We propose to close the 71-day window for shell companies to file financial information reflecting significant acquisitions for several reasons. First, the operating business that constitutes all or substantially all of the company's operations and assets has no publicly disclosed financial information. Consequently, prompt access to the operating business's Form 10-equivalent information should be useful to investors. Under our current rules, if the former shell company or its successor chooses to file the audited financial statements later than the due date for the Form 8–K filing reporting completion of the transaction, the securities trade in the markets without vital information about the significant acquisition being available.

Second, obtaining audited financial statements for the operating business does not present the difficulties that caused us to provide the 71-day window for business combinations involving reporting companies with operations. In a shell company conversion transaction, management of the continuing operating business is in control of the transaction and has the power to control the timing and preparation of the required financial and other information. The 71-day extension should not be necessary to produce audited financial statements in the shell company situation.

2. Changes in Control

Currently, reporting shell companies that cease being shell companies because they are acquired by an operating business in a "back-door registration'' transaction are required to report the completion of the event under Item 5.01 of Form 8–K as a "change in control'' of the company. The line-item disclosures currently required by Item 5.01 focus on identifying the persons who acquired control, the amount and source of consideration used to acquire control, the transaction that resulted in the change in control, and the beneficial ownership of the company after the change in control. In addition, the Commission's staff has expressed its view that a Form 8–K report filed by a shell company that ceases being a shell company in this type of transaction should include as additional information the information required in a Form 10 or Form 10–SB for a company registering a class of securities under section 12 of the Exchange Act or, at a minimum, "complete audited and pro forma financial statements required by these forms.'' [54] This information is to be filed with the report on Form 8–K reporting completion of the acquisition.[55]

We propose to revise the definition of "succession'' in Exchange Act Rule 12b-2 to include a change in control of a shell company.[56] This would codify the "back-door registration'' procedure permitted by the Commission staff.[57] As a result of the revision, the nonpublic acquiror would succeed to the reporting obligations of the shell company and become a reporting company. For public shell companies with securities registered under section 12 of the Exchange Act,[58] this would occur because Exchange Act Rule 12g-3 [59] would impose section 12 regulation on the acquiror without the necessity of filing an Exchange Act registration statement. Similarly, public shell companies with reporting obligations under section 15(d) of the Exchange Act [60] would be deemed to have assumed the reporting obligations of the shell company by operation of Exchange Act Rule 15d-5.[61] Due to the interaction of this proposed definition of "succession'' and Rules 12g-3 and 15d-5, a private entity that acquires a public shell company would be required to report the transaction on Form 8–K rather than filing an Exchange Act registration statement.[62]

3. Request for Comment

We request specific comment on the following questions:

- Will requiring former shell companies to make more complete and detailed filings on Form 8–K when they cease being shell companies help investors in making informed investment decisions and deter fraud and abuse by shell companies?
- Will closing the 71-day window for filing the financial statements of businesses acquired by shell companies in significant acquisitions deter fraud and abuse by shell companies?
- Is the non-financial information that is proposed to be required in the Form 8–K necessary? Alternatively, should we require the historical audited annual and unaudited interim financial statements only, or some intermediate level of information, such as historical audited annual and unaudited interim financial statements, required pro forma financial information and the information containing Management's Discussion and Analysis of the Financial Condition and Results of Operations of the new business pursuant to Item 303 of Regulation S–K or Regulation S–B? [63]
- Because of the manner in which we propose to define "shell company,'' a company could cease to be a shell company by acquiring substantial assets, even if it has neither acquired nor been acquired by an operating business. Should the proposed Form 8–

[52] Item 9.01 until recently was numbered Item 7 of Form 8–K. *See* Release No. 33–8400 (Mar. 16, 2004). It requires inclusion in the filing of financial statements of a significant business acquired for the periods specified in 17 CFR 210.3.05(b), prepared in accordance with the requirements of Regulation S–X, 17 CFR 210.1–01 through 210.12–29. It also requires *pro forma* financial information in accordance with Article 11 of Regulation S–X with respect to a business acquired.

[53] Most offerings of securities must be delayed until the financial statements are filed, although ordinary trading and market transactions by persons who are not underwriters, issuers or dealers in securities may occur. *See* Instruction to Item 9.01 of Form 8–K.

[54] *See Lisa Roberts, Director of NASDAQ Listing Qualifications,* Interpretive Letter (Apr. 7, 2000). As explained in this interpretive letter, the procedure sometimes called "back-door registration'' under the Exchange Act did not, in the Commission staff's view at the time, constitute a "succession'' of the surviving entity to the rights and obligations of the reporting shell company because the definition of "succession'' in Exchange Act Rule 12b–2 requires that the acquiring company acquire a "going business'' and a shell company was not considered a "going business.'' Nevertheless, the staff permitted nonreporting acquiring companies to file Form 8–K reports and enter our reporting system, so long as specified information was included, rather than requiring these companies to file registration statements under section 12 of the Act to become reporting companies.

[55] *Id.*

[56] Proposed revision of Rule 12b-2.

[57] If this rule is adopted, it will supersede the *Lisa Roberts, Director of NASDAQ Listing Qualifications* interpretive letter discussed in footnote 54 above.

[58] 15 U.S.C. 78*l*.

[59] 17 CFR 240.12g-3.

[60] 15 U.S.C. 78o.

[61] 17 CFR 240.15d-5.

[62] If a company is filing a registration statement under section 12(g) of the Exchange Act to register a class of securities because it has total assets of more than $10 million and a class of equity securities held by more than 500 record holders, it has 120 days after the last day of the fiscal year on which it first met those thresholds to file the registration statement with the Commission. The registration statement becomes effective automatically 60 days after filing, unless the staff accelerates effectiveness pursuant to delegated authority upon request of the company.

[63] 17 CFR 228.303 or 17 CFR 229.303.

K disclosure requirements be modified for this type of transaction?

• Would the proposed amendments to Form 8–K unduly increase costs for smaller public companies?

• Would adoption of the Form 8–K proposal have any unwarranted or unforeseen adverse consequences, including adverse consequences for the preparation and auditing of financial statements reflecting significant acquisitions of businesses by shell companies? Would it create unnecessary obstacles to legitimate transactions?

• Should certain shell companies be exempted from the Form 8–K proposal? If so, what specific circumstances would warrant exemption?

• Is the proposed revision of the definition of "succession'' appropriate? Does it have any consequences other than requiring the filing of a report on Form 8–K when a private entity acquires a public shell company? Should we instead make these companies file an Exchange Act registration statement, perhaps within an accelerated time frame?

• Should we amend the definition of the term "succession'' in Rule 12b-2 to delete the reference to "a going business,'' so that it would mean the act or right of taking over a predecessor entity's rights, obligations and property despite changes in ownership or management?

• Should we amend Rule 12g-3 and Rule 15d-5 under the Exchange Act to provide that a change in control of a shell company constitutes a "succession'' for purposes of those rules rather than, or in addition to, amending the definition of the term "succession'' in Rule 12b-2 to achieve the same result? Is there a different and better way to achieve the desired result?

• Should we try to make reports on Form 8–K reporting the shell company transactions discussed in this release easier to identify in the Commission's Electronic Data Gathering, Analysis and Retrieval (EDGAR) system,[64] such as by creating a special Form 8–K item for them or a special EDGAR tag?[65]

*C. Definition of "Shell Company''*

We propose to add a definition of the term "shell company'' to Rule 405 under the Securities Act and Rule 12b-2 under the Exchange Act. The definition would state that the term "shell company'' means a registrant with no or nominal operations, and with no or nominal assets or assets consisting solely of cash and cash equivalents.

We believe this definition generally reflects the ordinary understanding of the term "shell company'' in the area of corporate finance.[66] It has been used in this area for many years.[67] It predates the definition of the term "blank check company'' in Section 7(b)(3) of the Securities Act and Rule 419. It does not include many of the concepts used in those definitions, such as "development stage company,'' company with "no specific business plan or purpose,'' and company that "has indicated that its business plan or purpose is to merge with an unidentified company.''[68] We believe the proposed definition of "shell company'' is more appropriate for the purposes of today's proposals, as it better describes the type of company involved in the schemes we are attempting to address, uses more objective criteria, and would be easier to apply.[69]

The proposed definition of "shell company'' would include reporting companies whose assets consist solely of cash and cash equivalents. We have included cash-only shell companies because these types of shell companies could also engage in the types of schemes addressed in the Form S–8 and Form 8–K proposals. We seek comments, however, on the appropriateness of including cash-only shell companies in the definition of the term "shell company.''

The proposed definition of "shell company'' does not exclude two types of shell companies commonly used for corporate structuring purposes—shell companies used to change corporate domicile and shell companies formed to effect merger and acquisition transactions (the latter of which are commonly referred to as "merger subs''). As to shell companies used to change corporate domicile, we have excluded them from application of the portion of the Form S–8 proposal that suspends the ability of a former shell company to use Form S–8 for 60 days after it files Form 10 information reflecting its conversion from a shell company into an operating business. We see no reason to suspend the ability of such shell companies to use Form S–8 after completion of the change-in-domicile transaction. We also see no reason to exclude shell companies used to change corporate domicile from the applicability of the Form 8–K proposal. A change in corporate domicile ordinarily would not be reportable as either an acquisition of assets or a change in control, the only types of transactions to which the Form 8–K proposal is applicable.

As to merger subs, we see no reason to exclude them from the definition of "shell company'' or from application of either the Form S–8 proposal or the Form 8–K proposal. We do not envision any unreasonable burdens or problems in applying the proposals to merger subs. In most instances, merger subs do not survive business combinations as reporting companies. In those situations where that may happen, the merger sub should have previously filed its Form 10 information with the Commission and have no difficulty complying with the Form 8–K proposal. We are seeking comment, however, on these preliminary determinations regarding shell companies used merely to change corporate domicile and shell companies used as merger subs.

We request specific comment on the following questions:

• Is our proposed definition of the term "shell company'' too broad or too narrow? If so, how should the definition be tailored to achieve our objectives?

• Should the first "and'' in the proposed definition be an "or,'' so that the definition would encompass a company that has (1) no or nominal operations, (2) no or nominal assets, or (3) assets consisting solely of cash and cash equivalents?

[64] EDGAR is the computer system maintained by the Commission for the receipt, acceptance, review and dissemination of disclosure documents submitted to the Commission in electronic format.

[65] An EDGAR tag is an identifier that highlights specific information in a document filed through EDGAR.

[66] *Barron's Finance & Investment Handbook* 593 (5th ed. 1998), a commonly used reference work on corporate finance terminology, defines the term "shell corporation'' as follows:

SHELL CORPORATION company that is incorporated but has no significant assets or operations. Such corporations may be formed to obtain financing prior to starting operations, in which case an investment in them is highly risky. The term is also used of corporations set up by fraudulent operators as fronts to conceal tax evasion schemes.

