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9:00 a.m.–Noon

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Washington, DC 20002

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AK26

Prevailing Rate Systems; Redefinition of the San Francisco, CA; Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to abolish the San Francisco, CA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine San Francisco County as an area of application to the Santa Clara, CA, NAF FWS wage area. This change is necessary because the closure of Fort Mason Officers' Club left the San Francisco wage area without a host activity to conduct local NAF wage surveys.

DATES: This rule is effective on June 17, 2005.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; email *pay-performance-policy@opm.gov*; or FAX: (202) 606–4264.

SUPPLEMENTARY INFORMATION: On November 14, 2003, the Office of Personnel Management (OPM) published an interim rule (68 FR 64493) that abolished the San Francisco, CA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefined San Francisco County as an area of application to the Santa Clara, CA, NAF FWS wage area. The interim rule had a 30-day comment period, during which OPM received no comments. The change was necessary because the closure of Fort Mason Officers' Club left the San Francisco wage area without a host activity to conduct local NAF wage surveys. Because of downsizing caused by closures of Federal installations in the San Francisco wage area, no other NAF employer in the wage area has sufficient local personnel or financial resources to conduct local NAF wage surveys.

NAF FWS employees in San Francisco County were placed on the Santa Clara wage schedule on November 30, 2003—the date the next wage schedule for the San Francisco wage area would have become effective if the wage area had continued as a separate wage area. The Federal Prevailing Rate Advisory Committee, the national labor-management committee that advises OPM on matters affecting the pay of FWS employees, reviewed and recommended this wage area redefinition by majority vote.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Dan G. Blair,

Acting Director.

■ Accordingly, under the authority of 5 U.S.C. 5343, the interim rule (68 FR 64493) amending 5 CFR part 532 published on November 14, 2003, is adopted as final with no changes.

[FR Doc. 05–9896 Filed 5–17–05; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21217; Directorate Identifier 2005–SW–06–AD; Amendment 39–14089; AD 2005–10–12]

RIN 2120–AA64

Airworthiness Directives; Schweizer Aircraft Corporation Model 269C, C–1, and D Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the Schweizer Aircraft Corporation (Schweizer) Model 269C, C–1, and D helicopters. This action requires inspecting, modifying, and testing the lateral control trim actuator assembly on certain serial-numbered helicopters. This amendment is prompted by three reported incidents of the inner spring tube separating from the lateral trim control housing resulting in a lateral cyclic control restriction. The actions specified in this AD are intended to prevent separation of the inner spring tube from the lateral trim control housing and the associated loss of trim control, increased local resistance to right cyclic stick movement, and an emergency landing or subsequent loss of control of the helicopter.

DATES: Effective June 2, 2005.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 2, 2005.

Comments for inclusion in the Rules Docket must be received on or before July 18, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically;
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically;
- Mail: Docket Management Facility; U.S. Department of Transportation, 400

Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590;

- Fax: (202) 493–2251; or
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Schweizer Aircraft Corporation, 1250 Schweizer Road, Horseheads, New York 14845.

Examining the Docket

You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://dms.dot.gov*, or in person at the Docket Management System (DMS) Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT: Leung Lee, Aviation Safety Engineer, FAA, New York Aircraft Certification Office, Systems and Flight Test Branch, 1600 Stewart Ave., Suite 410, Westbury, New York 11590, telephone (516) 228–7309, fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for the Schweizer Model 269C, C–1, and D helicopters. This action requires inspecting, modifying, and testing the lateral control trim actuator assembly on certain serial-numbered helicopters. This amendment is prompted by three reported incidents of the inner spring tube separating from the lateral trim control housing resulting in a lateral cyclic control restriction. This condition, if not corrected, could result in the loss of trim control, increased local resistance to right cyclic stick movement, and an emergency landing or subsequent loss of control of the helicopter.

We have reviewed Schweizer Service Bulletins B–283.1 and C1B–017.1, both dated March 4, 2005, and DB–012, dated February 8, 2005, which describe procedures for inspecting, modifying, and testing the lateral control trim actuator assembly, part number (P/N) 269A7316–13.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs. Therefore, we are issuing this AD to prevent the separation of the inner spring tube from the lateral trim control housing, resulting in the loss of trim control, increased local resistance to right cyclic stick movement, and a subsequent emergency landing or loss of control of the helicopter. This AD requires the following:

- For Model 269C, S/N 1865 through 1874, with a prefix of S, and Model 269C–1, S/N 0169 through 0191, before further flight, inspect the lateral control trim actuator assembly for a scuffmark, indentation, or outer spring guide tube deformation. Inspect for security of the inner spring tube in the socket of the lateral trim control housing by rotating and pulling on the inner spring tube. Examine the resin bead around the base of the inner spring tube and housing socket. Resin should be translucent dark pink in color to indicate a good bond.
  - If a scuffmark, indentation, or deformation exists on the outer spring tube, or the inner spring tube is loose or has motion, or bonding is separated, before further flight, remove the lateral control trim actuator assembly; modify the trim control housing and the inner spring tube; and test run the actuator assembly.
  - If no scuffmark, indentation, or deformation exists on the outer spring tube, or the inner spring tube is not loose, or the bonding is not separated, within the next 25 hours time-in-service (TIS), modify the lateral control trim actuator assembly.
- For Model 269D, Configuration A, S/N 0044 through 0050 with an A suffix, within the next 50 hours TIS, modify the lateral control trim actuator assembly.

Accomplish the actions by following the service bulletins described previously.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, inspecting, modifying, and testing the lateral control trim assembly, P/N 269A7316–13, before further flight, for Model 269C and C–1 or no later than 50 hours TIS for Model 269D are required, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

We estimate that this AD will affect 20 helicopters and will take about:

- 2¼ work hours to inspect, modify, and test Schweizer Model 269C and C–1 helicopters (for 19 helicopters), and
- 3½ work hours to modify and test Schweizer Model 269D helicopters (for one helicopter).
- The average labor rate is $65 per hour.
- The cost is about $30 for adhesive, solvent, sandpaper, and nylon or cotton cord.

Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be about $3,606.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–21217; Directorate Identifier 2005–SW–06–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

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

We prepared an economic evaluation of the estimated costs to comply with

this AD. See the DMS to examine the economic evaluation.

Authority for This Rulemaking

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

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

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 a new airworthiness directive to read as follows:

2005–10–12 Schweizer Aircraft Corporation: Amendment 39–14089. Docket No. FAA–2005–21217; Directorate Identifier 2005–SW–06–AD.

Applicability: Model 269C, serial number (S/N) 1865 through 1874 with a prefix of S; Model 269C–1, S/N 0169 through 0191; and Model 269D, Configuration A, S/N 0044 through 0050 with an A suffix, helicopters, with a lateral control trim actuator assembly, part number (P/N) 269A7316–13, installed, except for an actuator assembly containing a #30 drilled hole in the lateral trim control housing through the wall of the inner spring tube socket, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the inner spring tube from the lateral trim control housing, the associated loss of trim control, increased local resistance to right cyclic stick movement, and subsequent emergency landing or loss of control of the helicopter, accomplish the following:

(a) For Model 269C, S/N 1865 through 1874, with a prefix of S, and Model 269C–1, S/N 0169 through 0191, before further flight, inspect the lateral control trim actuator assembly for a scuffmark, indentation, or outer spring guide tube deformation. Inspect for security of the inner spring tube in the socket of the lateral trim control housing by rotating and pulling on the inner spring tube. Examine the resin bead around the base of the inner spring tube and housing socket. Resin should be translucent dark pink in color to indicate a good bond. Conduct the inspection by following the Procedures in Part I of Schweizer Service Bulletin B–283.1 or C1B–017.1, both dated March 4, 2005, respectively, as applicable.

(1) If a scuffmark, indentation, or deformation exists on the outer spring tube, or the inner spring tube is loose or has motion, or the bonding is separated, before further flight, remove the lateral control trim actuator assembly; modify the trim control housing and the inner spring tube; and test run the actuator assembly. Modify and test run the actuator assembly by following the Procedures in Part II of Schweizer Service Bulletin B–283.1 or C1B–017.1, both dated March 4, 2005, as applicable.

(2) If no scuffmark, indentation, or deformation exists on the outer spring tube, or the inner spring tube is not loose, or the bonding is not separated, within the next 25 hours time-in-service (TIS), modify the lateral control trim actuator assembly as required by paragraph (a)(1) of this AD.

(b) For Model 269D, Configuration A, S/N 0044 through 0050 with a suffix of A, within the next 50 hours TIS, modify the lateral control trim actuator assembly by following the Procedures in Schweizer Service Bulletin DB–012, paragraphs a through i, dated February 8, 2005.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the New York Aircraft Certification Office, FAA, for information about previously approved alternative methods of compliance.

(d) Inspect, modify, and test the affected lateral control trim actuator assembly by following Schweizer Service Bulletin DB–012, dated February 8, 2005, or B–283.1, or C1B–017.1, both dated March 4, 2005, as applicable. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Schweizer Aircraft Corporation, 1250 Schweizer Road, Horseheads, New York 14845. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(e) This amendment becomes effective on June 2, 2005.

Issued in Fort Worth, Texas, on May 6, 2005.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05–9764 Filed 5–17–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20625; Directorate Identifier 2003–NM–148–AD; Amendment 39–14092; AD 2005–10–15]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus model airplanes, as specified above. This AD requires modifying the electrical bonding points of additional center tanks. This AD is prompted by the results of fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent electrical arcing inside the fuel tank, due to insufficient bonding, which could result in the ignition of fuel vapors with a potential risk of explosion of the fuel tank.

DATES: This AD becomes effective June 22, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of June 22, 2005.

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

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401,

Washington, DC. This docket number is FAA–2005–20625; the directorate identifier for this docket is 2003–NM–148–AD.

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

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes); and Model A310 series airplanes. That action, published in the **Federal Register** on March 16, 2005 (70 FR 12816), proposed to require modifying the electrical bonding points of additional center tanks.

Comments

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

Conclusion

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

Costs of Compliance

This AD affects about 2 airplanes of U.S. registry. The actions will take about 48 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $470 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $7,180, or $3,590 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2005–10–15 Airbus: Amendment 39–14092. Docket No. FAA–2005–20625; Directorate Identifier 2003–NM–148–AD.

Effective Date

(a) This AD becomes effective June 22, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category, equipped with one or more additional center tanks (ACTs).

TABLE 1.—APPLICABILITY

Airbus model—	As identified in—
A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes).	Airbus Service Bulletin A300–28–6060, dated December 7, 1999.
A310 series airplanes	Airbus Service Bulletin A310–28–2137, Revision 02, dated April 7, 2003.

Unsafe Condition

(d) This AD was prompted by the results of fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent electrical arcing inside the fuel tank, due to insufficient bonding, which could result in the ignition of fuel vapors with a potential risk of explosion of the fuel tank.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modify the Electrical Bonding Points

(f) Within 30 months after the effective date of this AD, modify the electrical bonding points of the ACT(s), by doing all of the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–28–6060, dated December 7, 1999 (for Model A300–600 series airplanes); or Airbus Service Bulletin A310–28–2137, Revision 02, dated April 7, 2003 (for Model A310 series airplanes); as applicable.

Credit for Previous Service Bulletins

(g) Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A310–28–2137, dated December 7, 1999; or Revision 01, dated January 12, 2002; are acceptable for compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(i) French airworthiness directive 2003–161(B), dated April 30, 2003, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Airbus Service Bulletin A300–28–6060, dated December 7, 1999; or Airbus Service Bulletin A310–28–2137, Revision 02, dated April 7, 2003; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 9, 2005.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–9658 Filed 5–17–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19531; Directorate Identifier 2004–NM–45–AD; Amendment 39–14088; AD 2005–10–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all Boeing Model 737–300, –400, and –500 series airplanes. That AD currently requires repetitive inspections of certain connectors located in the main wheel well to detect discrepancies, and corrective action if necessary. This new AD instead mandates a modification. This AD is prompted by the development of a modification intended to address the unsafe condition. We are issuing this AD to prevent discrepancies of certain connectors located in the main wheel well. Those discrepancies could result in electrical arcing of the connectors, uncommanded closure of the engine fuel shut-off valves, and consequent in-flight loss of thrust or engine shutdown from lack of fuel.

DATES: This AD becomes effective June 22, 2005.

The incorporation by reference of a certain publication, as listed in the AD, is approved by the Director of the Federal Register as of June 22, 2005.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2004–19531; the directorate identifier for this docket is 2004–NM–45–AD.

FOR FURTHER INFORMATION CONTACT: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6480; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an AD to supersede AD 2001–14–06, amendment 39–12316 (66 FR 36445, July 12, 2001). The existing AD applies to all Boeing Model 737–300, –400, and –500 series airplanes. The proposed AD was published in the **Federal Register** on November 5, 2004 (69 FR 64539), to mandate a modification of the electrical connectors located in the main wheel well.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD. One commenter, the airplane manufacturer, concurs with the contents of the proposed AD.

Request to Change Preamble

One commenter states that the wrong AD number is referenced in the ''Differences Between Proposed AD and Service Bulletin'' section in the preamble of the proposed AD. The commenter notes that AD 2001–14–16 was referenced, but the correct AD number is AD 2001–14–06.

We acknowledge and agree with the commenter's remarks, in that there was a typographical error in the referenced section of the preamble of the proposed AD; however, that section is not restated in this final rule.

Observation on Costs of Compliance Section

One commenter states that the modification identified in Boeing Special Attention Service Bulletin 737–28–1196, Revision 3, dated April 1, 2004 (referenced as the appropriate source of service information for accomplishing the proposed modification), has been accomplished on all of its Model 737–300 and –500 series airplanes. The commenter adds that the Accomplishment Instructions in the service bulletin specify approximately 15 man hours or 10 elapsed hours per airplane (including the operational tests) for accomplishing the modification, which is the amount of time the commenter used to accomplish the modification. The commenter does not provide a specific request.

Conclusion

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

Costs of Compliance

There are about 1,974 Model 737–300, –400, and –500 airplanes worldwide of the affected design. This AD affects about 755 airplanes of U.S. registry.

The new modification (including the operational tests) takes about 9 work hours per airplane, at an average labor rate of $65 per work hour. Required parts cost is minimal. Based on these figures, the estimated cost of the modification specified in this AD for U.S. operators is $441,675, or $585 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–12316 (66 FR 36445, July 12, 2001) and by adding the following new airworthiness directive (AD):

2005–10–11 Boeing: Amendment 39–14088. Docket No. FAA–2004–19531; Directorate Identifier 2004–NM–45–AD.

Effective Date

(a) This AD becomes effective June 22, 2005.

Affected ADs

(b) This AD supersedes AD 2001–14–06, amendment 39–12316.

Applicability

(c) This AD applies to all Boeing Model 737–300, –400, and –500 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by the development of a modification intended to address the unsafe condition. We are issuing this AD to detect and correct discrepancies of certain connectors located in the main wheel well. Those discrepancies could result in electrical arcing of the connectors, uncommanded closure of the engine fuel shut-off valves, and consequent in-flight loss of thrust or engine shutdown from lack of fuel.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modification

(f) At the applicable time specified in paragraph (f)(1) or (f)(2) of this AD: Modify the electrical connectors located in the main wheel well by doing all the actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–28–1196, Revision 3, dated April 1, 2004. Any corrective action must be done before further flight in accordance with the service bulletin.

(1) For airplanes on which no inspection required by AD 2001–14–06 has been done as of the effective date of this AD: Accomplish the modification within 12 months after the effective date of this AD.

(2) For airplanes on which any inspection required by AD 2001–14–06 has been done as of the effective date of this AD: Accomplish the modification at the later of the times specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD.

(i) Within 18 months after accomplishing the last inspection.

(ii) Within 6 months after the effective date of this AD.

Modifications Done Using Previous Issues of the Service Bulletin

(g) Modifications done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 737–28–1196, dated December 5, 2002; Revision 1, dated March 13, 2003; or Revision 2, dated August 21, 2003; are considered acceptable for compliance with paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Alternative methods of compliance, approved previously in accordance with AD 2001–14–06, amendment 39–12316, are approved as AMOCs for this AD.

Material Incorporated by Reference

(i) You must use Boeing Special Attention Service Bulletin 737–28–1196, Revision 3, dated April 1, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 9, 2005.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–9659 Filed 5–17–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19648; Directorate Identifier 2004–NE–31–AD; Amendment 39–14090; AD 2005–10–13]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (Formerly Allison Engine Company) 250–B17B, –B17C, –B17D, –B17E, –C20, –C20B, –C20F, –C20J, –C20S, and –C20W Turboprop and Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-

Royce Corporation (RRC) (formerly Allison Engine Company) 250–B17B, –B17C, –B17D, –B17E, –C20, –C20B, –C20F, –C20J, –C20S, and –C20W turboprop and turboshaft engines that do not have turbine energy absorbing ring, RRC part number (P/N) 23035175, or an equivalent FAA-approved serviceable turbine energy absorbing ring, installed. This AD requires installation of a turbine energy absorbing ring in the plane of the 1st stage turbine wheel. This AD results from an unacceptable rate of uncontained 1st stage turbine wheel failures. We are issuing this AD to minimize the risk of uncontained 1st stage turbine wheel fragments from causing damage to the aircraft or damage to the second engine on twin-engine installations, which could lead to loss of control and loss of the aircraft.

DATES: This AD becomes effective June 22, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of June 22, 2005.

ADDRESSES: Contact Rolls-Royce Corporation, P.O. Box 420, Indianapolis, IN 46206–0420; telephone (317) 230–2712; fax (317) 230–3381 for the service information identified in this AD.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Melissa T. Bradley, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, IL 60018–4696; telephone (847) 294–8110; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to Rolls-Royce Corporation (RRC) (formerly Allison Engine Company) 250–B17B, –B17C, –B17D, –B17E, –C20, –C20B, –C20F, –C20J, –C20S, and –C20W turboprop and turboshaft engines that do not have turbine energy absorbing ring, RRC P/N 23035175, installed. We published the proposed AD in the **Federal Register** on November 22, 2004 (69 FR 67867). That action proposed to require installation of a turbine energy absorbing ring in the plane of the 1st stage turbine wheel. That action also proposed to require installation of 1st stage turbine nozzles, 2nd stage turbine nozzles, and a gas producer support assembly, all modified to allow for installation of the turbine energy absorbing ring.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Add Helicopters to the Applicability of the AD

One commenter requests that we add to the applicability of the AD, the Rogerson Hiller Corporation UH–12E helicopter, modified by Supplemental Type Certificate (STC) SH178WE, in addition to including STC SH657NW applicability. The commenter states that the proposed AD did not reference all known installations of the affected engines.

We agree that all known installations of the affected engines should have been listed. We have corrected the applicability, by adding helicopters that are listed under STC SH177WE, STC SH178WE, STC SH218NW–D, and STC SH657NW.

Request the FAA Require RRC To Supply All Parts Needed at No Cost

One commenter requests that we require RRC to supply all parts needed to comply with the AD, at no cost to the operator. The commenter is concerned about the financial impact the AD will have on operators.

We understand the commenter's concern over parts costs, however, we do not have the authority to control or eliminate parts costs.

Request To Change the Compliance

One commenter requests that the compliance be done at the next 1,750-hour hot section inspection or turbine overhaul.

We do not agree. Our existing compliance time is based on minimizing the risk of failure. If compliance time is extended to the next hot section inspection or turbine overhaul for the entire population of engines, then the associated fleet risk would increase to an unacceptable level.

Request To Eliminate the Final Compliance Date

One commenter requests we eliminate the final compliance date of October 31, 2011. The commenter has a concern that operators who have recently overhauled the turbine, will not accumulate the 1,750 hours before the final compliance date.

We do not agree. We have a final compliance date in the AD to ensure compliance within a reasonable period of time (over six years) for engines that may not accumulate 1,750 hours, or may not be disassembled for any reason before the final compliance date. Risk of failure increases with each additional year the engine does not comply.

Request To Include FAA–PMA P/Ns

One commenter requests that the AD include the FAA–PMA P/N for the turbine energy absorbing ring manufactured by EXTEX, as well as all other equivalent FAA–PMA P/Ns for turbine energy absorbing rings. The commenter's concern is that the proposed AD states that the AD applies to engines that do not have turbine energy absorbing ring, P/N 23035175, installed. The commenter states that this wording implies that the only method of compliance is by installing the turbine energy absorbing ring manufactured by the Type Certificate holder, RRC. Equivalent FAA–PMA turbine energy absorbing rings are also available to install.

We partially agree. We have changed the AD to identify the part number referenced, as an RRC part number, and, to take into account that there are equivalent parts available.

Request To Remove Paragraphs (f) and (g) From the Compliance

One commenter requests that we remove paragraphs (f) and (g) from the compliance. The commenter states that these paragraphs are unnecessary and restrictive. AD compliance paragraph (f) states to use paragraph 2. of RRC Alert Commercial Engine Bulletin (CEB) No. CEB–A–1254, Revision 3, dated May 21, 2004, to modify the gas producer support. This paragraph would prevent the use of currently available and widely used FAA-Designated Engineering Representative (DER)-approved methods to modify the gas producer support, for installing the turbine energy absorbing ring. An operator would have to request numerous Alternative Methods of Compliance (AMOCs) because of the overly restrictive wording.

The commenter also states that AD compliance paragraph (g) specifies to

use paragraph 2. of RRC Alert CEB No. CEB–A–1253, Revision 4, dated May 21, 2004, to modify and install the 1st stage turbine nozzle and 2nd stage turbine nozzle. This CEB Revision 4 only lists the latest P/N for the 1st stage turbine nozzle. Since the issuance of the original version of this CEB on June 1, 1988, several P/Ns of 1st stage turbine nozzles exist which are the required configuration to allow installation of a turbine energy absorbing ring. These earlier 1st stage turbine nozzles are still in wide circulation and are perfectly suitable for use. AD compliance paragraph (g) would prevent the use of these earlier P/N 1st stage turbine nozzles without first receiving AMOC approval.

The commenter concludes by stating that installing the turbine energy absorbing ring without modifying the gas producer support and nozzles is physically impossible. Paragraph 1.M of RRC CEB No. CEB–A–1255, Revision 4, dated September 29, 2004, lists CEB No. CEB–A–1253 and No. CEB–A–1254 as prerequisites to CEB No. CEB–A–1255, without the overly restrictive use of specific revision numbers and dates. That same prerequisite paragraph also includes the necessary words ''or equivalent'' to these two CEBs.

We agree. We have replaced paragraphs (f), (g), and (h) of this AD with the following single paragraph: ''(f) Install a turbine energy absorbing ring, RRC P/N 23035175, or an equivalent FAA-approved serviceable turbine energy absorbing ring, in the plane of the 1st stage turbine wheel, using paragraphs 1.M., 2.A., and 2.B. of Rolls-Royce Corporation Alert Commercial Engine Bulletin No. CEB–A–1255, Revision 4, dated September 29, 2004, to do the installation.''

Request To Reevaluate the Basis for the AD

One commenter requests we reevaluate the basis for the AD. The request is based on field experience of an operator who has maintained the 250–C20 series engines for over 25 years, and is concerned with the financial impact on operators. The commenter has never seen a 1st stage turbine wheel failure and questions the validity of RRC's analysis.

We do not agree. We reviewed the analysis and associated risk and find it necessary to issue this AD.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 13,299 RRC 250–B17B, –B17C, –B17D, –B17E, –C20, –C20B, –C20F, –C20J, –C20S, and –C20W turboprop and turboshaft engines of the affected design in the worldwide fleet. We estimate that 5,000 engines installed on helicopters of U.S. registry require the installation of a turbine energy absorbing ring. Of those 5,000 engines, we also estimate that 4,000 engines require installation of a gas producer support assembly, 1st stage turbine nozzle, and 2nd stage turbine nozzle. About 16 work hours per engine are needed to install the turbine energy absorbing ring, 35 work hours to install the gas producer support assembly, and 20 work hours to install the 1st stage turbine nozzle, and 2nd stage turbine nozzle. The average labor rate is $65 per work hour. Required turbine energy absorbing rings cost about $10,765 per engine. Required gas producer support assemblies cost about $2,500 per engine. Required 1st stage turbine nozzles and 2nd stage turbine nozzles cost about $1,000 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $87,325,000.

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES.**

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 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:

2005–10–13 Rolls-Royce Corporation (formerly Allison Engine Company): Amendment 39–14090. Docket No. FAA–2004–19648; Directorate Identifier. 2004–NE–31–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 22, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce Corporation (RRC) (formerly Allison Engine Company) 250–B17B, B17C, –B17D, –B17E, –C20, –C20B, –C20F, –C20J, –C20S, and –C20W turboprop and turboshaft engines that do not have turbine energy absorbing ring, RRC part number (P/N) 23035175, or an equivalent FAA-approved serviceable turbine energy absorbing ring, installed. These engines are installed on, but not limited to, the following aircraft:

Agusta A109
Agusta A109A
Agusta A109A II
B–N Group BN–2T
Bell 206A
Bell 206B
Bell 206L
Bell Helicopter Textron 47G–2A (Supplemental Type Certificate (STC) SH657NW)
Bell Helicopter Textron 47G–2A–1 (STC SH657NW)
Bell Helicopter Textron 47G–3B (STC SH657NW)
Bell Helicopter Textron 47G–3B–1 (TH–13T) (STC SH657NW)
Bell Helicopter Textron 47G–3B–2 (STC SH657NW)
Bell Helicopter Textron 47G–3B–2A (STC SH657NW)
Bell Helicopter Textron 47G–4 (STC SH657NW)
Bell Helicopter Textron 47G–4A (STC SH657NW)
Bell Helicopter Textron 47G–5 (STC SH657NW)
Bell Helicopter Textron 47G–5A (STC SH657NW)
Eurocopter Deutchland BO–105C
Eurocopter Deutchland BO–105C (STC SH218NW–D)
Eurocopter Deutchland BO–105S
Eurocopter France AS355E
Eurocopter France AS355F
Eurocopter France AS355F1
Eurocopter France AS355F2
FH–1100 Manufacturing Corp FH–1100
Hiller Aviation UH–12D (Army UH–23D) (STC SH177WE)
MDHI 369D
MDHI 369E
MDHI 369HM
MDHI 369HS
MDHI 369HE
Rogerson Hiller Corporation UH–12E (STC SH178WE)
Rogerson Hiller Corporation UH–12E–L (STC SH178WE)
SIAI Marchetti s.r.l. SF600

Unsafe Condition

(d) This AD results from an unacceptable rate of uncontained 1st stage turbine wheel failures. We are issuing this AD to minimize the risk of uncontained 1st stage turbine wheel fragments from causing damage to the aircraft or damage to the second engine on twin-engine installations, which could lead to loss of control and loss of the aircraft.

Compliance

(e) You are responsible for having the actions required by this AD performed at the next time the gas producer turbine rotor is disassembled for any reason, or within 1,750 hours time-since-last-overhaul, time-since-new, time-since-last-heavy-maintenance, or time-since-last-hot section inspection after the effective date of this AD, whichever occurs first, but no later than October 31, 2011, unless already done.

Required Actions

(f) Install a turbine energy absorbing ring, RRC P/N 23035175, or an equivalent FAA-approved turbine energy absorbing ring, in the plane of the 1st stage turbine wheel, using paragraphs 1.M., 2.A., and 2.B. of Rolls-Royce Corporation Alert Commercial Engine Bulletin No. CEB–A–1255, Revision 4, dated September 29, 2004, to do the installation.

Alternative Methods of Compliance

(g) The Manager, Chicago Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) None.

Material Incorporated by Reference

(i) You must use Rolls-Royce Corporation Alert Commercial Engine Bulletin No. CEB–A–1255, Revision 4, dated September 29, 2004, to perform the actions required by this AD. 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. Contact Rolls-Royce Corporation, P.O. Box 420, Indianapolis, IN 46206–0420; telephone (317) 230–2712; fax (317) 230–3381 for the service information identified in this AD for a copy of this service information. You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001, on the internet at *http://dms.dot.gov,* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Burlington, Massachusetts, on May 10, 2005.

Robert Ganley,

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

[FR Doc. 05–9660 Filed 5–17–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19410; Airspace Docket No. 04–ANM–09]

RIN 2120–AA66

Revision of Federal Airways V–2, V–257 and V–343; MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises three Very High Frequency Omnidirectional Range (VOR) Federal airways southeast of Missoula, MT (V–2, V–257, and V–343). These VOR Federal airways are being revised due to the decommissioning of the Drummond VOR. These changes will enhance air safety, simplify routings, and reduce controller workload in Montana.

DATES: Effective 0901 UTC, September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2004, the FAA published in the **Federal Register** a notice of proposed rulemaking to revise VOR Federal airways V–2, V–257, and V–343 southeast of Missoula, MT due to the decommissioning of the Drummond VOR (69 FR 70208). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received stating the radials defining V–257 from Phoenix, AZ, to Drake, AZ, were incorrect. The FAA does not agree. A review of V–257 verified that the correct true bearings are listed for V–257 from Phoenix, AZ, to Drake, AZ. With the exception of editorial changes, this amendment is the same as that published in the notice of proposed rulemaking.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) to revise V–2, V–257, and V–343 southeast of Missoula, MT. Specifically, segments of V–2 and V–343 will be eliminated due to the decommissioning of the Drummond VOR. New airway segments on V–2 (between Missoula, MT, and Helena, MT) and V–257 (between SCAAT intersection and the Coppertown VOR) will be established in their place. This action will enhance air safety, simplify routings, and reduce controller workload in Montana.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Federal airways listed in this document will be published subsequently in the order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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, when promulgated, 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, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE 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 FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–2 [Revised]

From Seattle, WA; Ellensburg, WA; Moses Lake, WA; Spokane, WA; Mullan Pass, ID; Missoula, MT; Helena, MT; INT Helena 119° and Livingston, MT, 322° radials; Livingston; Billings, MT; Miles City, MT; 24 miles, 90 miles, 55 MSL, Dickinson, ND; 10 miles, 60 miles, 38 MSL, Bismarck, ND; 14 miles, 62 miles, 34 MSL, Jamestown, ND; Fargo, ND; Alexandria, MN; Gopher, MN; Nodine, MN; Lone Rock, WI; Madison, WI; Badger, WI; Muskegon, MI; Lansing, MI; Salem, MI; INT Salem 093° and Aylmer, ON, Canada, 254° radials; Aylmer; INT Aylmer 086° and Buffalo, NY, 259° radials; Buffalo; Rochester, NY; Syracuse, NY; Utica, NY; Albany, NY; INT Albany 084° and Gardner, MA, 284° radials; to Gardner. The airspace within Canada is excluded.

* * * * *

V–257 [Revised]

From Phoenix, AZ, via INT Phoenix 348° and Drake, AZ, 141° radials; Drake; INT Drake 003° and Grand Canyon, AZ, 211° radials; Grand Canyon; 38 miles 12 AGL, 24 miles 125 MSL, 16 miles 95 MSL, 26 miles 12 AGL, Bryce Canyon, UT; INT Bryce Canyon 338° and Delta, UT, 186° radials, Delta; 39 miles, 105 MSL INT Delta 004° and Malad City, ID, 179° radials; 20 miles, 118 MSL, Malad City; Pocatello, ID; DuBois, ID; Dillon, MT; Coppertown, MT; INT 002° and Great Falls, MT, 222° radials; Great Falls; 73 miles, 56 MSL, Havre, MT. The airspace within Restricted Area R–6403 is excluded.

* * * * *

V–343 [Revised]

From Dubois, ID; Bozeman, MT.

* * * * *

Issued in Washington, DC, May 10, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–9922 Filed 5–17–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD11–04–006]

RIN 1625–AA01

Anchorage Ground; Pacific Ocean at Santa Catalina Island, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has established three anchorage areas outside Avalon Bay, Santa Catalina Island, California, for large passenger vessels. This rule provides designated anchorage grounds outside the harbor, thereby allowing safe and secure anchorage for an increasing number of large passenger vessels. This rule increases safety for vessels by enhancing voyage planning and by alerting other recreational and commercial vessels to potential anchorage locations for these large vessels.

DATES: This rule is effective June 17, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office/Group Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California 90731, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Peter Gooding, USCG, Chief of the Waterways Management Division, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On November 5, 2004, we published a notice of proposed rulemaking (NPRM) entitled Anchorage Ground; Pacific Ocean at Santa Catalina Island, Calif. in the **Federal Register** (69 FR 214). We received no letters

commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

Large passenger vessels calling on Avalon, Santa Catalina Island, California are forced to anchor offshore due to limited docking capabilities in Avalon Harbor. While these vessels have been anchoring in this location for over 15 years, there has never been a designated anchorage area or annotation on the NOAA chart to indicate these activities. However, with the increase in large passenger vessel operations in Southern California and multiple ships visiting Avalon Harbor on the same day, it is becoming apparent that designated anchorage areas are needed to ensure the safety and security of these vessels.

In developing the proposed rule, the Coast Guard consulted various owners and masters of the large passenger vessels currently calling on Avalon Harbor.

Designated anchorages and the subsequent chart annotations will help ensure recreational and commercial boaters are aware that large passenger vessels may be anchored in these locations. This will be most helpful in conditions of low visibility.

Discussion of Comments and Changes

The Coast Guard received no comments on this rule and has not changed the regulations from the published NPRM.

Regulatory Evaluation

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

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in the affected area. The impact to these entities will not, however, be significant since this zone encompasses only a small portion of the waterway and vessels could safely navigate around the anchored vessels. Additionally, large passenger vessels already routinely anchor within these anchorage areas.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule or you have questions concerning its provisions or options for compliance, please contact Petty Officer Adam Proctor, U.S. Coast Guard Sector San Diego at (619) 683–6435.Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use

voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

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

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 110

Anchorage grounds.

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

PART 110—ANCHORAGE REGULATIONS

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

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

■ 2. In § 110.216 add new paragraphs (a)(3) and (b)(6) to read as follows:

§ 110.216 Pacific Ocean at Santa Catalina Island, Calif.

(a) * * *

(3) *Avalon Bay.* (i) *Anchorage A.* The waters within an area described as follows: A circle of 1350 feet radius centered at 33°20′59.0″ N, 118°18′56.2″ W.

(ii) *Anchorage B.* The waters within an area described as follows: A circle of 1350 feet radius centered at 33°20′38.3″ N, 118°18′35.8″ W.

(iii) *Anchorage C.* The waters within an area described as follows: A circle of 1350 feet radius centered at 33°21′21.0″ N, 118°19′16.7″ W.

(b) * * *

(6) The Avalon Bay anchorage is reserved for large passenger vessels of over 1600 gross tons, unless otherwise authorized by the Captain of the Port Los Angeles-Long Beach.

Dated: May 6, 2005.

Kevin J. Eldridge,

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

[FR Doc. 05–9916 Filed 5–17–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 117 and 165

[USCG–2005–21072]

Quarterly Listings; Drawbridge Operation Regulations, Safety Zones and Security Zones

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between January 1, 2005 and March 31, 2005, that were not published in the **Federal Register.** This quarterly notice lists temporary drawbridge operation regulations, safety zones and security zones, all of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This document lists temporary Coast Guard rules that became effective and were terminated between January 1, 2005, and March 31, 2005.