[67] A popular handbook of investment terms published in 1983 defined the term "shell company'' as follows:

SHELL COMPANY Jargon for a corporation, usually without assets or a valid business operation, whose shares are offered for sale. Although such sales are not necessarily fraudulent, the value of the shares is questionable and are always high risk.

Allan H. Pessin & Joseph A. Ross, *Words of Wall Street, 2,000 Investment Terms Defined* 229 (1983).

[68] 15 U.S.C. 77g(b)(3). These concepts also are present in Rules 251, 419 and 504 under the Securities Act. See 17 CFR 230.251(a)(3), 230.419(a)(2)(i) and 230.504(a)(3). Our staff also has used the term "blank check company'' in interpretive letters to describe what appear to be shell companies. See *Ken Worm, NASD Regulation, Inc.,* Interpretive Letter (Jan. 21, 2000) and *Lisa Roberts, Director of NASDAQ Listing Qualifications,* Interpretive Letter (Apr. 7, 2000).

[69] Because the definition of "blank check company'' requires that the company have "no specific business plan,'' many companies seek to circumvent Rule 419 promulgated under Section 7(b) by arguing that they have a specific business plan when they do not have a business plan that would attract investment by a reasonable investor seeking a reasonable balance of risk and return.

• Should our definition of the term "shell company'' have quantitative thresholds defining the term "nominal''? For example, if a shell company has a specific level of non-cash assets or operations, should we exclude it from the definition? [70]

• If the definition had quantitative thresholds, how could we prevent companies from circumventing them to defeat the intent of the Form 8–K proposal?

• Should we define the term "shell company'' in a different way? For example should the definition reflect concepts from the definition of "blank check company,'' such as "development stage company,'' company with "no specific business plan or purpose,'' or company that "has indicated that its business plan or purpose is to merge with an unidentified company'?

• Should the definition of the term "shell company'' include companies whose assets consist solely of cash, as proposed, and thereby subject such companies to the Form S–8 and Form 8–K proposals? If not, under what circumstance should such companies be excluded?

• Should the definition of "shell company'' include companies with substantial assets, so long as they have no or nominal operations? If shell companies were defined only in terms of operations, would this be overly inclusive? On the other hand, can companies with substantial assets but no operations be used to combine with operating businesses in a manner that implicates the policy concerns discussed in this release?

• Should the definition of "shell company'' exclude shell companies formed solely to change corporate domicile or shell companies formed solely to effect merger and acquisition transactions?

*D. Effect on Shell Companies That Are Foreign Private Issuers*

Some foreign private issuers [71] that are registered with the Commission would come within the proposed definition of "shell company.'' Shell companies that are foreign private issuers would be subject to the proposed rules regarding use of Form S–8. Accordingly, as with a domestic shell company, a foreign private issuer shell company would not be eligible to file a registration statement on Form S–8 until 60 days after it files the information that it would be required to file if it were registering a class of securities under the Exchange Act. For foreign private issuers, the requisite information would be the equivalent of information required in a registration statement on Form 20–F,[72] rather than on Form 10 or Form 10–SB.[73]

If a foreign private issuer shell company engaged in a transaction with a domestic operating business that resulted in the shell company's loss of foreign private issuer status upon completion of the transaction, the surviving entity would have to file a Form 8–K upon completion of the transaction. That Form 8–K report would contain the same information that would be required in the appropriate initial registration statement used to register securities under the Exchange Act, as would be the case for a similar transaction involving a U.S. shell company under the proposed rules. As in transactions involving U.S. shell companies, the filing on Form 8–K would need to be filed within four business days after the completion of the transaction.

Foreign private issuers that are subject to the periodic reporting requirements under the Exchange Act generally are not required to file current reports on Form 8–K.[74] Rather, many of the disclosures required of foreign private issuers are made on Form 20–F, which is an integrated form used both as a registration statement for purposes of registering securities of qualified foreign private issuers under section 12 of the Exchange Act [75] or as an annual report under section 13(a) [76] or 15(d) [77] of the Exchange Act.

Because the proposed rules relating to shell companies would apply to foreign private issuers, we believe that foreign private issuer shell companies should have the same disclosure requirements as those proposed for domestic shell companies. To avoid the use of foreign private issuer shell companies to circumvent the proposed new disclosure and timing requirements, we are considering the appropriate form on which foreign companies should file information equivalent to that contained in an Exchange Act registration statement even if they do not lose their foreign private issuer status following completion of the transaction with the operating business. We believe that whichever form is used, it would be appropriate to require foreign private issuer shell companies to follow the same timing as would apply to a U.S. shell company under the proposed rule, *i.e.*, four business days after completion of the transaction.

We request specific comment on the following questions relating to alternative approaches that we are considering with respect to disclosure requirements applicable to foreign private issuer shell companies:

• What factors would be most significant to a foreign shell company when structuring a transaction with an operating business? In what circumstances would an operating business seek to enter into a transaction with a foreign shell company rather than a domestic shell company?

• Should foreign private issuer shell companies file registration statement-equivalent information as an amendment to their annual report on Form 20–F? Should it be a separate report on Form 20–F, as would be the case with a transition report? We note that under current rules, any annual report, transition report or amendment on Form 20–F would include the certifications required by Exchange Act Rule 13a–14 [78] and section 906 of the Sarbanes-Oxley Act of 2002.[79]

• Would there be additional consequences to requiring that the disclosure be made on Form 20–F? Would this type of disclosure place undue burdens on foreign companies?

• Would it be more appropriate to require foreign private issuer shell companies to file a report on Form 8–K or Form 6–K containing the level of information required in a Form 20–F registration statement when it ceases to be a shell company? Should the Commission create a separate disclosure form (similar to Form 8–K) for those reports by foreign private issuers? What are the advantages or disadvantages of these approaches compared to filing the

[70] Examples of such thresholds can be found in Rule 3a51–1 under the Exchange Act, 17 CFR 240.3a51–1, which exclude from being classified as penny stock companies certain issuers with net tangible assets of $2 million (if in continuous operation for at least 3 years) or $5 million (if in continuous operation for less than three years) or average revenue of $6 million for three years.

[71] The term "foreign private issuer'' is defined in Exchange Act Rule 3b–4(c), 17 CFR 240.3b–4(c). A foreign private issuer is a non-government foreign issuer, except for a company that (1) has more than 50% of its outstanding voting securities owned by U.S. investors and (2) has either a majority of its officers and directors residing in or being citizens of the United States, a majority of its assets located in the United States, or its business principally administered in the United States.

[72] 17 CFR 249.220f

[73] Generally, foreign private issuers may elect to register under the Exchange Act on Form 10 or Form 10–SB, as eligible, rather than on Form 20–F. Foreign private issuers that have chosen to report on domestic forms should comply with the same Form 8–K requirements as domestic companies, providing information equivalent to that required in a Form 10 or 10–SB.

[74] *See* Exchange Act Rules 13a–11(b) and 15d–11(b), 17 CFR 240.13a–11(b) and 240.15d–11(b).

[75] 15 U.S.C. 78*l*.

[76] 15 U.S.C. 78m(a).

[77] 15 U.S.C. 78o(d).

[78] 17 CFR 240.13a–14.

[79] Pub. L. 107–204, 116 Stat. 745 (2002).

information in an amendment to an annual report on Form 20–F?

• Should the timing requirements for filings made by foreign private issuers differ from the timing requirement for filing Form 8–K that applies to domestic issuers? If so, what timing would be appropriate?

**III. Request for Comments**

We request and encourage any interested person to submit comments regarding:

• The proposals that are the subject of this release;

• Additional or different changes relating to shell companies; and

• Other matters that may have an effect on the proposals contained in this release.

Comment is solicited from the point of view of both issuers and investors, as well as facilitators of capital formation, such as underwriters and placement agents, and other regulatory bodies, such as state securities regulators. We also solicit comments from accounting firms that regularly audit the types of transactions covered by the proposals.

**IV. Paperwork Reduction Act**

The proposed amendments affect Securities Act Form S–8, Exchange Act Form 8–K, Form SB–2, and Form S–1, which contain "collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[80] We are submitting a request for approval of the proposed amendments to the Office of Management and Budget ("OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles of the affected collections of information are Form S–8 (OMB Control No. 3235–0066), Form 8–K (OMB Control No. 3235–0060), Form SB–2 (OMB Control No. 3235–0418), and Form S–1 (OMB Control No. 3235–0065). 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.

These amendments are intended to protect investors by deterring fraud and abuse in our public securities markets through the use of shell companies. Compliance with the proposed disclosure requirements would be mandatory. There would be no mandatory retention period for the information disclosed and responses to the disclosure requirements would not be kept confidential. It is difficult to quantify whether the collection of information will increase for foreign private issuers.[81]

*Form S–8*

The new proposal to prohibit shell companies from using Securities Act Form S–8 may require some companies to use a less streamlined form, such as Form SB–2 or Form S–1, to register offerings that otherwise would have been registered on Form S–8. A company that ceases to be a shell company would be eligible to file a Form S–8 registration statement 60 days after it has filed information equivalent to what it would be required to file if it were registering a class of securities under the Exchange Act. We estimate that this may reduce the number of registration statements filed on Form S–8 by approximately 5%, and may increase the number of registration statements filed on Form SB–2 and Form S–1 by a corresponding amount. We estimate that approximately 4,050 Form S–8 registration statements were filed in the Commission's last fiscal year, resulting in a total annual compliance burden of 97,200 hours (12 hours per response × 4,050 filings) and an annual cost of $14,580,000 (12 hours × 4,050 filings × $300). We also estimate that approximately 650 Form SB–2 registration statements were filed in the last fiscal year, resulting in a total annual compliance burden of 385,450 hours and an annual cost of $86,726,000. We further estimate that approximately 433 Form S–1 registration statements were filed in the last fiscal year, resulting in a total annual compliance burden of 189,329 hours and an annual cost of $170,396,000.

With respect to Form S–8, we estimate that 50% of the burden of preparing the form is borne by the company's internal staff and that 50% represents work performed by outside securities counsel retained by the company at an average the rate of $300 per hour. With respect to Form SB–2 and Form S–1, we estimate that 25% of the burden of preparing the form is borne by the company's internal staff and that 75% of the burden represents work performed by outside securities counsel at the rate of $300 per hour.

We do not expect that shell companies that are prohibited from using Form S–8 will file other registration statements, but if they did they could use Form SB–2 or Form S–1. At the maximum, we estimate the number of Form S–8 registration statements filed on other forms would be 5% of the Form S–8 registration statements filed in fiscal year 2003 would no longer be filed (4,050 × .05 = 203). We also expect that the overwhelming majority of companies (95%) that chose to file another registration statement in lieu of Form S–8 would file them on Form SB–2, thereby increasing the number of Form SB–2 filings by 193 (203 filings × .95) and the number of Form S–1 registration statements by 10 (203 filings × .05). As a result, the Form S–8 reporting burden would decrease by 2,436 hours (203 filings × 12 hours) and the annual cost would decrease by $730,800 (203 filings × 12 hours × $300). The Form SB–2 reporting burden would increase by 28,612 hours (385,450 hours ÷ by 650 filings = 593 hours per filing × 193 filings × .25) with an annual cost increase of $25,751,025 (593 hours × 193 filings × $300 per hour × .75). Finally, the Form S–1 reporting burden would increase by 4,373 hours (757,317 hours ÷ by 433 filings = 1,749 hours per response × 10 filings × .25) with an annual cost increase of $393,525 (1,749 hours × $300 per hour × .75).

**Form 8–K**

Form 8–K (OMB Control No. 3235–0060) prescribes information about important corporate events that a company must disclose on a current basis. Form 8–K also may be used, at a company's option, to report any events that the company deems to be of importance to its shareholders. In addition, companies may use the form to report the nonpublic information required to be disclosed by Regulation FD.

We currently estimate that Form 8–K results in a total annual compliance burden of 513,007 hours and an annual cost of $41,040,000. We estimate the number of Form 8–K filers to be 13,200, based on the actual number of Form 10–K and Form 10–KSB filers during the Commission's 2003 fiscal year. For purposes of this analysis, we estimate that the number of reports on Form 8–K filed annually is 154,007. We estimate that each entity currently spends, on average, approximately five hours completing the form. We estimate that 75% of the burden is borne by the company and that 25% of the burden is borne by outside securities counsel retained by the company at an average cost of $300 per hour. Our estimates of the average number of hours each entity spends completing the form, and the average hourly rate for outside securities counsel, were obtained by contacting a

[80] 44 U.S.C. 3501 *et seq.*

[81] We believe that a foreign private issuer shell company merging with a domestic operating business would rarely be able to keep its foreign private issuer status. We would not expect the number of these transactions to have any effect on the estimates used in this section.

number of law firms and other persons regularly involved in completing the forms.

Under the proposal, a shell company would be required to make a more specific and detailed filing on Form 8–K when it reports a transaction that causes it to cease being a shell company. The shell company would need to file a Form 8–K that contains the information that would be required in an initial registration statement on Form 10 or Form 10–SB to register a class of securities under section 12 of the Exchange Act. The company would be required to file the Form 8–K within four business days after the closing of the transaction. This amendment would eliminate the 71-day window during which the financial information currently can be filed.

This proposal would not increase the number of Form 8–K filings but would increase the amount of information that a former shell company must include in the form. In 2003, companies that categorized themselves as "blank check companies'' under the SEC Standard Industrial Classification (SIC) Code for that category disclosed 63 transactions under Item 2 of Form 8–K. We believe that the additional information we are requiring is analogous to the information required to complete a Form 10–SB. Currently, we estimate that it takes 133 hours to complete a Form 10–SB. We estimate that it would take a shell company 133 hours to prepare the information that we are proposing to require the company to provide in a Form 8–K report. We estimate that the company bears 75% of the burden and that 25% of the burden is borne by outside securities counsel retained by the company at an average rate of $300 per hour. We estimate that it will take a former shell company 133 hours to complete the Form 8–K when it reports a transaction that causes it to cease being a shell company. The burden in this type of Form 8–K filing would increase to 8,379 hours (133 hours × 63 shell companies). Therefore, the Form 8–K reporting burden would increase by 6,284 hours (8,379 hours × .75). The cost burden would increase by approximately $628,425 (.25 × 8,379 hours × $300).

In accordance with 44 U.S.C. 3506(c)(2)(B), we solicit comment on the following:

- The appropriateness of the proposed changes in the collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;
- The accuracy of our estimate of the burden of the proposed collection of information;
- Ways to enhance the quality, utility and clarity of the information to be collected;
- Ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and
- Any effects of the proposals on any other collections of information not previously identified.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy of Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–19–04. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–19–04, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

## V. Cost-Benefit Analysis

Shell companies have been used for fraudulent and manipulative purposes. These proposals will disqualify shell companies from using Form S–8. These proposals will also require a shell company making a filing on Form 8–K to report completion of a transaction that causes it to become an operating business and cease being a shell company to include information of the kind it would be required to include in a long-form filing to register a class of its securities under the Exchange Act. These new proposals would make it more difficult for shell companies to be used for fraudulent purposes.

These proposals are consistent with the notion that the federal securities regulations should promote full disclosure. We solicit comment specifically on the costs to shell companies of losing eligibility to use Form S–8. A shell company will continue to be eligible to use Form S–1 or Form SB–2 to offer securities in connection with its employee benefit plan. A shell company may also be entitled to rely on certain exemptions from the registration and prospectus delivery requirements of the Securities Act. Shell companies would thus still be able to issue securities to employees and consultants; but they could not use a streamlined form with automatic effectiveness, and the securities may be subject to restrictions on resale. This may impose costs on companies that issue securities as compensation. This cost is difficult to quantify. The benefit of this proposal is the increased protection of investors.

The proposals also would require the filing of a report on Form 8–K containing information of the type that is required in an initial registration statement on Form 10 or Form 10–SB when registering a class of securities under section 12 of the Exchange Act. For purposes of the Paperwork Reduction Act, we estimate the cost of preparing this report is 133 hours. Most of this time would be spent by internal company personnel, but we estimate that 25% would involve outside professionals. Assuming an hourly rate of $300, this would result in an estimated average out-of-pocket cost of $9,975 (133 hours × .25 × 300). Further, we estimate that approximately 105 shell companies a year would be required to prepare and file this information. In calendar year 2003, there were 63 reverse merger transactions involving blank check companies and 41 "back door'' registration transactions.

The proposal to amend Form 8–K will require additional disclosure to be filed with the Form 8–K reporting completion of the transaction within four business days instead of within 71 calendar days after the initial filing due date. The additional disclosure will increase costs for shell companies that file a Form 8–K following the completion of the transaction that causes them to cease being shell companies. The benefit of this amendment to Form 8–K would be the protection of investors and increased integrity of the markets for the securities of smaller companies. To assist in a full evaluation of the costs and benefits of the proposals, we seek the views of and other data from the public.

## VI. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act [82] requires us to consider the anti-competitive effects of any rules that we adopt under the Exchange Act. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, section 2(b) of the Securities Act [83] and section 3(f) of the Exchange Act [84] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition and capital formation.

The purpose of these proposed amendments is to deter fraud and reduce abuse of Form S–8 in unlawful capital-raising transactions through the use of shell companies and to enhance our reporting requirements with respect to transactions involving shell companies. We anticipate that these proposals would improve the proper functioning of the capital markets. We believe the proposals will enhance investor confidence in the securities markets and promote efficiency and capital formation. We do not expect that the proposals will have any anti-competitive effects.

We solicit comment on these matters with respect to the proposed rules. Would adoption of the proposals have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Securities Act or the Exchange Act? Would the proposed amendments, if adopted, promote efficiency, competition and capital formation? Commenters are requested to provide empirical data and other factual support for their views, if possible.

## VII. Initial Regulatory Flexibility Analysis

We have prepared an Initial Regulatory Flexibility Analysis, in accordance with 5 U.S.C. 603 concerning the rules proposed today.

### *A. Reasons for and Objectives of the Proposed Amendments*

The purpose of these proposed amendments is to protect investors in shell companies and to deter fraud and abuse in our public securities markets through the use of shell companies.

### *B. Legal Basis*

The amendment proposed for Securities Act Form S–8 and adding the definition of shell company to Rule 405 under the Securities Act would be adopted pursuant to sections 6, 7, 8, 10, 19, and 28 of the Securities Act. The amendment to Exchange Act Form 8–K and adding the definition of shell company to Rule 12b–2 under the Exchange Act would be adopted pursuant to sections 3, 12, 13, 15, and 23(a) of the Exchange Act.

### *C. Small Entities Subject to the Proposed Amendment*

The proposed amendments would affect companies that are small entities. Exchange Act Rule 0–10(a) [85] defines an issuer, other than an investment company, to be a "small business'' or "small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there were approximately 2,500 issuers, other than investment companies, that may be considered small entities. The proposed amendments would prohibit the use of Securities Act Form S–8 by shell companies and require them to have specific and detailed information on file before being permitted to use Form S–8 when they become an operating business and cease being a shell company. We believe only a small percentage of the 2,500 issuers that are small entities are shell companies. The proposed amendments would affect only shell companies but they all would be "small entities.''

### *D. Reporting, Record Keeping, and Other Compliance Requirements*

The proposed amendments would impose additional disclosure requirements on shell companies by requiring them to provide certain business disclosure in addition to currently required audited financial statements. No other new reporting, record keeping or compliance requirements would be imposed. The proposed amendments would prohibit shell companies from using Form S–8 and require a shell company to include additional information in any report on Form 8–K that it files to report completion of a transaction in which it ceases being a shell company and becomes an operating business. Other than the additional disclosure requirements, the primary impact of these proposals relates to the timing of the filing.

### *E. Overlapping or Conflicting Federal Rules*

We do not believe any current federal rules duplicate, overlap or conflict with the proposed amendments.

### *F. Significant Alternatives*

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small businesses. We considered the following types of alternatives:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) The clarification, consolidation or simplification of compliance and reporting requirements under the rule for such small entities;

(3) The use of performance rather than design standards; and

(4) An exemption from coverage of the rule, or any part thereof, for small entities.

With respect to alternative (1), the proposed amendment to Form S–8 will prohibit shell companies from using the form. The proposed amendments to Form 8–K will shorten the time within which shell companies must file their required financial disclosures from 71 calendar days after the initial Form 8–K filing to four business days after completion of the conversion transaction. It would be inappropriate to establish a more liberal compliance standard for small businesses since the current standard applies to all public companies; it is the current delay in the filing of the required financial statements that permits abuse by shell companies. The proposed amendments will increase costs only to shell companies, not to all to small businesses, by requiring former shell companies to file a report on Form 8–K containing the information that would be required in an initial registration statement on Form 10 or Form 10–SB to register a class of its securities under Section 12 of the Exchange Act upon making a significant acquisition and 60 days before using Form S–8. Form S–8 is a registration statement used for employee compensation plans and shell companies typically have few, if any, employees. Accordingly, the proposal does not impose any burdens on small businesses.

With regard to Alternative 2, the proposed amendments are clear and concise. We however seek comment on the definition of "shell company'' to

[82] 15 U.S.C. 78w(a)(2).

[83] 15 U.S.C 77b(b).

[84] 15 U.S.C. 78c(f).