ADDRESSES: The Department of Transportation Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20593–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may electronically access the public docket for this notice on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice contact LT Jeff Bray, Office of Regulations and Administrative Law, telephone (202) 267–2830. For questions on viewing, or on submitting material to the docket, contact Renee Z. Wright, Acting Program Manager, Docket Operations, telephone (202) 493–0402.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to prevent injury or damage to vessels, ports, or waterfront facilities and may also describe a zone around a vessel in motion. Drawbridge operation regulations authorize changes to drawbridge schedules to accommodate bridge repairs, seasonal vessel traffic, and local public events. Timely publication of these rules in the **Federal Register** is often precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the beginning of the effective period, mariners were personally notified of the contents of these drawbridge operation regulations, security zones or safety zones by Coast Guard officials on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary drawbridge operation regulations, security zones and safety zones. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register.** Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones, drawbridge operation regulations and security zones listed in this notice have been exempted from review under Executive Order 12866, Regulatory Planning and Review, because of their

emergency nature, or limited scope and temporary effectiveness.

The following rules were placed in effect temporarily during the period from January 1, 2005, through March 31, 2005, unless otherwise indicated.

Dated: May 10, 2005.

David L. Nichols,

Acting Chief, Office of Regulations and Administrative Law.

Docket No.	Location	Type	Effective date
CGD05–05–001	Baltimore Harbor, MD	Safety Zone	1/19/2005
CGD05–05–002	Chesapeake Bay, Mathews, VA	Safety Zone	1/17/2005
CGD05–05–003	Potomac River, Washington, DC	Safety Zone	1/12/2005
CGD05–05–012	New Jersey Intracoastal Waterway	Drawbridges	3/20/2005
CGD09–05–002	Detroit, MI	Security Zone	2/8/2005
CGD09–05–003	St. Lawrence River, NY	Safety Zone	3/14/2005
CGD13–05–005	Cape Disappointment, WA	Safety Zone	3/25/2005
COTP Corpus Christi 05–001	Corpus Christi, TX	Safety Zone	1/5/2005
COTP Houston 04–002	Galveston Bay, TX	Safety Zone	12/13/2004
COTP Houston 04–003	Galveston Bay, TX	Safety Zone	12/20/2004
COTP Huntington 05–001	Reedsville, OH	Safety Zone	1/13/2005
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COTP Jacksonville 05–004	St. Johns River, FL	Safety Zone	2/6/2005
COTP Jacksonville 05–030	Jacksonville, FL	Safety Zone	3/8/2005
COTP LA/LB 05–002	Los Angeles, CA	Safety Zone	1/30/2005
COTP Louisville 05–001	Uniontown, KY	Safety Zone	1/24/2005
COTP Louisville 05–002	Ghent, KY	Safety Zone	1/11/2005
COTP Louisville 05–003	Ghent, KY	Safety Zone	1/13/2005
COTP Louisville 05–004	Spottsville, KY	Safety Zone	1/13/2005
COTP Louisville 05–006	Louisville, KY	Safety Zone	3/10/2005
COTP Memphis 05–005	Henrico, AR	Safety Zone	2/5/2005
COTP Memphis 05–007	Little Rock, AR	Safety Zone	2/22/2005
COTP Miami 05–013	Miami, FL	Safety Zone	3/12/2005
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COTP Mobile 04–063	Destin, FL	Safety Zone	12/13/2004
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COTP New Orleans 04–047	New Orleans, LA	Safety Zone	1/1/2005
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COTP New Orleans 05–003	New Orleans, LA	Safety Zone	1/17/2005
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COTP New Orleans 05–014	Geismar, LA	Safety Zone	2/10/2005
COTP New Orleans 05–015	Convent, LA	Safety Zone	2/10/2005
COTP New Orleans 05–016	Laplace Anchorage, LA	Safety Zone	2/16/2005
COTP New Orleans 05–017	Lower Mississippi River, LA	Safety Zone	2/23/2005
COTP Pittsburgh 04–028	Pittsburgh, PA	Safety Zone	1/1/2005
COTP Pittsburgh 05–005	Pittsburgh, PA	Safety Zone	1/23/2005

Docket No.	Location	Type	Effective date
COTP Pittsburgh 05–006	New Kensington, PA	Safety Zone	1/31/2005
COTP Port Arthur 05–001	Orange, TX	Safety Zone	1/7/2005
COTP San Francisco Bay 05–001	Napa River, CA	Safety Zone	1/17/2005
COTP San Francisco Bay 05–002	San Francisco Bay, CA	Safety Zone	3/1/2005
COTP San Juan 04–138	Saint Croix, Virginia Islands	Security Zone	1/29/2005
COTP Savannah 04–065	Savannah, GA	Safety Zone	9/1/2004
COTP Savannah 05–011	Savannah, GA	Safety Zones	2/3/2005
COTP Savannah 05–022	Savannah, GA	Security Zones	3/2/2005
COTP St. Louis 04–047	South Sioux City, NE	Safety Zones	1/1/2005
COTP St. Louis 05–002	Alton, IL	Safety Zones	3/31/2005

[FR Doc. 05–9917 Filed 5–17–05; 8:45 am]
BILLING CODE 4910–15–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Western Alaska–04–003]

RIN 1625–AA00

Safety Zone; Bering Sea, Aleutian Islands, Unalaska Island, AK

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; change of effective period.

SUMMARY: The Coast Guard is extending the effective period of the safety zone in the Bering Sea, west of and including Makushkin Bay, Unalaska Island, Alaska. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Commander, Seventeenth Coast Guard District, the Coast Guard Captain of the Port, Western Alaska, or their on-scene representative. The intended effect of the proposed safety zone is to mitigate damage to the environment during oil spill recovery operations.

DATES: The extended period of 165.T17–010 is effective from June 12, 2005 through November 30, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are available for inspection and copying at Coast Guard Marine Safety Office Anchorage, 510 ''L'' Street, Suite 100, Anchorage, AK 99501. Normal Office hours are 7:30 a.m. to 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Meredith Gillman, Marine Safety Office Anchorage, at (907) 271–6700.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest because immediate action is needed to prevent unauthorized vessel traffic from hindering oil spill recovery operations.

The Coast Guard will terminate the zone when oil recovery operations are complete and the area adjacent to the grounded vessel is considered safe to vessel traffic.

Background and Purpose

The M/V SELENDANG AYU ran aground at a position of 53.634° N, 167.125° W on December 9, 2004. The vessel then broke in half and began discharging its fuel into the water. The safety zone is necessary to prevent unauthorized vessels from transiting through the oiled waters or otherwise impeding oil recovery operations.

Discussion of Rule

The Unified Command, which is responding to the grounding of the M/V Selendang Ayu, identified the likely oil trajectory based on the geography of the region, as well as possible wind and weather scenarios. The safety zone was established in the area that is likely to become oiled, and where subsequent oil recovery operations will be taking place. This area is defined by a point at the western tip of Cape Kovrizhka, Unalaska Island, located at 53°51.0′ N, 167°9.5′ W, then west 10 nautical miles to a point located at 53°51.0′ N, 167°26′ W, then south to the northern tip of Wedge Point, Unalaska Island, located at 53°27′ N, 167°24′ W. All coordinates reference Datum: NAD 1983.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential cost and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the area defined by a point at the western tip of Cape Kovrizhka, Unalaska Island, located at 53°51.0′ N, 167°9.5′ W, then west 10 nautical miles to a point located at 53°51.0′ N, 167°26′ W, then south to the northern tip of Wedge Point, Unalaska Island, located at 53°27′ N, 167°24′ W.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic transiting from the north to south side of Unalaska Island can pass safely around the safety zone. We will terminate the safety zone once oil recovery operations are complete and the area adjacent to the grounded vessel is considered safe for vessel traffic.

Collection of Information

This rule calls for no new collection of information under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

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

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

■ 2. From June 12, 2004 to November 30, 2005, add temporary § 165.T17–010 to read as follows:

§ 165.T17–010 Safety Zone; Bering Sea, Aleutian Islands, Unalaska Island, AK.

(a) *Description.* This safety zone is defined by a point at the western tip of Cape Kovrizhka, Unalaska Island, located at 53°51.0′ N, 167°9.5′ W, then west 10 nautical miles to a point located at 53°51.0′ N, 167°26′ W, then south to the northern tip of Wedge Point, Unalaska Island, located at 53°27′ N, 167°24′ W. All coordinates reference Datum: NAD 1983.

(b) *Enforcement period.* The safety zone in this section will be enforced from June 12, 2005 through November 30, 2005.

(c) *Regulations.* (1) The Captain of the Port and the Duty Officer at Marine Safety Office, Anchorage, Alaska can be contacted at telephone number (907) 271–6700.

(2) The Captain of the Port may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf in enforcing the safety zone.

(3) The general regulations governing safety zones contained in § 165.23 apply. No person or vessel may enter or remain in this safety zone, with the exception of attending vessels, without first obtaining permission from the Captain of the Port or his on-scene representative.

Dated: May 3, 2005.

R.J. Morris,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 05–9925 Filed 5–17–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2004–KY–0002–200511; FRL–7914–5]

Approval and Promulgation of Implementation Plans for Kentucky: Inspection and Maintenance Program Removal for Jefferson County, Kentucky; Source-Specific Nitrogen Oxides Emission Rate for Kosmos Cement Kiln

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the Jefferson County, Kentucky, portion of the Kentucky State Implementation Plan (SIP) requesting removal of three regulations from the regulatory portion of the Kentucky SIP related to the Jefferson County inspection and maintenance (I/M) program. EPA is approving Kentucky's September 22, 2003, SIP revision to move these I/M regulations to the contingency measures section of the Kentucky portion of the Louisville 1-Hour Ozone Maintenance Plan. EPA is also approving a source-specific SIP revision amending the nitrogen oxides (NO_X) emission rate for Kosmos Cement Company's cement kiln. This final rule addresses comments made on EPA's proposed rulemaking previously published for this action.

DATES: This rule will be effective June 17, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) ID No. R04–OAR–2004–KY–0002. All documents in the docket are listed in the RME index at *http://docket.epa.gov/rmepub/*, once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached via telephone number at (404) 562–9031 or electronic mail at *notarianni.michele@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Today's Action

EPA is approving revisions to the Jefferson County, Kentucky, portion of the Kentucky SIP related to the Jefferson County I/M program, also known as the Jefferson County Vehicle Emissions Testing (VET) Program. Through this final action, EPA is approving the movement of three regulations which comprise the Jefferson County VET Program from the regulatory portion of the Kentucky SIP to the contingency measures section of the Kentucky portion of the Louisville 1-Hour Ozone Maintenance Plan, which is part of the Kentucky SIP. The three Jefferson County VET Program regulations which are subject to today's action are: Regulation 8.01, ''Mobile Source Emissions Control Requirements,'' Regulation 8.02, ''Vehicle Emissions Testing Procedure,'' and Regulation 8.03, ''Commuter Vehicle Testing Requirements.'' Also in this final action EPA is approving a source-specific SIP revision for changes reflected in the May 3, 2004, Board Order for the Kosmos Cement Company's cement kiln. EPA is approving the revisions to the Board Order which lower the kiln's NO_X emission rate to 4.755 pounds per ton of clinker produced (pptcp) by the kiln, based upon a rolling 30-day average. In addition, EPA is responding to the adverse comments received on the January 3, 2005, rulemaking proposing to approve the aforementioned revisions (70 FR 53).

II. Background

On January 3, 2005, EPA proposed approval of Kentucky's September 22, 2003, SIP revision request to move the three, SIP-approved Jefferson County VET Program regulations to the contingency measures section of the Kentucky SIP, and to lower the NO_X emission rate for the Kosmos Cement Company's cement kiln (70 FR 53). The emissions reductions from the Kosmos Cement Company provide compensating, equivalent emissions reductions for the Jefferson County VET Program. (See the proposed rule published January 3, 2005, at 70 FR 53 for further background and a detailed analysis of the complete September 22, 2003, SIP revision.) EPA received adverse comments on the proposed rule. In today's action, EPA is responding to the adverse comments received.

III. Response to Comments

Comment 1: The commenter writes that the SIP revision is unapprovable because Jefferson County is violating both the 8-hour ozone and fine particulate matter ($PM_{2.5}$) NAAQS, to which the VET Program contributed emissions reductions. A plain reading of Section 110(l) of the Clean Air Act (CAA) requires that the Louisville Metro Air Pollution Control District (LMAPCD) first determine whether the I/M program will be necessary for achievement of the 8-hour ozone (and $PM_{2.5}$) standards prior to approval of removal of the measure from the current SIP. Another commenter also questions what is the justification for terminating the VET Program.

Response 1: Jefferson County, Kentucky is designated nonattainment for the 8-hour ozone and $PM_{2.5}$ NAAQS. Control strategy SIP revisions showing how the area will attain these NAAQS are due June 15, 2007, for the 8-hour ozone standard and April 5, 2008, for the $PM_{2.5}$ standard, unless the area attains the standards prior to these due dates. These control strategy SIPs will identify the control measures that will be used to help the area attain the NAAQS. The control measures will be selected by the Commonwealth of Kentucky after public notice and comment.

In a May 11, 2004, letter from EPA to Louisville's Assistant County Attorney, EPA provided its interpretation of section 110(l) of the Clean Air Act as guidance in relation to an area such as Jefferson County that does not yet have an attainment demonstration for the 8-hour ozone nor for the $PM_{2.5}$ NAAQS. Prior to the time when the control strategy SIP revisions are due, to demonstrate no interference with any applicable NAAQS or requirement of the Clean Air Act under section 110(l), EPA has interpreted this section such that States can substitute equivalent (or greater) emissions reductions to compensate for the control measure being moved from the regulatory portion of the SIP to the contingency provisions. As long as actual emissions in the air are not increased, EPA believes that equivalent (or greater) emissions reductions will be acceptable to demonstrate non-interference. EPA does not believe that areas must wait to produce a complete attainment demonstration to make any revisions to the SIP, provided the status quo air quality is preserved. EPA believes this will not interfere with an area's ability to develop a timely attainment demonstration. As an acceptable means to demonstrate no interference in order

to satisfy section 110(l) of the CAA, the submittal provides for equivalent emissions reductions from the Kosmos Cement Company to replace the NO_X and volatile organic compound (VOC) emissions reductions previously gained from the VET Program to ensure actual emissions in the air are not increased pending development of a complete attainment demonstration for the new 8-hour ozone and $PM_{2.5}$ standards. Even if the area ultimately determines that an I/M program should again be instituted as part of those future attainment demonstrations, since air quality has not been adversely affected in the interim, EPA believes that 110(l) will be satisfied.

As for the 1-hour ozone and carbon monoxide (CO) NAAQS, Kentucky has demonstrated through air quality analyses that the VET Program is not needed for the Kentucky portion of the Louisville area in order to continue to maintain those NAAQS. VOC and NO_X emissions remain below 1999 attainment year levels to support movement of the program to a contingency measure in the Kentucky portion of the Louisville 1-Hour Ozone Maintenance Plan. Finally, since mobile source winter CO emission levels continuously decline from 1999 through 2020, EPA concludes that no potential interference with the CO standard will result from this action. (For the complete analysis, see pages 56–57 of proposed rule, 70 FR 53, published January 3, 2005.)

The commenter also questions whether a demonstration of non-interference is needed for air toxics, also known as hazardous air pollutants (HAPs). An I/M program is not designed to reduce HAPs, however, the program does reduce emissions of VOCs, several of which are HAPs. Since there are no ambient air quality standards established for HAPs, the area must demonstrate that the SIP revision will not interfere with any applicable air toxics rules. There are no air toxics rules that apply to motor vehicles, thus removal of the VET Program does not interfere with any Federal standards that might apply. Furthermore, a change to requirements that apply to mobile sources in the area does not interfere with implementation of Federal air toxics rules i.e., maximum achievable control technology (MACT) standards, that apply to stationary sources in the area. The EPA thus concludes that non-interference relative to air toxics has been demonstrated.

Comment 2: The commenter states that, ''EPA has issued policy interpretations that sweep the non-interference obligation under the regulatory rug and which clearly undercut 110(l) through a substantive agency interpretation, not properly promulgated as a regulation under 5 U.S.C. 553 despite an obvious and dramatic effect of altering the applicability of law, and which proffers an interpretation of 110(l) that flunks the first step of *Chevron*.'' The commenter believes the ''strict'' interpretation of Section 110(l) which EPA describes in its May 11, 2004, letter to the District is the only interpretation consistent with the plain language and intent of the Act, and that removal of an approved and implemented control measure controlling both precursors of ozone and particulates, at a time when it is not known what additional reductions will be needed to attain the 8-hour ozone and fine particulates standard in the Jefferson County airshed, is of questionable legality. Until EPA completes the guidance on what constitutes ''interference,'' EPA defense of an ad-hoc finding of ''non-interference'' appears unsubstantiated.

Response 2: EPA is authorized by Congress to issue interpretations of ambiguous provisions of the Clean Air Act without promulgating a regulation. Through the January 3, 2005, proposed rule (70 FR 53), EPA sought public comment on its current interpretation of 110(l) of the Act. EPA has evaluated the comments and believes its interpretation to be reasonable. EPA is taking final action on this interpretation in this rulemaking action, which has undergone appropriate notice-and-comment procedures, and EPA is here responding to all comments submitted on this issue. EPA concludes that the language in section 110(l) is not clear on its face with respect to the demonstrations necessary to show non-interference in the absence of an approved attainment demonstration. Rather, EPA believes section 110(l) is ambiguous with respect to the appropriate test for these areas, and consequently EPA has the discretion to interpret section 110(l) for these areas consistent with the Act as a whole. EPA believes that so long as substitute reductions are achieved such that ambient air quality levels in the area are not adversely affected in the interim, SIP revisions will not interfere with an area's obligations to develop timely demonstrations of attainment and reasonable further progress. Consequently, since substitute reductions have been submitted in this case, EPA concludes that the Agency is authorized to approve this SIP revision consistent with section 110(l).

Comment 3: The commenter states that the NO_X reductions achieved by Kosmos occurred prior to the 2003 ozone season, yet the community had numerous incidents of exceedances of ozone standards even with the Kosmos emissions reductions and the VET Program. Substituting already-achieved emissions reductions that were insufficient to prevent violations during the previous ozone season do not provide any new reductions to offset those lost. The District must provide new actual reductions, not ones that have already been achieved.

Response 3: EPA clarifies that the Louisville area has had no 1-hour ozone NAAQS exceedances since the area was redesignated to attainment for that standard in a final action published October 23, 2001, 66 FR 53665. Regarding exceedances of the 8-hour ozone NAAQS during the 2003 ozone season, Kentucky has provided substitute, equivalent emissions reductions that meet the criteria set forth in EPA's proposed rulemaking published January 3, 2005 (70 FR 53) to demonstrate no interference with the 8-hour ozone and $PM_{2.5}$ NAAQS. (See Response #1.) EPA believes that this equivalent substitution of emissions to ensure no net emissions change into the air is allowable regardless of whether the area is meeting the 8-hour ozone or $PM_{2.5}$ NAAQS. Enacting the equivalent reductions at Kosmos prior to (rather than after) the cessation of the VET Program provides additional assurance that there is no net emissions increase to the air for any period of time. The control strategy SIP for the area will ultimately demonstrate how the Louisville area will meet the 8-hour ozone and $PM_{2.5}$ NAAQS as noted in Response #1.

The NO_X emissions reductions at Kosmos, as reflected in the emission rate reduction to 4.755 pptcp of NO_X, are new or ''surplus'' for two reasons. The reduction is not from a Federal Control Measure that would occur without any state or local action and the emission rate reduction is below what is already required in the Jefferson County portion of the Kentucky SIP. (For additional details, refer to the proposed rulemaking published January 3, 2005, at 70 FR 53.) Although the NO_X emissions reductions at Kosmos occurred eight months prior to the closing of the VET Program, these reductions are considered new reductions based on EPA's policy of supporting early implementation of control measures to achieve early emissions reductions. This policy is commonly applied, for example, to enact contingency measures prior to the occurrence of a NAAQS violation in an area. This policy of allowing early

emissions reductions was upheld in the September 8, 2004, 5th Circuit decision (*Louisiana Environmental Action Network* v. *EPA,* 382 F.3d 575 (5th Cir. 2004)).

Comment 4: Is there a guidance document EPA uses to determine whether proposed substitutions of emissions reductions are acceptable?

Response 4: Yes, the Agency is using several guidance documents to assess the legality of accepting compensating emissions reductions. These guidance documents are listed below, and further described in the January 3, 2005, proposed rule (70 FR 53) with information on how to obtain copies.

The EPA guidance memorandum from John Calcagni, Director, Air Quality Management Division, to the Air Directors in EPA Regions 1–10, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' September 4, 1992, is currently being used. On pages 10 and 13, the guidance allows areas redesignated to attainment for the NAAQS to move control measures from the regulatory portion of the SIP to the contingency plan if they are not needed to maintain the NAAQS and if compensating equivalent emissions reductions are provided. The guidance notes that a demonstration that measures are equivalent would have to include appropriate modeling or an adequate justification. This 1992 memorandum pertains to the NAAQS in existence at the time, which include the 1-hour ozone and CO NAAQS. EPA is currently drafting guidance that specifically addresses section 110(l).

Guidance EPA is using as precedence to determine the acceptability of substituting NO_X for VOC emissions reductions in the Louisville case is the August 5, 1994, EPA memorandum, ''Clarification of Policy for Nitrogen Oxides (NO_X) Substitution,'' from John Seitz, Director, Office of Air Quality Planning and Standards. This memorandum pertains to EPA's ''NO_X Substitution Guidance'' (December 1993). The guidance acknowledges that controlling only VOCs may not be the most effective approach in all areas for attaining the ozone standard and allows for substitution of NO_X emissions reductions for VOC emissions reductions as appropriate, contingent upon approval by EPA.

Two items of correspondence from EPA that serve as guidance are also described in the January 3, 2005, proposed rule (70 FR 53). The Agency is using the May 12, 2004, EPA Memorandum from Tom Helms, Group Leader, Ozone Policy and Strategies Group, Office of Air Quality Planning and Standards, and Leila H. Cook, Group Leader, State Measures and Conformity Group, Office of Transportation and Air Quality, to the Air Program Managers, the subject of which is ''1-Hour Ozone Maintenance Plans Containing Basic I/M Programs.'' The May 12, 2004, memorandum addresses the application of 8-hour ozone anti-backsliding provisions to basic I/M programs in 1-hour ozone maintenance areas. In addition, EPA is using a May 11, 2004, letter from the Agency to Louisville's Assistant County Attorney to provide the Agency's current interpretation of section 110(l) of the Clean Air Act as guidance in relation to an area such as Jefferson County that does not yet have an attainment demonstration for the new 8-hour ozone and $PM_{2.5}$ NAAQS.

Comment 5: The commenter states that it has not been demonstrated, through appropriate modeling and analysis, that reductions of NO_X from tall stack emissions controls would yield the same or better air quality benefit in ozone formation reduction as from ground-level exhaust emissions of both VOCs and NO_X from continued implementation of the I/M program.

Response 5: The May 26, 2004, supplement to the September 22, 2003, SIP submittal provides information to address the equivalency of NO_X emissions reductions from Kosmos Cement Company, a point source, to replace low-level, area reductions of NO_X and VOC gained by the VET Program. This information is discussed under the third response of the LMAPCD Comment and Response document. In summary, the LMAPCD document provides existing modeling for the area that shows NO_X emissions reductions are beneficial to the Louisville area and that NO_X emissions reduction scenarios in all cases in the Louisville area resulted in a greater reduction of ozone concentrations than the VOC reduction scenarios. Modeling to demonstrate the air quality impacts from this specific scenario was not developed. Modeling was not needed to support this equivalency demonstration because it is unlikely that the small emission changes involved in the removal of the VET Program and additional reductions from the Kosmos cement kiln would be noticeable in the modeling or have any noticeable effects on ozone formation in the modeling. The photochemical models are more suited to assessing the aggregate effects of the many control measures used in an attainment strategy for an urban area. However, sensitivity modeling of emissions reductions on source categories can be used to provide directional information on the effectiveness of precursor reductions. Such information was provided through the sensitivity modeling developed for the 1-hour ozone NAAQS for the Louisville area. This modeling demonstrates that areawide ozone coverages for concentrations greater than the ozone standard are more effectively reduced with NO_X emissions reductions than with VOC reductions. The Louisville modeling does show that VOC emissions reductions are beneficial, but on a more localized level, whereas NO_X emissions reductions are beneficial over a larger area. In conclusion, EPA finds the analysis detailed in the Comment and Response document adequate to demonstrate that point source NO_X reductions will yield the same or better air quality benefit in reducing ozone formation as low-level, areawide emissions reductions of VOC and NO_X.

Comment 6: The commenter states that the emissions reductions at Kosmos are clearly not contemporaneous since they occurred in March 2003, nearly two years ago. The use of the November 2003 date to measure the contemporaneousness of the emissions reductions would reward Louisville for having terminated the program unlawfully, and is inappropriate given that the termination of the program has not yet been lawfully approved and it remains a component of the SIP. The time frame in which the reductions must be viewed as ''contemporaneous'' for purposes of substituting other measures in a maintenance plan, must be the date of lawful cessation of the I/M Program on approval by EPA.

Response 6: While ''contemporaneous'' is not explicitly defined in the Clean Air Act, EPA believes a reasonable interpretation is to enact the compensating, equivalent emissions reductions within a maximum of one year (prior to or following) the cessation of the substituted control measure. The actual dates of occurrence of the start and end of substituted control measures, rather than the effective date of EPA action on a SIP revision, are used to ensure that the status quo level of emissions in the air is maintained. EPA acknowledges that Louisville inappropriately terminated the program before obtaining EPA approval of a SIP revision, however EPA does not believe this is relevant to determining the contemporaneousness of substitute reductions. Since the concept of contemporaneous reductions is to address ambient air quality levels, EPA believes it should be measured with respect to actual program implementation. Kosmos' March 2003 emissions reductions occurred well

within a year of the end of the actual termination of the VET Program, which occurred as of November 1, 2003. EPA agrees that the VET Program remains an enforceable component of the SIP, and will not become a contingency measure until the effective date of this final action. (*See* also Response #7 regarding legal consequences of terminating the VET Program without EPA approval.)

Comment 7: Unless the EPA approves an amendment to the Kentucky SIP to remove the VET Program, the approved SIP, including the VET Program, must continue to be maintained and enforced as a matter of federal law. The commenter expresses that the illegal termination of the VET Program has gone without sanction by the EPA.

Response 7: EPA exercises its discretion whether to issue a finding of failure to implement the SIP for the discontinuation of the VET Program. EPA recognized that the LMAPCD was actively working with the Agency to develop an approvable SIP revision to provide compensating emissions reductions as expeditiously as possible. EPA also notes that in a Memorandum Opinion dated January 29, 2004, the U.S. District Court concluded that the District violated the Clean Air Act by terminating the VET Program, an approved element of the Kentucky SIP, without EPA's prior approval. (Memorandum Opinion, P.20, Case Number 3:03CV–712–H) In a court order issued June 10, 2004, the Court ordered the LMAPCD, the agency responsible for implementation of the Jefferson County, Kentucky portion of the state SIP, to pay a fine of $100,000 in connection with this termination of the program. The Court subsequently distributed these funds to the Kentucky Resources Council for use in the Council's environmental projects as specified by the Court. The Court did not order the District to restart the VET Program due to the status of the pending SIP revision at that time and the likely timing and potential substance of an EPA response. (Memorandum and Order, Case Number 3:03CV–712–H, June 10, 2004) Upon the effective date of this final action, the issue of not implementing and enforcing a control measure in the SIP is resolved.

Comment 8: The commenter writes that the Kosmos reductions are not enforceable and equivalent to the lost VET Program reductions, because the new Kosmos proposed limits are a rolling 30-day average rather than a maximum instantaneous cap. The commenter notes there may be times (including days where ozone levels are otherwise elevated) in which the emissions will exceed the proposed average and will not offset what would have been captured on a continuous basis by the operation of the VET Program. The commenter also expressed that the modifications resulting in NO_X reductions were undertaken to avoid NO_X spikes that were in excess of permit limits and that as such, those reductions would not appear to be surplus since they were undertaken to achieve compliance with permit requirements that would have occurred regardless of the termination of the VET Program.

Response 8: The May 3, 2004, amended Board Order for the Kosmos cement kiln requires that NO_X emissions (expressed as NO2) from the cement kiln shall not exceed 4.755 pptcp by the kiln, based upon a rolling 30-day average. In this final action, EPA is approving the proposed revisions in the May 3, 2004, Board Order, including this lowered NO_X emission rate, into the Kentucky SIP. To comply with this lower emission rate and the SIP, the average of daily NO_X emissions from Kosmos' cement kiln over 30 consecutive days must be below the rate approved into the SIP. Any daily fluctuations above the emission rate are compliant with the SIP as long as this 30-day rolling average condition is met. For this reason, the emissions reductions, as reflected in the lowered NO_X emission rate for Kosmos, are surplus and are not a violation of SIP requirements.

Through this final action, the 30-day rolling average condition for Kosmos becomes federally enforceable. Kosmos is required to maintain and operate a continuous emission monitoring system (CEMS) to measure daily NO_X emissions into the atmosphere from the cement kiln (Appendix A of Kosmos' NO_X Reasonably Available Control Technology (RACT) Plan). This requirement to record and submit CEMS data allows for monitoring of the lowered NO_X emission rate at Kosmos on a daily basis which will assure compliance with the new limit on a 30 day basis. The VET Program was designed with the presumption that the vehicle would maintain compliance for the year.

Regarding concerns expressed on high ozone days, an emission rate based upon a rolling 30-day average is set to accommodate normal fluctuations in operating conditions while remaining protective of public health. EPA notes that other programs use a 30-day rolling average and have been effective in controlling emissions, including NO_X RACT (see page 55625 of 57 FR 55620, November 25, 1992) and New Source Performance Standards for boilers (see page 49444 of 63 FR 49442, September 16, 1998). Furthermore, EPA believes even longer term compliance averaging periods have demonstrated their effectiveness, *e.g.*, EPA's NO_X SIP Call trading program's ozone season averaging time period (''NO_X Budget Trading Program,'' August 2004, EPA–430–R–04–010). Should the rolling 30-day average NO_X emission rate ever exceed the established NO_X emissions standard, Section II.A.4. of Appendix A of Kosmos' NO_X RACT Plan contains specific reporting and recordkeeping requirements for Kosmos to submit excess emissions reports that document the amount, dates, and timeframes of the excess emissions and corrective actions taken or preventive measures adopted.

Comment 9: The commenter writes that the emissions reductions at Kosmos from the installation of controls preclude emission at levels contained in the former permit even under full operating conditions, and that the elimination of the increment of allowable emissions from the former permit limits to the actual potential emissions is a ''phantom paper reduction'' rather than a real emissions reduction.

Response 9: EPA first clarifies that Kosmos made changes to its operating procedures, not installed controls, to achieve the equivalent emissions reductions achieved in March 2003. As described in LMAPCD's Comment and Response Document on page 5, by requiring all kiln operators to operate the kiln in the same manner, the cement kiln ran more efficiently and thus used less fuel and emitted less pollutants. The resulting NO_X emissions reductions at Kosmos were verified using CEMS, which is a monitoring system for continuously measuring and recording the emissions of a pollutant. The Agency's evaluation of the SIP submittal supports that Kosmos will have achieved the predicted 8,672 pounds per summer day (ppsd) of NO_X emissions reductions in 2004. It is EPA's practice to approve control measures into the SIP using projected emissions reduction data as long as the baseline data and emission projection methodology are based on sound science. In the proposed approval, EPA's analysis is based on the change in the allowable emission rate (6.6 to 4.755 pptcp NO_X) at a constant production rate (4700 tons of clinker/day). The procedure EPA used in the proposal assumes: (1) Kosmos emitted at its maximum allowable rate of 6.6 pptcp NO_X, on average in 2002, under the previous Board Order approved into the Kentucky SIP and (2) Kosmos will emit no more than 4.755 pptcp NO_X, on

average, under the new Board Order dated May 3, 2004 (see 70 FR 58, January 3, 2005). Kosmos was emitting at 2.1–4.1 pptcp NO_X in 2003 under the 6.6 limit due to the operational changes made in March 2003. To prevent Kosmos from changing the cement kiln's operation and increasing emissions in 2004 or later up to 6.6, a revised Board Order with the lower emission rate of 4.755 pptcp NO_X was adopted by the Board on May 3, 2004, and will become part of the federally enforceable Kentucky SIP as of the effective date of this final action. Kosmos' cement kiln cannot emit up to 6.6 pptcp NO_X without violating the new SIP limit for Kosmos of 4.755 pptcp NO_X, and therefore, the proposed calculation procedure remains valid.

Comment 10: The commenter expressed that eliminating the VET Program may increase cost of a program restart should the area's control strategy be required to use an I/M program if Louisville is classified as a moderate 8-hour ozone nonattainment area.

Response 10: EPA acknowledges that there would be additional costs to restart the VET Program since it has been terminated. The Louisville area is designated nonattainment under subpart 1, ''Nonattainment Areas in General,'' of Title I Part D of the Clean Air Act for the 8-hour ozone NAAQS. An I/M program is not required for these subpart 1 nonattainment areas. The statutory authority to implement an I/M program remains intact in Kentucky Revised Statute (KRS) 77.320, ''Elimination of vehicle emissions testing program in county containing consolidated local government—Determination of need for program,'' and in KRS 77.180, ''Orders, rules and regulations.'' KRS 77.180 is the cited statute in the VET Program regulations now located in the contingency portion of the Louisville 1-Hour Ozone Maintenance Plan as of the effective date of this action. Thus, should the area become classified moderate and need to implement I/M, it would already have the statutory authority to do so. (To access KRS 77.320 and KRS 77.180 within Chapter 77, ''Air Pollution Control,'' access the following Web site: *http://lrc.ky.gov/KRS/077–00/CHAPTER.HTM.*)

Comment 11: The commenter states that the law that repealed the VET Program, KRS 77.320, should be repealed. The commenter suggests that the VET Program was the only effective means of air management in the metropolitan area and should be reinstated.

Response 11: The LMAPCD adopted several regulatory programs that helped the area to attain the 1-hour ozone NAAQS. The Louisville area has had no 1-hour ozone NAAQS exceedances since the area was redesignated to attainment in a final action published October 23, 2001 (66 FR 53665). Louisville was able to demonstrate continued maintenance of the 1-hour ozone NAAQS without the I/M program. In addition, the provision of substitute reductions from the Kosmos cement kiln will prevent increases in ambient air levels pending development of 8-hour and $PM_{2.5}$ attainment demonstrations. The 8-hour ozone and $PM_{2.5}$ control strategy SIP revisions for the area due in 2007 and 2008, respectively, will identify control strategies to help the area meet these NAAQS as expeditiously as practicable. These SIP revisions will include a demonstration that the selected control measures will timely achieve the relevant NAAQS.