[85] 17 CFR 240.0–10(a).

appropriately tailor the rule. Prohibiting the use of Securities Act Form S–8 by shell companies does not increase the disclosure required unless a shell company wants to compensate employees with securities. If the shell company had employees and wanted to compensate them with securities it would substantially increase the disclosure required for the shell company to file a Form SB–2 or S–1. We believe that most shell companies will wait until they cease being a shell company before compensating employees with securities. The proposed amendment to Form S–8 will require a former shell company to wait 60 days after filing the required disclosure before being eligible to use Form S–8. Due to the nature of the entity, full and fair disclosure by the operating company supports the trading market in the shares of the new entity. The proposed amendment to Form 8–K requiring filing additional information within four business days does not necessarily increase disclosure significantly but rather accelerates it. We propose to require that certain information, which is not specifically required in the current Form 8–K report, be included for shell companies. We solicit comment on these specific issues.

Alternatives (3) and (4) are not viable because the purpose of the amendments is to deter fraud. It would be difficult under Alternative (3) to design performance standards that would carry out the Commission's statutory mandate to ensure adequate disclosure about shell companies and companies formed by merger with a shell company and disclose significant acquisitions promptly. Alternative (4) is inappropriate since the rule only applies to small entities. An exemption for small entities would not achieve the desired result.

*G. Solicitation of Comments*

We encourage the submission of written comments with respect to any aspect of this initial regulatory flexibility analysis, especially empirical data on the impact on small businesses. In particular, we request comment on: (1) The number of small entities that would be affected by the proposed amendments of Forms S–8 and 8–K; and (2) whether these amendments would increase the reporting, record keeping and other compliance requirements for small businesses. Such written comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposed amendments are adopted.

## VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 [86] a rule is "major'' if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposals would be a "major rule'' for purposes of SBREFA. We solicit comment and empirical data on (1) the potential effect on the U.S. economy on an annual basis; (2) any potential increase in costs or prices for consumers or individual industries; and (3) any potential effect on competition, investment or innovation.

## IX. Statutory Basis and Text of Proposal

The amendments to Form S–8 and Rule 405 under the Securities Act are proposed pursuant to sections 6, 7, 8, 10, 19 and 28 of the Securities Act.

The amendments to Form 8–K and Rule 12b–2 under the Exchange Act are proposed pursuant to sections 3, 12, 13, 15 and 23(a) of the Exchange Act.

## List of Subjects in 17 CFR Parts 230, 239, 240 and 249

Reporting and record keeping requirements, Securities.

## Text of Proposed Amendments

In accordance with the foregoing, title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

## PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

**Authority:** 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Amend § 230.405 to add the following definition in alphabetical order to read as follows:

### § 230.405 Definitions of terms.

* * * * *

*Shell company.* The term *shell company* means a registrant with no or nominal operations and with:

(1) No or nominal assets; or

(2) Assets consisting solely of cash and cash equivalents.

* * * * *

## PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

3. The authority citation for part 239 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

4. Amend § 239.16b to revise the introductory text of paragraph (a) to read as follows:

### § 239.16b Form S–8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to employee benefit plans.

(a) Any registrant that, immediately before the time of filing a registration statement on this form, is subject to the requirement to file reports pursuant to section 13 (15 U.S.C. 78m) or 15(d) (15 U.S.C. 78o(d)) of the Securities Exchange Act of 1934; has filed all reports and other materials required to be filed by such requirements during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials); is not a shell company (as defined in § 230.405 of this chapter); and, if it has been a shell company at any time during the preceding 12 months, has filed current Form 10 information (as defined in Instruction A.1(a)(6) to Form S–8) with the Commission at least 60 days previously, may use this form for registration under the Securities Act of 1933 (the Act) (15 U.S.C. 77a *et seq.*) of the following securities:

* * * * *

5. Amend Form S–8 (referenced in § 239.16b) by revising the introductory text to General Instruction A.1 and adding paragraphs (a)(6) and (a)(7) to General Instruction A. 1, to read as follows:

**Note—** The text of Form S–8 does not, and this amendment will not, appear in the Code of Federal Regulations.

**Form S–8—Registration Statement Under the Securities Act of 1933**

* * * * *

General Instructions

*A. Rule as to Use of Form S–8*

1. Any registrant that, immediately before the time of filing a registration statement on this form, is subject to the requirement to file reports pursuant to section 13 (15 U.S.C. 78m) or 15(d) (15 U.S.C. 78o(d) ) of the

[86] Pub. L. 104–121 tit. II, 110 Stat. 857 (1996).

Securities Exchange Act of 1934; has filed all reports and other materials required to be filed by such requirements during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials); is not a shell company (as defined in § 230.405 of this Chapter); and, if it has been a shell company at any time during the preceding 12 months, has filed current Form 10 information with the Commission at least 60 days previously, may use this form for registration under the Securities Act of 1933 (the Act) (15 U.S.C. 77a *et seq.*) of the following securities:

(a) * * *

(6) The term "Form 10 information'' means the information that is required by Form 10, Form 10–SB or Form 20–F (17 CFR 249.210, 17 CFR 249.210b or 17 CFR 249.220f), as applicable, under the Securities Exchange Act of 1934 to register the class of securities being registered using this form. The information may be provided in Form 8–K (17 CFR 249.308) or another Commission filing with respect to the registrant.

(7) Notwithstanding the last clause of the first paragraph of this Instruction A.1, a shell company in existence solely for purposes of changing the corporate domicile of another entity may use this form immediately upon ceasing to be a shell company and without waiting 60 days after it has filed current Form 10 information with the Commission.

* * * * *

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

6. The authority citation for part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

7. Amend § 240.12b–2 to add the following definition of *Shell company* in alphabetical order and revise the definition of *Succession* to read as follows:

### § 240.12b–2 Definitions.

* * * * *

*Shell company:* The term *shell company* means a registrant with no or nominal operations and with: (1) No or nominal assets; or (2) Assets consisting solely of cash and cash equivalents.

* * * * *

*Succession.* The term *succession* means the direct acquisition of the assets comprising a going business, whether by merger, consolidation, purchase, or other direct transfer; or the acquisition of control of a shell company in a transaction required to be reported on Form 8–K (17 CFR 249.308) in compliance with Item 5.01 of that Form. Except for an acquisition of control of a shell company, the term does not include the acquisition of control of a business unless followed by the direct acquisition of its assets. The terms *succeed* and *successor* have meanings correlative to the foregoing.

* * * * *

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

8. The authority citation for part 249 continues to read in part as follows:

**Authority:** 15 U. S. C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

9. Amend Form 8–K under the caption "Information to Be Included in the Report'' (referenced in § 249.308) by:

a. Removing the word "and'' at the end of Item 2.01(d);

b. Removing the period at the end of Item 2.01(e)(2) and in its place adding "; and';

c. Adding paragraph (f) to Item 2.01;

d. Removing the word "and'' at the end of Item 5.01(a)(6);

e. Removing the period at the end of Item 5.01(a)(7) and in its place adding " ; and';

f. Adding paragraph (a)(8) to Item 5.01;

g. Redesignating paragraph (c) of Item 9.01 as paragraph (d); and

h. Adding new paragraph (c) to Item 9.01.

The additions read as follows:

**Note** —The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

**Form 8–K—Current Report**

* * * * *

Information To Be Included in the Report

* * * * *

**Item 2.01. Completion of Acquisition or Disposition of Assets**

* * * * *

(f) if the registrant was a shell company immediately before the transaction, the information that would be required if the registrant were filing a general form for registration of securities on Form 10 or Form 10–SB (17 CFR 249.210 or 17 CFR 249.210b), as applicable, under the Exchange Act reflecting all classes of the registrant's securities subject to the reporting requirements of section 13 (15 U.S.C. 78m) or section 15(d) (15 U.S.C. 78o(d)) of such Act upon consummation of the transaction.

* * * * *

**Item 5.01. Changes in Control of Registrant**

(a)* * *

(8) if the registrant was a shell company immediately before the change in control, the information that would be required if the registrant were filing a general form for registration of securities on Form 10 or Form 10–SB (17 CFR 249.210 or 17 CFR 249.210b), as applicable, under the Exchange Act reflecting all classes of the registrant's securities subject to the reporting requirements of sections 13 (15 U.S.C. 78m) or section 15(d) (15 U.S.C. 78o(d)) of such Act upon consummation of the change in control.

* * * * *

**Item 9.01. Financial Statements and Exhibits**

* * * * *

(a) * * *

(c) *Shell company transactions.* A registrant that was a shell company immediately before a transaction required to be described in Item 2.01 or Item 5.01 of this form must file the financial statements required by those items in the initial report.

* * * * *

Dated: April 15, 2004.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–8963 Filed 4–20–04; 8:45 am]

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Federal Register

Wednesday,
April 21, 2004

Part IV

# Department of Housing and Urban Development

## America's Affordable Communities Initiative, HUD's Initiative on Removal of Regulatory Barriers: Incentive Criteria on Barrier Removal in HUD's FY 2004 Competitive Funding Allocations; Technical Correction and Supplemental Information; Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4882–N–03]**

## America's Affordable Communities Initiative, HUD's Initiative on Removal of Regulatory Barriers: Incentive Criteria on Barrier Removal in HUD's FY 2004 Competitive Funding Allocations; Technical Correction and Supplemental Information

**AGENCY:** Office of the General Counsel, HUD.

**ACTION:** Notice.

**SUMMARY:** In this notice, HUD advises of one correction to its notice published on March 22, 2004, which announced HUD's intention to proceed to establish in the majority of its Fiscal Year (FY) 2004 notices of funding availability (NOFAs), including HUD's SuperNOFA, a policy priority for increasing the supply of affordable housing through the removal of regulatory barriers to affordable housing. In this notice, HUD also responds to additional questions that were raised following publication of the March 22, 2004, notice.

**FOR FURTHER INFORMATION CONTACT:** Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Room 10282, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone (202) 708–1793 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On November 25, 2003 (68 FR 66294), HUD published in the **Federal Register** a notice that announced its proposal to provide incentives to regulatory barrier removal in HUD's funding allocations, commencing with the FY2004 competitive funding process. HUD proposed in the November 2003 notice to establish in the majority of its FY2004 NOFAs, including HUD's SuperNOFA, a policy priority for increasing the supply of affordable housing through the removal of regulatory barriers (referred to, for brevity purposes, as the "Removal of Regulatory Barriers'' policy priority). As a policy priority in HUD's NOFAs (and like other policy priorities in HUD NOFAs), higher rating points would be available to (1) governmental applicants that are able to demonstrate successful efforts in removing regulatory barriers to affordable housing, and (2) nongovernmental applicants that are associated with jurisdictions that have undertaken successful efforts in removing barriers. The proposal advised that for the higher rating points to be obtained applicants had to respond to a series of evaluative questions that HUD determined were significantly important and have broad-based applicability to measure state, local, and tribal government efforts at regulatory reform and which serve as good "markers'' for effective regulatory reform.

HUD solicited public comment from prospective applicants of HUD funding as well as other interested members of the public. The November 25, 2003, notice originally called for a public comment deadline of December 29, 2003, but HUD extended the deadline to January 12, 2004. HUD received 37 public comments in response to the November 2003 notice.

On March 22, 2004 (69 FR 13450), HUD published its final notice announcing its intention to proceed to establish the Removal of Regulatory Barriers policy priority in the majority of its FY2004 NOFAs. HUD took into consideration the public comments received on the November 2003 notice and made several changes to the questionnaire that was part of the November 2003 notice. Specifically, PART A of the questionnaire was revised to cover 20 questions in contrast to the 13 questions presented in the November 2003 notice. PART B of the questionnaire was revised to cover 15 questions in contrast to the 6 questions presented in the November 2003 notice. It was determined that the greater number of questions would permit more jurisdictions and applicants to reach the applicable threshold for receiving one or two points available for this policy priority.

This notice published in today's **Federal Register** advises of one correction to a question in PART A.

In the November 2003 notice, one of the questions in PART A provided that if a community was without impact fees, the community could check the "yes'' column and receive credit toward the receipt of points. The March 2004 notice inadvertently omitted that option. Therefore, HUD has revised Question 5 in PART A to provide that an applicant may check the "yes'' column if an applicant's jurisdiction is without impact fees. This approach is similar to the approach taken in Question 3, which addresses zoning. Although Question 7 addresses impact fees, it also addresses "other significant fees'' and it was therefore determined that a revision to Question 7 was not necessary.

This notice also responds to a few questions that have arisen since publication of the March 22, 2004, notice. Several members of the public asked whether prospective HUD applicants should begin completing the questionnaire in the March 2004 notice and submit it to HUD. Applicants should not complete the questionnaire in this notice published in today's **Federal Register** or in the earlier March 22, 2004, notice. Applicants must wait for the publication of HUD's FY2004 SuperNOFA, which is expected to publish soon, or publication of individual HUD NOFAs to which the Removal of Regulatory Barriers policy priority will apply. HUD's SuperNOFA (or an individually published NOFA) will contain the questionnaire to be completed, and that questionnaire will be submitted as part of the applicant's application for the HUD program funds for which the applicant is applying. The questionnaire was published in the March 2004 notice, and again in this notice, to provide prospective applicants with the opportunity to become familiar with the questionnaire and facilitate completion of the questionnaire when the SuperNOFA is published.

Another commenter asked whether the applicant's jurisdiction must complete and sign the questionnaire. That is not necessary. The questionnaire was developed with the objective that an applicant should be able to complete the questionnaire with information about the applicant's jurisdiction that is readily available to the public. Applicants are welcome to have their jurisdictions complete the questionnaire but that is not a requirement.

Another commenter asked whether each project listed in an associated homeless Continuum of Care (CoC) application has to submit a questionnaire for each project, or would one questionnaire for the whole continuum be sufficient. The commenter also asked that if one questionnaire would be sufficient would the applicant submit a questionnaire for the local jurisdiction where the CoC applicant provides the majority of its services.

The CoC NOFA, when published as part of HUD's SuperNOFA, will provide that only one questionnaire needs to be submitted to obtain the up to 2 points available for the Removal of Regulatory Barriers policy priority. Therefore, the CoC applicant should submit a questionnaire for the local jurisdiction where the majority of its CoC assistance will be provided. Although a CoC applicant identifies several projects for funding in its application, the score

provided to a CoC application is for the entire list of projects and not for any one individual project. Therefore, the up to 2 points available for the Removal of Regulatory Barriers policy priority will be available for the entire application, not the individual projects identified in the application. This issue will also be addressed in the CoC NOFA.

For the convenience of the reader, the questionnaire, with the revised Question 5 in PART A, is repeated in its entirety. Applicants wishing to receive points for the Removal of Regulatory Barriers policy priority must wait for the publication of HUD's NOFAs to submit their response as part of their application for funding assistance. HUD's NOFAs will contain form HUD 27300, Questionnaire for HUD's Initiative on Removal of Regulatory Barriers.

Again, HUD anticipates that its FY2004 SuperNOFA as well as other individual FY2004 NOFAs will be published soon.

PART A.—LOCAL JURISDICTIONS, COUNTIES EXERCISING LAND USE AND BUILDING REGULATORY AUTHORITY AND OTHER APPLICANTS APPLYING FOR PROJECTS LOCATED IN SUCH JURISDICTIONS OR COUNTIES

[Collectively, Jurisdiction]

| | 1. | 2. |
|---|---|---|
| 1. Does your jurisdiction's comprehensive plan (or in the case of a tribe or TDHE, a local Indian Housing Plan) include a "housing element"? A local comprehensive plan means the adopted official statement of a legislative body of a local government that sets forth (in words, maps, illustrations, and/or tables) goals, policies, and guidelines intended to direct the present and future physical, social, and economic development that occurs within its planning jurisdiction and that includes a unified physical plan for the public development of land and water. If your jurisdiction does not have a local comprehensive plan with a "housing element," please enter no. If no, skip to question #4. | No__ | Yes__ |
| 2. If your jurisdiction has a comprehensive plan with a housing element, does the plan provide estimates of current and anticipated housing needs, taking into account the anticipated growth of the region, for existing and future residents, including low-, moderate-, and middle-income families, for at least the next five years? | No__ | Yes__ |
| 3. Does your zoning ordinance and map, development and subdivision regulations or other land use controls conform to the jurisdiction's comprehensive plan regarding housing needs by providing: (a) sufficient land use and density categories (multifamily housing, duplexes, small lot homes and other similar elements); and (b) sufficient land zoned or mapped "as-of-right" in these categories, that can permit the building of affordable housing addressing the needs identified in the plan? (For purposes of this notice, "as-of-right," as applied to zoning, means uses and development standards that are determined in advance and specifically authorized by the zoning ordinance. The ordinance is largely self-enforcing because little or no discretion occurs in its administration.) If the jurisdiction has chosen not to have either zoning, or other development controls that have varying standards based upon districts or zones, the applicant may also enter yes.. | No__ | Yes__ |
| 4. Does your jurisdiction's zoning ordinance set minimum building size requirements that exceed the local housing or health code or is otherwise not based upon explicit health standards? | Yes__ | No__ |
| 5. If your jurisdiction has development impact fees, are the fees specified and calculated under local or state statutory criteria? If no, skip to question #7. Alternatively, if your jurisdiction does not have impact fees, you may enter yes.. | No__ | Yes__ |
| 6. If yes to question #5, does the statute provide criteria that set standards for the allowable type of capital investments that have a direct relationship between the fee and the development (nexus), and a method for fee calculation? | No__ | Yes__ |
| 7. If your jurisdiction has impact or other significant fees, does the jurisdiction provide waivers of these fees for affordable housing? | No__ | Yes__ |
| 8. Has your jurisdiction adopted specific building code language regarding housing rehabilitation that encourages such rehabilitation through gradated regulatory requirements applicable as different levels of work are performed in existing buildings? Such code language increases regulatory requirements (the additional improvements required as a matter of regulatory policy) in proportion to the extent of rehabilitation that an owner/developer chooses to do on a voluntary basis. For further information see HUD publication: "Smart Codes in Your Community: A Guide to Building Rehabilitation Codes" (*www.huduser.org/publications/destech/smartcodes.html*). | No__ | Yes__ |
| 9. Does your jurisdiction use a recent version (*i.e.* published within the last five years or, if no recent version has been published, the last version published) of one of the nationally recognized model building codes (*i.e.* the International Code Council (ICC), the Building Officials and Code Administrators International (BOCA), the Southern Building Code Congress International (SBCI), the International Conference of Building Officials (ICBO), the National Fire Protection Association (NFPA)) without significant technical amendment or modification? In the case of a tribe or TDHE, has a recent version of one of the model building codes as described above been adopted or, alternatively, has the tribe or TDHE adopted a building code that is substantially equivalent to one or more of the recognized model building codes? | | |
| Alternatively, if a significant technical amendment has been made to the above model codes, can the jurisdiction supply supporting data that the amendments do not negatively impact affordability? | No__ | Yes__ |
| 10. Does your jurisdiction's zoning ordinance or land use regulations permit manufactured (HUD-Code) housing "as of right" in all residential districts and zoning classifications in which similar site-built housing is permitted, subject to design, density, building size, foundation requirements, and other similar requirements applicable to other housing that will be deemed realty, irrespective of the method of production? | No__ | Yes__ |
| 11. Within the past five years, has a jurisdiction official (*i.e.,* chief executive, mayor, county chairman, city manager, administrator, or a tribally recognized official, etc.), the local legislative body, or planning commission, directly, or in partnership with major private or public stakeholders, convened or funded comprehensive studies, commissions, or hearings, or has the jurisdiction established a formal ongoing process, to review the rules, regulations, development standards, and processes of the jurisdiction to assess their impact on the supply of affordable housing? | No__ | Yes__ |
| 12. Within the past five years, has the jurisdiction initiated major regulatory reforms either as a result of the above study or as a result of information identified in the barrier component of the jurisdiction's "HUD Consolidated Plan?" If yes, attach a brief list of these major regulatory reforms. | No__ | Yes__ |
| 13. Within the past five years has your jurisdiction modified infrastructure standards and/or authorized the use of new infrastructure technologies (*e.g.* water, sewer, street width) to significantly reduce the cost of housing? | No__ | Yes__ |

PART A.—LOCAL JURISDICTIONS, COUNTIES EXERCISING LAND USE AND BUILDING REGULATORY AUTHORITY AND OTHER APPLICANTS APPLYING FOR PROJECTS LOCATED IN SUCH JURISDICTIONS OR COUNTIES—Continued

[Collectively, Jurisdiction]

| | 1. | 2. |
|---|---|---|
| 14. Does your jurisdiction give "as-of-right" density bonuses sufficient to offset the cost of building below market units as an incentive for any market rate residential development that includes a portion of affordable housing? (As applied to density bonuses, "as of right" means a density bonus granted for a fixed percentage or number of additional market rate dwelling units in exchange for the provision of a fixed number or percentage of affordable dwelling units and without the use of discretion in determining the number of additional market rate units.). | No__ | Yes__ |
| 15. Has your jurisdiction established a single, consolidated permit application process for housing development that includes building, zoning, engineering, environmental, and related permits? | | |
| Alternatively, does your jurisdiction conduct concurrent not sequential, reviews for all required permits and approvals? | No__ | Yes__ |
| 16. Does your jurisdiction provide for expedited or "fast track" permitting and approvals for all affordable housing projects in your community? | No__ | Yes__ |
| 17. Has your jurisdiction established time limits for government review and approval or disapproval of development permits in which failure to act, after the application is deemed complete, by the government within the designated time period, results in automatic approval? | No__ | Yes__ |
| 18. Does your jurisdiction allow "accessory apartments" either as: (a) a special exception or conditional use in all single-family residential zones, or (b) "as of right" in a majority of residential districts otherwise zoned for single-family housing? | No__ | Yes__ |
| 19. Does your jurisdiction have an explicit policy that adjusts or waives existing parking requirements for all affordable housing developments? | No__ | Yes__ |
| 20. Does your jurisdiction require affordable housing projects to undergo public review or special hearings when the project is otherwise in full compliance with the zoning ordinance and other development regulations? | Yes__ | No__ |
| Total Points: ..... | _____ | _____ |