Comment 12: The commenter states that in addition to businesses, each individual who drives should be responsible for cleaner, healthier air. The commenter suggests that the VET Program could be required only every other year and exclude cars less than five years old to reduce the burden.

Response 12: Under Jefferson County's present 8-hour ozone and $PM_{2.5}$ nonattainment classifications, and 1-hour ozone maintenance status, Kentucky has discretion which control measures to apply to help the County attain and maintain these NAAQS. So long as the area meets all applicable CAA requirements, EPA cannot dictate that each individual residing in the area must personally contribute to required emissions reductions.

Comment 13: Mobile source emissions comprise a significant component of the emissions profile for the county, and the VET program has been responsible for moderating the effects of the increase in vehicle miles traveled in this region, and in reducing the contribution of ozone precursors from the mobile sector. For this reason, the proposed repeal of the VET Program is troubling.

Response 13: The Kentucky portion of the Louisville 1-Hour Ozone Maintenance Plan provides emissions data and emissions projections covering the year 2005 for this maintenance area. The Kentucky portion of the Louisville 1-Hour Ozone Maintenance Area is comprised of Jefferson County, and portions of Bullitt and Oldham Counties in Kentucky. EPA acknowledges that projected 2005 emissions from mobile sources contribute almost one-third of the VOC emissions and nearly one-half of the NO_X emissions in the Kentucky portion of the Louisville area. The equivalent emissions reductions from Kosmos that are replacing those previously gained from the VET Program, in addition to meeting all other applicable requirements for the area, help to ensure that the current air quality is maintained. The 8-hour ozone and $PM_{2.5}$ attainment demonstrations due in 2007 and 2008, respectively, will address, as appropriate, any needed mobile source controls for the designated nonattainment areas under these standards. See also Response #1.

Comment 14: When will the public review and formal comment period begin on the January 3, 2005, proposed rule (70 FR 53)?

Response 14: The public comment period on the proposed rulemaking was from January 3, 2005 to February 2, 2005, as stated in the proposed rulemaking published January 3, 2005, at 70 FR 53.

Comment 15: The commenter notes that the problems that come with global warming and pollution are not going to go away anytime soon, and that these issues will only get worse until action is taken.

Response 15: This comment is not relevant nor specific to issues contained in the January 3, 2005, proposed rule (70 FR 53).

Comment 16: The commenter notes that the United States of America needs to do much more to clean up the air and atmosphere to protect the ozone layer from getting worse. The commenter also states that the country's per capita output of air pollutants and many other environmentally damaging pollutants is ''shamefully high.''

Response 16: This comment is not relevant nor specific to issues contained in the January 3, 2005, proposed rule (70 FR 53).

Comment 17: The commenter states that with respect to Louisville Gas & Electric (LG&E), it is inappropriate to claim credit for reductions achieved by the company as a result of its compliance strategy with the NO_X SIP call, since those reductions were made in response to existing legal obligation and would have been achieved irrespective of any District action to execute an ''Agreement.'' The commenter also notes that substituting LG&E emissions of NO_X for lost VOC and NO_X emissions from motor vehicles is not equivalent because LG&E has presented modeling in the past demonstrating that NO_X emissions from the LG&E stacks did not contribute appreciably to the local ozone problem in the Louisville area.

Response 17: The comments received regarding emissions reductions from LG&E are not relevant nor specific to

issues contained in the January 3, 2005, proposed rule (70 FR 53).

IV. Final Action

EPA is approving a revision to the Jefferson County, Kentucky portion of the Kentucky SIP which moves Regulations 8.01, 8.02, and 8.03 from the regulatory portion of the Jefferson County part of the Kentucky SIP to the contingency measures section of the Kentucky portion of the Louisville 1-Hour Ozone Maintenance Plan. EPA is also approving a source-specific SIP revision amending the NO_X emission rate for Kosmos Cement Company's cement kiln.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 11, 2005.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

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

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

■ 2. Section 52.920 is amended as follows:

■ a. in paragraph (c) by removing from Table 2, Regulation 8.01 titled, ''Mobile Source Emissions Control Requirements,'' Regulation 8.02 titled, ''Vehicle Emissions Testing Procedure,'' and Regulation 8.03 titled, ''Commuter Vehicle Testing Requirements,''

■ b. in paragraph (d) by revising the entry for ''Board Order Kosmos Cement Company,'' and

■ c. in paragraph (e) by revising the entry for ''Louisville 1-hour Ozone Maintenance Plan'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED KENTUCKY SOURCE—SPECIFIC REQUIREMENTS

Name of source	Permit number	State effective date	EPA approval date	Explanation
*	* * * * *	*		*
Board Order Kosmos Cement Company.	NO_X RACT Plan 05/03/04	05/03/04	05/18/05 [Insert first page number of publication]	
*	* * * * *	*		*

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
*	* * * * *	*		*
Louisville 1-Hour Ozone Maintenance Plan.	Jefferson County and portions of Bullitt and Oldham Counties	11/1/03	05/18/05 [Insert first page number of publication]	
*	* * * * *	*		*

[FR Doc. 05–9905 Filed 5–17–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[OPP –2005–0109; FRL–7711–4]

Dimethyl Ether; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of dimethyl ether or methane, oxybis- as an inert ingredient (propellant) in pesticide formulations applied to growing crops or to raw agricultural commodities (RAC) after harvest. The DuPont Company, DuPont Fluoroproducts submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of dimethyl ether.

DATES: This regulation is effective May 18, 2005. Objections and requests for hearings must be received on or before July 18, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit XIV. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0109. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; e-mail address: *boyle.kathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action apply to Me?

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

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 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. 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 Electronic Documents and Other Related Information?

In addition to using EDOCKET at *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of September 27, 2000 (65 FR 58078) (FRL–6742–4), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (6E4785) by the DuPont Company, DuPont Fluoroproducts, Chestnut Run Plaza, P.O. Box 80711, Wilmington, DE, 19880–0711. This notice included a summary of the petition prepared by the petitioner.

The petition requested that 40 CFR 180.1001(c) now redesignated as 40 CFR 180.910 be amended by establishing an exemption from the requirement of a tolerance for residues of dimethyl ether (DME), also known as methane, oxybis, (CAS Reg. No. 115–10–6) as an inert ingredient (propellant) in pesticide formulations applied to growing crops or to RAC after harvest. There were no comments received in response to the notice of filing.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Physical/Chemical Properties

The vapor pressure of DME is 4,450 mm Hg @ 25°C. DME exists as a gas at room temperature, thus allowing it to spread and disperse rapidly. DME is soluble in water (7% by weight). The flash point of DME is -41°C or -42°C with flammable limits in air of 3.4% by volume in air (lower limit) and 18.0% (upper limit). DME is slightly heavier than air with a density of 1.92 grams/Liter @ 1 atmosphere and 25°C.

V. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability, and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects identified in DME toxicity studies are discussed in this unit.

A. Review and Evaluation of Five Inhalation Toxicity Studies

The Agency reviewed and evaluated the following five inhalation toxicity studies conducted using DME.

TABLE 1.—DIMETHYL ETHER INHALATION TOXICITY STUDIES

Study Type (Species)	Results
Acute Inhalation (rat)	Doses were 8.4, 12.1, 15.2, 16.9, or 20.5% equivalent to 84,000, 121,000, 152,000, 169,000, or 205,000 part per million (ppm); or 158, 228, 286, 318, or 386 mg/L. LC_{50} = 309 mg/L (Toxicity Category IV) (95% confidence limits of 268 - 382 mg/L) Whole-body inhalation exposure. Clinical signs during exposure included ataxia, anesthesia, coma, head bobbing, paw waving, and heavy or short jerky respirations.
2-Week Inhalation (rat)	Doses were 0, 1, or 5% (v/v) equivalent to 0, 18.8, or 94.1 mg/L NOAEL = Not determined LOAEL = 1% or 18.8 mg/L Whole-body inhalation exposure. LOAEL based on red nasal and ocular discharge, sluggish behavior, salivation, lung noise, wet perineal area, decreased cumulative body weight gains, and decreased thymus and liver weights. Moderate sluggishness occurred briefly at 1% and was very common at 5%.
13 Week Inhalation (rat and hamster)	Doses were 1, 1,000, 5,000, 10,000, or 20,000 ppm equivalent to 0, 1.9, 9.4, 18.8, or 37.7 mg/L. NOAEL = 37.7 mg/L LOAEL = Not Observed Whole body inhalation exposure in both species. There were no treatment-related effects.

TABLE 1.—DIMETHYL ETHER INHALATION TOXICITY STUDIES—Continued

Study Type (Species)	Results
Chronic toxicity/carcinogenicity (rat)	Doses were 0, 0.2, 1.0, or 2.5% equivalent to 0, 2,000, 10,000, or 25,000 ppm; or 0, 3.7, 18.6, and 46.4 mg/L NOAEL = 3.7 mg/L LOAEL = 1% or 18.6 mg/L Whole body inhalation exposure. LOAEL based on decreased survival towards the end of the study and liver angictasis in males. The Office of Pesticide Program Cancer Peer Review Committee concluded that DME should be classified as Group D (not classifiable as to human carcinogenicity) since chronic testing was performed in only one species.
Cardiac sensitization (dog)	Doses were 10, 20, (16.7), or 30 (33.3%) (v/v) equivalent to 100,000, 200,000, or 300,000 ppm. The dogs received an intravenous injection of epinephrine prior to exposure to the DME and a second (challenge) injection after breathing the test compound for five minutes. NOAEL = 10% LOAEL = 16.7% Capable of sensitizing the mammalian heart to epinephrine (development of a cardiac arrhythmia after a challenge injection of epinephrine).

B. Mutagenicity Study

Dimethyl ether did not induce a genotoxic response in the five *S. typhimurium* strains tested with or without S9-activation.

C. Developmental Toxicity

There are two inhalation developmental toxicity rat studies, both conducted in 1981. One study was conducted in Sprague-Dawley rats at concentrations of 0, 0.125, 0.5, and 2.0% and a second study was conducted in Wistar rats at concentrations of 0, 2.0 and 2.8%.

In the study conducted using Sprague-Dawley rats, at 2.0%, decreased response to tapping on the glass wall of the inhalation chamber was identified by the study authors. This cage-side type evaluation was not well-characterized in the report. The observations in these studies may not have been conducted in a manner consistent with determining a true no observed adverse effect level (NOAEL) for neurotoxic effect in dams. The NOAEL for maternal toxicity is 0.5%.

The developmental toxicity findings are remarkedly similar across both studies. The fetal observations were referred to by different names in the two laboratories. But, both laboratories were referring to skeletal variations. Combining the results of both studies, there is an unequivocal, statistically significant dose-related response for both fetuses and litters at 0.5, 2.0, and 2.8%. The NOAEL for this finding is 0.125%.

The results of the two studies also indicated delays in ossification. The incidence is statistically significant at 2.0% in the first study and at 2.8% in the second study. Non-statistically significant increases in this finding occur at 0.5% in the first study and at 2.0% in the second study.

Taken together, the results of the two developmental toxicity studies are:

- Developmental NOAEL = 0.125% (v/v) equivalent to 2.4 mg/L or 1,250 ppm.
- Developmental LOAEL = 0.5% (v/v) equivalent to 9 mg/L or 5,000 ppm based on an increased incidence of ribs with extra ossification center.
- Maternal NOAEL = 0.5% (v/v) equivalent to 9 mg/L or 5,000 ppm.
- Maternal LOAEL = 2.0% (v/v) equivalent to 37 mg/L or 20,000 ppm based on decreased responsiveness.

The fact that the developmental NOAEL is less than the maternal NOAEL is a possible indication of increased susceptibility. However, the maternal effects were not always well-characterized.

D. Conclusions

Using the submitted studies and its typical procedures, the Agency classified DME as acute inhalation toxicity Category IV, which is the Agency's category of lowest acute toxicity. No treatment-related effects were noted in a 13-week inhalation study. In both the 2-week and the chronic inhalation studies the LOAELs were determined to be 1%. In a developmental toxicity study, exposure at levels of 0.5% (v/v) produced developmental effects (skeletal variations) but maternal toxicity, other than decreased responsiveness, was not noted. DME is not classifiable as to human carcinogenicity. It produces cardiac sensitization in dogs. For several reasons, the Agency has concerns about the doses at which the studies were conducted. DME's flammablity limits in air are 3.4% by volume (lower limit) and 18.0% (upper limit). Several of the studies were conducted with one or more dose levels greater than the lower limit of flammability.

The Agency's limit concentration for inhalation studies is 2 mg/L, which was greatly exceeded in all studies. The limit concentration is a concept used in animal toxicity testing to establish an upper concentration level beyond which testing is not encouraged: Concentrations higher than the limit concentration represent very unrealistic scenarios. Testing above the limit concentration may not provide the appropriate information on adverse effects which could then support a NOAEL for use in risk assessment. It must be possible to differentiate between toxic effects due to the test substance and toxic effects due to other causes such as stress induced by breathing difficulties.

VI. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from groundwater or surfacewater and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

A. Dietary Exposure

1. *Food.* DME is a gas at room temperature. Significant levels of residues from such a volatile gas are unlikely to be present in food or feed items.

2. *Drinking water exposure.* Residues of a volatile gas such as dimethyl ether

are not likely to be present in any significant quantities in surface water. The estimated half-life in a river is 2.1 hours and in a lake 2.7 days. DME is therefore, not expected to be present in drinking water.

B. Other Non-Occupational Exposure

Dimethyl ether is sponsored under the High Production Volume Challenge Program. This is indicative of over 1 million pounds of DME either produced or imported per year.

Dimethyl ether is used as a propellant in various personal care products such as hairsprays, shaving creams, mousses, deodorants, antiperspirants, baby care products, medical/pharmaceutical products and perfumes. Residential uses could also include air fresheners, disinfectants, furniture polishes, adhesives, insulating foams, paints, and insecticides.

In 1990, an article (MRID 45772201) on simulated consumer exposures to DME was published. The report's authors simulated and then measured breathing zone concentrations of DME for typical hair spray exposures, for both domestic and salon conditions. To assure accuracy, repeated measurements were made, thus yielding the range of reported results. Some of the results were expressed as a time-weighted average concentration over 10 minutes (TWA10). TWA10s are calculated by averaging the peak concentration of DME (at initial release) with the lower concentrations that reflect the rapid dispersal of DME throughout the room over the 10 minute time-frame. Table 2 and Table 3 contain domestic simulated exposures to DME. The difference in the measurements is due solely to a closed door (Table 2) and an open door (Table 3). Examination of the data in the tables, indicates that the peak concentration of DME declines substantially from the initial (peak) spray, to the TWA10, to the residual 20-minute concentration whether the door is open or closed.

TABLE 2.—DOMESTIC DME CONCENTRATIONS FROM SIMULATED HAIRSPRAY USES IN A CLOSED ROOM (ALL VALUES EXPRESSED IN PPM)

Peak concentration hairspray user)	Mean 1,310 Maximum 1,577 Minimum 1,043
Peak concentration (nearby child)	Mean 717 Maximum 762 Minimum 672
TWA10 (hairspray user)	Mean 114 Maximum 143 Minimum 82
TWA10 (nearby child)	Mean 89 Maximum 97 Minimum 86
Residual concentration in the breathing zone at 20 minute (hairspray user)	Mean 62 Maximum 78 Minimum 42
Residual concentration in the breathing zone at 20 minute (nearby child)	Mean 56 Maximum 63 Minimum 41

With the door closed there is an order of magnitude reduction from peak concentration to TWA10 concentration, which is then reduced by half to a residual 20 minute concentration.

TABLE 3.—DOMESTIC DME CONCENTRATIONS FROM SIMULATED HAIRSPRAY USES IN A ROOM WITH AN OPEN DOOR (ALL VALUES EXPRESSED IN PPM)

Peak concentration (hairspray user)	Mean 693 Maximum 837 Minimum 549
Peak concentration (nearby child)	Mean 530 Maximum 954 Minimum 105
TWA10 (hairspray user)	Mean 84 Maximum 107 Minimum 67
TWA10 (nearby child)	Mean 68 Maximum 102 Minimum 38

TABLE 3.—DOMESTIC DME CONCENTRATIONS FROM SIMULATED HAIRSPRAY USES IN A ROOM WITH AN OPEN DOOR (ALL VALUES EXPRESSED IN PPM)—Continued

Residual concentration at 20 minutes (hairspray user)	Mean 23 Maximum 41 Minimum 8
Residual concentration at 20 minutes (nearby child)	Mean 24 Maximum 42 Minimum 7

With an open door, the dispersion of the DME occurs so rapidly, that even the peak concentration (Table 3) is less than the peak concentration in Table 2 (door closed). Having an open door and the resultant more rapid dispersion means that DME concentrations are 25% lower.

There is an additional factor that must also be considered in understanding the DME use pattern in the home. The above estimates considered that the user and the nearby child were perfectly still and did not move for 20 minutes. This is an unlikely possibility. It is more likely that the user and the nearby child would move away from the area where the spray occurred within that 20 minute time-frame.

To examine use as an inert ingredient in pesticide products, the Agency examined a scenario likely to yield a higher exposure: Foggers. Release of DME occurs via activation of the fogger, as the propellant releases and fills the enclosed area. The average amount of DME found in a pesticide fogger product is 67.2 grams (g). If the 67.2 grams is suddenly released into a 136 m^3 area, then the concentration in the room equals 67.2 g DME/136m^3 = 0.49 g/m^3 or 490 mg/m^3 at the time of release.

Label directions for foggers indicate that no one is to be present during the application of the pesticide product and for a short period of time afterward. A standardized time-frame for re-entry is 2 hours. The concentration of DME in the room at the end of two hours can be estimated using a decrease of approximately 50% to account for the dispersion of DME from the residence. The 50% rate of decline was based on a study (MRID 45772401) that used a testing chamber with ''ceilings'' that were 11 ft. high. The average measured concentration of DME in the chamber declined by approximately 50% over a period of two hours. The 245 (50% of 490) mg/m^3 used as the starting point in Table 2 is an over-estimate since the testing chambers are usually designed to be airtight. DME would escape from a house much faster through the cracks and crevices around doors and windows.

At the end of two hours, the homeowner re-enters the house, not to stay, but to open doors and windows for venting. Rapid venting occurs immediately as the doors and window are opened. (Labels indicate that venting should occur for at least 30 minutes.) Assuming, (1) that the above 136m^3 area could have one door and three windows, depending on the layout, and (2) every 10 minutes the DME concentration drops 10% due to dispersal, 25% for a door and 10% for a window, then a 65% reduction in DME concentration occurs every 10 minutes. Each line in Table 4 represents 10 minutes. Therefore, the initial concentration of 245 mg/m^3 (Column 1) reduces to 86 mg/m^3 (Column 2). The next 10 minute time-frame (Line 2) begins with 86 mg/m^3 in Column 1.

TABLE 4.—DME CONCENTRATION VS. TIME

Starting Concentration of DME (mg/m^3)	Concentration Minutes Later (mg/m^3)	Total Elapsed Time Since Re-entry (minutes)
245	86	10
86	30	20
30	11	30

VII. Cumulative Effects

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

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

VIII. Safety Factor for Infants and Children

Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children.

The toxicity database for DME is adequate for the purpose of establishing

this tolerance exemption for use of DME as an inert ingredient (propellant) in a pesticide product. From that toxicity database, the Agency could select a toxicological endpoint to use in the Agency's risk assessment. In selecting an endpoint, EPA matches, as best possible, the time-frames of a potential user's exposure to the time-frames of the toxicity study(ies). Selection of a developmental NOAEL for use in assessing short-term risk appears, at first glance, to be a good match. However, the test animals were confined in the test chambers for 6 hours/day for either 10 or 11 consecutive days, receiving an artificially maintained atmosphere to breathe. The concentrations of DME used in the toxicity studies considered in this final rule are maintained by enclosed test chambers and constant in-flow of DME. Such concentrations cannot be maintained in any building such as greenhouses, apartments, single-family dwellings, or places of business, since any released DME will disperse from the structure via cracks and crevices. Unless, the DME is continually released in that environment, the DME concentration is always decreasing. Therefore, although these studies provide some information concerning potential toxicological hazards of DME, they do not provide useful information for quantitatively assessing the risks from human exposure to DME given the dissimilarity in duration between likely human exposure and the exposure patterns in the studies.

Further, for DME, in the developmental toxicity study, the dose levels used in these inhalation toxicity studies routinely exceeded the limit concentration. It is also noted that dose concentrations in several of the toxicity studies exceed the DME flammable limits and routinely exceed the industrial time-weighted 8-hour day average acceptable exposure limit of 1,000 ppm recommended by DuPont and the American Industrial Hygiene Association. Effects appearing above the limit concentration may not indicate the toxicity of the chemical.

Given the extreme testing conditions in these studies and the effects observed, EPA believes it has adequate data to evaluate the safety of DME. Further, when the hazard testing data is evaluated in light of exposure information, EPA has determined that a safety factor analysis is neither appropriate or needed to assess the risk. For the same reasons a tenfold safety factor is unnecessary.

IX. Determination of Safety for U.S. Population, and Infants and Children

The NOAELs or LOAELs in any of the toxicological studies for DME are significantly higher than any concentration that could be reasonably expected in a home environment given the volatility of DME. The confined, artificially-maintained environment and a 6 hour exposure used in the toxicological studies are not readily comparable to the highly dispersive nature of DME and does not consider the massive reductions in concentration that occur in a 20 to 30 minute time-frame as shown in Tables 2, 3, and 4.

DME is widely used in consumer products that are not regulated by EPA. Simulated consumer exposures for domestic hairspray use are presented in Tables 2 and 3. The magnitude of the EPA-regulated exposures expected from use in a pesticide product is not dissimilar to those of other consumer products. However, the possible number of products containing DME are dissimilar, as well as the use patterns. There is a wide-variety of consumer use patterns, including personal care products, which during use are aimed directly at the user, for example hair spray. Types of pesticide products containing DME are the spray can (which during use is not directed at the individual), and foggers (where the individual is directed to not be present). In most cases, the consumer use patterns and the pesticide use patterns are not likely to overlap. One is unlikely to use a consumer product in a house that is being fogged. One is unlikely to spray paint and apply hairspray at the same time. The activities would usually be separated by time and occur in different rooms.

The exposure estimates presented by the Agency are considered to be over-estimates. It is very likely the DME will disperse more rapidly and/or an individual would remove themselves from the location of the peak concentration.

Given the rapid dispersion of DME from a home via cracks around doors and windows, as well as via open doors and windows, and the likelihood of an exposed individual to move away from the peak concentration area, exposures to DME from use in a pesticide product, or any other product such as hair spray, are very small. Based on the available information on these very small exposures, the volatile nature of DME and its rapid dispersion, the use of dose levels in the toxicological studies which are greater than the limit concentration, toxicity studies that do not readily lend themselves to selection of an appropriate dose and endpoint for such a short duration, and effects that are occurring only at levels greater than the limit concentration, EPA finds that exempting DME, also known as methane, oxybis, (CAS Reg. No. 115–10–6) from the requirement of a tolerance will be safe for the general population including infants and children.

X. Other Considerations

A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect * * *'' EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing DME, also known as methane, oxybis, (CAS Reg. No. 115–10–6) for endocrine effects may be required.

B. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Tolerances

There is an existing exemption from tolerance for DME when used as a propellant (40 CFR 180.930) in pesticide formulations applied to animals.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for DME nor have any CODEX Maximum Residue Levels (MRL's) been established for any food crops at this time.

XI. Conclusion

Therefore, an exemption from the requirement for a tolerance is established for DME, also known as methane, oxybis, (CAS Reg. 115–10–6).

XII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to

reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old FFDCA sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0109 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 18, 2005.

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

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

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit XI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0109, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

XIII. Statutory and Executive Order Reviews

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

67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XIV. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 27, 2005.

Betty Shackleford,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180 —[AMENDED]

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

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

■ 2. Section 180.910 is amended by adding alphabetically, the following entry.

§ 180.910 Insert ingredients used pre-harvest and post-harvest; Exemptions from the requirement of a tolerance.

* * * * *

Inert ingredient	Limit	Use
* *	* * *	*
Dimethyl ether (methane, oxybis-) (CAS Reg. No. 115–10–06)	.....	Propellant
* *	* * *	*

[FR Doc. 05–9475 Filed 5–17–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0361; FRL–7711–7]

Red Cabbage Color; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of red cabbage color when used as an inert ingredient (visual pH indicator) in pesticide formulations applied in or on certain various food commodities. Colarome Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996, requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of red cabbage color.

DATES: This regulation is effective May 18, 2005. Objections and requests for hearings must be received on or before July 18, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit XIV. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under docket identification (ID) number OPP–2002–0292. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Rame Cromwell, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9068; e-mail address: *cromwell.rame@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 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 insert appropriate cite to either another

unit in the preamble or a section in a rule. 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 Electronic Documents and Other Related Information?

In addition to using EDOCKET at *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of November 17, 2004 (69 FR 67348) (FRL–7685–5), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (4E6851) by Colarome Inc., 5132 Bombardier Street, St. Hubert (Quebec), Canada J3Z1H1. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of red cabbage color, which is intended to be used as an inert ingredient in pesticide products. The petitioner specifically requested that tolerance exemptions be established in 40 CFR 180.910, 180.930, and 180.940(a). That notice included a summary of the petition prepared by the petitioner Colarome Inc.. One comment was submitted. The Agency's response to this comment is in Unit IX.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Red cabbage color is cabbage juice extracted from edible cabbage heads by finely chopping and pressing, alone, without the use of solvents other than acidified water. The red cabbage juice thus obtained is further processed using physical means such as clarification by centrifugation, filtration and concentration by vacuum evaporation. Red cabbage color is a natural pigment, belonging to a class of naturally-occurring pigments called anthocyanins. Anthocyanins are ubiquitous in the plant kingdom, being responsible for most of the red, blue and purple colors of fruits, flowers and vegetables. Given its derivation from edible cabbage heads, without the use of a highly refined solvent extractive procedure, toxicity is expected to be low.

V. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food*. Red cabbage color for use as a visual pH indicator, is obtained from fresh cabbage heads. It is not considered to be a food since the extraction was performed with acidified water. The petitioner's recommended usage of the red cabbage color as a visual pH indicator is less than 1%. Given its use as a colorant, the amount of red cabbage color that would be incorporated into a pesticide product is limited by the need for a certain shade of color. In fact, information available to the Agency indicate most dyes are used at very low levels in pesticide products. The petitioner claims red cabbage color is used as a color additive in reconstituted juices, beverages, spirits, confectionary, fruit preparations and jams.

2. *Drinking water exposure*. Red cabbage color is a natural pigment in the family of naturally occurring acid-base indicator dyes. The compounds are soluble in water, non-volatile, have a low water partitioning coefficient and can be mobile in soils and sediments. The ultimate environmental sink for these compounds is anticipated to be soils and sediments. Microbial degradation is likely to occur, although the rate and extent of primary and/or complete degradation is unknown. Given the naturally-occurring nature of the red cabbage color, and the existence of anthocyanin from sources such as red maple and other leaves, it is unlikely that residues of red cabbage color would significantly increase in drinking water.

B. Non-Occupational Exposure

The Agency is not aware of any uses of red cabbage color in and around the home. If red cabbage color were to be incorporated into such products, the percentage would be low.

VI. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and other

substances that have a common mechanism of toxicity.''

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

VII. Safety Factor for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. The Agency believes red cabbage color to be of low toxicity. Additionally, dyes are generally used in low percentages in pesticide products. EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VIII. Determination of Safety for U.S. Population, Infants and Children

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risk from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Red cabbage color is derived naturally from plants. The Agency believes it to be of low toxicity. Therefore, EPA concludes that use of red cabbage color in pesticide products as a visual pH indicator or colorant will be safe for the general population including infants and children.

IX. Other Considerations

A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect.'' EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing red cabbage color for endocrine effects may be required.

B. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Tolerances

There are no existing tolerances or tolerance exemptions for red cabbage color.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for red cabbage color nor have any CODEX Maximum residue Levels been established for any food crops at this time.

E. Response to Comment

One comment was received from a private citizen indicating that there was ''no reason to have this coloring allowed in pesticides.'' The Agency understands the commentor's concerns and recognizes that some individuals believe that pesticides should be banned completely. However, under the existing legal framework provided by section 408 of the ''FFDCA'' EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such exemptions have demonstrated that the pesticide meets the safety standard imposed by the statue. The commentor has not provided the Agency with specific rationale or additional information pertaining to the legal standards in FFDCA Section 408 for opposing the establishment of a tolerance exemption for red cabbage color. In the absence of any additional information of a factual nature, the Agency can not effectively respond to the commmentor's disagreement with the Agency's decision.

F. List 4A Classification

The Agency established 40 CFR 180.950 (see the rationale in the proposed rule published January 15, 2002 (67 FR 1925) (FRL–6807–8)) to collect the tolerance exemptions for those substances classified as List 4A, i.e., minimal risks substances. As part of evaluating an inert ingredient and establishing the tolerance exemption, the Agency determines the chemical's list classification. The red cabbage color is obtained from fresh edible cabbage heads. The Agency believes this to be a substance of low toxicity. Therefore, red cabbage color is to be classified as a List 4A inert ingredient, and the tolerance exemption is established in 40 CFR 180.950.

X. Conclusions

Based on the available information on red cabbage color including an understanding of the processing process and use in pesticide products at low levels, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of red cabbage color. Accordingly, EPA finds that exempting red cabbage color from the requirement of tolerance will be safe.

XI. Objections and Hearing Requests

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

period for filing objections is now 60 days, rather than 30 days.

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0292 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 18, 2005.

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

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

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit XI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2002–0292, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

XII. Statutory and Executive Order Reviews

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

the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 29, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In § 180.950, the table in paragraph (e) is amended by adding alphabetically the following entry to read as follows:

§ 180.950 Tolerance exemptions for minimal risk active and inert ingredients.

* * * * *

(e)* * *

Chemical Name	CAS No.
* * * *	*
Red cabbage color, expressed from edible red cabbage heads via a pressing process using only acidified water.	None
* * * *	*

[FR Doc. 05–9482 Filed 5–17–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0110; FRL–7710–3]

Pinene Polymers; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes exemptions from the requirement of a tolerance for residues of several alpha- and/or beta-pinene polymers when used as inert ingredients in or on growing crops and when applied to raw agricultural commodities after harvest. Hercules, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of alpha and/or beta-pinene polymers.

DATES: This regulation is effective May 18, 2005. Objections and requests for hearings must be received on or before July 18, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit XI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0110. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; e-mail address: *boyle.kathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or 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. 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 Electronic Documents and Other Related Information?

In addition to using EDOCKET at (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of November 20, 1998 (63 FR 64494) (FRL–6027–6), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 6E4782) by Hercules, Inc. 1313 North Market St., Wilmington, DE 19894–0001. The petition requested that 40 CFR part 180 be amended by establishing an

exemption from the requirement of a tolerance for residues of alpha- and/or beta-pinene polymers for use as an inert ingredient in pesticide products. That notice included a summary of the petition prepared by the petitioner.

The Agency interpreted the petitioner's request for an exemption for alpha- and/or beta-pinene polymers, as a request to amend the existing exemption for beta-pinene polymers to include alpha- and/or beta-pinene polymers. In the Notice of Filing the petitioner used only the generalized term alpha- and/or beta-pinene polymers and did not specifically identify the chemicals by CAS Reg. No. or Name. The alpha- and/or beta-pinene polymers considered by the Agency are in the following Table.

CHEMICALS CONSIDERED

Common chemical name	CAS Nomenclature	CAS No.
Alpha-pinene polymer	Bicyclo[3.1.1]hept-2-ene, 2,6,6-trimethyl-, homopolymer	25766–18–1
Beta-pinene polymer	Bicyclo[3.1.1]heptane, 6,6-dimethyl-2-methylene-, homopolymer (9CI)	25719–60–2
Copolymer of alpha- and beta-pinene	Bicyclo[3.1.1]hept-2-ene, 2,6,6trimethyl, polymer with 6,6- dimethyl-2-methylenebicyclo [3.1.1]heptane (9CI)	31393–98–3
Polymerized alpha- pinene fraction from turpentine	Terpenes and Terpenoids, turpentine oil, alpha-pinene fraction, polymd.	70750–57–1

There were no comments received in response to the notice of filing.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by alpha- and/or beta-pinene polymers are discussed in this unit.

Alpha- and beta-pinene are bicyclic terpene hydrocarbons. They are the major components of turpentine. The two chemicals are closely related, having the same empirical formula of $C_{10}H_{16}$ and the same basic ring structure. Alpha- and/or beta-pinene polymers are manufactured by various processes that increase the molecular weight beyond that of alpha- or beta-pinene and include formation of a dimer (two ''pinenes'' in a single molecule), formation of a trimer (three ''pinenes'' in a single molecule), or polymerization.

The data considered in this assessment included information submitted by the petitioner, and information located by OPP on the internet, primarily information prepared by the National Toxicology Program (NTP) and the robust summaries for bicyclic terpene hydrocarbons submitted in 2002 to EPA by the Terpene Consortium of the Flavor and Fragrance High Production Volume Consortia (FFHPVC). The Agency evaluated first the toxicity of the alpha- and beta-pinene chemicals.

The toxicity of alpha- and beta-pinene is defined by studies from open-literature conducted with alpha-pinene, beta-pinene and various alpha- and beta-pinene mixtures. There is also a structure-activity-relationship (SAR) assessment for alpha-pinene. The findings of the SAR assessment are consistent with the studies from open-literature. The overall conclusions are the following; however, greater detail on the Agency's review and evaluation of the submitted studies and articles from open literature are in the Alpha- and Beta-Pinene Science Assessment in EDOCKET at (*http://www.epa.gov/edocket/*).

Alpha- and beta-pinene are of low acute toxicity via the oral, dermal and inhalation routes. Both alpha-and beta-pinene are irritants to the skin, eye and mucous membranes. Alpha- and beta-pinene are well-absorbed by all routes of exposure.

The subchronic toxicity of alpha- and beta-pinene compounds appears to be low. A subchronic oral toxicity study indicated minor changes in liver and thryoid weights at the two higher dose levels, which were not considered treatment related. There were no effects at approximately 800 mg/kg/day.

Genotoxicity study summaries indicated no evidence of mutagenicity in several *Salmonella typhimurium* reverse mutation assays, one unscheduled DNA assay, and one sister chromatid exchange assay. No chronic/carcinogenicity studies were identified; however, alpha- and beta-pinene are not structurally related to any known carcinogens.

A mixture primarily of alpha- and beta-pinene was tested in three developmental toxicity studies. Summaries of the results of these studies report that no maternal or developmental effects were noted in mice, hamsters, or rats at the highest dose levels, 560, 600, or 260 mg/kg/day, respectively. Alpha- and beta-pinene are not structurally related to any known developmental/reproductive toxicants.