PART B.—STATE AGENCIES AND DEPARTMENTS OR OTHER APPLICANTS APPLYING FOR PROJECTS LOCATED IN UNINCORPORATED AREAS OR AREAS OTHERWISE NOT COVERED IN PART A

| | 1. | 2. |
|---|---|---|
| 1. Does your state, either in its planning and zoning enabling legislation or in any other legislation, require localities regulating development have a comprehensive plan with a "housing element?" If no, skip to question #4. | No__ | Yes__ |
| 2. Does your state require that a local jurisdiction's comprehensive plan estimate current and anticipated housing needs, taking into account the anticipated growth of the region, for existing and future residents, including low-, moderate-, and middle-income families, for at least the next five years? | No__ | Yes__ |
| 3. Does your state's zoning enabling legislation require that a local jurisdiction's zoning ordinance have: (a) sufficient land use and density categories (multifamily housing, duplexes, small lot homes and other similar elements); and (b) sufficient land zoned or mapped in these categories, that can permit the building of affordable housing that addresses the needs identified in the comprehensive plan? | No__ | Yes__ |
| 4. Does your state have an agency or office that includes a specific mission to determine whether local governments have policies or procedures that are raising costs or otherwise discouraging affordable housing? | No__ | Yes__ |
| 5. Does your state have a legal or administrative requirement that local governments undertake periodic self-evaluation of regulations and processes to assess their impact upon housing affordability and undertake actions to address these barriers to affordability? | No__ | Yes__ |
| 6. Does your state have a technical assistance or education program for local jurisdictions that includes assisting them in identifying regulatory barriers and in recommending strategies to local governments for their removal? | No__ | Yes__ |
| 7. Does your state have specific enabling legislation for local impact fees? If no, skip to question #9 ..... | No__ | Yes__ |
| 8. If yes to question #7, does the state statute provide criteria that set standards for the allowable type of capital investments that have a direct relationship between the fee and the development (nexus) and a method for fee calculation? | No__ | Yes__ |
| 9. Does your state provide significant financial assistance to local governments for housing, community development and/or transportation that includes funding prioritization or linking funding on the basis of local regulatory barrier removal activities? | No__ | Yes__ |
| 10. Does your state have a mandatory state-wide building code that (a) does not permit local technical amendments and (b) uses a recent version (*i.e.,* published within the last five years or, if no recent version has been published, the last version published) of one of the nationally recognized model building codes (*i.e.,* the International Code Council (ICC), the Building Officials and Code Administrators International (BOCA), the Southern Building Code Congress International (SBCI), the International Conference of Building Officials (ICBO), the National Fire Protection Association (NFPA)) without significant technical amendment or modification? | No__ | Yes__ |
| Alternatively, if the state has made significant technical amendments to the model code, can the state supply supporting data that the amendments do not negatively impact affordability? | No__ | Yes__ |
| 11. Has your state adopted mandatory building code language regarding housing rehabilitation that encourages rehabilitation through gradated regulatory requirements applicable as different levels of work are performed in existing buildings? Such language increases regulatory requirements (the additional improvements required as a matter of regulatory policy) in proportion to the extent of rehabilitation that an owner/developer chooses to do on a voluntary basis. For further information see HUD publication: "Smart Codes in Your Community: A Guide to Building Rehabilitation Codes" (*www.huduser.org/publications/destech/smartcodes.html*). | No__ | Yes__ |
| 12. Within the past five years, has your state made any changes to its own processes or requirements to streamline or consolidate the state's own approval processes involving permits for water or wastewater, environmental review, or other state-administered permits or programs involving housing development. If yes, briefly list these changes. | No__ | Yes__ |

PART B.—STATE AGENCIES AND DEPARTMENTS OR OTHER APPLICANTS APPLYING FOR PROJECTS LOCATED IN UNINCORPORATED AREAS OR AREAS OTHERWISE NOT COVERED IN PART A—Continued

| | 1. | 2. |
|---|---|---|
| 13. Within the past five years, has your state (*i.e.*, Governor, legislature, planning department) directly or in partnership with major private or public stakeholders, convened or funded comprehensive studies, commissions, or panels to review state or local rules, regulations, development standards, and processes to assess their impact on the supply of affordable housing? | No__ | Yes__ |
| 14. Within the past five years, has the state initiated major regulatory reforms either as a result of the above study or as a result of information identified in the barrier component of the state's "Consolidated Plan submitted to HUD?" If yes, briefly list these major regulatory reforms. | No__ | Yes__ |
| 15. Has the state undertaken any other actions regarding local jurisdiction's regulation of housing development including permitting, land use, building or subdivision regulations, or other related administrative procedures? If yes, briefly list these actions. | No__ | Yes__ |
| Total Points: ..... | _____ | _____ |

As noted in the earlier notices published on this subject, to assist NOFA applicants in reviewing their state and local regulatory environments so they can effectively address the questions above that are to be incorporated in all FY2004 NOFAs, the Department recommends visiting HUD's Regulatory Barriers Clearinghouse (RBC) at *www.huduser.org/rbc/.* This Web site was created to support state, local, and tribal governments and other organizations seeking information about laws, regulations, and policies affecting the development, maintenance, improvement, availability and cost of affordable housing. To encourage better understanding of the impact of regulatory issues on housing affordability, the Web site includes an extensive bibliography of major studies and guidance materials to assist state, local and tribal governments in fashioning solutions and approaches to expanding housing affordability through regulatory reform at *www.huduser.org/rbc/relevant_publications.html.*

Dated: April 14, 2004.

**A. Bryant Applegate,**

*Senior Counsel and Director of America's Affordable Communities Initiative.*

[FR Doc. 04–8978 Filed 4–20–04; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Wednesday,
April 21, 2004

# Part V

# Department of Education

## 34 CFR Part 99

## Family Educational Rights and Privacy Act; Final Rule

## DEPARTMENT OF EDUCATION

### 34 CFR Part 99

**RIN 1855–AA00**

## Family Educational Rights and Privacy Act

**AGENCY:** Office of Innovation and Improvement; Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends 34 CFR part 99 to implement the Department's interpretation of the Family Educational Rights and Privacy Act (FERPA) identified through administrative experience as necessary for proper program operation. These final regulations provide general guidelines for accepting "signed and dated written consent'' under FERPA in electronic format.

**DATES:** These regulations are effective May 21, 2004.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Wolan, U.S. Department of Education, 400 Maryland Avenue, SW., room 2W115, Washington, DC 20202–5901. Telephone: (202) 260–3887.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** On July 28, 2003, the Secretary published a notice of proposed rulemaking (NPRM) for this amendment in the **Federal Register** (68 FR 44420). In the preamble to the NPRM, we invited interested persons to submit comments concerning the proposed change. We proposed to add § 99.30(d) in order to provide general guidelines for educational agencies and institutions that choose to meet the requirements of § 99.30 with records and signatures in electronic format.

We reviewed guidance for electronic signatures recently published by a variety of Federal Government sources, including the Office of Management and Budget (OMB), the General Services Administration, and the National Institute for Standards and Technology. Based on that review and comments received from school officials, we believe it is necessary to modify these final regulations. We modified these regulations to reflect the definition of "electronic signature'' established in the Government Paperwork Elimination Act (GPEA), Public Law 105–277, Title XVII, Section 1710.

Electronic signatures are an area of rapidly evolving technology. These modified regulations provide more fluid and flexible standards for schools that choose to implement a process for accepting electronic signatures. These modified regulations permit schools to take advantage of changing technology as it may become available, whether the change concerns additional security provisions or enhanced customer service.

### Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 16 parties submitted comments on the proposed regulations. We publish an analysis of the comments and of the changes in the regulations since publication of the NPRM as an appendix at the end of these final regulations. We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes and suggested changes the law does not authorize the Secretary to make. However, we have reviewed these regulations since publication of the NPRM and have made changes as follows:

*Acceptance of signature in electronic form* (§ 99.30)

*Comments:* None.

*Discussion:* Electronic formats for signatures and documents are changing rapidly and substantially in response to evolving technologies and public acceptance. We wish to provide the widest possible flexibility for schools to adapt to such changes yet retain a methodology that operates within FERPA's requirements for proper disclosure of education records. Because FERPA applies to educational agencies and institutions at all levels, we do not want these regulations to inadvertently impose standards on elementary and secondary schools that may be valid only for postsecondary schools under Federal student aid programs.

Based on our review of standards acceptable to other areas of the Federal Government, including OMB circulars and Federal Student Aid (FSA) guidance for electronic student loan transactions, as well as standards established by laws such as the Electronic Signatures in Global and National Commerce Act (E–Sign) and GPEA, we believe these modified regulations will more easily permit schools to adapt to changing standards in the areas of electronic signatures and documents.

*Changes:* We have revised these regulations to be consistent with other Federal Government standards for "electronic signatures.''

### Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with these final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

*Summary of Potential Costs and Benefits*

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (68 FR 44421).

### Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

### Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

### Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also find these regulations, as well as additional information about FERPA, on the following Web site: *http://www.ed.gov/policy/gen/guid/fpco/index.html.*

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number does not apply.)

## List of Subjects in 34 CFR Part 99

Administrative practice and procedure, Education, Information, Parents, Privacy, Records, Reporting and recordkeeping requirements, Students.

Dated: April 2, 2004.

**Rod Paige,**

*Secretary of Education.*

■ For the reasons discussed in the preamble, the Secretary amends part 99 of title 34 of the Code of Federal Regulations as follows:

■ 1. The authority citation for part 99 continues to read as follows:

**Authority:** 20 U.S.C. 1232g, unless otherwise noted.

■ 2. Section 99.30 is amended by adding a new paragraph (d) to read as follows:

### § 99.30 Under what conditions is prior consent required to disclose information?

* * * * *

(d) "Signed and dated written consent'' under this part may include a record and signature in electronic form that—

(1) Identifies and authenticates a particular person as the source of the electronic consent; and

(2) Indicates such person's approval of the information contained in the electronic consent.

## Appendix

### Analysis of Comments and Changes

**Note:** The following appendix will not appear in the Code of Federal Regulations.

*Use at Multiple School Levels*

*Comments:* One commenter asked whether the proposed regulations apply only to eligible students at postsecondary institutions.