The available information does not indicate that any of these chemicals are of higher toxicity. For alpha- and beta-pinene, the irritation effects are the effects of concern. Such effects are handled through use of personal protective equipment. Most of the turpentine produced in the United States is made up primarily of alpha-pinene (75 to 85%). Turpentine is known to act as a central nervous system (CNS) depressant, as is typical of certain organic chemicals. Given the relationship of turpentine to alpha-pinene, and the relationship of alpha- to beta-pinene, by extrapolation, there could be neurotoxicity concerns for pinene chemicals from dermal and inhalation exposures. Such exposures generally need to be ''high'' and/or ''prolonged'' for such toxicity effects to occur. Also, for acute exposures, such effects, generally, are reversible. Concerns are for occupational exposures since the potential for day in/day out exposure can occur in the workplace.

Few toxicity studies conducted with alpha- and/or beta-pinene polymers were located. A structure activity relationship (SAR) assessment indicated an overall low concern. The toxicity information on alpha- and beta- pinene indicate that these are not substances of high toxicity. Polymers composed of alpha and beta-pinene monomers are of a low molecular weight, and thus cannot be exempted from the requirement of a tolerance using the criteria specified for defining a low-risk polymer in 40 CFR 723.250. As previously explained, processes used to form an alpha- and/or beta-pinene polymer would increase the molecular weight. Greater molecular weight means decreased absorption. Alpha- and/or beta-pinene dimers, trimers, or polymers should therefore be of even lower toxicity than pure alpha- and beta-pinene.

V. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Human beings are exposed to a background level of naturally-occurring alpha- and beta-pinene. The two chemicals occur together, but beta-pinene occurs at lower levels than alpha-pinene. Atmospheric concentrations of alpha-pinene have been detected in deciduous and coniferous forests, and suburban and urban areas. Alpha-pinene has been detected in filberts, chicken, mangos, fresh grapefruit juice (0.054 ppm), guava, carrots, pistachio, safflower, sorghum, tomato, walnut, ginger, celery, unpasteurized orange juice (0.10–1.09 ppm), shrimp, and crab.

Neither alpha- nor beta-pinene are persistent in the environment. Given the ready volatilization and rapid degradation of alpha- and beta-pinene, it is unlikely to be present in any significant amounts in sources of drinking water.

Exposure to alpha- and beta-pinene can occur from use as a fragrance in consumer products (both are components of many essential oils) and as a flavoring in foods. However, the naturally-occurring exposures to alpha- and beta-pinene are more extensive than such anthropogenic exposures. The uses regulated by EPA are much smaller than the naturally-occurring exposures.

For greater detail see the Alpha- and Beta-Pinene Science Assessment in EDOCKET at (*http://www.epa.gov/edocket/*).

VI. Cumulative Effects

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to alpha-pinene, beta-pinene, or any alpha- and/or beta-pinene polymers. These chemicals do not appear to produce a toxic metabolite produced by other substances. These are lower toxicity chemicals; therefore, the resultant risks separately and/or combined should also be low. For the purposes of this action, therefore, EPA has not assumed that alpha-pinene, beta-pinene, or any alpha- and/or beta-pinene polymers have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

VII. Safety Factor for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data unless EPA concludes that a different margin of safety will be safe for infants and children. Three developmental toxicity studies (rat, mouse and hamster) conducted using a mixture of alpha- and beta-pinenes at high dose levels did not identify either maternal or developmental no observed adverse effect levels (NOAELs). There are no indications of increased susceptibility. These pinene chemicals are not structurally related to any known

developmental/reproductive toxicants. Therefore, EPA has not used a safety factor analysis to assess the risk. For the same reasons a tenfold safety factor is unnecessary.

VIII. Determination of Safety for U.S. Population, and Infants and Children

The database considered for this action included mostly toxicity data derived using alpha- and beta-pinene. Alpha- and beta-pinene exhibit low acute toxicity by the oral, dermal and inhalation routes, and low subchronic toxicity. Polymers composed of alpha and beta-pinene monomers, even those of low molecular weight, should be even less toxic than alpha- and beta-pinene considering that their absorption is decreased. Based on the available information on toxicity and exposure, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of alpha-pinene, beta-pinene, and alpha- and/or beta-pinene polymers. EPA finds that amending the existing exemption from the requirement of a tolerance for beta-pinene polymers to include alpha- and/or beta-pinene polymers will be safe for the general population including infants and children.

IX. Other Considerations

A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect * * *'' EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing alpha-pinene, beta-pinene, or any alpha- and/or beta-pinene polymers for endocrine effects may be required.

B. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Exemptions

There is an existing tolerance exemption for B-pinene polymers in 40 CFR 180.910 when applied to growing crops or to raw agricultural commodities after harvest.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for alpha- and/or beta-pinene polymers nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusions

Therefore, exemptions from the requirement for a tolerance are established for alpha-pinene polymer (CAS Reg. No. 25766–18–1), beta-pinene polymer (CAS Reg. No. 25719–60–2), copolymer of alpha- and beta-pinene (CAS Reg. No. 31393–98–3), and terpenes and terpenoids, turpentine oil, alpha-pinene fraction, polymd. (CAS Reg. No. 70750–57–1).

XI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0110 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 18, 2005.

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

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

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit XI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0110, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account

uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Statutory and Executive Order Reviews

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

XIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 27, 2005.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In § 180.910, the table is amended by removing the current B-pinene polymer entry and by alphabetically adding the following entries to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
Bicyclo[3.1.1]hept–2–ene, 2,6,6–trimethyl–, homopolymer (Alpha-pinene, homopolymer)(CAS Reg. No. 25766–18–1),.	.....	Surfactants, related adjuvants of surfactants
Bicyclo[3.1.1]heptane, 6,6–dimethyl–2–methylene–, homopolymer (Beta-pinene, homopolymer) (CAS Reg. No. 25719–60–2),.	.....	Surfactants, related adjuvants of surfactants

Inert ingredients	Limits	Uses
Bicyclo[3.1.1]hept–2–ene, 2,6,6–trimethyl–, polymer with 6,6–dimethyl–2– methylenebicyclo [3.1.1] heptane (Copolymer of alpha- and beta-pinene) (CAS Reg. No. 31393–98–3),.	.....	Surfactants, related adjuvants of surfactants
* * *	* *	* *
Terpenes and terpenoids, turpentine oil, alpha-pinene fraction, polymd. (CAS Reg. No. 70750–57–1)..	.....	Surfactants, related adjuvants of surfactants
* * *	* *	* *

* * * * *

[FR Doc. 05–9479 Filed 5–17–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0095; FRL–7711–9]

Fludioxonil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of fludioxonil (4-(2,2-difluoro-1,3-benzodioxol-4-yl)-*H*-pyrrole-3-carbonitrile) in or on pomegranate. Interregional Research Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective May 18, 2005. Objections and requests for hearings must be received on or before July 18, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under docket identification (ID) number OPP–2005–0095. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

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

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of March 17, 2004 (69 FR 12680) (FRL–7347–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3E6803) by IR-4, 681 US Highway #1 South, North Brunswick, NJ 08902–3390. The petition requested that 40 CFR 180.516 be amended by establishing a tolerance for residues of the fungicide fludioxonil (4-(2,2-difluoro-1,3-benzodioxol-4-yl)-*H*-pyrrole-3-carbonitrile) in or on pomegranate at 2.0 parts per million (ppm). This petition has subsequently been amended to propose pomegranate (post-harvest) at 5.0 ppm. That notice included a summary of the petition prepared by Syngenta Crop Protection, the registrant. There were no comments received in response to the notice of filing.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of fludioxonil on pomegranate at 5.0 ppm.

On September 29, 2004 (69 FR 58084) (FRL–7682–3), the Agency published a final rule establishing tolerances for residues of fludioxonil in or on bean, dry; bean, succulent; citrus, crop group 10; fruit, pome, group 11; grapefruit, oil; kiwifruit; leafy greens subgroup 4A, except spinach; melon subgroup 9A; and yam, true. When the Agency conducted the risk assessments in support of this tolerance action it assumed that fludioxonil residues would be present on pomegrante as well as on all foods covered by the proposed and established tolerances. Residues on pomegrante were included because there was a pending application under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.*, to register fludioxonil on pomegrante. Therefore, establishing the pomegranate tolerance will not change the most recent estimated aggregate risks resulting from use of fludioxonil, as discussed in the September 29, 2004 **Federal Register**. Refer to the September 29, 2004 **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action.

Based on the risk assessments discussed in the final rule published in the **Federal Register** of September 29, 2004 (69 FR 58084) FRL–7682–3), EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to fludioxonil residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. Apple, pear, kiwifruit, cantaloupe, yam, citrus, and pomegranate were analyzed for fludioxonil using Syngenta tolerance enforcement method AG-597B, Analytical Method for the Determination of CGA-219417 in Crops by High Performance Liquid Chromatography Including Validation Data, with Modifications. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no CODEX, Canadian, or Mexican tolerances/maximum residue levels (MRLs) for fludioxonil residues on pomegranate. Thus, harmonization is not an issue at this time.

V. Conclusion

Therefore, the tolerance is established for residues of fludioxonil (4-(2,2-difluoro-1,3-benzodioxol-4-yl)-*H*-pyrrole-3-carbonitrile), in or on pomegranate at 5.0 ppm.

VI. Objections and Hearing Requests

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

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

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

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include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VIII. Statutory and Executive Order Reviews

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 6, 2005.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.516 is amended by alphabetically adding the following commodity to the table in paragraph (a) to read as follows:

§ 180.516 Fludioxonil; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * *	*
Pomegranate	5.0
* * * *	*

* * * * *

[FR Doc. 05–9778 Filed 5–17–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0048; FRL–7708–3]

Alternaria destruens Strain 059; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the microbial pesticide *Alternaria destruens* Strain 059 (also referred to in this document as *A. destruens*) on all agricultural commodities when applied/used in accordance with label directions. Loveland Products Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *A. destruens*.

DATES: This regulation is effective May 18, 2005. Objections and requests for hearings must be received on or before July 18, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0048. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Tessa Milofsky, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0455; e-mail address: *milofsky.tessa@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or 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. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of January 17, 2001 (66 FR 4017) (FRL–6755–1), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 0F6191) by Loveland Products, Inc, 419 18th Street, Greenley, CO 80632–1286. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Alternaria destruens* Strain 059. This notice included a summary of the petition prepared by the petitioner Loveland Products, Inc. There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of the FFDCA defines ''safe '' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *.'' Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues '' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Alternaria destruens Strain 059 is toxic to several *Cuscuta* species including dodder, swamp dodder, largeseed dodder, field dodder, and smallseed dodder. This fungal pathogen is well-characterized, naturally-occurring, and has been isolated in the

United States, from fields located in Wisconsin and Massachusetts. Results of the acute toxicology, pathogenicity, and irritation studies required of the petitioner under FFDCA section 408(d)(2)(A), in support of the petition for an exemption from the requirement of a tolerance for *A. destruens* Strain 059, indicate that the fungus is non-toxic, non-pathogenic, non-irritating to skin, and minimally irritating to eyes.

Tests performed by Loveland Products, Inc. and cited in support of its food tolerance exemption petition are summarized below:

1. *Acute oral toxicity* - Rat (OPPTS Guideline 870.1100) MRID 451664–02: *Test material*: *Alternaria destruens* Strain 059. *Test dose*: 1 x 10^7 CFU/animal. *Result*: No mortality, no observable abnormalities on necropsy, and minor clinical signs (hair loss in one male, colored material around nose on a second male, and reduced fecal production in one female) with complete symptom clearance by day seven. The pesticide was classified as Toxicity Category IV for acute oral toxicity (C. Etsitty/J. Kough memorandum to S. Matten, 10/25/02 (hereafter referred to as BPPD Review - 10/25/02)).

2. *Acute pulmonary toxicity / pathogenicity* - Rat (OPPTS Guideline 885.3150) MRID 451664–03: *Test material*: *Alternaria destruens* Strain 059. *Test dose*: 5.0 x 10^5 CFU/animal. *Result*: Strain 059 was shown to be non-toxic, non-infective, and non-pathogenic to rats when administered intratracheally at 5.0 x 10^5 CFU/animal. Rats exhibited rales, colored material around nose/eyes, anogenital staining, few feces, labored breathing, and/or rough hair coat after dosing, however full recovery was seen within six days of test administration. Four test animals died following exposure and rats sacrificed on days three, seven, or 14, exhibited lungs with multifocal areas of congestion and consolidation, mottled colored areas, and enlargement. These symptoms are characteristic of an immune response and are considered normal when test material is delivered using this vehicle of exposure (BPPD Review - 10/25/02).

3. *Acute injection toxicity / pathogenicity* - Rat (OPPTS Guideline 885.3200) MRID 451664–04: *Test material*: *Alternaria destruens* Strain 059. *Test dose*: 9.6 x 10^6 CFU/animal. *Result*: No mortality lethal dose ($(LD)_{50}$ > 9.6 x 10^6 CFU per animal). Following exposure to *A. destruens*, rats exhibited soiled hair coat, emission of colored material around the nose, anogenital staining, and soft/few/no feces for up to eight days following test material administration. Gross necropsy provided evidence of an inflammatory response to the test substance in the form of multiple adhesions associated with liver, spleen, diaphragm, stomach, and/or testes/ovaries. Some males exhibited one or more of the following: Enlarged testis, small testis, lump in the scrotum, subcutaneous lump, multiple adhesions and nodular masses associated with the testes. Subcutaneous lumps and/or multiple nodules in the abdominal cavity were noted in some females. Adhesions and lumps identified in the abdominal and peritoneal area are indicative of an inflammatory response to administration of the test material and are considered normal (BPPD Review - 10/25/02).

4. *Acute dermal toxicity* - Rat (OPPTS 870.1200) MRID 451664–05: *Test material*: *Alternaria destruens* Strain 059. *Test dose*: 5,000 milligrams/kilogram (mg/kg) of animal weight. *Result*: No mortality (LD_{50} > 5,000 mg/kg animal weight), no observable abnormalities on necropsy. The pesticide is considered non-toxic and is therefore classified as Toxicity Category IV for acute dermal toxicity.

5. *Acute inhalation toxicity* - Rats (OPPTS 870.1300) MRID 451664–06: *Test material*: *Alternaria destruens* Strain 059. *Test dose*: 2.03 mg/liter (L). *Result*: No mortality (LD_{50} > 2.03 mg/L). Ocular and nasal discharge, hunched posture, and hypoactivity were noted during exposure. Upon removal from the exposure chamber, rats exhibited ocular and/or nasal discharge. Full recovery was noted within 17 hours of test completion. The acute lethal dose (LC_{50}) was greater than 2.03 mg/L. The pesticide is considered non-irritating and is therefore classified as Toxicity Category IV for acute inhalation toxicity.

6. *Primary eye irritation* - Rabbits (OPPTS 870.2400) MRID 451664–07: *Test material*: *Alternaria destruens* Strain 059. *Test dose:* 0.1 gram (g)/animal. *Result*: No corneal opacity or iritis. All test animals showed an initial positive conjunctival irritation response to *A. destruens*. Full resolution was seen within 48 hours of test administration. The pesticide is considered to be minimally irritating and is therefore classified as Toxicity Category III for primary eye irritation.

7. *Primary dermal irritation* - Rabbits (OPPTS 870.2500) MRID 451664–08: *Test material*: *Alternaria destruens* Strain 059. *Test dose*: 0.5 g/animal. *Result*: No dermal irritation was noted. The test substance was found to be nonirritating. The pesticide is considered non-irritating and is therefore classified as Toxicity Category IV for primary dermal irritation.

8. *Hypersensitivity study* - (OPPTS 870.2600) *Test material*: Not applicable (N/A). *Test dose:* N/A. *Result*: Loveland Products, Inc. submitted a request for a data waiver of this study. A waiver was granted due to the following considerations:

i. The non-toxicity and low irritation potential of the test substance, as demonstrated by acute oral, acute dermal, acute pulmonary, injection toxicity/pathogenicity, and dermal irritation studies;

ii. Few opportunities for exposure via dermal and inhalation routes; and

iii. No documented reports of hypersensitivity incidents during production and testing of the active ingredient and end use product.

9. *Immune response study* - (OPPTS 885.3800) *Test material*: N/A. *Test dose*: N/A. *Result*: Loveland Products, Inc. submitted a request for a data waiver of this study. The submitted acute toxicity and pathogenicity studies demonstrated that *A. destruens* is not toxic, infective, or pathogenic to test animals. This finding justifies the data waiver request. Therefore, the Agency waived the data requirement for immune response testing.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

Alternaria destruens may be applied early-season, as a granular formulation that is sprinkled on soil, or mid- to late-season as a foliar spray on fruit and vegetable crops. Proposed use sites include vegetables, fruits, field crops, and nonagricultural areas such as uncultivated rights-of-way, roadsides, and fallow areas.

1. *Food*. Because of the proposed use of *A. destruens* on food crops, fungal residues may be present on agricultural commodities. However, negligible to no risk is expected for the general population, including infants and children, because *A. destruens* demonstrated no pathogenicity or oral toxicity at the maximum doses tested (see Unit III of this document).

2. *Drinking water exposure*. *Alternaria destruens* does not thrive in aquatic

environments and there are no aquatic use sites for the pesticide. Although cranberry is listed as a use site, the product may only be applied to dry bogs. Accordingly, application of this pesticide to agricultural crops is not expected to increase drinking water exposure to *A. destruens*. Furthermore, any material that is consumed through drinking water would pose negligible to no risk for the general population, including infants and children, due to the pesticide's low toxicity classification (see Unit III of this document).

B. Other Non-Occupational Exposure

Alternaria destruens will be applied to agricultural fields and dry bogs. Since these application sites are not generally located near residential areas, there will be little opportunity for non-occupational exposures to *A. destruens*. Moreover, in the unlikely event of such exposure, no harm would be expected due to the active ingredient's low toxicity classification.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires the Agency, when considering whether to establish, modify, or revoke a tolerance, to consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' These considerations include the possible cumulative effects of such residues on infants and children. Due to the overall minimal toxicity and non-pathogenicity of the active ingredient, cumulative effects from the residues of this product are not anticipated.

VI. Determination of Safety for U.S. Population, Infants and Children

There is a reasonable certainty that no harm to the U.S. population, including infants and children, will result from aggregate exposure to residues of *A. destruens* due to its use as a microbial pest control agent. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. As discussed in Unit III, above, *A. destruens* is minimally toxic, non-pathogenic, and non-infective to mammals. Accordingly, exempting *A. destruens* from the requirement of a tolerance is considered safe and poses no significant risks.

FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure, unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety), which often are referred to as uncertainty factors, are incorporated into EPA risk assessment either directly or through the use of a margin of exposure analysis or by using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk. Actual exposures to adults and children through diet are expected to be several orders of magnitude less than the doses used in the toxicity and pathogenicity tests referenced in Unit III of this document. Thus, the Agency has determined that an additional margin of safety for infants and children is unnecessary.

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under section 408(p) of the FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen, or other such endocrine effects as the Administrator may designate.'' *Alternaria destruens* is not a known endocrine disruptor nor is it related to any class of known endocrine disruptors. Consequently, endocrine-related concerns did not adversely impact the Agency's safety finding for *A. destruens*.

B. Analytical Method(s)

The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation for the reasons stated above, including the active ingredient's low mammalian toxicity. *Alternaria destruens* is a common and naturally-occurring fungus. There is likelihood of prior exposure for some individuals and exposure to this fungus is not expected to increase dramatically though use of the pesticide in approved use sites. For these reasons, an analytical method is not required.

C. Codex Maximum Residue Level

There is no Codex Alimentarium Commission Maximum Residue Level for *A. destruens*.

VIII. Conclusions

There is no evidence of adverse effects from oral, dermal, or inhalation exposure to this microbial agent (see Unit III of this document), nor is *A. destruens* expected to disrupt hormone or endocrine systems. Further, *A. destruens* is not expected to negatively impact the quality of drinking water. Consequently, there is reasonable certainty that no harm to the U.S. population, including infants and children, will result from aggregate exposure to residues of *A. destruens*.

IX. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0048 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 18, 2005.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked

confidential may be disclosed publicly by EPA without prior notice.

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

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES.** Mail your copies, identified by docket ID number OPP–2005–0048, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

X. Statutory and Executive Order Reviews

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

XI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure,

Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: May 5, 2005.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.1256 is added to subpart D to read as follows:

§ 180.1256 Alternaria destruens Strain 059; Exemption from the Requirement of a Tolerance

An exemption from the requirement of a tolerance is established for residues of the microbial pesticide *Alternaria destruens* Strain 059 when used in or on all raw agricultural commodities when applied/used in accordance with label directions.

[FR Doc. 05–9903 Filed 5–17–05; 8:45 am]

BILLING CODE 6560–50–S

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301–2, 301–10, 301–11, 301–13, 301–50, 301–70, 301–71, 304–3, and 304–5

[FTR Amendment 2005–03; FTR Case 2005–304]

RIN 3090–AI10

Federal Travel Regulation; Transportation Expenses

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the Federal Travel Regulation (FTR), by clarifying various provisions regarding temporary duty (TDY) travel. The explanation of changes is addressed in the supplementary information below. The FTR and any corresponding documents may be accessed at GSA's website at *http://www.gsa.gov/ftr*.

DATES: *Effective Date*: May 18, 2005.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat (VIR), Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Umeki Gray Thorne, Office of Governmentwide Policy, Travel Management Policy, at (202) 208–7636. Please cite FTR Amendment 2005–03; FTR case 2005–304.

SUPPLEMENTARY INFORMATION:

A. Background

The changes in this final rule clarify existing sections of chapters 301 and 304 as follows:

1. In section 301–2.5(a) ''premium-class'' is replaced with ''first-class or business-class''.

2. In section 301–10.106(b) ''premium class'' is replaced with ''business-class''.

3. In section 301–10.121 an introductory paragraph is added and the definition of ''coach-class'' is revised; the term and definition of ''premium-class'' is deleted; the term and definition of ''business-class'' is added; the definition of ''first-class'' is revised; the term and definition of ''premium-class other than first-class'' is deleted; and the definition of ''single-class'' is moved from paragraph (e) to paragraph (d).

4. In section 301–10.123 the introductory paragraph is revised and in paragraph (a) ''premium-class other than first-class'' is replaced with ''business-class''.

5. In section 301–10.124 the section heading and the note to section 301–10.124 ''premium-class other than first-class'' is replaced with ''business-class''. In section 301–10.124 ''premium-class'' is replaced with ''first-class and business-class''.

6. In section 301–11.20(a)(4) ''less than premium-class'' is replaced with ''coach-class''.

7. In section 301–13.3(f) ''premium-class'' is replaced with ''first-class'' and ''business-class''.

8. Section 301–50.6(a)(2) is revised.

9. Section 301–70.102(b)(1) is revised.

10. In section 301–71.105(a) ''premium-class'' is replaced with ''first-class or business-class''.

11. In Appendix C to Chapter 301—Standard Data Elements for Federal Travel, the phrases ''premium class'' and ''Non-premium class'' are replaced with the phrases ''first-class and business class'' and ''Non-first-class and Non-business-class'' respectively, wherever they appear.

12. In section 304–3.9 ''premium-class other than first-class common carrier'' is replaced with ''business-class''.

13. In section 304–5.5 ''premium other than first-class'' is replaced with ''business-class''.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 301–2, 301–10, 301–11, 301–13, 301–50, 301–70, 301–71, 304–3, and 304–5.

Government employees, Travel and transportation expenses.

Dated: May 5, 2005.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA amends 41 CFR parts 301–2, 301–10, 301–11, 301–13, 301–50, 301–70, 301–71, 304–3, and 304–5 as set forth below:

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

PART 301–2—GENERAL RULES

■ 1. The authority citation for 41 CFR part 301–2 continues to read as follows:

Authority: 5 U.S.C. 5707, 31 U.S.C. 1353; 49 U.S.C. 40118.

§ 301–2.5 [Amended]

■ 2. Amend § 301–2.5(a) by removing ''premium-class service'' and adding ''first-class or business-class service'' in its place.

PART 301–10—TRANSPORTATION EXPENSES

■ 3. The authority citation for 41 CFR part 301–10 is revised to read as follows:

Authority: 5 U.S.C. 5707, 40 U.S.C. 121(c); 49 U.S.C. 40118, Office of Management and Budget Circular No. A–126, ''Improving the

Management and Use of Government Aircraft.'' Revised May 22, 1992.

§ 301–10.106 [Amended]

■ 4. Amend § 301–10.106(b) by removing ''premium class'' and adding ''business-class'' in its place.

■ 5. Revise § 301–10.121 to read as follows:

§ 301–10.121 What classes of airline accommodations are available?

The following classes of air accommodations are available:

(a) *Coach-class.* The basic class of accommodations offered to travelers regardless of fare paid. The terms ''tourist'' or ''economy-class'' are sometimes used for this class of accommodation. When authorizing this class of accommodation, use of the contract city-pair fare is mandatory.

(b) *Business-class.* A premium-class of accommodation offered by the airlines that is higher than coach and lower than first class, in both cost and amenities. This class of accommodation is generally referred to as ''business, business elite, business first, world business, connoisseur, or envoy'' depending on the airline. Not all city-pair fares are available in business-class, and even when use of business-class is authorized, the use of business-class city-pair fares is optional. This class of service may only be authorized in accordance with the provisions of § 301–10.124 of this part.

(c) *First-class.* Generally, the highest class of accommodation offered by the airlines in terms of both cost and amenities and termed ''first-class'' by the airlines and any reservation system. This class of accommodation may only be authorized in accordance with the provisions of § 301–10.123 of this part. There are no contract city-pair fares for this class of accommodation.

(d) *Single-class.* This term applies when an airline offers only one class of accommodations to all travelers.

■ 6. Amend § 301–10.123 by revising the introductory paragraph and the first sentence of paragraph (a) to read as follows:

§ 301–10.123 When may I use first-class airline accommodations?

You may use first-class airline accommodations only when your agency specifically authorizes/approves your use of such accommodations, for the reasons given under paragraphs (a) through (d) of this section.

(a) No coach or business-class accommodations are reasonably available. * * *

* * * * *

■ 7. Amend § 301–10.124 by—

■ a. Revising the section heading and introductory paragraph;

■ b. Removing from paragraph (a) ''premium-class'' and adding ''first-class and business-class'' in its place; and

■ c. Removing from paragraphs (c), (d), and the note to § 301–10.124, ''premium-class other than first class'' wherever it appears and adding ''business-class'' in its place.

■ The revised text reads as follows:

§ 301–10.124 When may I use business-class airline accommodations?

Only when your agency specifically authorizes/approves your use of such accommodations, for the reasons given under paragraphs (a) through (i) of this section.

* * * * *

PART 301–11—PER DIEM EXPENSES

■ 8. The authority citation for 41 CFR part 301–11 continues to read as follows:

Authority: 5 U.S.C. 5707.

§ 301–11.20 [Amended]

■ 9. Amend § 301–11.20 in paragraph (a)(4) by removing ''less than premium-class'' and adding ''coach-class'' in its place.

PART 301–13—TRAVEL OF AN EMPLOYEE WITH SPECIAL NEEDS

■ 10. The authority citation for 41 CFR part 301–13 continues to read as follows:

Authority: 5 U.S.C. 5707.

■ 11. Amend § 301–13.3 by revising paragraph (f) to read as follows:

§ 301–13.3 What additional travel expenses may my agency pay under this part?

* * * * *

(f) First-class accommodations under § 301–10.123(b) and business-class accommodations under § 301–10.124(c) of this chapter when necessary to accommodate your special need.

PART 301–50—ARRANGING FOR TRAVEL SERVICES

■ 12. The authority citation for 41 CFR part 301–50 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c).

■ 13. Amend § 301–50.6 by revising paragraph (a)(2) to read as follows:

§ 301–50.6 Are there any limits on travel arrangements I may make?

(a)* * *

(2) You may use first-class accommodations only under §§ 301–10.123, 301–10.162, and 301–10.183 and business-class accommodations only under § 301–10.124 of this chapter; and

* * * * *

PART 301–70—INTERNAL POLICY AND PROCEDURE REQUIREMENTS

■ 14. The authority citation for 41 CFR part 301–70 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note), Office of Management and Budget Circular No. A–126, ''Improving the Management and Use of Government Aircraft.'' Revised May 22, 1992.

■ 15. Amend § 301–70.102 by revising paragraph (b)(1) to read as follows:

§ 301–70.102 What governing policies must we establish for authorization and payment of transportation expenses?

* * * * *

(b)* * *

(1) Use of business-class service for airlines under § 301–10.124 and first-class service for air, rail, and ship under §§ 301–10.123, 301–10.162, and 301–10.183 of this chapter;

* * * * *

PART 301–71—AGENCY TRAVEL ACCOUNTABILITY REQUIREMENTS

■ 16. The authority citation for 41 CFR part 301–71 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note).

§ 301–71.105 [Amended]

■ 17. Amend § 301–71.105 in paragraph (a) by removing ''premium-class'' and adding ''first-class or business-class'' in its place.

Appendix C to Chapter 301 [Amended]

■ 18. Amend Appendix C to Chapter 301 by removing ''premium class'' wherever it appears and adding ''first-class and business-class'' in its place, and removing ''Non-premium class'' wherever it appears and adding ''Non-first-class and Non-business-class'' in its place.

CHAPTER 304—PAYMENT OF TRAVEL EXPENSES FROM A NON-FEDERAL SOURCE

PART 304–3—EMPLOYEE RESPONSIBILITY

■ 19. The authority citation for 41 CFR part 304–3 continues to read as follows:

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

■ 20. Revise § 304–3.9 to read as follows:

§ 304–3.9 May I use business-class accommodations when a non-Federal source pays in full for my transportation expenses to attend a meeting?

Yes, you may use business-class accommodations if your agency authorizes you to do so in accordance with § 304–5.5 of this chapter.

PART 304–5—AGENCY RESPONSIBILITIES

■ 21. The authority citation for 41 CFR part 304–5 continues to read as follows:

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

§ 304–5.5 [Amended]

■ 22. Amend § 304–5.5 by removing from the section heading and introductory paragraph ''premium other than first-class'' and adding ''business-class'' in its place.

[FR Doc. 05–9893 Filed 5–17–05; 8:45 am]

BILLING CODE 6820–14–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1152, MB Docket No. 04–201, RM–10972, RM–11103]

Radio Broadcasting Services; Birmingham, Orrville, Selma and Shorter, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition filed by SSR Communications Incorporated proposing the allotment of Channel 300A at Shorter, Alabama, as that community's first local service. *See* 69 FR 34115, published June 18, 2004. This document also denies a counterproposal filed jointly by Scott Communications, Inc., licensee of Station WJAM–FM, Channel 300A, Orrville, Alabama and Alexander Broadcasting Company, Inc., licensee of Station WALX(FM), Channel 265C2, Selma, Alabama, requesting the substitution of Channel 300C3 for Channel 300A at Orrville, Alabama, reallotment of Channel 300C3 from Orrville to Shorter, Alabama, as its first local service and modification of the Station WJAM–FM license. To accommodate the reallotment, the counterproposal also proposed the reallotment of Channel 265C2 from Selma to Orrville, Alabama to prevent removal of Orrville's sole local service and modification of the Station WALX(FM) license and substitution of Channel 299C0 for Channel 299C at Birmingham, Alabama and modification of the Station WRAX license. Channel 300A can be allotted to Shorter, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, provided there is a site restriction of 13.3 kilometers (8.3 miles) south of the community. The reference coordinates for Channel 300A at Shorter are 32–16–36 North Latitude and 85–56–20 West Longitude.

DATES: June 13, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MB Docket No. 04–201, adopted April 25, 2005, and released April 27, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Shorter, Channel 300A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–9815 Filed 5–17–05; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1146; MB Docket No. 04–387, RM–11083]

Radio Broadcasting Service; Cedarville, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Jeffrey Cotton allots Channel 260A at Cedarville, California, as the community's first local aural transmission service. *See* 69 FR 61617, published October 20, 2004. Channel 260A can be allotted to Cedarville in compliance with the Commission's minimum distance separation requirements at the center of the community. The reference coordinates for Channel 260A at Cedarville are 41–31–45 North Latitude and 120–10–20 West Longitude. A filing window for Channel 260A at Cedarville, California will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective June 13, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 04–387, adopted April 25, 2005, and released April 27, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Cedarville, Channel 260A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–9814 Filed 5–17–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1150; MB Docket No. 04–329, RM–11050; MB Docket No. 04–332, RM–11054; MB Docket No. 04–333, RM–11055; MB Docket No. 04–334, RM–11056; MB Docket No. 04–335, RM–11057; MB Docket No. 04–336, RM–11058; MB Docket No. 04–337, RM–11059]

Radio Broadcasting Services; Cambria, CA; Carbon, TX; Coachella, CA; Dulac, LA; Fallon Station, NV; King City, CA; and Northport, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a multi-docket *Notice of Proposed Rulemaking,* 69 FR 54614 (September 9, 2004), this *Report and Order* allots new FM channels in seven different communities, including Cambria, California; Carbon, Texas; Coachella, California; Dulac, Louisiana; Fallon Station, Nevada; King City, California; and Northport, Alabama. The Audio Division, at the request of SSR Communications, Inc., allots Channel 242A at Dulac, Louisiana, as the community's first local aural transmission service. Channel 242A can be allotted to Dulac in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.0 kilometers (3.7 miles) southwest of Dulac. The reference coordinates for Channel 242A at Dulac are 29–21–09 North Latitude and 90–45–36 West Longitude. *See* **SUPPLEMENTARY INFORMATION,** *infra.*

DATES: Effective June 13, 2005. The window period for filing applications for these allotments will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket Nos. 04–329, 04–332, 04–333, 04–334, 04–335, 04–336, and 04–337, adopted April 25, 2005, and released April 27, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

The Audio Division, at the request of Daniel R. Feely, allots Channel 275A at King City, California, as the community's fourth local aural transmission service. Channel 275A can be allotted to King City in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.3 kilometers (0.2 miles) southwest of King City. The reference coordinates for Channel 275A at King City are 36–12–40 North Latitude and 121–07–40 West Longitude.

The Audio Division, at the request of Linda A. Davison, allots Channel 287C at Fallon Station, Nevada, as the community's first local aural transmission service. Channel 287C can be allotted to Fallon Station in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.1 kilometers (12.5 miles) north of Fallon Station. The reference coordinates for Channel 287C at Fallon Station are 39–36–00 North Latitude and 118–43–12 West Longitude.

The Audio Division, at the request of Dana J. Puopolo, allots Channel 278A at Coachella, California, as the community's third local aural transmission service. Channel 278A can be allotted to Coachella in compliance with the Commission's minimum distance separation requirements at the city reference coordinates, and therefore this allotment requires no site restrictions. The reference coordinates for Channel 278 at Coachella are 33–40–49 North Latitude and 116–10–23 West Longitude. The Mexican government has concurred with this allotment.

The Audio Division, at the request of Linda A. Davidson, allots Channel 293A at Cambria, California, as the community's fourth local aural transmission service. Channel 293A can be allotted to Cambria in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.4 kilometers (3.4 miles) north of Cambria. The reference coordinates for Channel 293A at Cambria are 35–36–36 North Latitude and 121–06–00 West Longitude.

The Audio Division, at the request of Charles Crawford, allots Channel 238A at Carbon, Texas, as the community's first local aural transmission service. Channel 238A can be allotted to Carbon in compliance with the Commission's minimum distance separation requirements at the city's reference coordinates and therefore this allotment requires no site restrictions. The reference coordinates for Channel 238A at Carbon are 32–16–14 North Latitude and 98–49–42 West Longitude.

The Audio Division, at the request of TTI, Inc., allots Channel 286A at Northport, as the community's second local aural transmission service, with a site restriction of 8.6 kilometers (5.4 miles) southwest of Northport. The reference coordinates for Channel 286A are 33–11–02 North Latitude and 87–39–10 West Longitude.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Channel 286A at Northport.

■ 3. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 293A at Cambria, Channel 278A at Coachella, and Channel 275A at King City.

■ 4. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Dulac, Channel 242A.

■ 5. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Fallon Station, Channel 287C.

■ 6. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Carbon, Channel 238A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–9813 Filed 5–17–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1185, MB Docket No. 01–325, RM–10136]

Television Broadcast Service; Green Bay, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Green Bay 44, L.L.C., substitutes channel 50+ for channel 44+ at Green Bay, Wisconsin. *See* 66 FR 63209, December 5, 2001. TV channel 50 can be allotted to Green Bay, Wisconsin, with a plus offset at coordinates 44–30–48 N. and 88–00–24 W. with reduced ERP of 802 kW. Since the community of Green Bay is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government was obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective June 20, 2005.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 01–325, adopted April 27, 2005, and released May 6, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 301–816–2820, facsimile 301–816–0169, or via-e-mail *joshir@erols.com*.

This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13. In addition, therefore, it does not contain any new ore modified ''information collection burden for small business concerns with fewer that 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107–198, *see* 44 U.S.C. 3506(c)(4).

The Commission will send a copy of this Report & Order, etc. in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

■ 2. Section 73.606(b), the Table of Television Allotments under Wisconsin, is amended by removing TV channel 44+ and adding TV channel 50+ at Green Bay.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 05–9812 Filed 5–17–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 00–32; FCC 04–265]

The 4.9 GHz Band Transferred From Federal Government Use

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission considers a petition for reconsideration filed on July 30, 2003, by the National Public Safety Telecommunications Council (NPSTC). NPSTC requests the Commission to reconsider certain technical rules in which the Commission adopted licensing and service rules for the 4940–4990 MHz (4.9 GHz) band. The Commission endeavors to provide 4.9 GHz band licensees with the maximum operational flexibility practicable and to encourage effective and efficient utilization of the spectrum. The document makes significant strides towards ensuring that agencies involved in the protection of life and property possess the communications resources needed to successfully carry out their mission.

DATES: Effective July 18, 2005.

FOR FURTHER INFORMATION CONTACT: Tim Maguire, *tmaguire@fcc.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Memorandum Opinion and Order*, FCC 04–265, adopted on November 9, 2004, and released on November 12, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. The 4.9 GHz band was transferred from Federal Government to non-Federal Government use in 1999, in accordance with the provisions of the Omnibus Budget Reconciliation Act. In 2000, the Commission released a *Notice of Proposed Rulemaking* (65 FR 14230, March 16, 2000) proposing to allocate the 4.9 GHz band to non-Government fixed and mobile services, and to allow flexible use of this band. In 2002, the Commission adopted the fixed and mobile allocation, designated the band for use in support of public safety, and sought comment on the establishment of licensing and service rules for the 4.9 GHz band. In the *Third Report and Order*, the Commission adopted service rules for use of this band and addressed petitions for reconsideration of its decision to prohibit aeronautical mobile operations in this band.

2. The current NPSTC petition urges us to adopt two different emission masks, one mask for low power operations, the other for high power operations. NPSTC also proposes a technology standard for general and interoperability use in the 4.9 GHz band, and seeks mandatory regional planning and the inclusion of a conflict resolution process in regional plans. We received comments on the NPSTC proposals from equipment manufacturers, standards organizations, public safety licensees and others.

3. In the *Second Report and Order*, and *Further Notice of Proposed Rulemaking* (67 FR 17038 April 9, 2002), the Commission sought comment on whether technical standards should be adopted for the 4.9 GHz band, and, if so, what standards would be appropriate. The Commission then adopted a flexible band plan suited to emerging broadband technologies that could enhance public safety operations. It also adopted an emission mask to minimize out-of-band emissions that could result in interference between 4.9 GHz devices. This mask, currently incorporated into § 90.210 of the rules, is referred to herein as the *Section 90.210 Mask*. The parameters of this mask were derived from recommendations from the two parties commenting on the emission mask, Motorola, Inc. (Motorola) and the Association of Public-Safety Communications Officials-International, Inc. (APCO).

4. In the instant Petition, NPSTC submits that the *Section 94.210 Mask* is unnecessarily restrictive and would add significantly to the cost of 4.9 GHz equipment, thereby potentially delaying public safety's use of the band. It argues that public safety must leverage currently available (*i.e.,* ''commercial-off-the-shelf'' (COTS)) technologies used in adjacent bands, such as the 5.4. GHz Unlicensed National Information Infrastructure (U–NII) unlicensed band and the intelligent Transportation System (ITS) band, NPSTC indicates that the current mask would prohibit any significant transfer of technology from the equipment used in these bands. For example, NPSTC contends that the more restrictive mask would hamper the ability of 4.9 GHz equipment to use chipsets employed in equipment designed for the U–NII or ITS bands.

5. As a substitute for the *Section 90.210 Mask*, NPSTC recommends that the Commission adopt the DSRC–A and DSRC–C masks applicable to ITS equipment. It proposes the DSRC–A mask for low power 4.9 GHz devices with transmitter output power of 20 dBm or less, and recommends the DSRC–C mask for higher power 4.9 GHz devices with transmitter power output greater than 20 dBm. It also contends that adoption of these emission masks could enable manufacture of devices that could operate in the 4.9 GHz band, the ITS band and the U–NII band, thus providing the public safety community access to these bands using a single, low-cost device.

6. In its comments, PacketHop, Inc. (PacketHop), a supplier of mobile broadband *ad hoc* networking and applications for public safety, states that adopting NPSTC's recommendations would create incentives for IEEE 802.11 manufacturers to leverage their current technical skills and manufacturing techniques to develop new, low cost, reliable devices built to a nationwide uniform technical standard. These devices, PacketHop claims, would give the public safety community access to affordable and interoperable equipment. The IEEE 802.18 Group submits that the mask identified in the amended rules 90.210(l), 47 CFR 90.210 will explicitly preclude the use of widely available equipment compliant with IEEE 802.11a standards and that to meet the mask as currently specified would require the redesign of existing chipsets and equipment specifically for use in this band, creating a niche market that will result in much higher equipment costs with virtually no benefit to the Public Safety community. It further indicates that the use of the IEEE 802.11a channel mask [which is identical to the DSRC–A mask] will have minimal effect on in-band interference between channels and will permit the use of IEEE 802.11a compliant equipment.

7. Motorola initially favored the use of the DSRC–C mask at power levels of 0 dBm, or more, indicating that there are relatively straightforward and inexpensive ways to meet standards such as the *Section 90.210 Mask* and the DSRC–C mask, while still being able to take advantage of COTS technology. It offered simulations purporting to show that use of the DSRC–A mask at power levels up to 20 dBm would result in excessive interference when multiple 4.9 GHz devices are used at the site of an incident. Later, however, Motorola reached a consensus with NPSTC that the DSRC–A and DSRC–C masks were a reasonable regulatory substitute for the *Section 90.210 Mask*, and that the DSRC–A mask should be used for low power devices while the more restrictive DSRC–C mask should be used for high power devices. However, NPSTC and Motorola reached no consensus on the definition of ''high power'' and ''low power'' in this context. Motorola argued that devices using powers greater than 8 dBm should be classified as high power, whereas NPSTC maintained that devices should be classified as ''low power'' if they employed powers of 20 dBm or less.

8. Ultimately, on September 10, 2004, NPSTC filed an *ex parte* document that included a set of recommended rules that put the ''high power'' breakpoint at 20 dBm. On the next business day, Motorola filed an *ex parte* letter stating that while it continued to believe that an 8 dBm breakpoint was more appropriate, ''Motorola and NPSTC concur on the rules needed if a 20 dBm breakpoint is used.''

9. We recognize that benefits would accrue to public safety agencies if they could use 4.9 GHz devices adapted from COTS technologies in nearby bands. In particular, leveraging such technologies could result in savings for state and local governments and provide the potential for deployment of dual-band devices that make Internet access available via the U–NII band adjacent to the 4.9 GHz band. We are persuaded by the comments submitted that we may safely adopt the DSRC–A and DSRC–C masks in lieu of the *Section 90.210 Mask* currently in our Rules, and, therefore, will not burden public safety agencies with unnecessary costs for 4.9 GHz devices.

10. We are encouraged that Motorola and NPSTC reached consensus on the rules proposed by NPSTC. However, after review of the submissions by all parties, we believe that 20 dBm is, in fact, the appropriate breakpoint. This power level strikes a reasonable balance between interference avoidance and 4.9 GHz equipment affordability.

11. Our decision to adopt a 20 dBm breakpoint is also grounded on the fact that even consumer equipment in this frequency range is relatively tolerant of interference. The DSRC–A mask is identical to the mask defined in the widely-used 802.11 ''Wi-Fi'' standard for equipment used for in-home wireless LANs and found in consumer ''hotspots'' in businesses ranging from coffee shops to airports. The adjacent channel rejection (ACR) of an 802.11 receiver, using Orthogonal Frequency Division Multiplexing (OFDM), is defined by data throughput as a function of the level of adjacent channel interference. For example, an 802.11 receiver can sustain data throughput of 48 Mbits/s in the presence of an equal-power adjacent channel signal and a throughput of 6 Mbits/s when the adjacent channel signal is 16 dB higher. Thus, adjacent channel interference in these systems is a ''graceful degradation'' of data throughput, although loss of service can eventually result at higher levels of adjacent channel interference. Moreover, the potential for interference can be anticipated and taken into account in the placement of 4.9 GHz devices at the scene of an incident.

12. In assessing the proper breakpoint for requiring the more restrictive emission mask, we were mindful that, although 4.9 GHz equipment operating at power levels of 8 dBm or less may be adequate for consumer applications, the reliability requirements of public safety

communications favor higher power levels, especially given propagation characteristics at these frequencies. Accordingly, were we to preclude use of higher power on affordable units using the DSRC–A mask, such devices could have so few applications that they might be unattractive to public safety agencies, which then would have to resort to specialized higher power units employing the DSRC–C mask—if they could afford such units. By comparison, allowing the DSRC–A mask to be used for low-cost 4.9 GHz devices at power levels up to 20 dBm would provide enhanced reliability—notably when obstructions are present between devices—albeit with the possibility of some degradation in throughput if multiple systems are operated on adjacent channels in close proximity to one another. In sum, technical, economic and operational considerations have informed our decision that the DSRC–A mask should be permitted for power levels of 20 dBm and less, and that the DSRC–C mask should apply to all power levels in excess of 20 dBm.

13. NPSTC contends that technology standards are necessary to provide roaming capability and requests us to develop a ''clear path'' toward identification and adoption of a technology standard for general and interoperability use within the 4.9 GHz band. NPSTC believes a standard could be developed within the next eighteen months and that, once the standard is established, users should be given approximately three years, to migrate to the standard.

14. In the *Second Report and Order and Further Notice of Proposed Rulemaking,* the Commission sought comment on the adoption of two widely contemplated broadband standards available for wireless: LAN–IEEE standard 802.11a, and European Telecommunications Standardization Institute (ETSI) Broadband Radio Access Network (BRAN) High Performance Local Area Network number two (HiperLAN2). In the comments, some parties recommended the adoption of the 802.11a standard because of its utility for mobile applications, and others urged adoption of a flexible band plan that would accommodate other emerging broadband technologies. Previously, the Commission found that considerations of minimal regulation and licensee flexibility outweighed any benefits that adoption of a single standard would confer. It thus declined to adopt technology standards and stated that potential interference between devices using different standards could be minimized if licensees cooperated in the selection and use of channels. NPSTC asks us to revisit that determination because, they maintain, differing technologies operating at the same site could generate interference that could disrupt communications. NPSTC believes this interference could be avoided by use of Internet Protocol-based (IP) applications that would allow users to ''roam seamlessly across infrastructures (their own and others), with their traffic routed appropriately to its destination across an Internet-type backbone.''

15. We belive that there is an insufficient record to justify adoption of technical standards that would provide interoperability in the 4.9 GHz band. Moreover, the band is likely to be used for a variety of services that do not readily lend themselves to standardization or interoperability. Thus, for example, users may consider a fixed video camera and a mobile data terminal as distinctly separate applications without a need to interoperate: The video camera cannot display data and the mobile data terminal would not normally be used to display video from the camera. Also, were we to adopt a standard, it likely would cement the 4.9 GHz band in 2004 technology such that public safety would be denied the benefits of emerging broadband technologies. Finally, even were a standard realizable in eighteen months, as NPSTC suggests, we see no point in depriving the public safety community the use of the 4.9 GHz band in the interim in the hope that a useful standard could be adopted by that time. We therefore reaffirm our determination in the *Third Report and Order* that interoperability technical standards for the 4.9 GHz band would be counterproductive.

16. NPSTC supports mandatory regional planning and the inclusion of a conflict resolution process in regional plans. We disagree and reaffirm our decision in the *Third Report and Order.* Our primary rationale for rejecting mandatory regional planning lies in the shared-use structure we have established for the 4.9 GHz band. Applicants that meet eligiblity criteria will be granted a geographic area license for the entire fifty MHz of 4.9 GHz spectrum over a geographical area defined by the boundaries of their jurisdiction—city, county, state, etc. Licensees are required to coordinate their operations in the shared band to avoid interference, a common practice when joint operations are conducted.

17. The functions served by Regional Planning Committees (RPCs) in the public safety segments of the 700 MHz and 800 MHz bands entail the long-term planning for the use of specific channels by discrete licensees, in bands where public safety agencies are not granted a blanket license for the entire spectrum. Nontheless, the Commission directed each 700 MHz RPC to consider coordination procedures for the 4.9 GHz band, and that each may submit to the Commission such a plan. It envisioned that the plans would specify best practices for efficient use of the 4.9 GHz band, including, for example, procedures to allow an incident commander to take control of emergency communications pursuant to compacts made with adjacent and overlapping jurisdictions. In the event an RPC does not submit such a plan, licensees must cooperate in the selection and use of channels in order to reduce interference and make the most effective use of authorized facilities.

18. We continue to believe that the technical expertise resident in the RPCs may be quite useful to new 4.9 GHz licensees, and we encourage dialog between them. However, we have not been shown that coordination of 4.9 GHz operations will be facilitated by requiring 4.9 GHz licensees to make mandatory use of the RPCs. The principal task of RPC is to coordinate selection of specific channels for use at static base stations (and their associated mobiles). However, given the whole-band licensing structure that we have established and the likelihood that deployment of 4.9 GHz equipment is likely to be dynamic rather than static, it would appear impractical to formulate, in advance, an optimum distribution of channel assignments that would be universally suitable for each incident. This is not to suggest that agencies should not coordinate use of channels at an incident, or not have a process for doing so. However, we believe that that task is best undertaken by local jurisdictions, and we thus are not prepared to mandate use of RPCs for a purpose markedly different from that for which they were formed.

19. Our decision essentially renders moot NPSTC's request that we require RPCs to establish procedures for resolving disputes over the use of 4.9 GHz frequencies. However, we are aware that 700 MHz and 800 MHz RPCs do have procedures for resolution of disputes among licensees using those bands. Accordingly, these RPCs may be well-equipped to mediate disputes arising between 4.9 GHz licensees, should such licensees voluntarily elect to submit such disputes to mediation. We do not believe, however, that the possibility of such requests for voluntary mediation is a sufficient

reason to require RPCs to develop 4.9 GHz dispute resolution procedures and, accordingly, we decline NPSTC's request to do so.

I. Procedural Matters

A. Final Regulatory Flexibility Certification

20. As required by the Regulatory Flexibility Act (RFA), a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Third Report and Order*. In view of the fact that we have adopted further rule amendments in this *Memorandum Opinion and Order*, we have included this Final Regulatory Flexibility Certification. This Certification conforms to the RFA.

21. The RFA requires that regulatory flexibility analysis be prepared for rulemaking proceedings unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business '' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

22. This *Memorandum Opinion and Order* relaxes the technical emission limits adopted in the *Third Report and Order* for devices operating in the band 4940–4990 MHz, to be used exclusively for public safety services. Our action may affect equipment manufacturers since technical equipment parameters are being changed. However, as service rules for the 4.9 GHz band have been recently adopted, equipment has not yet been developed and certified under the Commission's rules.

23. Therefore, we certify that the requirements of this *Memorandum Opinion and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Memorandum Opinion and Order*, including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A). In addition, the *Memorandum Opinion and Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. *See* U.S.C. 605(b).

II. Ordering Clauses

24. Part 90 of the commission's rules is amended as specified in appendix B, effective July 18, 2005.

25. Pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 405, and § 1.429 of the commission's Rules, 47 CFR 1.429, that the petition for reconsideration filed by the National Public Safety Telecommunications Council is granted in part and denied in part, to the extend set forth above.

26. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Memorandum Opinion and Order,* including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subject in 47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rule

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 2. Section 90.210 is amended by revising the entry in the table for the 4940–4990 MHz frequency band in the undesignated paragraph, by revising paragraph (l), redesignating paragraphs (m) and (n) as paragraphs (n) and (o) and by adding a new paragrah (m) to read as follows:

§ 90.210 Emission masks.

* * * * *

Frequency band (MHz)	Mask for equipment with audio low pass filter	Mask for equipment without audio low pass filter
* *	*	* *
4940–4990 MHz.	L or M	L or M.
* *	*	* *

* * * * *

(l) *Emission Mask L.* For low power transmitters (20 dBm or less) operating in the 4940–4990 MHz frequency band, the power spectral density of the emissions must be attenuated below the output power of the transmitter as follows:

(1) On any frequency removed from the assigned frequency between 0–45% of the authorized bandwidth (BW): 0 dB.

(2) On any frequency removed from the assigned frequency between 45–50% of the authorized bandwidth: 219 log (% of (BW)/45) dB.

(3) On any frequency removed from the assigned frequency between 50–55% of the authorized bandwidth: 10 + 242 log (% of (BW)/50) dB.

(4) On any frequency removed from the assigned frequency between 55–100% of the authorized bandwidth: 20 + 31 log (% of (BW)/55) dB attenuation.

(5) On any frequency removed from the assigned frequency between 100–150% of the authorized bandwidth: 28 + 68 log (% of (BW)/100) dB attenuation.

(6) On any frequency removed from the assigned frequency above 150% of the authorized bandwidth: 50 dB.

(7) The zero dB reference is measured relative to the highest average power of the fundamental emission measured across the designated channel bandwidth using a resolution bandwidth of at least one percent of the occupied bandwidth of the fundamental emission and a video bandwidth of 30 kHz. The power spectral density is the power measured within the resolution bandwidth of the measurement device divided by the resolution bandwidth of the measurement device. Emission levels are also based on the use of measurement instrumentation employing a resolution bandwidth of at least one percent of the occupied bandwidth.

(m) *Emission Mask M.* For high power transmitters (greater that 20 dBm) operating in the 4940–4990 MHz frequency band, the power spectral density of the emissions must be attenuated below the output power of the transmitter as follows:

(1) On any frequency removed from the assigned frequency between 0–45% of the authorized bandwidth (BW): 0 dB.

(2) On any frequency removed from the assigned frequency between 45–50% of the authorized bandwidth: 568 log (% of (BW)/45) dB.

(3) On any frequency removed from the assigned frequency between 50–55% of the authorized bandwidth: 26 + 145 log (% of BW/50) dB.

(4) On any frequency removed from the assigned frequency between 55–100% of the authorized bandwidth: 32 + 31 log (% of (BW)/55) dB.

(5) On any frequency removed from the assigned frequency between 100–150% of the authorized bandwidth: 40 + 57 log (% of (BW)/100) dB.

(6) On any frequency removed from the assigned frequency between above 150% of the authorized bandwidth: 50 dB or 55 + 10 log (P) dB, whichever is the lesser attenuation.

(7) The zero dB reference is measured relative to the highest average power of the fundamental emission measured across the designated channel bandwidth using a resolution bandwidth of at least one percent of the occupied bandwidth of the fundamental emission and a video bandwidth of 30 kHz. The power spectral density is the power measured within the resolution bandwidth of the measurement device divided by the resolution bandwidth of the measurement device. Emission levels are also based on the use of measurement instrumentation employing a resolution bandwidth of at least one percent of the occupied bandwidth.

Note to paragraph m: Low power devices may as an option, comply with paragraph (m).

* * * * *

■ 3. Section 90.1215 is revised to read as follows:

§ 90.1215 Power limits.

The transmitting power of stations operating in the 4940–4990 MHz band must not exceed the maximum limits in this section.

(a) The peak transmit power should not exceed:

Channel bandwidth (MHz)	Low power peak transmitter power (dBm)	High power peak transmitter power (dBm)
1	7	20
5	14	27
10	17	30
15	18.8	31.8
20	20	33

High power devices are also limited to a peak power spectral density of 21 dBm per one MHz. High power devices using channel bandwidths other than those listed above are permitted; however, they are limited to a peak power spectral density of 21 dBm/MHz. If transmitting antennas of directional gain greater than 9 dBi are used, both the peak transmit power and the peak power spectral density should be reduced by the amount in decibels that the directional gain of the antenna exceeds 9 dBi. However, high power point-to-point or point-to-multipoint operation (both fixed and temporary-fixed rapid deployment) may employ transmitting antennas with directional gain up to 26 dBi without any corresponding reduction in the transmitter power or spectral density. Corresponding reduction in the peak transmit power and peak power spectral density should be the amount in decibels that the directional gain of the antenna exceeds 26 dBi.

(b) Low power devices are also limited to a peak power spectral density of 8 dBm per one MHz. Low power devices using channel bandwidths other than those listed above are permitted; however, they are limited to a peak power spectral density of 8 dBm/MHz. If transmitting antennas of directional gain greater than 9 dBi are used, both the peak transmit power and the peak power spectral density should be reduced by the amount in decibels that the directional gain of the antenna exceeds 9 dBi.

(c) The peak transmit power is measured as a conducted emission over any interval of continuous transmission calibrated in terms of an RMS-equivalent voltage. If the device cannot be connected directly, alternative techniques acceptable to the Commission may be used. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, sensitivity, etc., so as to obtain a true peak measurement conforming to the definitions in this paragraph for the emission in question.

(d) The peak power spectral density is measured as conducted emission by direct connection of a calibrated test instrument to the equipment under test. If the device cannot be connected directly, alternative techniques acceptable to the Commission may be used. Measurements are made over a bandwidth of one MHz or the 26 dB emission bandwidth of the device, whichever is less. A resolution bandwidth less than the measurement bandwidth can be used, provided that the measured power is integrated to show total power over the measurement bandwidth. If the resolution bandwidth is approximately equal to the measurement bandwidth, and much less than the emission bandwidth of the equipment under test, the measured results shall be corrected to account for any difference between the resolution bandwidth of the test instrument and its actual noise bandwidth.

[FR Doc. 05–9933 Filed 5–17–05; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 386

[FMCSA Docket No. FMCSA–1997–2299]

RIN 2126–AA15

Rules of Practice

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FMCSA amends its Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings. These rules increase the efficiency of the procedures, enhance due process and awareness of the public and regulated community, and accommodate recent programmatic changes. The changes in these rules apply to all motor carriers, other business entities, and individuals involved in motor carrier safety and hazardous materials administrative actions and proceedings with FMCSA.

DATES: Effective Date: November 14, 2005. *Petitions for Reconsideration* must be received by the Agency no later than June 17, 2005. *Docket:* Background documents or comments received on the proposed rules may be accessed electronically at *http://dms.dot.gov* at any time or in person at Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Jackie K. Cho, Office of Chief Counsel, (202) 366–0834, Federal Motor Carrier Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 8 a.m. to 5:30 p.m., E.T., Monday through Friday, except Federal holidays. *Privacy Act:*

Anyone is able to search the electronic form of all comments received into any of DOT's 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 (65 FR 19477). This statement is also available at *http://dms.dot.gov*. FMCSA may not post copyrighted material on the electronic docket absent express permission by the copyright holder. All such material will be made part of the official docket and is accessible in person as outlined above. Anyone submitting comments to the docket is responsible for ensuring compliance with all applicable copyright laws.

SUPPLEMENTARY INFORMATION:

Legal Basis for the Rulemaking

Congress delegated certain powers to regulate interstate commerce to DOT in numerous pieces of legislation, most notably in section 6 of the Department of Transportation Act (DOT Act) (Pub. L. 85–670, 80 Stat. 931 (1966)). Section 55 of the DOT Act transferred to DOT the authority of the Interstate Commerce Commission (ICC) to regulate the qualifications and maximum hours-of-service of employees, the safety of operations, and the equipment of motor carriers in interstate commerce. *See* 49 U.S.C. 104 (1983). This authority, first granted to the ICC in the Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543), now appears in chapter 315 of title 49 of the U.S. Code. The regulations issued under this authority became known as the Federal Motor Carrier Safety Regulations (FMCSRs), appearing generally at 49 CFR parts 390–99, including the Federal Motor Carrier Commercial Regulations (FMCCRs) (49 CFR parts 360–379) and the Hazardous Materials Regulations (HMRs) (49 CFR parts 171–180). The administrative powers to enforce chapter 315 were also transferred from the ICC to the DOT in 1966, and appear in chapter 5 of title 49 of the U.S. Code. The Secretary of DOT delegated oversight of these provisions to the Federal Highway Administration (FHWA), the predecessor Agency to FMCSA.

Between 1966 and 1999, a number of statutes were added to FHWA's authority. For a more detailed statutory background, see the preamble to the 1996 Notice of Proposed Rule Making (1996 NPRM) (61 FR 18866–67 (April 26, 1996)). The various statutes authorize the enforcement of the FMCSRs and HMRs and provide both civil and criminal penalties for violations. In practice, when circumstances dictate an enforcement action be instituted, civil penalties are more commonly sought than criminal sanctions. The administrative rules in this rulemaking apply, among other things, to the administrative adjudication of civil penalties assessed for violations of the FMCSRs, FMCCRs and HMRs.

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748) established FMCSA as a new operating administration within DOT, effective January 1, 2000. The staff and responsibilities previously assigned to FHWA, and reassigned to a new Office of Motor Carrier Safety within the Department, are now assigned to FMCSA.

On April 29, 1996, FHWA published the 1996 NPRM for Rules of Practice for Motor Carrier Proceedings; Investigations; Disqualifications and Penalties (61 FR 18865). In the 1996 NPRM, FHWA proposed eliminating the rules of practice contained in part 386 and replacing them with new rules of practice in a new part 363.

The 1996 NPRM was the first effort by FHWA to rewrite comprehensively its rules of practice for motor carrier administrative proceedings since 1985. The 1996 NPRM was intended to be the forerunner of a revision of the FMCSRs following the completion of a zero-based review of those regulations then underway in the Agency. The proposal would have placed the new regulations in previously unused parts of chapter III of title 49 of the Code of Federal Regulations (CFR) reserved for the FMCSRs. The proposed rulemaking was intended to make administrative actions and proceedings more efficient while enhancing the guarantee of due process to carriers, individuals, and other entities by substantially increasing awareness of the consequences of noncompliance with commercial motor vehicle safety and hazardous materials regulations.

On October 21, 1996, FHWA published a Supplemental Notice of Proposed Rulemaking (SNPRM) (61 FR 54601) to broaden the scope of the 1996 NPRM to include proceedings arising under section 103 of the Interstate Commerce Commission Termination Act of 1995 (ICCTA) (Pub. L. 104–88, 109 Stat. 803, 852). In the SNPRM, FHWA proposed to adopt the term ''Commercial Regulations'' to refer to requirements transferred from the former ICC. The SNPRM also extended the comment period of the previous 1996 NPRM to November 20, 1996. FHWA received 127 comments in response to the 1996 NPRM. No comments were received in response to the SNPRM. Comments relevant to those portions of the 1996 NPRM addressed in the recent SNPRM were considered in the Discussion of Comments in FMCSA's October 29, 2004 SNPRM (October 2004 SNPRM).

On February 16, 2000, FMCSA issued technical amendments to part 386 and incorporated enforcement proceedings for Commercial Regulations into part 386 (65 FR 7753). This final rule was intended to ensure all civil forfeiture and investigation proceedings instituted by FMCSA were governed by consistent procedures. In addition, FMCSA adopted some technical amendments which reflected organizational changes, removed obsolete statutory citations, and incorporated statutory changes which affected the civil penalty schedule.

On October 20, 2004, FMCSA published a SNPRM requesting comments proposed to further revise the rules of practice (69 FR 61617). The effective date of this final rule is 180 days following the date of publication in the **Federal Register**. Therefore, the revised rules of practice will apply to all matters where a Notice of Claim or Notice of Violation is served on or after the effective date.

Discussion of Public Comments

In response to the October 20, 2004 SNPRM, five comments were submitted to the docket. Commenting were James P. Lamb (Mr. Lamb), a non-attorney practitioner representing motor carriers; the American Trucking Associations (ATA); Mary Helen Delgado (Ms. Delgado), an attorney practicing motor carrier law; the Association for Transportation Law, Logistics and Policy (ATLLP); and the Scapellato Group, Inc. (SGI), a law firm practicing motor carrier law. The comments are addressed below, together with FMCSA's responses on the issues addressed.

Section 386.3—Separation of Functions

Ms. Delgado questioned whether attorneys in the Office of Chief Counsel act as both enforcement counsel and advisory counsel to the Agency decisionmaker. SGI commented that because the Assistant Administrator also serves as the Chief Safety Officer, serious questions arise regarding whether the Assistant Administrator can render an impartial decision over issues arising from the very policy and standards the Chief Safety Officer has established.

FMCSA Response. We have added § 386.3 to clarify how functions are separated within the Agency, as well as within the Office of Chief Counsel. This added text makes the Agency's current practice more transparent as to how the Agency complies with the Administrative Procedure Act (APA) regarding the separation of functions. The new text states that prosecutorial functions are performed by attorneys in the Enforcement and Litigation Division under oversight of the Assistant Chief Counsel of the Division and the Deputy Chief Counsel. These attorneys do not advise Agency decisionmakers. Rather, the Chief Counsel and the Chief Counsel's immediate staff, including Agency Adjudications Counsel, advise the Assistant Administrator in enforcement actions. This separation of functions is consistent with the APA and mirrors practices in effect at other federal agencies.

The Agency decisionmaker determines whether the Agency is fairly and impartially carrying out the policies and procedures established. As such, knowledge of those procedures and policies is well served. Since all field enforcement personnel report to the Associate Administrator for Enforcement and the Assistant Administrator is not involved in the enforcement process directly, the arrangement preserves the integrity of the proceeding and complies with the APA. Additionally, parties may always raise case-specific conflict issues.

Section 386.4 Appearances and Rights of Witnesses—an FMCSA ''Bar''

Both Mr. Lamb and ATLLP recommended that FMCSA adopt standards for non-attorney practitioners and certify individuals who meet those standards. Mr. Lamb commented that doing so would ''protect the public from unqualified representation, spare FMCSA unnecessary administrative problems, and protect the interests of qualified professionals who are operating in the industry.''

ATLLP commented that all respondents should be represented in all formal proceedings by an attorney or FMCSA practitioner. Thus, ATLLP continued, certification of motor carrier safety practitioners would assure the industry it is receiving advice from a knowledgeable source, which will also foster efficient prosecution of enforcement actions within the standards of due process. To implement such a recommendation, ATLLP offered its resources to set up and administer a program for the certification and continuing education of FMCSA practitioners.

FMCSA Response. Carriers may select the representative of their choice in FMCSA proceedings. Creating an FMCSA practitioner ''bar'' would limit a carrier's option and perhaps impose additional economic expense. The Agency believes the potential benefit to the carrier or Agency does not currently justify the resources and expenses associated with developing and managing such a system.

Proposed § 386.6(b)—Service

The ATA commented that the Agency should include e-mail as an acceptable form of service.

FMCSA Response. Although the Agency notes the wider acceptability of e-mail, after consulting with information technology staff, it has been determined that the infrastructure necessary to ensure an adequate level of security measures and technical support are not currently available. Moreover, the costs associated with implementing such a system currently outweigh the potential benefits. As technological capabilities evolve, the issue may be revisited.

Section 386.14(c)—Reply

Ms. Delgado commented on the lack of clarity in this provision, especially with regard to when a default is found and a Notice of Final Agency Order is issued for failure to file a timely reply.

FMCSA Response. This provision has been revised to clearly convey the effect of a default and when a Final Agency Order will be issued as a result of a respondent's failure to reply to the Notice of Claim. Please see the detailed discussion in the Section-by-Section Analysis for § 386.14.

Section 386.14(c)(1)—Default

Ms. Delgado commented that the regulation states the Assistant Administrator can review a default only where the respondent first demonstrates excusable neglect, a meritorious defense, or due diligence. This procedure permits the Agency to default a respondent, then decide whether the default may be reviewed. Ms. Delgado expressed concern this would allow Agency Counsel to have both prosecutorial and decision-making functions and that the lifting of the default should be separated from the initial decision as to whether the default should be reviewed. Instead, Ms. Delgado suggested where there is excusable neglect, a meritorious defense, or due diligence, the Assistant Administrator should be able to review a default under any circumstances, and the default will be vacated only where a respondent can show excusable neglect, a meritorious defense, or due diligence.

FMCSA Response. The section has been revised to clarify the original intent of the Agency which is in fact to allow, upon petition, the review of default by the Assistant Administrator under any circumstances and only those demonstrating excusable neglect, a meritorious defense, or due diligence will be vacated.

Informal Hearings—Proposed § 386.16

The ATA commented that the Agency should appoint a neutral third-party mediator to preside over informal hearings and delete the waiver of formal hearing requirement when a carrier opts for informal hearing.

FMCSA Response. The purpose of the informal hearing option is to provide respondents with an opportunity to contest alleged violations in an efficient, often less costly proceeding. The use of a neutral third party mediator in an informal hearing would not serve this purpose effectively. While a mediator may facilitate negotiations in a matter, the goal of an informal hearing is to more quickly resolve a matter based on the arguments submitted in person by both parties.

As to ATA's comment regarding the waiver of a formal hearing, please see the detailed discussion in the Section-by-Section Analysis for § 386.16. The Agency believes the option for requesting an informal hearing versus a formal hearing is best left to the discretion of individual respondents based upon which option best suits their needs.

Proposed § 386.16(c)(4)(i)(B)—Informal Hearing Denied

Ms. Delgado commented that the section is confusing and needs to be clarified, citing the difficulty in tracking the time periods for response and differentiating which document is due at what time.

FMCSA Response. In response to comments, the Agency has revised this provision, finalized as § 386.16(b)(4)(A)(i), to clarify the procedural requirements of all parties in the event an informal hearing is denied. Please see the detailed discussion of § 386.16 in the Section-by-Section Analysis.