*Discussion:* FERPA gives the right to consent to disclosure of education records to parents of minor children at the elementary and secondary school levels, and to parents of children with disabilities who receive services under Part B or Part C of the Individuals with Disabilities Education Act (IDEA). When a student turns 18 years of age or attends a postsecondary institution at any age, the student is considered an "eligible student'' under FERPA. The right to consent under FERPA transfers under either of those two conditions from the parent to the eligible student. Although the term "eligible student'' will be used throughout this document, educational agencies and institutions at all levels may use these regulations to accept electronic signatures.

*Change:* None.

*Specific Methodologies*

*Comments:* Several commenters asked for more specific guidance on authentication methods and technologies that may be used.

*Discussion:* As explained in the preamble to the NPRM, the regulations are purposefully narrow in scope and intended to be technology-neutral (page 44420). While we will issue additional guidance that will include further examples of an acceptable process, we do not want to limit the flexibility of schools in this area of rapid technological change.

*Change:* None.

*Safe Harbor*

*Comments:* Several commenters support the use of the FSA standards for electronic signatures in electronic student loan transactions (FSA Standards) as a "safe harbor'' provision for acceptance of electronic signatures in FERPA. Several other commenters objected to the FSA Standards as being too rigorous for the perceived level of risk of improper disclosure. The FSA Standards may be viewed on the Internet at the following site: *http://www.ifap.ed.gov/dpcletters/gen0106.html.*

*Discussion:* The preamble to the NPRM stated (page 44421) that the FSA Standards would be the "safe harbor'' provision. A "safe harbor'' is not set at the minimally acceptable level of security. Due to the nature of the information that may be disclosed and the potential harm a student may suffer from an unauthorized disclosure, we believe the "safe harbor'' provision is not unduly rigorous. Schools retain the flexibility to choose to implement a system that meets the "safe harbor'' provisions or to choose to implement another system to meet the new FERPA provisions.

However, schools should be reminded that Congress has also, through the Gramm-Leach-Bliley Act (GLB) (Pub.L. 106–102, November 12, 1999), imposed additional privacy restrictions on financial institutions, which include postsecondary institutions, requiring institutions to protect against unauthorized access to, or use of, consumer records. The Federal Trade Commission's (FTC) rule on the privacy of consumer financial information provides that postsecondary institutions that are complying with FERPA to protect the privacy of their student financial aid records will be deemed in compliance with the FTC's rule. (65 FR 33646, 33648 (May 24, 2000)). This exemption applies to notice requirements and the restrictions on a financial institution's disclosure of nonpublic personal information to nonaffiliated third parties in Title V of GLB. However, postsecondary institutions are not exempt from the FTC final rule implementing section 501 of GLB on Safeguarding Customer Information. (67 FR 368484 (May 23, 2002)). Financial institutions, including postsecondary institutions, are required to have adopted an information security program by May 23, 2003, under the FTC rule.

Thus, while schools have the maximum flexibility in choosing a system that meets FSA's "safe harbor'' provisions or another process for authenticating Personal Identification Number (PIN) numbers under FERPA, postsecondary institutions should keep these other Federal requirements in mind when implementing such systems.

*Change:* None.

**Applicability of FSA Standards**

*Comments:* One commenter stated that it was confusing to apply the situations and terminology in the FSA Standards to FERPA. The commenter suggested that we issue a separate guide on FERPA standards.

*Discussion:* The FSA Standards do not apply directly to FERPA because some actions are imposed only on lenders or borrowers of financial aid. For example, the FSA Standards require that paper copies of transactions be provided to a student borrower at no cost in some circumstances, and lenders are required to obtain a borrower's specific consent to conduct loan transactions electronically. Neither of those circumstances has parallels within FERPA.

We agree that some circumstances within the FSA Standards do not relate directly to FERPA. While schools are not required by FERPA to follow the FSA Standards, we believe that schools may use the set-up and security measures described in the FSA Standards, particularly sections 3 through 7, as guidance for security measures in a system using electronic records and signatures under FERPA. We do not plan to issue a separate FERPA standards document, but we will clarify these items in additional guidance.

*Change:* None.

*Use of "Trusted Third Party'' in Identification Verification*

*Comments:* A commenter expressed a belief that disclosure by a school of student information without prior written consent to a "trusted third party'' as part of an identification verification process may be in violation of FERPA. This commenter stated that the conflict arises because the FSA Standards specify that the third party may not be an agent of the school.

*Discussion:* FSA authenticates student identification information with the Social Security Administration as a "trusted third party.'' FERPA's consent provisions do not apply to transactions between a student and FSA.

In situations where a school is disclosing education records to a third party, FERPA's consent provisions apply. When the third party receiving the information from the school is not an agent for the school, FERPA generally requires a school to obtain prior written consent before the disclosure is made. Receipt of the prior consent would then allow a school to disclose personal information for authentication purposes with the records of independent sources such as credit reporting agencies or testing companies.

Schools may also choose to use other processes to authenticate identity. For example, a school may require the eligible student to present photographic identification issued by a government agency. Such photographic identification includes, but is not limited to, a State-issued driver's license, a federally-issued passport,

and other Military, Federal, or State-issued identification cards.

*Change:* None.

*Issuing a PIN or Password*

*Comments:* One commenter stated that schools that issue a PIN to students as outlined in the FSA Standards can result in a PIN that is recorded and accessible to school officials. The commenter is concerned that this conflicts with FERPA policy that a PIN is not acceptable for use under FERPA if persons other than the student have access to the PIN.

*Discussion:* The process described in the FSA Standards does not permit school officials to access a student's PIN or password. In addition, the FSA Standards permit an eligible student to change an assigned password or PIN to one of their own choosing. Under the FSA Standards, all of the passwords or PINs, whether assigned or student-selected, are maintained in a secure database in an encrypted manner that is not generally accessible to school officials or other parties.

A school that uses a similar methodology would remain in compliance with requirements for the acceptance of an electronic signature under FERPA. However, a school may not use a PIN or password process that results in a PIN or password that is visible and easily accessible to persons other than the eligible student because that type of process results in an insecure PIN or password. Schools retain the maximum flexibility to implement any appropriate methodology.

*Change:* None.

*Use of Current Systems*

*Comments:* Several commenters asked whether it is acceptable to use existing systems that include sign-on capability, such as campus e-mail, admissions, enrollment, and fee payment systems. Several commenters also asked if it is acceptable to permit eligible students to provide notice of directory information opt-outs by use of electronic signatures.

*Discussion:* As explained in the preamble to the NPRM, the requirements for an electronic signature apply in circumstances where a signed and dated written consent is required under FERPA (page 44420). Such consent is generally required under FERPA when information from education records is to be disclosed to a third party, as in the issuance of a transcript to a prospective employer. Consent is not a requirement for disclosure of an eligible student's own records to the student. A school that wishes to use its current system for situations where FERPA consent is required must determine whether it provides the required level of security.

The majority of the systems mentioned by the commenters are designed for communication between a school and an eligible student. Systems that permit eligible students to view, alter, or update the student's own records by electronic means are not the subject of these regulations. A school must ensure that the eligible student and not some other party is the receiver of the information, but the method a school uses to do so is not prescribed by these regulations.

*Change:* None.

**Third-Party Presentation of Electronic Signature**

*Comments:* Several commenters asked whether the proposed regulations are applicable when a third party, not the eligible student, presents the electronic signature claimed to be that of the eligible student. Two commenters expressed strong support for acceptance of electronic signatures presented by third parties, primarily when the third party is a government entity or another educational agency or institution.

*Discussion:* Educational agencies and institutions are responsible to ensure that education records are disclosed only in accordance with FERPA. Any disclosure of education records to a third party, even in accordance with a student's consent, is permitted but not required under FERPA. Each agency or institution must have the flexibility to decide whether a request for disclosure meets the requirements of FERPA and whether the institution wishes to make the requested disclosure.

The FERPA regulations do not require that an eligible student provide his or her consent directly to the educational agency or institution, and these regulations do not impose a different requirement for electronic signatures. We would support an agency's or institution's decision to only accept electronic signatures presented on behalf of the eligible student by certain third parties, such as Federal or State agencies.

*Change:* None.

*Application of Standards of Other Privacy Laws*

*Comments:* One commenter suggested that the standards of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule for "protected health information'' be applied to personally identifiable information contained in students' education records. The commenter was concerned because personally identifiable information from students' education records are disclosed by educational agencies and institutions to outside third parties who have grants to do research. The commenter stated that educational agencies and institutions do not recognize the concern for privacy of such data.

*Discussion:* The HIPAA Privacy Rule, which is administered by the Department of Health and Human Services, excludes from the definition of "protected health information'' two categories of records that are relevant here: "education records'' covered by FERPA (34 CFR 99.3 "Education records'') and records described under FERPA's medical treatment records provision (34 CFR 99.3 "Education records''). See 45 CFR 160.103(a). The HIPAA Privacy Rule does not cover such records because Congress, through FERPA, specifically has addressed how these records should be protected. As such, FERPA provides ample protections for these records and schools should ensure that health information, as well as other education records on students, are not disclosed to outside third parties without the consent of the student or under one of the exceptions to FERPA's general prior consent rule.

With regard to the commenter's statement that educational agencies and institutions do not recognize the concern for privacy of student information, it has been our experience that the majority of the Nation's schools do comply with FERPA and strive to protect the privacy of information contained in student records. FERPA is not a public open records or freedom of information statute. Rather, the purpose of FERPA is to protect the privacy interests of parents and eligible students in records maintained by educational agencies and institutions on the student. These privacy concerns should not be viewed as barriers to be minimized and overcome but important public safeguards to be protected and strengthened.

*Change:* None.

[FR Doc. 04–9054 Filed 4–20–04; 8:45 am]

**BILLING CODE 4000–01–P**

Federal Register

Wednesday,
April 21, 2004

# Part VI

# The President

**Presidential Determination No. 2004–26 of March 24, 2004—Determination to Waive Military Coup-Related Provision of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004, with Respect to Pakistan**

**Presidential Determination No. 2004–27 of April 6, 2004—Waiving Prohibition on United States Military Assistance to Parties to the Rome Statute Establishing the International Criminal Court**

**Presidential Determination No. 2004–28 of April 14, 2004—Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization**

Federal Register
Vol. 69, No. 77
Wednesday, April 21, 2004

# Presidential Documents

**Title 3—**

## The President

**Presidential Determination No. 2004–26 of March 24, 2004**

## Determination to Waive Military Coup-Related Provision of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004, with Respect to Pakistan

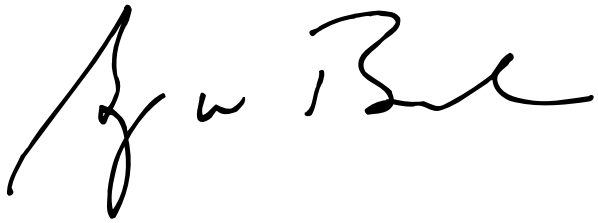
**Memorandum for the Secretary of State**

Pursuant to the authority vested in me by the Constitution and laws of the United States, including Public Law 107–57, as amended by section 2213 of Public Law 108–106, I hereby determine that, with respect to Pakistan, a waiver of any provision of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004 (section 508 of Public Law 108–199, Division D), that prohibits direct assistance to the government of any country whose duly elected head of government was deposed by decree or military coup:

- would facilitate the transition to democratic rule in Pakistan; and
- is important to United States efforts to respond to, deter, or prevent acts of international terrorism.