Section 386.31 Service—Official Notice

Ms. Delgado commented that there is no provision for the Agency decisionmaker to notify the parties that she/he intends to take official notice.

FMCSA Response. The provision has been re-inserted into the final rule.

Section 386.37—Discovery

SGI recommended that § 386.46 (Depositions) be revised to require the Agency to designate a headquarters official to testify on behalf of the Agency on matters regarding FMCSA policies, procedures, practices, and other relevant matters similar to the designation provided in Rule 30(b)(6) of the Federal Rules of Civil Procedure. This commenter also recommended FMCSA institute administrative procedures to enforce subpoenas or resolve other discovery requests.

FMCSA Response. Given FMCSA is a large agency with almost 1,200 employees, coupled with the acknowledgement that the facts and issues in each case differ, no single Agency official could possibly have the knowledge to address every possible policy, procedure, and practice issue which might arise in enforcement actions. The Agency therefore believes the better practice is to let parties seek the testimony of Agency officials as appropriate based upon the issues involved in the matter.

With regard to SGI's suggestions for delineating procedures for resolving discovery disputes, including enforcement of subpoenas, the Agency does not believe it appropriate for inclusion in the rules of practice. Because discovery does not begin until a matter is pending before the Assistant Administrator or referred to the Office of Hearings, the resolution of discovery disputes are within the discretion of the presiding decisionmaker and thus, a mechanism to resolve discovery disputes is at all times available to the parties.

Section 386.42—Written Interrogatories to Parties and § 386.43—Production of Documents and Other Evidence

SGI recommended the Agency create a legal ombudsman position to resolve costly issues of discovery. This individual should be given full power and authority to effectively resolve delay.

FMCSA Response. Creating such provisions in the regulations is not appropriate, as each civil penalty proceeding is different. SGI's recommendations are essentially seeking intervention and oversight by a Court Master. As stated in the previous response, discovery disputes are within the purview of the presiding decisionmaker and the level of detail that SGI seeks in the regulations lie beyond the scope of the rules of practice.

Section 386.42(c)—Written Interrogatories to Parties

Ms. Delgado commented the following provision needed clarification, as it appears to state the Agency will serve written interrogatories with the notice of claim: ''The party to whom the interrogatories are directed shall serve the answers and any objections within 30 days after the service of the interrogatories, except that a respondent may serve upon claimant its answers or objections within 45 days after service of the notice of claim.''

FMCSA Response. The Agency agrees and the phrase ''except that a respondent may serve upon claimant its answers or objections within 45 days after service of the notice of claim'' has been eliminated from the final rule.

Section 386.46—Depositions

Ms. Delgado commented that limiting discovery to commence upon referral of the matter to the Office of Hearings misinterprets 49 U.S.C. § 502(e)(1), as it provides, ''In a proceeding or investigation, the Secretary may take testimony of a witness by deposition and may order the witness to produce records. A party to a proceeding or investigation pending before the Secretary may take the testimony of a witness by deposition and may require the witness to produce records at any time after a proceeding or investigation is at issue on petition and answer.'' Ms. Delgado posits that civil penalty proceedings are commenced by the issuance of a notice of claim and parties must be allowed to take a deposition of a witness ''at any time'' after the issuance of the notice of claim, and not subsequent to the appointment of an Administrative Law Judge.

FMCSA Response. The Agency interprets the language of § 502(e)(1), ''at any time after a proceeding or investigation *is at issue* on petition and answer,'' (emphasis added) to mean that discovery commences after issuance of a Notice of Claim, service of the reply, and when the matter is pending before the Assistant Administrator or referred to the Office of Hearings. The issuance of a Notice of Claim alone is premature for the commencement of discovery, and cannot constitute a period of petition and answer, as there has been no opportunity for a respondent to answer the Notice of Claim. The term ''at issue'' is generally accepted in the legal community to be the point in litigation where initial and responsive pleadings such as claims and responses thereto have been served.

Section 386.54—Administrative Law Judge

Ms. Delgado commented on the changes proposed in this section, especially the deletion of language in current § 386.54(b). Ms. Delgado suggested the regulation provide an Administrative Law Judge with the powers provided under the APA to regulate the conduct of the proceedings.

FMCSA Response. The substance of the provision has been reinserted into the final rule. For a detailed discussion, please refer to the Section-by-Analysis under § 386.54, *infra.*

Section 386.64—Petitions for Reconsideration

ATA commented the Agency should permit a complete stay of a Final Agency Order while a petition for reconsideration is pending.

FMCSA Response. This change has been incorporated into the final rule.

Section-by-Section Analysis

The majority of the proposed changes to this SNPRM are discussed in detail in the Section-by-Section Analysis portion of this preamble. Minor revisions have been made throughout the final rule for clarity, readability, or consistency, and such changes will not be discussed.

This Section-by-Section Analysis describes the changes to current Part 386 as implemented by this final rule, and provides justification for the changes made.

Subpart A—Scope of Rules; Definitions and General Provisions

The title of Subpart A is revised to Scope of Rules; Definitions, and General Provisions to reflect the inclusion of several preliminary procedural rules.

Section 386.1 Scope of Rules in This Part

FMCSA makes no changes to the language in current § 386.1.

Section 386.2 Definitions

Based on internal Agency considerations, and to provide clarity in the use of terms throughout this Part, FMCSA finalizes § 386.2 with the following revisions. The term *Civil forfeiture proceedings* is revised as *Civil penalty proceedings* to make the use of the term consistent throughout revised Part 386. In addition, the statutory citations provided in the definition of *Civil penalty proceedings* have been removed, thus avoiding administrative updates to Part 386 each time new legislation is passed. The term *Dockets* has been added to this section because it is used throughout this Part, and the definition reads as all documents filed

before an Agency decisionmaker must be submitted to the Department's docket management system. The term *Commercial regulations* has been revised to *Federal Motor Carrier Commercial Regulations (FMCCRs)* to conform to usage in other parts of the regulations. The definitions of *Interstate commerce* and *State* were removed from this section as unnecessary because the terms are not used in Part 386.

The revised definition of *Default* now accurately reflects all possible instances in which a default may occur. The SNPRM proposed definition only provided for a failure to reply or provide an adequate reply in the time required; however, a default can also be found where a carrier has omitted or failed to perform a legal duty within a specified period. Whether or not a reply is adequate is a determination for the Assistant Administrator, and thus, a default issued by the service centers will not be based on an evaluation of the adequacy of a reply.

The definition of *Field Administrator* is added to this section because the Field Administrator of each regional service center is responsible for prosecuting civil penalty proceedings before the Agency decisionmaker.

The revised definition of *Final agency order* now more accurately provides for all possible instances in which a final agency order would apply. The final agency order is a crucial benchmark in administrative adjudication, as it constitutes the final agency action of which a petitioner may seek review. The existing definition in current § 386.2 does not fully capture the situations in which a final agency order will result. Moreover, the definition of final agency order is updated to reflect revisions to other sections in this Part.

The substantive definition of *Formal hearing* has not changed; however, the language was reworked for greater readability. The definition of *Informal hearing* is revised to include more specificity to the process. For example, discovery is not permitted and the informal hearing will not have a transcribed record. The Hearing Officer's written report and recommendations will serve as the record of the proceedings. Therefore, the revised definition highlights the procedural difference in informal hearings.

The definition of *Notice of Claim* (NOC) was modified to reflect that it is the initial document issued by the Agency to propose a civil penalty for alleged violations. The Agency wanted to emphasize the stage in the proceedings in which an NOC is issued and fine-tune the language to reflect the revisions made throughout this Part.

The definition of *Notice of Violation* was revised to reflect the current reference to the FMCCRs. The definition of Service was removed because its definition is implicit in § 386.6 and need not be defined separately in this section.

The definition of *Submission of written evidence without hearing* was modified to reflect the change in terminology from ''formal oral hearing'' and ''informal oral hearing'' as proposed in the October 2004 SNPRM, in favor of ''formal hearing'' and ''informal hearing.'' The definition was also revised to read as a submission, rather than as a ''right of a respondent to present,'' because both the Field Administrator and the respondent may submit written evidence without a hearing.

Section 386.3 Separation of Functions

FMCSA adds § 386.3 to delineate the separation of functions within the Office of Chief Counsel. Attorneys in the Enforcement and Litigation Division serve as enforcement counsel in the prosecution of all cases brought under Part 386, and report to the Assistant Chief Counsel for Enforcement and Litigation and the Deputy Chief Counsel. Attorneys serving as Adjudications Counsel as well as the Special Counsel to the Chief Counsel, advise the Agency decisionmaker regarding cases brought under Part 386, and report to the Chief Counsel. The inclusion of such a provision in the regulations ensures fairness to the motor carrier, by clearly defining the relevant functions of the divisions within the Office of Chief Counsel. By separating the attorneys prosecuting enforcement actions from the attorneys advising the Agency decisionmaker, a motor carrier is assured that those who prosecute civil penalty cases are separate from those who advise the Agency decisionmaker. References to the ''staff of the Chief Counsel'' are deleted as vague, and more specific terms for the separation of functions by division were added to clarify § 386.3(c) and (d).

Section 386.4 Appearances and Rights of Parties

FMCSA adds § 386.4, which incorporates part of existing § 386.50(a) in its entirety and the additional procedural requirement for representatives to file a notice of appearance in the action before participating in the proceedings. Including such a requirement will promote administrative efficiency, as all parties will be uniformly notified of representation, and thus ensure that all documents are served on the correct parties in a timely fashion. In addition, an attorney or representative must file a timely notice of all changes in contact information, as outdated information prevents the proper service of all documents, including Orders, in a proceeding.

A new paragraph (c) has been added to this section. It is an administrative provision to clarify that a separate notice of appearance must be filed in each case, thus preventing a representative from filing a single appearance to apply to numerous cases.

Section 386.5 Form of Filings and Extensions of Time

FMCSA adds § 386.5, which incorporates current § 386.33, Extension of time, and also establishes length and content limits, and other administrative requirements for filing documents. Based on internal Agency feedback, and in an effort to facilitate the processing of all documents filed, a new paragraph (a) is added to specify all filings must be typed or legibly handwritten.

A new paragraph (b) is added, requiring a short factual statement and the relief requested in each document filed. This provision will also enable the Agency to process enforcement cases more efficiently because the issues involved and the relief sought will be known from the outset, thus less time will be spent managing documents lacking clarification. This paragraph also places parties on notice that all documents filed in the proceedings will be publicly available in the Docket, unless otherwise ordered.

Paragraph (f) has been modified for greater readability and clarity, and now includes a reference requiring all documents be filed and served in accordance with §§ 386.6 and 386.7, with a copy served on the presiding decisionmaker over the proceeding at the time of the filing. A general reference to the presiding decisionmaker conveys the intent of the regulation, without need to specify in separate paragraphs, every procedural scenario before each Agency decisionmaker in which a copy of motion for extension of time must be provided.

Section 386.6 Service

FMCSA adds § 386.6 as proposed in the October 2004 SNPRM, with minor revisions. Paragraph (a) has been revised to reflect more accurate terminology by replacing ''registered agent'' with ''designated agent for service of process,'' because the term registered agent carries independent legal

significance which does not apply to these rules. Therefore, the term ''designated agent for service of process'' was inserted in order to describe a party's attorney of record or representative as reflected in a § 386.4 filing or a BOC–3 licensing filing to receive service. Section 386.6 incorporates the substance of § 386.31(b), and adds the following elements: (1) Specifies that the Agency must ensure service of the notice of claim; (2) includes commercial delivery services and facsimile (with consent of the parties) as additional options for effecting service; and (3) specifies other administrative provisions regarding service.

Section 386.7 Filing of Documents

FMCSA adds § 386.7 as proposed in the October 2004 SNPRM, with some minor revisions. After internal Agency consideration, the need to specify clearly when and how to tender a document for filing with U.S. DOT Dockets was recognized for inclusion in the final rule. It is also important to distinguish the difference between filing and serving a document. To be recognized on the record, and officially filed before the Agency decisionmaker, a document must be filed with the Docket Management System. The same document must then be sent to all parties listed on the certificate of service, which constitutes service.

Section 386.8 Computation of Time

FMCSA adds § 386.8 as proposed in the October 2004 SNPRM. The provision contains current § 386.32 in its entirety, which has been moved to Subpart A to locate it with other preliminary procedural requirements.

Section 386.11 Commencement of Proceedings

FMCSA adds § 386.11 as proposed in the October 2004 SNPRM with one minor revision and one clarification. Driver qualification proceedings under § 386.11(a) remain unchanged. The Notice of Investigation has been eliminated, and paragraph (b) now adopts the Notice of Violation (NOV). FMCSA will use the NOV as a means of notifying any person subject to the rules in this part that the Agency has received information indicating violations of the FMCSRs, HMRs, or FMCCRs, without initiating a civil penalty proceeding. This information may come from investigations, audits, complaints, or any other source of information.

The NOV will not be used to propose civil penalties. Rather, the goal of utilizing the NOV, in keeping with the overall mission of the Agency, is to gain compliance. The NOV offers a motor carrier an opportunity to take corrective action or cure other alleged violations before the Notice of Claim (NOC) stage is reached. If such deficiencies have not been addressed to the satisfaction of the Agency, then the matter may proceed to the issuance of a NOC. In the final provision the Agency clarified that a NOV is not a prerequisite to the issuance of a NOC. The use of the NOV is solely within the discretion of the Agency. Therefore, a NOV need not be issued prior to a NOC.

The content of current § 386.11(b) is redesignated as paragraph (c) of this section. Minor revisions have been made for simplicity and clarity. Instead of the term ''amount being claimed,'' of existing 386.11(b)(1)(iii), has been rephrased as ''proposed civil penalty'' in 386.11(c)(1)(iii) to more accurately capture the legal status of a civil penalty when referenced in a NOC.

Section 386.12 Complaint

FMCSA removes paragraphs (a) and (b) of the existing section, and redesignates paragraphs (c)–(e) as (a)–(c). This change is adopted to make it consistent with the elimination of the notice of investigation of § 386.11. With the elimination of the notice of investigation, existing § 386.12(a) and (b) are no longer necessary, as they govern the process for initiating and acting on a notice of investigation. With this change, the newly redesignated paragraph (b) was updated to reflect the correct internal citations. An existing error in the spelling of ''frivolous'' in paragraph (b) was also corrected for the final version of this section.

Section 386.13 Petition to Review and Request for Hearing: Driver Qualification Proceedings

FMCSA makes no changes to the language in current § 386.13.

Section 386.14 Reply

The title of this section is revised to Reply. This section is finalized with some revisions. The title of paragraph (b), which provides the choices for action once a motor carrier is served with a NOC, is now called ''Options for reply'' as opposed to ''Contents of reply,'' because this is a more accurate description of the provision.

FMCSA is finalizing § 386.14(a) which changes the time period for a reply from 15 days to 30 days, as proposed in the October 2004 SNPRM. Comment was sought from the public regarding this departure in the interpretation of 49 U.S.C. § 521(b)(1)(A), which states: ''The notice shall indicate that the violator may, within 15 days of service, notify the Secretary of the violator's intention to contest the matter.'' No comments in response to this request were received.

Upon re-examination of this section for the October 2004 SNPRM, the Agency determined the permissive nature of the word ''may'' in the statute allows the Agency to expand the time period for a respondent to contest a claim, and therefore, the 15-day period may be expanded to 30 days to allow for sufficient time to reply.

Paragraph (b) provides the contents of a reply to a NOC. Respondent may choose to pay the civil penalty, request administrative adjudication, or seek binding arbitration. The notable revision in this paragraph since the proposal is the removal of settlement negotiations as a formal option to a reply to the NOC. Settlement may occur at any time during the civil penalty proceeding at the discretion of the parties. Moreover, because negotiations may be conducted simultaneously with the other options for a reply, it was decided the stand-alone option to proceed was not necessary. Should settlement negotiations reach a stalemate, it is vital to the efficiency of the proceeding to utilize other options for contesting the claim during the same period so as not to delay the resolution of a NOC.

Paragraph (c) provides for what occurs in the event of a respondent's failure to reply within the 30-day period. In such a case, the Field Administrator may issue a document called a ''Notice of Default and Final Agency Order.'' The introduction of the Notice of Default and Final Agency Order is a new revision in the final rule. Upon consideration of how best to notify respondents of their failure to reply, in conjunction with the administrative need to note a default for subsequent stages of a civil penalty proceeding, FMCSA has devised the Notice of Default and Final Agency Order to specify when a NOC will become the Final Agency Order. The date on which a Final Agency Order is effective dictates the timing of subsequent action by both the Agency and the respondent. Therefore, § 386.14(c)(1) specifies that in the event of a default, the Final Agency Order becomes effective five days after the service of the Notice of Default and Final Agency Order. This document conveys the legal effect of a failure to reply clearly to the respondent, and provides a date certain from which a petition for reconsideration or an appeal of final agency action may be tracked.

In the past, often when a respondent failed to reply, the NOC became the Final Agency Order, but the respondent

then filed a petition for reconsideration under § 386.64. As a result, the substantive reply is submitted for the first time as a basis for reconsideration. Paragraph (c)(2), and § 386.64(b) clearly define what may be considered in a petition for reconsideration when a respondent has failed to reply to the NOC in the time allotted. This provision puts respondents on notice that if they fail to reply during the 30-day period, a petition for reconsideration does not serve as a second opportunity to respond to the alleged violations.

Lastly, under § 386.14(c), paragraph (c)(3) notifies respondents that failure to pay the civil penalty as directed in the Final Agency Order will trigger an additional civil penalty under Subpart G of Part 386.

FMCSA is finalizing § 386.14(d), Request for administrative adjudication, with some minor modifications from the proposed language. A request for administrative adjudication is the means by which a respondent may contest the alleged violations in a NOC. The final provision now includes a statement clarifying that once an administrative adjudication option is elected, it is binding on the respondent to promote the efficiency and predictability of the enforcement process. We also included a requirement that the reply be in writing. This change was made to prevent respondents from assuming that oral communications with the service centers or other FMCSA staff constitute a reply within the meaning of the regulation. In order to avoid a default, a respondent must submit a timely written reply stating the grounds for disputing the claim.

A reply must contain certain elements. The first requirement for a reply requesting administrative adjudication is a statement in which respondent must admit or deny each and every allegation in the NOC. Any allegation that is not specifically denied will be considered admitted. A one-sentence denial in response to all allegations, *e.g.*, ''I deny all allegations'' or ''I am not guilty,'' or other blanket denial of the NOC, without addressing each of the alleged violations one by one will not be accepted as a proper reply, and may be considered a default by the Assistant Administrator if the Field Administrator makes such a motion. For clarity, the term ''Claimant,'' as proposed in the October 2004 SNPRM, is replaced throughout the final rule with the term ''Field Administrator,'' because claimant is a confusing term in the regulation.

The second requirement for a reply requesting administrative adjudication is a statement of all known affirmative defenses, under § 386.14(d)(1)(ii). Affirmative defenses are different from admitting or denying the truth of the alleged violation. Rather, affirmative defenses are responses attacking the legal right of the Agency to bring the civil penalty proceeding. Therefore, attacks on the jurisdiction, limitations, or procedure of the civil penalty proceedings are affirmative defenses. Any such defenses must be stated at the outset in the reply.

The last requirement for a reply requesting administrative adjudication, § 386.14(d)(1)(iii), has been revised from the proposed provision to clarify that respondents may choose only one of the three administrative adjudications options provided. Thus, a sufficient reply requesting administrative adjudication must offer three basic points of information: (1) Admit or deny the substance of the allegations; (2) list any known affirmative defenses; and (3) choose between an informal hearing, formal hearing, or proceed on the papers and submit written evidence.

Section 386.16 Action on Replies to the Notice of Claim

The title of this section is revised from ''Action on petitions or replies'' to ''Action on replies to the notice of claim.'' Upon further consideration of the functionality of this provision, certain portions of this provision have been revised from the proposed version to provide all parties with sufficient time to respond.

As discussed in the analysis of § 386.14, the stand-alone option of settlement negotiations has been eliminated from the reply process. Although parties are free to discuss settlement throughout a civil penalty proceeding, a separate time period in which only settlement negotiations will occur will no longer serve as an option for a reply. Accordingly, the procedures set forth in proposed § 386.16(a) are deleted.

Submission of written evidence without a hearing: First, in requests to submit written evidence without a hearing, now under finalized § 386.16(a), Agency Counsel is given 60 days to serve all written evidence following service of the respondent's reply, as opposed to the proposed 40 days. The period for submission of evidence has been extended to accommodate the variety of complexity in civil penalty proceedings, thus ensuring all submissions have sufficient time to be thoroughly researched, investigated, and prepared. This extra time also allows for settlement negotiations to continue should the parties choose. Accordingly, § 386.16(b) extends the period for respondent's submission of written evidence and argument to 45 days, instead of the proposed 30 days. Parties are also reminded all written evidence must be served on the Assistant Administrator in accordance with §§ 386.6 and 386.7. Agency Counsel will then have 20 days to reply to respondent's submission, an extension from the proposed 15-day time period.

Requests for hearing: The final version of § 386.16(b) provides for hearings generally. The Assistant Administrator will determine whether a dispute of material fact is at issue in the matter, and if so, the matter will be referred to the Office of Hearings. If a dispute of a material fact is not at issue, the Assistant Administrator may issue a decision based on the written record.

The final version of § 386.16(b)(2) changes the time period for the Field Administrator to consent or object to a hearing request from the proposed 20-day period to 60 days. In addition, the Field Administrator must either consent or object with basis to a hearing request. An objection with basis means an objection qualified by a simple summary of the basis of the objection. Thus, the time period in which to respond to a hearing request has been extended to allow sufficient time to provide a basis of objection. Also included in the final § 386.16(b)(2) is a provision notifying the parties that failure to serve an objection within the 60-day period may result in automatic referral to the Office of Hearings. This provision was included to provide all parties with a reliable indicator of timely proceedings, and prevent cases from falling through the cracks due to lags in procedural responses.

Requests for formal hearing: Specific provisions governing requests for a formal hearing, or referral to the Office of Hearings for assignment to an administrative law judge, have been modified to simplify the process, The proposed version of 386.16(b)(2) and (3) had provided 20 days for the Field Administrator to serve a notice of consent or objection, in effect a yes-no response, and then an additional 60 days to file a motion for final agency order. Respondent was then given 30 days to respond to the motion. In the finalized version of § 386.16(b)(3), the 60-day period for the Field Administrator to file a motion for final agency order is removed. The Agency believes the introduction of an objection with basis will serve as a reasonable indicator of the Agency's relevant issues in the matter, and thus, the need for the imposition of a strict time period to file such a motion is not warranted.

Moreover, if a motion for final agency order is delayed for an inordinate amount of time after service of the objection with basis, respondent may file an appropriate motion before the Assistant Administrator.

Requests for informal hearing: FMCSA adds § 386.16(b)(4) with some revisions for clarity, and another change in time periods. An informal hearing may serve as a speedier alternative to the formal hearing process, as it requires less in the way of written submissions independent of the NOC and the respondent's reply. Section 386.16(b)(4)(A) is finalized as proposed, with the exception of redesignating § 386.16(b)(4)(i) to § 386.16(b)(4)(A)(i) for clerical consistency. In this streamlined process, a Field Administrator may object to a request for an informal hearing by serving an objection with basis, the NOC, and respondent's reply on the Assistant Administrator, who will grant or deny the request.

As provided in finalized § 386.16(b)(4)(A)(i), if an informal hearing request is granted, a hearing officer will be assigned to the matter. No discovery will be conducted, nor will further motions be considered. All parties may present written and oral evidence, and the hearing officer will issue a report of the findings of fact and a recommended disposition in the case to the Assistant Administrator. The report will serve as the sole written record of the hearing. After consideration of the hearing officer's report, the Assistant Administrator will issue a Final Agency Order or other such order as deemed appropriate. Although participating in an informal hearing waives a respondent's right to a formal hearing, this option may serve the needs and interests of respondents to participate in an adversarial process that may offer a quicker resolution, a minimum of additional written submissions, in an informal, simplified proceeding. Respondents are not obligated to choose the informal hearing; the availability of such an option, however, may be beneficial to a respondent's interest.

In the event an informal hearing is denied, the Field Administrator must serve a motion for final agency order, unless otherwise directed. As finalized, § 386.16(b)(4)(A)(ii) differs from the proposed version by eliminating the period during which the Field Administrator must file a motion for final agency order. However, once the Field Administrator files such a motion, respondent's response period has been increased to 45 days. The time periods were revised to bring uniformity to the time periods established throughout this part. Moreover, the mere fact that an informal hearing is denied does not indicate the complexity of a particular case, and pleadings in such cases should not be given less preparation time.

The finalized § 386.16(b)(4)(A)(iii), which remains unchanged from the proposed version, provides the Assistant Administrator with the discretion to refer any matter for formal or informal hearing, even in cases where respondent may seek only an informal hearing. This provision is important because it allows flexibility of procedures for the agency decisionmaker to resolve a matter based on the changing needs of each case.

Section 386.17 Intervention

FMCSA makes no changes to the language in current § 386.17.

Section 386.18 Payment of the Claim

Current part 386 does not specifically address payment of claims. Therefore, FMCSA is finalizing § 386.18 with a few important clarifications which were not present in the proposed provision.

As per § 386.18(a), payment of the full amount proposed before a Final Agency Order is issued will resolve the claim. The agency has clarified § 386.18(b) in order to reflect no written reply is necessary if a respondent chooses to pay the full amount proposed within the 30-day period for replies. The finalized provision also specifies that payment must be served on the Field Administrator, *i.e.*, by any of the means listed in § 386.6, and not ''postmarked.'' If, however, a respondent has submitted in writing that it intends to pay the civil penalty, but fails to do so within the 30-day period, failure to serve payment will constitute a default and may result in the NOC becoming the Final Agency Order.

Finally, because payment is presumed to constitute admission, respondents have an opportunity to note their objections for the record. Therefore, § 386.18(c) has been revised since proposed, to specify that if a respondent objects to the admission of all facts alleged in the NOC upon payment, such objection must be submitted at the time of payment, or is otherwise waived.

Section 386.18(c) is also important because future Agency enforcement actions may be based on, and certain consequences may flow from, prior and continued violations of the safety regulations. Therefore, compliance with paragraph (c) will identify the implications of prior enforcement actions as related to maximum civil penalty cases under section 222 of the MCSIA. *See* 49 U.S.C. 521, note.

Subpart C—Consent Orders

The title of Subpart C is revised to Settlement Agreements.

Section 386.21 Compliance Order

Current § 386.21 is deleted in its entirety, as it pertains to the notice of investigation, which has been eliminated from the regulation.

Section 386.22 Settlement Agreements and Their Contents

The title of this section is revised to ''Settlement agreements and their contents'' because it is a more accurate description of the provision. This provision is finalized with revisions from the proposed version. The parties to a settlement agreement are the respondent motor carrier, and the Field Administrator of the service center from which the NOC originated. Therefore, § 386.22(a)(1) has been corrected to reflect that the Field Administrator or his/her designee is the proper Agency representative to execute settlement agreements. The contents of a settlement agreement are set forth in § 386.22(1)(i)–(vii), with the revision of § 386.22(a)(1)(vi) to include a provision regarding non-monetary terms of an agreement, such as holding a civil penalty in abeyance while compliance is achieved, or maintaining a satisfactory rating for a specified period of time. If a respondent fails to pay or comply with the terms of the agreement, the civil penalty may be reinstated and any deductions in the original amount proposed will become due immediately. Finally, the Agency finalizes § 386.22(a)(1)(vii) as proposed, and the settlement agreement becomes the Final Agency Order in the proceeding.

As noted above, settlement agreement may also contain conditions, actions or provisions to redress the violations alleged in the NOC. Therefore, the parties are free to include any such terms in the agreement. Accordingly, § 386.22(a)(2) is finalized as proposed. Section 386.22(a)(3) is finalized with revisions to clarify that settlement agreements must be approved by the Agency decisionmaker, and thereafter, the settlement agreement becomes a Final Agency Order. To preserve the integrity of an agreement while pending approval by a decisionmaker, this provision also includes that consent to a settlement agreement may not be withdrawn for a 30-day period.

Section 386.22(b) through (e) are all finalized with the same revision from the proposed version which specifies when a settlement agreement becomes

the Final Agency Order. The date on which a Final Agency Order becomes effective is important in subsequent proceedings, such as tracking due dates for payment, instituting out-of-service orders, and filing petitions for reconsideration. Thus, in proceedings not before an Agency decisionmaker, i.e., still handled at the service center, a settlement agreement becomes the Final Agency Order upon the date of execution by the Field Administrator or his/her designee. In proceedings before an Agency decisionmaker, a settlement agreement becomes the Final Agency Order as of the date the decisionmaker enters an order accepting the agreement.

Section 386.23 Content of Consent Order

This section is deleted in its entirety, as it pertains to the notice of investigation, which has been eliminated from the regulation.

Subpart D—General Rules and Hearings

Section 386.31 Service

This section is deleted in its entirety as superseded by § 386.6.

Section 386.32 Computation of Time

This section is deleted in its entirety as superseded by § 386.8.

Section 386.33 Extension of Time

This section is deleted in its entirety as superseded by § 386.5.

Section 386.31 Official Notice

This section has been revised since proposed to properly capture the procedure for when an Agency decisionmaker takes official notice of both facts and documents. The proposed provision did not require notice to all parties when a decisionmaker takes official notice. Such a provision has now been added, as well as the inclusion of a 10-day period for objections.

The Agency has also modified the language to state that if a Final Agency Order has been issued, and the decision rests on a material fact of which the Agency decisionmaker took official notice, a party may challenge the official notice under § 386.64 petitions for reconsideration. This revision prevents the disruption of proceedings before an Administrative Law Judge or Assistant Administrator for taking of official notice. A party must be able to assert that the decision rests on a material and disputable fact of which the Agency decisionmaker has taken official notice.

Section 386.34 Motions

Current § 386.35 is redesignated § 386.34, and finalized as proposed. Parties are now given 20 days, rather than seven days, for a reply to a motion that is applying for an order or ruling not otherwise covered in Part 386, *i.e.*, not a motion for Final Agency Order under § 386.36, a motion for rehearing or modification under § 386.66. This is to allow sufficient time for all replies to motion, as seven days appeared too short in light of the revised time periods for other filings.

Section 386.35 Motions To Dismiss and Motions for a More Definite Statement

This section is redesignated as § 386.35.

Section 386.36 Motions for Final Agency Order

The Agency finalizes § 386.36 Motions for final agency order, which has been revised since proposed. This provision governs all aspects of a motion for final agency order, including who may file, what must be included, and the period for an answer. Any party may file a motion for final agency order. If the matter is still handled in the service center, then the filing of a motion for final agency order will trigger the transfer of the case to the Agency decisionmaker because motions for final order cannot be decided on by the Field Administrator, as s/he is a party to the proceeding. The form and content provision which were previously proposed under § 386.36(a) have been moved to § 386.36(b), and requires a motion and memorandum of law, and all responsive pleadings and documents in the case. The agency also requires all motions for final agency order be accompanied by written evidence under § 386.49. Respondents have often overlooked the written evidence requirement, or otherwise failed to include an affidavit stating personal knowledge of the facts alleged, or exhibits with an affidavit identifying the exhibits and providing its source. Therefore, the reference to § 386.49 was included to ensure all parties are on notice to submit written evidence.

Analogous to a summary judgment standard, the Agency decisionmaker may issue a Final Agency Order if after reviewing the record in the light most favorable to the non-moving party, there are no genuine issues of material fact. Lastly, a non-moving party is given 45 days, as opposed to 30 days as proposed, to serve a response to the motion for final agency order. The time period was extended to 45 days to make most time periods consistent and predictable throughout this Part.

Section 386.37 Discovery

The title of this section is revised to ''Discovery.'' This provision incorporates the discovery methods listed in existing § 386.37: depositions, interrogatories, production of documents or other evidence for inspection, physical and mental examinations and requests for admissions. The Agency added a new provision since the regulation was proposed, § 386.37(b), which states discovery may commence only when a matter is pending before the Assistant Administrator or referred to the Office of Hearings.

The idea of discovery commencing after a matter has been referred to the Office of Hearings was introduced in the October 2004 SNPRM, under § 386.46 for depositions. It has now been added to the general discovery provision of this section. By allowing discovery to commence only after the matter is before the Assistant Administrator or an Administrative Law Judge, any discovery dispute may be resolved properly by the decisionmaker, and thus prevent further delay of the proceedings. If discovery begins immediately upon issuance of the NOC, discovery disputes may arise while a matter is still pending in the service center, and thus delay or unduly complicate the proceeding with premature discovery issues. Moreover, the case it technically not at issue until the initial pleadings, including the notice and any response have been served.

Finally, upon re-examination, a revised 386.37(c) now states that where a procedural matter is not addressed in the Agency's rules, the Federal Rules of Civil Procedure may serve as guidance for the decisionmaker, not the Federal Rules of Evidence as previously proposed. The prior text incorrectly referred to the Federal Rules of Evidence when it should have cited the Federal Rules of Civil Procedure.

Section 386.38 Scope of Discovery

FMCSA makes no changes to the language in current § 386.38.

Section 386.39 Protective Orders

FMCSA makes no changes to the language in current § 386.39.

Section 386.40 Supplementation of Responses

FMCSA makes no changes to the language in current § 386.40.

Section 386.41 Stipulations Regarding Discovery

FMCSA makes no changes to the language in current § 386.41.

Section 386.42 Written Interrogatories to Parties

FMCSA is finalizing this section, which has been revised since proposed. The substance of current § 386.42 is incorporated into the section, while adding page limits and time periods in which to exchange interrogatories. Consistent with the definition of commencement of discovery to begin when a matter is pending before the Assistant Administrator or Administrative Law Judge, § 386.42(a) has been so modified.

Section 386.42(e) had proposed a copy of interrogatories, answers and related pleadings be served on the Assistant Administrator or Administrative Law Judge. However, upon reconsideration, the Agency has decided to eliminate this requirement, as it could unnecessarily increase the volume of documents to be included in the docket. Accordingly, a simple procedure has been created to state for the record the parties have commenced discovery. As per revised § 386.42(e), all parties must file a notice of discovery, and are obligated to serve a copy of interrogatories, answers, and pleading to all parties in the proceeding. This provision will advise the decisionmaker as to the procedural status of the matter without unduly burdening the administrative record, and the parties' obligations, while facilitating discovery.

Section 386.43 Production of Documents and Other Evidence

FMCSA makes no changes to the language in current § 386.43.

Section 386.44 Request for Admissions

FMCSA makes no changes to the language in current § 386.44.

Section 386.45 Motion to Compel Discovery

FMCSA makes no changes to the language in current § 386.45.

Section 386.46 Depositions

FMCSA finalizes this section to provide procedures for depositions. Three notable provisions have been added to facilitate the process: § 386.46(a)(3) through (5) give the parties discretion to take depositions by telephone or other remote methods; provides that a notice of deposition may include a subpoena duces tecum, which should specify materials to be produced at the deposition; and if depositions are to be taken by videotape or audiotape, the method of recording must be so noticed.

As noted in previous discussions, discovery commences once a matter is pending before the Assistant Administrator or an Administrative Law Judge. Prior to this stage, under § 386.46(c), which is finalized as proposed, either party may petition the Assistant Administrator to conduct depositions on a showing of good cause.

Based on further consideration to improve the discovery process, paragraph (d) has been removed and a new paragraph (d) has been added to the final rule, which provides for written depositions. A notice and written questions may be served to a deponent. Within 14 days, cross-questions may be served on all other parties. Seven days after service of cross-questions, redirect questions may be served, followed by re-cross within seven days. The written deposition is an alternative to an oral deposition, which may save parties costs incurred discovery. The remainder of this section is finalized as proposed, with minor edits for accuracy.

Section 386.47 Use of Deposition at Hearings

FMCSA makes no changes to the language in current § 386.47.

Section 386.48 Medical Records and Physicians' Reports

FMCSA makes no changes to the language in current § 386.48.

Section 386.49 Form of Written Evidence

Although this revision was not proposed in the October 2004 SNPRM, the Agency believed it necessary to modify this section to reflect the practical implications of the written evidence requirement. Instead of requiring an affidavit, a written statement must now accompany all written evidence. A written statement is a more accurate assessment of the submissions typically provided by respondents, and while an affidavit holds legal significance, such significance would serve no further purpose. The written statement is less a matter of verification than that of identification and description. With that in mind, it is sufficient for parties to provide a written statement and thus, a requirement of form over substance is not essential to this provision.

Section 386.50 Appearances and Rights of Witnesses

This section is deleted in its entirety as superseded by § 386.4.

Section 386.51 Amendment and Withdrawal of Proceedings

FMCSA is finalizing § 386.51(b), which has been revised since proposed. A party may withdraw his or her pleadings more than 15 days prior to the scheduled hearing without the approval of the Assistant Administrator or the Administrative Law Judge. Withdrawal within the 15 days prior to the scheduled hearing would still require approval of the decisionmaker. Withdrawal of pleadings will be granted absent a finding that the withdrawal will result in injustice, prejudice, irreparable harm, or is otherwise contrary to the public interest. The public interest exception is the only revision to this section and was included to ensure full consideration before a pleading is withdrawn.

Section 386.52 Appeals From Interlocutory Rulings

After determining that the existing provision for interlocutory appeals did not sufficiently address the issues that may arise, the Agency proposed a more detailed provision for interlocutory appeals in the October 2004 SNPRM. Upon further consideration, and with the aid of feedback received internally, proposed § 386.52(c) was removed as unnecessary, as § 386.52(b) sufficiently covers interlocutory appeals. Moreover, it is possible that a party may use interlocutory appeal of right as a stalling tactic. While § 386.52(e) gives the Assistant Administrator the discretion to reject frivolous, repetitive, or dilatory appeals, a separate enumeration of interlocutory appeals of right may be excessive. Given that the overarching mission of the Agency, and the underlying goal of a civil penalty proceeding is safety, unnecessarily long delays will only postpone compliance.

Section 386.53 Subpoena, Witness Fees

FMCSA makes no changes to the language in current § 386.53.

Section 386.54 Administrative Law Judges

Upon reconsideration of this section as proposed, the Agency revised the provision to accurately reflect the powers of an Administrative Law Judge. Similar to the language in existing § 386.54, the Agency revised § 386.54(a) and inserted § 386.54(a)(11) to reincorporate the catch-all provision regarding the powers of an Administrative Law Judge, whereby s/he may take all necessary actions to ensure a fair and impartial hearing. Consistent with this goal, the APA was added to § 386.54(a)(6) as a reference to regulate the course of an administrative adjudication.

References to interlocutory appeals of right have been deleted from § 386.54(b). Aside from these changes,

the remaining provisions of § 386.54 are finalized as proposed.

Section 386.55 Prehearing Conferences

FMCSA makes no changes to the language in current § 386.55.

Section 386.56 Hearings

FMCSA makes no changes to the language in current § 386.56.

Section 386.57 Proposed Findings of Fact, Conclusions of Law

FMCSA makes no changes to the language in current § 386.57.

Section 386.58 Burden of Proof

FMCSA makes no changes to the language in current § 386.58.

Section 386.61 Decision

This provision is modified to make it consistent with the introduction of the Hearing Officer and his/her role in the decision-making process. Therefore, the Agency added § 386.61(b), which provides a Hearing Officer will submit a report of findings of fact and recommended disposition to the Assistant Administrator within 45 days after the conclusion of an informal hearing. The Assistant Administrator will then issue a Final Agency Order adopting the report or make other such determinations as appropriate. It is important to note this procedure differs from an Administrative Law Judge's decision. An Administrative Law Judge's decision becomes the decision of the Assistant Administrator 45 days after it is served if the parties do not seek review of the decision. Upon review of a decision, the Assistant Administrator may adopt, modify, or set aside the Administrative Law Judge's findings of fact and conclusions of law, remand the proceedings with instructions, or issue a Final Agency Order disposing of the proceedings. In contrast, a Hearing Officer's report and recommendation are advisory, and does not constitute final agency action until the Assistant Administrator issues a Final Agency Order at the conclusion of the proceedings.

Section 386.62 Review of Administrative Law Judge's Decision

FMCSA makes no changes to the language in current § 386.62.

Section 386.63 Decision on Review

FMCSA makes no changes to the language in current § 386.63.

Section 386.64 Reconsideration

FMCSA is finalizing this provision, which has been revised since first proposed, to reflect changes consistent with other sections of this Part. Section 386.64(a) now provides a petition for reconsideration must be filed 20 days following service, as opposed to issuance, of the Final Agency Order.

After further consideration of whether to stay only the civil penalty once a petition for reconsideration has been filed, the Agency decided that staying the civil penalty in effect stays the entire case. Because out-of-service orders in civil penalty proceedings are issued for failure to pay, no other action may be taken on a case if the civil penalty is stayed. Therefore, this change has been applied to the final version of the section.

Section 386.64(b) clarifies that the only issue to be considered under the petition for reconsideration of a final agency order based on default is whether a default occurred. Therefore, in a petition for reconsideration in defaults issued under § 386.14(c), a Final Agency Order may only be vacated where a respondent demonstrates excusable neglect, a meritorious defense, and due diligence in seeking relief. Having this information in the regulations should relieve parties, as well as the decisionmaker, of the burden of addressing other issues in these petitions for reconsideration. Newly adopted paragraphs (c)–(e) provide timelines for serving answers and when a decision must be made by the Assistant Administrator.

Section 386.65 Failure To Comply With Final Agency Order

FMCSA makes no changes to the language in current § 386.65.

Section 386.66 Motions for Rehearing or for Modification

It was proposed that this section be removed from the regulation. Upon further consideration, it was decided to re-insert the provision as it appears in existing § 386.66. The Agency had suggested its removal because it was assumed all motions would be governed by § 386.34. Internal comments have brought this matter to the Agency's attention, as motions for rehearing or for modification are instrumental in the enforcement of settlement agreements. Settlement agreements may often contain terms requiring more than a year to conclude. This section provides a mechanism for Agency Counsel to seek rehearing or modification where respondents have failed to comply with the Final Agency Order.

Section 386.67 Appeal

The title of this section is changed from ''Appeal'' to ''Judicial review.'' FMCSA finalizes this section as proposed, with two revisions for consistency. Current § 386.67 is divided into two paragraphs, (a) and (b). The word ''hearings'' is replaced with ''administrative adjudication'' because a respondent may seek judicial review once there has been final agency action, which may or may not include a hearing. The effect of this change is to liberally interpret 49 U.S.C. § 521(b)(8) to allow judicial review for contested claims resulting in a final agency order, but not for those claims resolved through settlement agreement or in which respondent failed to timely reply. The statute provides that judicial review is only available after a hearing. FMCSA believes, however, its interpretation is appropriate in this instance because these rules provide for resolution of contested claims in an administrative adjudication without formal hearing.

Lastly, a mistake in the standard of review in proposed § 386.67(b) has been corrected, and should now read: ''whether the findings and conclusions in the Final Agency Order were supported by substantial evidence or otherwise not in accordance with law.''

Subpart F—Injunctions and Imminent Hazards

FMCSA makes no changes to the language in current §§ 386.71–386.72.

Subpart G—Penalties

FMCSA makes no changes to the language in current §§ 386.81–386.84.

Appendices

FMCSA makes administrative changes to the language in current Appendix A or Appendix B.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has determined this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. The proposals contained in this document would not result in an annual effect on the economy of $100 million or more, or lead to a major increase in costs or prices, or have significant adverse effects on the United States economy. This proposal would augment, replace, or amend existing procedures and practices. Moreover, the Agency's inclusion of an informal hearing process would add flexibility and less expense for smaller businesses. Any economic consequences flowing from the procedures in the proposal are primarily

mandated by statute. A regulatory evaluation is not required because of the ministerial nature of this action.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency has evaluated the effects of this final rule on small entities. No economic impacts of this rulemaking are foreseen, as the rule would impose no additional substantive burdens that are not already required by the regulations to which these procedural rules would serve.

These administrative changes impose no costs in most situations and can impose no costs in equilibrium. The benefits are administrative ease, scheduling flexibility, and improved industry-agency relations. These benefits are not related to safety and are not easily quantifiable. Nonetheless, the presence of some benefits and essentially no costs leads to the conclusion the rule is cost-beneficial but cannot be considered economically significant and therefore, FMCSA certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. The rules proposed do not preempt State authority or jurisdiction, nor do they establish any conflicts with existing State role in the regulation and enforcement of commercial motor vehicle safety. It has therefore been determined that the SNPRM does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act of 1995

This final rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

National Environmental Policy Act

This rulemaking is categorically excluded from environmental studies under paragraph 6.u. of FMCSA Environmental Order 5610.1C.

Executive Order 13211 (Energy Supply, Distribution, or Use)

This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because as a procedural action it is not economically significant and will not have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 13045 (Protection of Children)

This proposed action is not economically significant and does not concern an environmental risk to health or safety that would disproportionately affect children. The Agency has determined this rule is not a ''covered regulatory action'' as defined under Executive Order 13045. First, this rule is not economically significant under Executive Order 12866 because FMCSA has determined the changes in this rulemaking would not have an impact of $100 million or more in any one year. Second, the Agency has no reason to believe that the rule would result in an environmental health risk or safety risk that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12988 (Civil Justice Reform)

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.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This proposed rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980. 44 U.S.C. 3501 *et seq.*

Regulation Identification Number

A regulation identification number (RIN) is assigned 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. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 386

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials transportation, Highway safety, Motor carriers, Motor vehicle safety, Penalties.

■ In consideration of the foregoing, FMCSA amends 49 CFR part 386 as follows:

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

■ 1. The authority citation for part 386 continues to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132–31133, 31136, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 217, Pub. L. 105–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

■ 2. Revise the heading of subpart A to read as follows:

Subpart A—Scope of Rules; Definitions and General Provisions

■ 3. Amend § 386.2 by removing the definitions for *Compliance Order* and *Consent Order* in their entirety.

■ 4. Amend § 386.2 by revising terms or definitions for *Civil penalty proceedings* and *Final agency order*; and by adding definitions for *Administrative adjudication, Agency, Agency Counsel, Decisionmaker, Default, Department, Dockets, Field Administrator, FMCSRs, Formal hearing, Hearing officer, HMRs, Informal hearing, Mail, Notice of Claim, Notice of Violation, Person, Reply, Secretary*, and *Submission of written evidence without hearing* to read as follows:

§ 386.2 Definitions.

* * * * *

Administrative adjudication means a process or proceeding to resolve contested claims in conformity with the Administrative Procedure Act, 5 U.S.C. 554–558.

Agency means the Federal Motor Carrier Safety Administration.

Agency Counsel means the attorney who prosecutes a civil penalty matter on behalf of the Field Administrator.

* * * * *

Civil penalty proceedings means proceedings to collect civil penalties for violations of regulations and statutes within the jurisdiction of FMCSA.

* * * * *

Decisionmaker means the Assistant Administrator of FMCSA, acting in the capacity of the decisionmaker or any

person to whom the Assistant Administrator has delegated his/her authority in a civil penalty proceeding. As used in this subpart, the Agency decisionmaker is the official authorized to issue a final decision and order of the Agency in a civil penalty proceeding.

Default means an omission or failure to perform a legal duty within the time specified for action, failure to reply to a Notice of Claim within the time required, or failure to submit a reply in accordance with the requirements of this part. A default may result in issuance of a Final Agency Order or additional penalties against the defaulting party.

Department means the U.S. Department of Transportation.

Dockets means the U.S. Department of Transportation's docket management system, which is the central repository for original copies of all documents filed before the agency decisionmaker.

Federal Motor Carrier Commercial Regulations (FMCCRs) means statutes and regulations applying to persons providing or arranging transportation for compensation subject to the Secretary's jurisdiction under 49 U.S.C. Chapter 135. The statutes are codified in Part B of Subtitle IV, Title 49 U.S.C. (49 U.S.C. 13101 through 14913). The regulations include those issued by FMCSA or its predecessors under authority provided in 49 U.S.C. 13301 or a predecessor statute.

* * * * *

Field Administrator means the head of an FMCSA Service Center who has been delegated authority to initiate compliance and enforcement actions on behalf of FMCSA.

Final Agency Order means the final action by FMCSA issued pursuant to this part by the appropriate Field Administrator (for default judgments under § 386.14) or the Assistant Administrator, or settlement agreements which become the Final Agency Order pursuant to 386.22, or decisions of the Administrative Law Judge, which become the Final Agency Order pursuant to 386.61 or binding arbitration awards. A person who fails to perform the actions directed in the Final Agency Order commits a violation of that order and is subject to an additional penalty as prescribed in Subpart G of this part.

FMCSRs means the Federal Motor Carrier Safety Regulations.

Formal hearing means an evidentiary hearing on the record in which parties have the opportunity to conduct discovery, present relevant evidence, and cross-examine witnesses.

Hearing officer means a neutral Agency employee designated by the Assistant Administrator to preside over an informal hearing.

HMRs means Hazardous Materials Regulations.

Informal hearing means a hearing in which the parties have the opportunity to present relevant evidence to a neutral Hearing Officer, who will prepare findings of fact and recommendations for the Agency decisionmaker. The informal hearing will not be on the transcribed record and discovery will not be allowed. Parties will have the opportunity to discuss their case and present testimony and evidence before the Hearing Officer without the formality of a formal hearing.

* * * * *

Mail means U.S. first class mail, U.S. registered or certified mail, or use of a commercial delivery service.

* * * * *

Notice of Claim (NOC) means the initial document issued by FMCSA to assert a civil penalty for alleged violations of the FMCSRs, HMRs, or FMCCRs.

Notice of Violation (NOV) means a document alleging a violation of the FMCSRs, HMRs, or FMCCRs, for which corrective action, other than payment of a civil penalty, is recommended.

Person means any individual, partnership, association, corporation, business trust, or any other organized group of individuals.

Reply means a written response to a Notice of Claim, admitting or denying the allegations contained within the Notice of Claim. In addition, the reply provides the mechanism for determining whether the respondent seeks to pay, settle, contest, or seek binding arbitration of the claim. *See* § 386.14. If contesting the allegations, the reply must also set forth all known affirmative defenses and factors in mitigation of the claim.

* * * * *

Secretary means the Secretary of Transportation.

Submission of written evidence without hearing means the submission of written evidence and legal argument to the Agency decisionmaker, or his/her representative, in lieu of a formal or informal hearing.

■ 5. Add § 386.3 to subpart A to read as follows:

§ 386.3 Separation of functions.

(a) Civil penalty proceedings will be prosecuted by Agency Counsel who represent the Field Administrator. In Notices of Violation, the Field Administrator will be represented by Agency Counsel.

(b) An Agency employee, including those listed in paragraph (c) of this section, engaged in the performance of investigative or prosecutorial functions in a civil penalty proceeding may not, in that case or a factually related case, discuss or communicate the facts or issues involved with the Agency decisionmaker, Administrative Law Judge, Hearing Officer or others listed in paragraph (d) of this section, except as counsel or a witness in the public proceedings. This prohibition also includes the staff of those covered by this section.

(c) The Deputy Chief Counsel, Assistant Chief Counsel for Enforcement and Litigation, and attorneys in the Enforcement and Litigation Division serve as enforcement counsel in the prosecution of all cases brought under this part.

(d) The Chief Counsel, the Special Counsel to the Chief Counsel, and attorneys serving as Adjudications Counsel advise the Agency decisionmaker regarding all cases brought under this Part.

(e) Nothing in this part shall preclude agency decisionmakers or anyone advising an agency decisionmaker from taking part in a determination to launch an investigation or issue a complaint, or similar preliminary decision.

■ 6. Add § 386.4 to subpart A to read as follows:

§ 386.4 Appearances and rights of parties.

(a) A party may appear in person, by counsel, or by other representative, as the party elects, in a proceeding under this subpart.

(b) A person representing a party must file a notice of appearance in the proceeding, in the manner provided in § 386.7 of this subpart. The notice of appearance must list the name, address, telephone number, and facsimile number of the person designated to represent the party. A copy of the notice of appearance must be served on each party, in the manner provided in § 386.6 of this subpart. The notice of appearance must be filed and served before the representative can participate in the proceeding. Any changes in an attorney or representative's contact information must be served and filed according to §§ 386.6 and 386.7 in a timely manner.

(c) A separate notice of appearance must be filed by a representative in each case. Blanket appearances on behalf of a party will not be accepted.

■ 7. Add § 386.5 to subpart A to read as follows:

§ 386.5 Form of filings and extensions of time.

(a) *Form.* Each document must be typewritten or legibly handwritten.

(b) *Contents.* Unless otherwise specified in this part, each document must contain a short, plain statement of the facts on which the person's case rests and a brief statement of the action requested in the document. Except by prior order, all contents will be made publicly available.

(c) *Length.* Except for the Notice of Claim and reply, motions, briefs, and other filings may not exceed 20 pages except as permitted by Order following a motion to exceed the page limitation based upon good cause shown. Exhibits or attachments in support of the relevant filing are not included in the page limit.

(d) *Paper and margins.* Filed documents must be printed on 8½″ by 11″ paper with a one-inch margin on all four sides of text, to include pagination and footnotes.

(e) *Spacing, and font size for typewritten documents.* Typewritten documents will use the following line format: single-spacing for the caption and footnotes, and double-spacing for the main text. All printed matter must appear in at least 12-point font, including footnotes.

(f) *Extensions of time.* Only those requests showing good cause will be granted. No motion for continuance or postponement of a hearing date filed within 15 days of the date set for a hearing will be granted unless accompanied by an affidavit showing extraordinary circumstances warrant a continuance. Unless directed otherwise by the Agency decisionmaker before whom a matter is pending, the parties may stipulate to reasonable extensions of time by filing the stipulation in the official docket and serving copies on all parties on the certificate of service. Motions for extensions of time must be filed in accordance with § 386.6 and served in accordance with § 386.7. A copy must also be served upon the person presiding over the proceeding at the time of the filing.

■ 8. Add § 386.6 to subpart A to read as follows:

§ 386.6 Service.

(a) *General.* All documents must be served upon the party or the party's designated agent for service of process. If a notice of appearance has been filed in the specific case in question in accordance with § 386.4, service is to be made on the party's attorney of record or its designated representative.

(b) *Type of service.* A person may serve documents by personal delivery utilizing governmental or commercial entities, U.S. mail, commercial mail delivery, and upon prior written consent of the parties, facsimile. Written consent for facsimile service must specify the facsimile number where service will be accepted. When service is made by facsimile, a copy will also be served by any other method permitted by this section. Facsimile service occurs when transmission is complete.

(c) *Certificate of service.* A certificate of service will accompany all documents served in a proceeding under this Part. The certificate must show the date and manner of service, be signed by the person making service, and list the persons served in accordance with § 386.7.

(d) *Date of service.* A document will be considered served on the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

(e) *Valid service.* A properly addressed document, sent in accordance with this subpart, which was returned, unclaimed, or refused, is deemed to have been served in accordance with this subpart. The service will be considered valid as of the date and the time the document was mailed, or the date personal delivery of the document was refused. Service by delivery after 5 p.m. in the time zone in which the recipient will receive delivery is deemed to have been made on the next day that is not a Saturday, Sunday, or legal holiday.

(f) *Presumption of service.* There shall be a presumption of service if the document is served where a party or a person customarily receives mail or at the address designated in the entry of appearance. If an entry of appearance has been filed on behalf of the party, service is effective upon service of a document to its representative.

■ 9. Add § 386.7 to subpart A to read as follows:

§ 386.7 Filing of documents.

(a) *Address and method of filing.* A person serving or tendering a document for filing must personally deliver or mail one copy of each document to all parties and counsel or their designated representative of record if represented. A signed original and one copy of each document submitted for the consideration of the Assistant Administrator, an Administrative Law Judge, or Hearing Officer must be personally delivered or mailed to: U.S. DOT Dockets 400 7th Street, SW., Room PL–401, Washington, DC 20590. A person will serve a copy of each document on each party in accordance with § 386.6 of this subpart.

■ 10. Add 386.8 to subpart A to read as follows:

§ 386.8 Computation of time.

(a) *Generally.* In computing any time period set out in these rules or in an order issued hereunder, the time computation begins with the day following the act, event, or default. The last day of the period is included unless it is a Saturday, Sunday, or legal Federal holiday in which case the time period will run to the end of the next day that is not a Saturday, Sunday, or legal Federal holiday. All Saturdays, Sundays, and legal Federal holidays except those falling on the last day of the period will be computed.

(b) *Date of entry of orders.* In computing any period of time involving the date of the entry of an order, the date of entry is the date the order is served.

(c) *Computation of time for delivery by mail.*

(1) Service of all documents is deemed effected at the time of mailing.

(2) Documents are not deemed filed until received by Dockets.

(3) Whenever a party has a right or a duty to act or to make any response within a prescribed period after service by mail, or on a date certain after service by mail, 5 days will be added to the prescribed period.

■ 11. Amend § 386.11 by revising paragraphs (b) and (c) to read as follows:

§ 386.11 Commencement of proceedings.

* * * * *

(b) *Notice of Violation.* The Agency may issue a Notice of Violation as a means of notifying any person subject to the rules in this part that it has received information (*i.e.*, from an investigation, audit, or any other source) wherein it has been alleged the person has violated provisions of the FMCSRs, HMRs, or FMCCRs. The notice of violation serves as an informal mechanism to address compliance deficiencies. If the alleged deficiency is not addressed to the satisfaction of the Agency, formal enforcement action may be taken in accordance with paragraph (c) of this section. A notice of violation is not a prerequisite to the issuance of a Notice of Claim. The notice of violation will address the following issues, as appropriate:

(1) The specific alleged violations.

(2) Any specific actions the Agency determines are appropriate to remedy the identified problems.

(3) The means by which the notified person can inform the Agency that it has received the notice of violation and

either has addressed the alleged violation or does not agree with the Agency's assertions in the notice of violation.

(4) Any other relevant information.

(c) *Civil penalty proceedings.* These proceedings are commenced by the issuance of a Notice of Claim.

(1) Each Notice of Claim must contain the following:

(i) A statement setting forth the facts alleged.

(ii) A statement of the provisions of law allegedly violated by the respondent.

(iii) The proposed civil penalty and notice of the maximum amount authorized to be claimed under statute.

(iv) The time, form, and manner whereby the respondent may pay, contest, or otherwise seek resolution of the claim.

(2) In addition to the information required by paragraph (c)(1) of this section, the Notice of Claim may contain such other matters as the Agency deems appropriate.

(3) In proceedings for collection of civil penalties for violations of the motor carrier safety regulations under the Motor Carrier Safety Act of 1984, the Agency may require the respondent to post a copy of the Notice of Claim in such place or places and for such duration as the Agency may determine appropriate to aid in the enforcement of the law and regulations.

■ 12. Remove § 386.12(a) and (b) in their entirety and redesignate § 386.12 (c) through (e) as § 386.12 (a) through (c), respectively and revise newly redesignated (b) to read as follows:

§ 386.12 Complaint.

* * * * *

(b) *Action on complaint of substantial violation.* Upon the filing of a complaint of a substantial violation under paragraph (a) of this section, the Assistant Administrator shall determine whether it is nonfrivolous and meets the requirements of paragraph (a) of this section. If the Assistant Administrator determines the complaint is nonfrivolous and meets the requirements of paragraph (a), he/she shall investigate the complaint. The complainant shall be timely notified of findings resulting from such investigation. The Assistant Administrator shall not be required to conduct separate investigations of duplicative complaints. If the Assistant Administrator determines the complaint is frivolous or does not meet the requirements of the paragraph (a), he/she shall dismiss the complaint and notify the complainant in writing of the reasons for such dismissal.

* * * * *

■ 13. Revise § 386.14 to read as follows:

§ 386.14 Reply.

(a) *Time for reply to the Notice of Claim.* Respondent must serve a reply to the Notice of Claim in writing within 30 days following service of the Notice of Claim. The reply is to be served in accordance with § 386.6 upon the Service Center indicated in the Notice of Claim.

(b) *Options for reply.* The respondent must reply to the Notice of Claim within the time allotted by choosing one of the following:

(1) Paying the full amount asserted in the Notice of Claim in accordance with § 386.18 of this part;

(2) Contesting the claim by requesting administrative adjudication pursuant to paragraph (d) of this section; or

(3) Seeking binding arbitration in accordance with the Agency's program. Although the amount of the proposed penalty may be disputed, referral to binding arbitration is contingent upon an admission of liability that the violations occurred.

(c) *Failure to answer the Notice of Claim.* (1) Respondent's failure to answer the Notice of Claim in accordance with paragraph (a) may result in the issuance of a Notice of Default and Final Agency Order by the Field Administrator. The Notice of Default and Final Agency Order will declare respondent to be in default and further declare the Notice of Claim, including the civil penalty proposed in the Notice of Claim, to be the Final Agency Order in the proceeding. The Final Agency Order will be effective five days following service of the Notice of Default and Final Agency Order.

(2) The default constitutes an admission of all facts alleged in the Notice of Claim and a waiver of respondent's opportunity to contest the claim. The default will be reviewed by the Assistant Administrator in accordance with § 386.64(b), and the Final Agency Order may be vacated where a respondent demonstrates excusable neglect, a meritorious defense, or due diligence in seeking relief.

(3) Failure to pay the civil penalty as directed in a Final Agency Order constitutes a violation of that order, subjecting the respondent to an additional penalty as prescribed in Subpart G of this part.

(d) *Request for administrative adjudication.* The respondent may contest the claim and request administrative adjudication pursuant to paragraph (b)(2) of this section. An administrative adjudication is a process to resolve contested claims before the Assistant Administrator, Administrative Law Judge, or Hearing Officer. Once an administrative adjudication option is elected, it is binding on the respondent.

(1) *Contents.* In addition to the general requirements of this section, the reply must be in writing and state the grounds for contesting the claim and must raise any affirmative defenses the respondent intends to assert. Specifically, the reply:

(i) Must admit or deny each separately stated and numbered allegation of violation in the claim. A statement that the person is without sufficient knowledge or information to admit or deny will have the effect of a denial. Any allegation in the claim not specifically denied in the reply is deemed admitted. A mere general denial of the claim is insufficient and may result in a default being entered by the Agency decisionmaker upon motion by the Field Administrator.

(ii) Must include all known affirmative defenses, including those relating to jurisdiction, limitations, and procedure.

(iii) Must state which one of the following options respondent seeks:

(A) To submit written evidence without hearing; or

(B) An informal hearing; or

(C) A formal hearing.

(2) [Reserved].

■ 14. Revise § 386.16 to read as follows:

§ 386.16 Action on replies to the Notice of Claim.

(a) *Requests to submit written evidence without a hearing.* Where respondent has elected to submit written evidence in accordance with § 386.14(d)(1)(iii)(A):

(1) Agency Counsel must serve all written evidence and argument in support of the Notice of Claim no later than 60 days following service of respondent's reply. The written evidence and argument must be served on the Assistant Administrator in accordance with §§ 386.6 and 386.7. The submission must include all pleadings, notices, and other filings in the case to date.

(2) Respondent will, not later than 45 days following service of Agency Counsel's written evidence and argument, serve its written evidence and argument on the Assistant Administrator in accordance with §§ 386.6 and 386.7.

(3) Agency Counsel may file a written response to respondent's submission. Any such submission must be filed

within 20 days of service of respondent's submission.

(4) All written evidence submitted by the parties must conform to the requirements of § 386.49.

(5) Following submission of evidence and argument as outlined in this section, the Assistant Administrator may issue a Final Agency Order and order based on the evidence and arguments submitted, or may issue any other order as may be necessary to adjudicate the matter.

(b) *Requests for hearing.* (1) If a request for a formal or informal hearing has been filed, the Assistant Administrator will determine whether there exists a dispute of a material fact at issue in the matter. If so, the matter will be set for hearing in accordance with respondent's reply. If it is determined that there does not exist a dispute of a material fact at issue in the matter, the Assistant Administrator may issue a decision based on the written record, or may request the submission of further evidence or argument.

(2) If a respondent requests a formal or informal hearing in its reply, the Field Administrator must serve upon the Assistant Administrator and respondent a notice of consent or objection with a basis to the request within 60 days of service of respondent's reply. Failure to serve an objection within the time allotted may result in referral of the matter to hearing.

(3) *Requests for formal hearing.* Following the filing of an objection with basis, the Field Administrator must serve a motion for Final Agency Order pursuant to § 386.36 unless otherwise ordered by the Assistant Administrator. The motion must set forth the reasons why the Field Administrator is entitled to judgment as a matter of law. Respondent must, within 45 days of service of the motion for Final Agency Order, submit and serve a response to the Field Administrator's motion. After reviewing the record, the Assistant Administrator will either set the matter for hearing by referral to the Office of Hearings or issue a Final Agency Order based upon the submissions.

(4) *Requests for informal hearing.*

(i) If the Field Administrator objects with basis to a request for an informal hearing, he/she must serve the objection, a copy of the Notice of Claim, and a copy of respondent's reply, on the respondent and Assistant Administrator, pursuant to paragraph (b)(2) of this section. Based upon the Notice of Claim, the reply, and the objection with basis, the Assistant Administrator will issue an order granting or denying the request for informal hearing.

(A) *Informal hearing granted.* If the request for informal hearing is granted by the Assistant Administrator, a Hearing Officer will be assigned to hear the matter and will set forth the date, time and location for hearing. No further motions will be entertained, and no discovery will be allowed. At hearing, all parties may present evidence, written and oral, to the Hearing Officer, following which the Hearing Officer will issue a report to the Assistant Administrator containing findings of fact and recommending a disposition of the matter. The report will serve as the sole record of the proceedings. The Assistant Administrator may issue a Final Agency Order adopting the report, or issue other such orders as he/she may deem appropriate. By participating in an informal hearing, respondent waives its right to a formal hearing.

(B) *Informal hearing denied.* If the request for informal hearing is denied, the Field Administrator must serve a motion for Final Agency Order pursuant to § 386.36, unless otherwise directed by the Assistant Administrator. The motion must set forth the reasons why the Field Administrator is entitled to judgment as a matter of law. Respondent must, within 45 days of service of the motion for Final Agency Order, submit and serve a response to the Field Administrator's motion. After reviewing the record, the Assistant Administrator will set the matter for formal hearing by referral to the Office of Hearings, or will issue a Final Agency Order based upon the submissions.

(C) Nothing in this section shall limit the Assistant Administrator's authority to refer any matter for formal hearing, even in instances where respondent seeks only an informal hearing.

■ 15. Add § 386.18 to subpart B to read as follows:

§ 386.18 Payment of the claim.

(a) Payment of the full amount claimed may be made at any time before issuance of a Final Agency Order. After the issuance of a Final Agency Order, claims are subject to interest, penalties, and administrative charges in accordance with 31 U.S.C. 3717; 49 CFR part 89; and 31 CFR 901.9.

(b) If respondent elects to pay the full amount as its response to the Notice of Claim, payment must be served upon the Field Administrator at the Service Center designated in the Notice of Claim within 30 days following service of the Notice of Claim. No written reply is necessary if respondent elects the payment option during the 30-day reply period. Failure to serve full payment within 30 days of service of the Notice of Claim when this option has been chosen may constitute a default and may result in the Notice of Claim, including the civil penalty assessed by the Notice of Claim, becoming the Final Agency Order in the proceeding pursuant to § 386.14(c).

(c) Unless objected to in writing, submitted at the time of payment, payment of the full amount in response to the Notice of Claim constitutes an admission by the respondent of all facts alleged in the Notice of Claim. Payment waives respondent's opportunity to further contest the claim, and will result in the Notice of Claim becoming the Final Agency Order.

■ 16. Revise the heading of subpart C to read as follows:

Subpart C—Settlement Agreements

§ 386.21 [Removed]

■ 17. Remove § 386.21.

■ 18. Revise § 386.22 to read as follows:

§ 386.22 Settlement agreements and their contents.

(a) *Settlement agreements.* (1) When negotiations produce an agreement as to the amount or terms of payment of a civil penalty or the terms and conditions of an order, a settlement agreement shall be drawn and signed by the respondent and the Field Administrator or his/her designee. Such settlement agreement must contain the following:

(i) The statutory basis of the claim;

(ii) A brief statement of the violations;

(iii) The amount claimed and the amount paid;

(iv) The date, time, and place and form of payment;

(v) A statement that the agreement is not binding on the Agency until executed by the Field Administrator or his/her designee;

(vi) A statement that failure to pay in accordance with the terms of the agreement or to comply with the terms of the agreement may result in the reinstatement of any penalties held in abeyance and may also result in the loss of any reductions in civil penalties asserted in the Notice of Claim, in which case the original amount asserted will be due immediately; and

(vii) A statement that the agreement is the Final Agency Order.

(2) A settlement agreement may contain any conditions, actions, or provisions agreed by the parties to redress the violations cited in the Notice of Claim or notice of violation.

(3) A settlement agreement accepted and approved by the Assistant Administrator or Administrative Law

Judge is a Final Agency Order which is binding on all parties according to its terms. Consent to a settlement agreement which has not yet been approved by the Assistant Administrator or Administrative Law Judge may not be withdrawn for a period of 30 days.

(b) *Civil Penalty Proceedings not before Agency Decisionmaker.* When the parties have agreed to a settlement at any time prior to the case coming before the Agency decisionmaker, the parties may execute an appropriate agreement for disposing of the case. The agreement does not require approval by the Agency decisionmaker. The agreement becomes the Final Agency Order upon execution by the Field Administrator or his/her designee.

(c) *Civil Penalty Proceedings before Agency Decisionmaker.* When a respondent has agreed to a settlement of a civil penalty before a Final Agency Order has been issued, the parties may execute an appropriate agreement for disposal of the case by consent for the consideration of the Assistant Administrator. The agreement is filed with the Assistant Administrator, who may accept it, reject it and direct that proceedings in the case continue, or take such other action as he/she deems appropriate. If the Assistant Administrator accepts the agreement, he/she shall enter an order in accordance with its terms. The settlement agreement becomes the Final Agency Order as of the date the Assistant Administrator enters an order accepting the settlement agreement.