Accordingly, I hereby waive, with respect to Pakistan, any such provision.

You are authorized and directed to transmit this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
*Washington, March 24, 2004.*

[FR Doc. 04–9184
Filed 4–20–04; 8:45 am]
Billing code 4710–10–P

# Presidential Documents

**Presidential Determination No. 2004–27 of April 6, 2004**

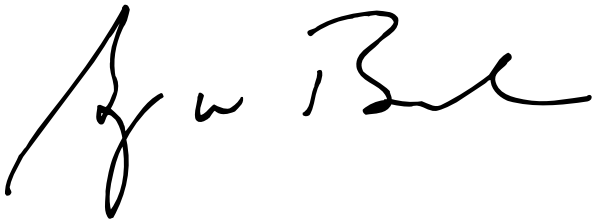
## Waiving Prohibition on United States Military Assistance to Parties to the Rome Statute Establishing the International Criminal Court

**Memorandum for the Secretary of State**

Consistent with the authority vested in me by section 2007 of the American Servicemembers' Protection Act of 2002 (the "Act''), title II of Public Law 107–206 (22 U.S.C 7421 *et seq.*) I hereby:

- Determine that the Central African Republic and Guinea have each entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against U.S. personnel present in such countries; and
- Waive the prohibition of section 2007 (a) of the Act with respects to these countries for as long as such agreement remains in force.

You are authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
*Washington, April 6, 2004.*

[FR Doc. 04–9185
Filed 4–20–04; 8:45 am]
Billing code 4710–10–P

# Presidential Documents

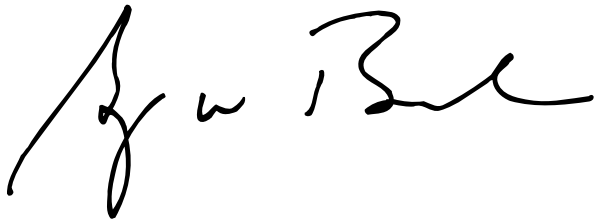
**Presidential Determination No. 2004–28 of April 14, 2004**

## Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization

**Memorandum for the Secretary of State**

Pursuant to the authority vested in me under section 534(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004, Public Law 108–199, I hereby determine and certify that it is important to the national security interests of the United States to waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204.

This waiver shall be effective for a period of 6 months from the date hereof. You are hereby authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
*Washington, April 14, 2004.*

[FR Doc. 04–9186
Filed 4–20–04; 8:45 am]
Billing code 4710–10–P

Federal Register

Wednesday,
April 21, 2004

# Part VII

# The President

**Proclamation 7772—National Park Week, 2004**

**Proclamation 7773—National Volunteer Week, 2004**

**Proclamation 7774—National Crime Victims' Rights Week, 2004**

Federal Register
Vol. 69, No. 77
Wednesday, April 21, 2004

# Presidential Documents

**Title 3—**

## The President

**Proclamation 7772 of April 16, 2004**

## National Park Week, 2004

**By the President of the United States of America**

**A Proclamation**

Our system of national parks is entrusted to each generation of Americans. By practicing good management and being faithful stewards of the land, our generation can show that we are worthy of that trust. During National Park Week, we renew our commitment to caring for these treasured natural resources.

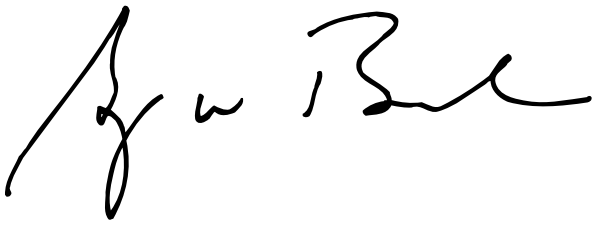
God designed our lands to be beautiful, but we must ensure God's beauty is maintained and conserved. Our citizens depend on our dedicated National Park Service employees and their volunteer partners to fulfill this important mission. In 2001 and 2002, volunteers contributed millions of hours of service to our parks by clearing trails, repairing facilities, leading education programs, and assisting visitors. This year's National Park Week theme, "Partners in Stewardship,'' encourages all Americans to join these volunteer partners in helping to look after our nearly 400 national park areas.

The Federal Government is investing more in its national parks now than at any time in its history. To help restore our national parks, my Administration proposed $4.9 billion in funding over 5 years on needed maintenance and repairs. We have undertaken hundreds of vital park maintenance projects and are planning and executing hundreds more. We are also using a new system of inventory and assessment to identify facilities needing improvements and to measure those improvements as they are implemented.

Our citizens own America's parks, historic sites, battlefields, recreation areas, monuments, and shores, and we want these lands to be accessible and enjoyable for them to visit. We must respect our natural, cultural, and recreational heritage and conserve our parks for future generations. Park maintenance is critical to achieving each of these goals. By modernizing trail systems, we make it possible for people to fully appreciate these remarkable places. By maintaining buildings, roads, and campsites, we ensure our parks remain sources of pride for our citizens, our communities, and our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 18 through April 25, 2004, as National Park Week. I call upon the people of the United States to join me in recognizing the importance of our national parks and to learn more about these areas of beauty, their cultural and historical significance, and the many ways citizens can volunteer to conserve these precious resources.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of April, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 04–9206
Filed 4–20–04;9:43 am]
Billing code 3195–01–P

# Presidential Documents

**Proclamation 7773 of April 16, 2004**

## National Volunteer Week, 2004

**By the President of the United States of America**

**A Proclamation**

The strength of America lies in the hearts and souls of our citizens. Across our country, citizens are donating their time and talents to improving lives and strengthening communities. During National Volunteer Week, we recognize and celebrate those who serve a cause greater than self.

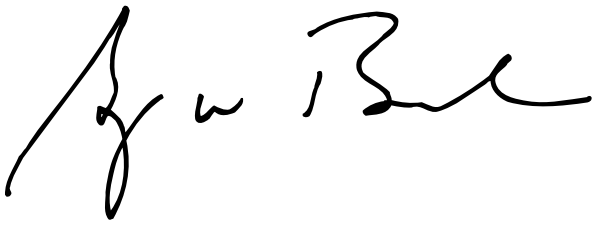
This year's theme, "Volunteers Inspire by Example,'' highlights the role of volunteers in encouraging others to serve. Last year, more than 63 million Americans gave their time to helping in their communities, an increase of 4 million from the prior year. Through the dedicated efforts of America's volunteers, we are building a culture of service, responsibility, and compassion, particularly among our young people.

Volunteers can make a difference in many ways—by mentoring a child, caring for the ailing and elderly, building a playground, or caring for the environment. I created the USA Freedom Corps to help Americans find opportunities to volunteer. As I travel around our country, I am honored to meet citizens of all ages who volunteer through programs such as the Citizen Corps, AmeriCorps, Senior Corps, and the Peace Corps, as well as many other organizations. Their acts of kindness have a profound effect on people's lives and on the future of our country. To recognize those who have demonstrated a sustained commitment to volunteer service, my Council on Service and Civic Participation presents individuals, families, and groups with the President's Volunteer Service Award. This award is a tribute to those whose outstanding efforts are helping make our country a better place.

America's volunteers set a fine example for our Nation, and I encourage all Americans to look for a challenge in their communities and step forward to lend a hand.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 18 through April 24, 2004, as National Volunteer Week. I call on all Americans to recognize and celebrate the important work that volunteers do every day across our country. I also encourage those who have not yet answered the call to explore ways to get involved.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of April, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 04–9207
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# Presidential Documents

**Proclamation 7774 of April 17, 2004**

## National Crime Victims' Rights Week, 2004

**By the President of the United States of America**

**A Proclamation**

We have made significant advances in reducing crime in our communities. As we continue to work to prevent crime, we also have a duty to help victims as they cope with the trauma of crimes committed against them. Each year during National Crime Victims' Rights Week, we acknowledge the suffering endured by crime victims, and we honor those who bring hope and comfort to victims and their families.

This year marks the 20th anniversary of the passage of the Victims of Crime Act of 1984 (VOCA), landmark legislation that sustains thousands of local victim assistance programs across the country. Established by VOCA, the Crime Victims Fund provides crucial assistance for victims and their families, including counseling, shelter, courtroom advocacy, and help with expenses. In recent years, VOCA has begun addressing issues such as cybercrime, identity theft, hate violence, and stalking. It has also expanded its services to help victims of domestic and international terrorism.

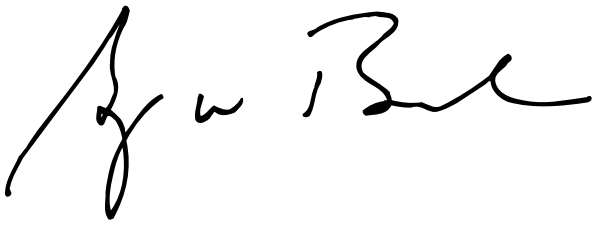
While our Nation works to prevent terrorist activities, we also continue to wage a war against other crimes. In fighting violent crime, we battle the problems of drug abuse, gun violence, and other threats to our safety. We must ensure that when crimes do occur, we always protect the rights of victims. For this reason, my Administration continues to endorse the bipartisan Crime Victims' Rights Amendment. By allowing victims of violent crime to be present and heard at public proceedings and by giving them access to information, such an amendment would guarantee victims' inclusion in the criminal justice process without threatening the rights of defendants.

While the Congress considers this amendment, my Administration continues to support important resources for victims and public safety. We have directed funding to improve the use of DNA technology to solve crime and identify missing persons; we are employing multiple agency resources to aid victims of trafficking who are forced into slavery and prostitution; and we are encouraging faith-based organizations to provide spiritual and material sustenance to those who have suffered and lost.

This month, I was pleased to sign into law the Unborn Victims of Violence Act of 2004, which creates a separate offense under Federal law for death or injury to an unborn child, in addition to any charges relating to the mother. Across our country, victims are being better served and better protected, but more can be done. I encourage every community to show compassion to victims and their families by providing them with the support they need.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 18 through April 24, 2004, as National Crime Victims' Rights Week. I encourage all Americans to embrace the cause of victims' rights and help to advance it throughout our society.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of April, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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**COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA**

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

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**H.R. 2584/P.L. 108–219**

To provide for the conveyance to the Utrok Atoll local government of a decommissioned National Oceanic and Atmospheric Administration ship, and for other purposes. (Apr. 13, 2004; 118 Stat. 615)

**Last List April 14, 2004**

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