(d) *Civil Penalty Proceedings before Administrative Law Judge (ALJ).* When a respondent has agreed to a settlement of a civil penalty before the hearing is concluded, the parties may execute an appropriate agreement for disposing of the case by consent for the consideration of the ALJ. The agreement is filed with the ALJ who may accept it, reject it, and direct that proceedings in the case continue, or take such other action as he/she deems appropriate. If the ALJ accepts the agreement, he/she shall enter an order in accordance with its terms. The settlement agreement becomes the Final Agency Order as per § 386.61.

(e) *Civil Penalty Proceedings before Hearing Officer.* When a respondent has agreed to a settlement of a civil penalty before the hearing is concluded, the parties may execute an appropriate agreement for disposal of the case for the consideration of the Hearing Officer. The agreement is filed with the Hearing Officer, who, within 20 days of receipt, will make a report and recommendation to the Assistant Administrator who may accept it, reject it, and direct that proceedings in the case continue, or take such other action as he/she deems appropriate. If the Assistant Administrator accepts the agreement, he/she will enter an order in accordance with its terms. The settlement agreement becomes the Final Agency Order as of the date the Assistant Administrator enters an order accepting the settlement agreement.

§ 386.23 [Removed]

■ 19. Remove § 386.23.

■ 20. Revise § 386.31 to read as follows:

§ 386.31 Official notice.

Upon notification to all parties, the Assistant Administrator or Administrative Law Judge may take official notice of any fact or document not appearing in evidence in the record. Any party objecting to the official notice must file an objection within 10 days after service of the notice. If a Final Agency Order has been issued, and the decision rests on a material and disputable fact of which the Agency decisionmaker has taken official notice, a party may challenge the action of official notice in accordance with § 386.64 of this part.

§ 386.32 [Removed]

■ 21. Remove § 386.32.

§ 386.33 [Removed]

■ 22. Remove § 386.33.

§ 386.34 [Removed]

■ 23. Remove § 386.34.

§ 386.35 [Redesignated and Amended]

■ 24. Redesignate § 386.35 as § 386.34 and amend paragraph (c) by removing the number ''7'' and adding, in its place, the number ''20.''

§ 386.36 [Redesignated]

■ 25. Redesignate § 386.36 as § 386.35.

■ 26. Add a new § 386.36 to read as follows:

§ 386.36 Motions for final agency order.

(a) *Generally.* Unless otherwise provided in this section, the motion and answer will be governed by § 386.34. Either party may file a motion for final order. The motion must be served in accordance with §§ 386.6 and 386.7. If the matter is still pending before the service center, upon filing, the matter is officially transferred from the service center to the Agency decisionmaker, who will then preside over the matter.

(b) *Form and content.*

(1) Movant's filing must contain a motion and memorandum of law, which may be separate or combined and must include all responsive pleadings, notices, and other filings in the case to date.

(2) The motion for final order must be accompanied by written evidence in accordance with § 386.49.

(3) The motion will state with particularity the grounds upon which it is based and the substantial matters of law to be argued. A Final Agency Order may be issued if, after reviewing the record in a light most favorable to the non-moving party, the Agency decisionmaker determines no genuine issue exists as to any material fact.

(c) *Answer to Motion.* The non-moving party will, within 45 days of service of the motion for final order, submit and serve a response to rebut movant's motion.

■ 27. Revise § 386.37 to read as follows:

§ 386.37 Discovery.

(a) Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; request for production of documents or other evidence for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery may not commence until the matter is pending before the Assistant Administrator or referred to the Office of Hearings.

(c) Except as otherwise provided in these rules, in the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, or by the Assistant Administrator or Administrative Law Judge, in the absence of specific Agency provisions or regulations, the Federal Rules of Civil Procedure may serve as guidance in administrative adjudications.

■ 28. Revise § 386.42 to read as follows:

§ 386.42 Written interrogatories to parties.

(a) Without leave, any party may serve upon any other party written interrogatories to be answered by the party to whom the interrogatories are directed; or, if that party is a public or private corporation or partnership or association or governmental agency, by any officer or agent, who will furnish the information available to that party.

(b) The maximum number of interrogatories served will not exceed 30, including all subparts, unless the Assistant Administrator or Administrative Law Judge permits a larger number on motion and for good cause shown. Other interrogatories may be added without leave, so long as the total number of approved and additional interrogatories does not exceed 30.

(c) Each interrogatory shall be answered separately and fully in writing

under oath unless it is objected to, in which event the grounds for objection shall be stated and signed by the party, or counsel for the party, if represented, making the response. The party to whom the interrogatories are directed shall serve the answers and any objections within 30 days after the service of the interrogatories, or within such shortened or longer period as the Assistant Administrator or the Administrative Law Judge may allow.

(d) Motions to compel may be made in accordance with § 386.45.

(e) A notice of discovery must be served on the Assistant Administrator or, in cases that have been referred to the Office of Hearings, on the Administrative Law Judge. A copy of the interrogatories, answers, and all related pleadings must be served on all parties to the proceeding.

(f) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Assistant Administrator or Administrative Law Judge may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

■ 29. Revise § 386.46 to read as follows:

§ 386.46 Depositions.

(a) *When, how, and by whom taken.*

(1) The deposition of any witness may be taken at reasonable times subsequent to the appointment of an Administrative Law Judge. Prior to referral to the Office of Hearings, a party may petition the Assistant Administrator, in accordance with § 386.37, for leave to conduct a deposition based on good cause shown.

(2) Depositions may be taken by oral examination or upon written interrogatories before any person having power to administer oaths.

(3) The parties may stipulate in writing or the Administrative Law Judge may upon motion order that a deposition be taken by telephone or other remote electronic means.

(4) If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to, or included in, the notice.

(5) If the deposition is to be recorded by videotape or audiotape, the notice shall specify the method of recording.

(b) *Application.* Any party desiring to take the deposition of a witness must indicate to the witness and all other parties the time when, the place where, and the name and post office address of the person before whom the deposition is to be taken; the name and address of each witness; and the subject matter concerning which each such witness is expected to testify.

(c) *Notice.* A party desiring to take a deposition must give notice to the witness and all other parties. Notice must be in writing. Notice of the deposition must be given not less than 20 days from when the deposition is to be taken if the deposition is to be held within the continental United States and not less than 30 days from when the deposition is to be taken if the deposition is to be held elsewhere, unless a shorter time is agreed to by the parties or by leave of the Assistant Administrator or Administrative Law Judge by motion for good cause shown.

(d) *Depositions upon written questions.* Within 14 days after the notice and written questions are served, a party may serve cross-questions upon all other parties. Within 7 days after being served with cross-questions, a party may serve redirect questions upon all other parties. Within 7 days after being served with redirect questions, a party may serve recross questions upon all other parties. The Assistant Administrator or Administrative Law Judge may enlarge or shorten the time for cause shown.

(e) *Taking and receiving in evidence.* Each witness testifying upon deposition must be sworn, and any other party must be given the right to cross-examine. The questions propounded and the answers to them, together with all objections made, must be reduced to writing; read by or to, and subscribed by the witness; and certified by the person administering the oath. The person who took the deposition must seal the deposition transcript in an envelope and file it in accordance with § 386.7. Subject to objections to the questions and answers as were noted at the time of taking the deposition and which would have been valid if the witness were personally present and testifying, the deposition may be read and offered in evidence by the party taking it as against any party who was present or represented at the taking of the deposition or who had due notice of it.

(f) *Witness Limit.* No party may seek deposition testimony of more than five witnesses without leave of the Agency decisionmaker for good cause shown. Individual depositions are not to exceed 8 hours for any one witness.

(g) *Motion to terminate or limit examination.* During the taking of a deposition, a party or deponent may request suspension of the deposition on grounds of bad faith in the conduct of the examination, oppression of a deponent or party or improper questions propounded. The deposition will then be adjourned. The objecting party or deponent must, however, immediately move for a ruling on his or her objections to the deposition conduct or proceedings before the Assistant Administrator or Administrative Law Judge, who then may limit the scope or manner of the taking of the deposition.

■ 30. Revise § 386.49 to read as follows:

§ 386.49 Form of written evidence.

All written evidence should be submitted in the following forms:

(a) A written statement of a person having personal knowledge of the facts alleged, or

(b) Documentary evidence in the form of exhibits attached to a written statement identifying the exhibit and giving its source.

§ 386.50 [Removed]

■ 31. Remove § 386.50.

■ 32. Amend § 386.51 by revising paragraph (b) to read as follows:

§ 386.51 Amendment and withdrawal of pleadings.

* * * * *

(b) A party may withdraw his/her pleading any time more than 15 days prior to the hearing by serving a notice of withdrawal on the Assistant Administrator or the Administrative Law Judge. Within 15 days prior to the hearing a withdrawal may be made only at the discretion of the Assistant Administrator or the Administrative Law Judge. The withdrawal will be granted absent a finding that the withdrawal will result in injustice, prejudice, or irreparable harm to the non-moving party, or is otherwise contrary to the public interest.

■ 33. Revise § 386.52 to read as follows:

§ 386.52 Appeals from interlocutory rulings.

(a) *General.* Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the Administrative Law Judge to the Assistant Administrator until the Administrative Law Judge's decision has been entered on the record. A decision or order of the Assistant Administrator on the interlocutory appeal does not constitute a Final Agency Order for the purposes of judicial review under § 386.67.

(b) *Interlocutory appeal for cause.* If a party files a written request for an interlocutory appeal for cause with the Administrative Law Judge, or orally requests an interlocutory appeal for cause, the proceedings are stayed until the Administrative Law Judge issues a

decision on the request. If the Administrative Law Judge grants the request, the proceedings are stayed until the Assistant Administrator issues a decision on the interlocutory appeal. The Administrative Law Judge must grant an interlocutory appeal for cause if a party shows that delay of the appeal would be detrimental to the public interest or would result in undue prejudice to any party.

(d) *Procedure.* A party must file a notice of interlocutory appeal, with any supporting documents, with the Assistant Administrator, and serve copies on each party and the Administrative Law Judge, not later than 10 days after the Administrative Law Judge's oral decision has been issued, or a written decision has been served. A party must file a reply brief, if any, with the Assistant Administrator and serve a copy of the reply brief on each party, not later than 10 days after service of the appeal brief. The Assistant Administrator will render a decision on the interlocutory appeal, within a reasonable time after receipt of the interlocutory appeal.

(e) The Assistant Administrator may reject frivolous, repetitive, or dilatory appeals, and may issue an order precluding one or more parties from making further interlocutory appeals, and may order such further relief as required.

■ 34. Revise § 386.54 to read as follows:

§ 386.54 Administrative Law Judge.

(a) *Powers of an Administrative Law Judge.* The Administrative Law Judge may take any action and may prescribe all necessary rules and regulations to govern the conduct of the proceedings to ensure a fair and impartial hearing, and to avoid delay in the disposition of the proceedings. In accordance with the rules in this subchapter, an Administrative Law Judge may do the following:

(1) Give notice of and hold prehearing conferences and hearings.

(2) Administer oaths and affirmations.

(3) Issue subpoenas authorized by law.

(4) Rule on offers of proof.

(5) Receive relevant and material evidence.

(6) Regulate the course of the administrative adjudication in accordance with the rules of this subchapter and the Administrative Procedure Act.

(7) Hold conferences to settle or simplify the issues by consent of the parties.

(8) Dispose of procedural motions and requests, except motions that under this part are made directly to the Assistant Administrator.

(9) Issue orders permitting inspection and examination of lands, buildings, equipment, and any other physical thing and the copying of any document.

(10) Make findings of fact and conclusions of law, and issue decisions.

(11) To take any other action authorized by these rules and permitted by law.

(b) *Limitations on the power of the Administrative Law Judge.* The Administrative Law Judge is bound by the procedural requirements of this part and the precedent opinions of the Agency. This section does not preclude an Administrative Law Judge from barring a person from a specific proceeding based on a finding of obstreperous or disruptive behavior in that proceeding.

(c) *Disqualification.* The Administrative Law Judge may disqualify himself or herself at any time, either at the request of any party or upon his or her own initiative. Assignments of Administrative Law Judges are made by the Chief Administrative Law Judge upon the request of the Assistant Administrator. Any request for a change in such assignment, including disqualification, will be considered only for good cause which would unduly prejudice the proceeding.

■ 35. Amend § 386.61 by designating the existing paragraph as paragraph (a) and adding a new introductory heading and adding paragraph (b), to read as follows.

§ 386.61 Decision.

(a) *Administrative Law Judge.* * * *

(b) *Hearing Officer.* The Hearing Officer will prepare a report to the Assistant Administrator containing findings of fact and recommended disposition of the matter within 45 days after the conclusion of the hearing. The Assistant Administrator will issue a Final Agency Order adopting the report, or may make other such determinations as appropriate. The Assistant Administrator's decision to adopt a Hearing Officer's report may be reviewed in accordance with § 386.64.

■ 36. Revise § 386.64 to read as follows:

§ 386.64 Reconsideration.

(a) Within 20 days following service of the Final Agency Order, any party may petition the Assistant Administrator for reconsideration of the order. If a civil penalty was imposed, the filing of a petition for reconsideration stays the entire action, unless the Assistant Administrator orders otherwise.

(b) In the event a Notice of Default and Final Agency Order is issued by the Field Administrator as a result of the respondent's failure to reply in accordance with § 386.14(a), the only issue that will be considered upon reconsideration is whether a default has occurred under § 386.14(c). The Final Agency Order may be vacated where a respondent can demonstrate excusable neglect, a meritorious defense, or due diligence in seeking relief.

(c) Either party may serve an answer to a petition for reconsideration within 30 days of the service date of the petition.

(d) Following the close of the 30-day period, the Assistant Administrator will rule on the petition.

(e) The ruling on the petition will be the Final Agency Order. A petition for reconsideration of the Assistant Administrator's ruling will not be permitted.

■ 37. Revise § 386.67 to read as follows:

§ 386.67 Judicial review.

(a) Any party to the underlying proceeding, who, after an administrative adjudication, is adversely affected by a Final Agency Order issued under 49 U.S.C. 521 may, within 30 days of service of the Final Agency Order, petition for review of the order in the United States Court of Appeals in the circuit where the violation is alleged to have occurred, or where the violator has its principal place of business or residence, or in the United States Court of Appeals for the District of Columbia Circuit.

(b) Judicial review will be based on a determination of whether the findings and conclusions in the Final Agency Order were supported by substantial evidence or were otherwise not in accordance with law. No objection that has not been raised before the Agency will be considered by the court, unless reasonable grounds existed for failure or neglect to do so. The commencement of proceedings under this section will not, unless ordered by the court, operate as a stay of the Final Agency Order of the Agency.

■ 38. Revise § 386.71 to read as follows:

§ 386.71 Injunctions.

Whenever it is determined that a person has engaged, or is about to engage, in any act or practice constituting a violation of section 31502 of title 49, United States Code; of the Motor Carrier Safety Act of 1984; the Hazardous Materials Transportation Act; or any regulation or order issued under that section or those Acts for which the Federal Motor Carrier Safety

Administrator exercises enforcement responsibility, the Chief Counsel may request the United States Attorney General to bring an action in the appropriate United States District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages, as provided by section 213(c) of the Motor Carrier Safety Act of 1984 and section 111(a) of the Hazardous Materials Transportation Act (49 U.S.C. 507(c) 5122).

■ 39. Revise § 386.82(a)(3) to read as follows:

§ 386.82 Civil penalties for violations of notices and orders.

(a) Additional civil penalties are chargeable for violations of notices and orders which are issued under civil forfeiture proceedings pursuant to 49 U.S.C. 521(b). These notices and orders are as follows:

* * * * *

(3) Final order—§ 386.14, § 386.17, § 386.22, and § 386.61; and

* * * * *

■ 40. Amend Appendix A to Part 386 by revising section I, removing and reserving section II, and revising section III to read as follows:

Appendix A to Part 386—Penalty Schedule; Violations of Notices and Orders

I. Notice to Abate

Violation—Failure to cease violations of the regulations in the time prescribed in the notice. (The time within to comply with a notice to abate shall not begin to run with respect to contested violations, *i.e.*, where there are material issues in dispute under § 386.14, until such time as the violation has been established.)

Penalty reinstatement of any deferred assessment or payment of a penalty or portion thereof.

* * * * *

III. Final Order

Violation—Failure to comply with Final Agency Order.

Penalty—Automatic reinstatement of any penalty previously reduced or held in abeyance and restoration of the full amount assessed in the Notice of Claim less any payments previously made.

* * * * *

■ 41. Amend Appendix B to Part 386 by revising the heading and paragraphs (a)(1) through (4) to read as follows:

Appendix B to Part 386—Penalty Schedule; Violations and Maximum Civil Penalties

* * * * *

(a) Violations of the Federal Motor Carrier Safety Regulations (FMCSRs):

(1) *Recordkeeping.* A person or entity that fails to prepare or maintain a record required by parts 40, 382, 385, and 390–99 of this subchapter, or prepares or maintains a required record that is incomplete, inaccurate, or false, is subject to a maximum civil penalty of $550 for each day the violation continues, up to $5,500.

(2) *Knowing falsification of records.* A person or entity that knowingly falsifies, destroys, mutilates, or changes a report or record required by parts 382, 385, and 390–99 of this subchapter, knowingly makes or causes to be made a false or incomplete record about an operation or business fact or transaction, or knowingly makes, prepares, or preserves a record in violation of a regulation or order of the Secretary is subject to a maximum civil penalty of $5,500 if such action misrepresents a fact that constitutes a violation other than a reporting or recordkeeping violation.

(3) *Non-recordkeeping violations.* A person or entity that violates parts 382, 385, or 390–99 of this subchapter, except a recordkeeping requirement, is subject to a civil penalty not to exceed $11,000 for each violation.

(4) *Non-recordkeeping violations by drivers.* A driver who violates parts 382, 385, and 390–99 of this subchapter, except a recordkeeping violation, is subject to a civil penalty not to exceed $2,750.

* * * * *

Issued on: May 12, 2005.

Annette M. Sandberg,

Administrator.

[FR Doc. 05–9898 Filed 5–17–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 051105C]

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

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

ACTION: Reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using pot or hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2005 A season total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective May 17, 2005, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The 2005 A season allowance of the Pacific cod TAC specified for vessels using jig gear in the BSAI is 374 metric tons (mt) as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005) and the reallocation on April 13, 2005 (70 FR 19708, April 14, 2005), for the period 1200 hrs, A.l.t., January 1, 2005, through 1200 hrs, A.l.t., April 30, 2005. See §§ 679.20 (a)(7)(i)(C)(*1*), (c)(3)(iii), and (c)(5).

The Administrator, Alaska Region, NMFS, has determined that jig vessels will not be able to harvest 350 mt of the A season apportionment of Pacific cod allocated to those vessels under §§ 679.20(a)(7)(i)(A) and (a)(7)(iii)(A). Therefore, in accordance with § 679.20(a)(7)(ii)(C)(*1*), NMFS apportions 350 mt of Pacific cod from the A season apportionment of jig gear to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear.

The harvest specifications for Pacific cod included in the harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005) are revised as follows: 24 mt to the A season apportionment for vessels using jig gear and 2,854 mt to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified for jig vessels to catcher vessels less than 60 feet (18.3 m) LOA

using pot or hook-and-line gear and therefore would cause disruption to the industry by requiring unnecessary closures, and will relieve a restriction on the industry and allow for the orderly conduct and efficient operation of this fishery.

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

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

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

Dated: May 12, 2005.

Alan D. Risenhoover

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

[FR Doc. 05–9926 Filed 5–17–05; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 95
Wednesday, May 18, 2005

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AK83

Prevailing Rate Systems; Redefinition of the Central North Carolina Appropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing a proposed rule that would redefine the geographic boundaries of the Central North Carolina Federal Wage System (FWS) appropriated fund wage area. The proposed rule would remove Edgecombe and Wilson Counties, NC, from the survey area and add Hoke County, NC, to the survey area. The redefinition of Edgecombe, Hoke, and Wilson Counties would align the geographic definition of the Central North Carolina wage area more closely with the regulatory criteria used to define FWS wage areas.

DATES: We must receive comments on or before June 17, 2005.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200; email *pay-performance-policy@opm.gov*; or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; email *pay-performance-policy@opm.gov*; or FAX: (202) 606–4264.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is engaged in an ongoing project to review the geographic definitions of Federal Wage System (FWS) wage areas. OPM considers the following regulatory criteria under 5 CFR 532.211 when defining FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

OPM reviewed each county in the Central North Carolina wage area and found that the area of application for the wage area is appropriately defined. As part of the review of wage area boundaries, OPM also considers whether the survey areas within each wage area should be changed. Based on an analysis of the regulatory criteria for defining FWS wage areas, OPM proposes to remove Edgecombe and Wilson Counties, NC, from the survey area because there are no FWS employees working in Edgecombe or Wilson Counties. Defining Edgecombe and Wilson Counties as part of the Central North Carolina area of application would allow FWS pay rates to reflect more closely the prevailing rates where FWS employees actually work. The amount of wage survey data obtained from Edgecombe and Wilson Counties has been relatively low in past surveys, with only about 15 percent of the Central North Carolina survey data during the last full-scale wage survey coming from private industrial establishments located in these two counties. Edgecombe and Wilson Counties would remain in the Central North Carolina area of application.

In addition, OPM proposes to add Hoke County to the Central North Carolina survey area. Hoke County is currently defined as part of the Central North Carolina area of application. While there are no FWS employees working in Hoke County, Fort Bragg, the Central North Carolina's host activity, extends into Hoke County. Also, Hoke County is one of the two counties of the Fayetteville, NC Metropolitan Statistical Area (MSA). The other county of the Fayetteville, NC MSA, Cumberland County, is already defined as part of the Central North Carolina survey area.

These changes would be effective for the next full-scale wage survey in the Central North Carolina wage area, which is scheduled to begin in May 2006.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee that advises OPM on FWS pay matters, reviewed and recommended these changes by consensus. Based on its review of the regulatory criteria for defining FWS wage areas, FPRAC recommended no other changes in the geographic definition of the Central North Carolina wage area.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Dan G. Blair,

Acting Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. In appendix C to subpart B, the wage area listing for the State of North Carolina is amended by revising the listing for Central North Carolina to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

North Carolina

* * * * *

Central North Carolina

Survey Area

North Carolina:
Cumberland
Durham
Harnett
Hoke
Johnston
Orange
Wake
Wayne

Area of Application. Survey Area Plus:

North Carolina:
Alamance
Bladen
Caswell

Chatham
Davidson
Davie
Edgecombe
Franklin
Forsyth
Granville
Guilford
Halifax
Lee
Montgomery
Moore
Nash
Northampton
Person
Randolph
Richmond
Robeson
Rockingham
Sampson
Scotland
Stokes
Surry
Vance
Warren
Wilson
Yadkin
South Carolina:
Dillon
Marion
Marlboro

* * * * *

[FR Doc. 05–9894 Filed 5–17–05; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21236; Directorate Identifier 2005–NM–011–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Airplanes Equipped with General Electric Model CF6–80C2 Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 767 airplanes. This proposed AD would require modifying a relay installation and associated wiring of the engine cowl anti-ice system and performing a functional test of the thrust reverser system. This proposed AD would also require replacing the operational program software of certain indicating/recording systems. This proposed AD is prompted by numerous operator reports of failures of the lock flexshaft of the thrust reverser actuation system (TRAS) between the upper actuator and the TRAS lock. We are proposing this AD to prevent high power in-flight deployment of a thrust reverser, which could cause high roll force and consequent departure from controlled flight.

DATES: We must receive comments on this proposed AD by July 5, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–21236; the directorate identifier for this docket is 2005–NM–011–AD.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6501; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–21236; Directorate Identifier 2005–NM–011–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received a report that operators have reported more than 140 failures of the lock flexshaft of the thrust reverser actuation system (TRAS) between the upper actuator and the TRAS lock, on certain Boeing Model 767 airplanes. Analysis showed these failures were caused by pneumatic pressure that was insufficient to decelerate the TRAS at the end of the deploy stroke. This condition, if not corrected, could result in high power in-flight deployment of a thrust reverser, which could cause high roll force and consequent departure from controlled flight.

Related Rulemaking

On April 26, 2000, we issued AD 2000–09–04, amendment 39–11712 (65 FR 25833, May 4, 2000), which is applicable to certain Boeing Model 767 series airplanes equipped with General Electric Model CF6–80C2 engines. That AD requires tests, inspections, and adjustments of the thrust reverser system and installation of a terminating modification and repetitive follow-on actions; in accordance with Boeing Service Bulletin 767–78A0081, Revision 1, dated October 9, 1997; Boeing Service

Bulletin 767–78–0063, Revision 2, dated April 28, 1994; and Boeing Service Bulletin 767–78–0047, Revision 3, dated July 28, 1994.

On July 27, 2001, we issued AD 2001–16–03, amendment 39–12371 (66 FR 40880, August 6, 2001), which is applicable to certain Boeing Model 767–200, –300, –300F, and –400ER series airplanes equipped with General Electric Model CF6–80C2 engines. That AD requires various repetitive inspections and tests of certain fail-safe features of the thrust reverser control system and corrective actions if necessary; in accordance with Boeing Service Bulletin 767–78A0090, Revision 1, dated July 5, 2001, and Boeing Alert Service Bulletin 767–78A0091, Revision 1, dated July 5, 2001.

Relevant Service Information

We have reviewed Boeing Service Bulletin 767–78A0092, Revision 1, dated October 30, 2003 (for Model 767–200, –300, and –300F airplanes); and Boeing Alert Service Bulletin 767–78A0093, dated May 6, 2004 (for Model 767–400ER airplanes). The service bulletins describe procedures for modifying a relay installation and associated wiring of the engine cowl anti-ice system and for performing a functional test of the thrust reverser system.

Service Bulletin 767–78A0092 specifies prior or concurrent accomplishment of Boeing Service Bulletin 767–31–0180, dated December 5, 2002 (for Model 767–200, –300, and –300F airplanes). Service Bulletin 767–31–0180 describes procedures for replacing the operational program software (OPS) in the left and right engine indication and crew alerting system (EICAS) computers. The software update incorporates design improvements and EICAS message logic revisions.

Alert Service Bulletin 767–78A0093 specifies prior or concurrent accomplishment of Boeing Service Bulletin 767–31–0176, dated February 26, 2004 (for Model 767–400ER airplanes). Service Bulletin 767–31A–0176 describes procedures for replacing the OPS of the large format display system (LFDS). The software update incorporates problem fixes, functionality improvements, and FAA required changes.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and Service Information.''

Difference Between the Proposed AD and Service Information

The effectivities stated in the service bulletins are different.

- Service Bulletin 767–78A0092 states ''all CF6–80C2 powered 767–200, –300, and –300F airplanes line numbers 0001–0882'' while concurrent Service Bulletin 767–31–0180 states ''all 767–200, -300, and -300F airplanes line numbers 1–881.''

- Alert Service Bulletin 767–78A0093 states ''all CF6–80C2 powered 767–400ER airplanes line numbers 0001–0882'' while concurrent Service Bulletin 767–31–0176 states ''767–400ER before Line Number 930.''

We have therefore analyzed the service bulletins and determined that the effectivity of this proposed AD should read ''Boeing Model 767–200, –300, –300F, and –400ER series airplanes; certificated in any category; having line numbers 0001 through 0882 inclusive; equipped with General Electric Model CF6–80C2 engines'' to ensure that all airplanes subject to the unsafe condition will be identified. The various actions in this proposed AD reflect the individual groups of airplanes within the applicability that are subject to the proposed requirements. This difference has been coordinated with Boeing.

Costs of Compliance

There are about 400 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 142 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD, at an average labor rate of $65 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane
For Model 767–200, –300, and –300F Series Airplanes			
Modify relay and wiring	5	$1,307–$1,390	$1,632–$1,715
Functional test	3	N/A	195
Install EICAS OPS software	2	N/A	130
For Model 767–400ER Series Airplanes			
Modify relay and wiring	5	2,119	2,444
Functional test	3	N/A	195
Install LFDS OPS software	3	N/A	195

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order

13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–21236; Directorate Identifier 2005–NM–011–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by July 5, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, –300F, and –400ER series airplanes; certificated in any category; having line numbers 0001 through 0882 inclusive; equipped with General Electric Model CF6–80C2 engines.

Unsafe Condition

(d) This AD was prompted by numerous operator reports of failures of the lock flexshaft of the thrust reverser actuation system (TRAS) between the upper actuator and the TRAS lock. We are issuing this AD to prevent high power in-flight deployment of a thrust reverser, which could cause high roll force and consequent departure from controlled flight.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modification and Functional Test

(f) Within 48 months after the effective date of this AD, perform the actions required by paragraphs (f)(1) and (f)(2) of this AD in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–78A0092, Revision 1, dated October 30, 2003 (for Model 767–200, –300, and –300F series airplanes); or Boeing Alert Service Bulletin 767–78A0093, dated May 6, 2004 (for Model 767–400ER series airplanes); as applicable.

(1) Modify the relay installation and associated wiring of the engine cowl anti-ice system.

(2) Perform a functional test of the thrust reverser system.

Concurrent Service Bulletins

(g) Prior to or concurrently with the actions required by paragraphs (f)(1) and (f)(2) of this AD, perform the actions required by paragraphs (g)(1) and (g)(2) of this AD in accordance with the Accomplishment Instructions of the applicable service bulletin.

(1) For Model 767–200, –300, and –300F series airplanes: Replace the operational program software (OPS) in the left and right engine indication and crew alerting system (EICAS) computers as specified in Boeing Service Bulletin 767–31–0180, dated December 5, 2002.

(2) For Model 767–400ER airplanes: Replace the OPS of the large format display system (LFDS) as specified in Boeing Service Bulletin 767–31–0176, dated February 26, 2004.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on May 9, 2005.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–9872 Filed 5–17–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19534; Directorate Identifier 2004–NM–99–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier NPRM for an airworthiness directive (AD) that applies to certain Airbus airplane models, as specified above. The original NPRM would have required modifying the thermal insulation system of certain fuselage frames, and modifying the fuselage drainage system. The original NPRM would also have required revising the FAA-approved maintenance inspection program to include inspections for corrosion or cracking in the subject areas. The original NPRM was prompted by reports of corrosion in the lower part of the pressure bulkhead at certain fuselage frames. This action revises the original NPRM by expanding the applicability to include additional airplanes. We are proposing this supplemental NPRM to prevent accumulation of condensation in the insulation blankets of certain fuselage frames, which could cause corrosion that could result in reduced structural integrity of the fuselage and consequent rapid decompression of the airplane.

DATES: We must receive comments on this supplemental NPRM by June 13, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this supplemental NPRM.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.

- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2004–19534; the directorate identifier for this docket is 2004–NM–99–AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. 2000–FAA–19534; Directorate Identifier 2004–NM–99–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

We will post all comments submitted, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this supplemental NPRM. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level in the Nassif Building at the DOT street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an airworthiness directive (AD) (the ''original NPRM''). The original NPRM applies to certain Airbus Model A300 B2 and B4 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called A300–600); and Model A310 series airplanes. The original NPRM was published in the **Federal Register** on November 5, 2004 (69 FR 64530). The original NPRM proposed to require modifying the thermal insulation system of certain fuselage frames, and modifying the fuselage drainage system. That action also proposed to require revising the FAA-approved maintenance inspection program to include inspections for corrosion or cracking in the subject areas.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the original NPRM.

Request To Revise Applicability

One commenter notes that the applicability statement of the original NPRM excludes airplanes on which Airbus Modification 5946 was done during production. The commenter states that this is incorrect. Airplanes modified in accordance with Airbus Modification 5946 should still be modified in accordance with Airbus Modification 8057. (Airbus Modification 8057 accomplishes the intent of Airbus Service Bulletin A300–53–0201, which would have been required by paragraph (f) of the original NPRM and would be required by this supplemental NPRM.) The commenter points out that the applicability statement should exclude only airplanes on which both Airbus Modifications 5946 and 8057 were done during production.

We concur. We inadvertently omitted the reference to Airbus Modification 8057 from the applicability statement of the original NPRM. We have revised paragraph (c), Applicability, in this supplemental NPRM to exclude airplanes on which both Airbus Modifications 5946 and 8057 were done during production.

Request To Refer to Other Service Bulletin Revisions

One commenter, the airplane manufacturer, notes that the original NPRM does not identify certain revisions of the referenced service bulletins that should be acceptable for compliance with the proposed actions. Paragraph (f) of the original NPRM refers to Airbus Service Bulletins A300–21–0116, Revision 02, dated June 13, 2003; A300–21–6025, Revision 01, dated June 13, 2003; A310–21–2041, Revision 02, dated June 13, 2003; and A300–53–0201, Revision 04, dated May 2, 2003; as applicable sources of service information for certain actions required by that paragraph. The commenter observes that referencing additional service bulletin revisions would eliminate the need for operators to request an alternative method of compliance (AMOC). This table lists the additional service bulletins that the commenter suggests be included:

ADDITIONAL SERVICE BULLETINS

Models	Airbus service bulletin	Revision level	Date
A300 B2 and B4 series	A300–21–116	1	March 24, 1992.
A300 B2 and B4 series	A300–21–0116	03	January 29, 2004.
A300–600	A300–21–6025	02	January 29, 2004.
A310 series	A310–21–2041	1	December 10, 1990.
A310 series	A310–21–2041	03	January 29, 2004.
A300 B2 and B4 series	A300–53–0201	05	July 15, 2004.

Another commenter requests that we revise paragraph (g) of the original NPRM to give credit for modifications to the fuselage drainage system that were accomplished before the effective date of the AD in accordance with Airbus Service Bulletin A300–53–6008, Revision 02, dated August 10, 1989. (For Model A300–600 airplanes, paragraph (g) of the original NPRM gives credit for modifications done in accordance with Airbus Service Bulletin A300–53–6008, Revision 03, dated November 6, 1990; or Revision 04, dated April 28, 2003.) The commenter states that no technical changes to the drainage system in the area of fuselage frames 39 and 54 were made to Revision 02 of the service bulletin or later revisions.

We concur with the commenters' requests. We have revised paragraph (f) of this supplemental NPRM to refer to the latest issues of the referenced service bulletins as the appropriate source of service information for the actions proposed by that paragraph. We have also revised paragraph (g) of this supplemental NPRM to give credit for actions accomplished previously in accordance with the service bulletins listed in the table below.

SERVICE BULLETINS FOR WHICH WE GIVE CREDIT

Models—	Airbus service bulletin—	Revision level	Date
A300 B2 and B4 series	A300–21–116	1	March 24, 1992.
A300 B2 and B4 series	A300–21–0116	02	June 13, 2003.
A300 B2 and B4 series	A300–53–0201	04	May 2, 2003.
A300–600	A300–21–6025	01	June 13, 2003.
A300–600	A300–53–6008	02	August 10, 1989.
A300–600	A300–53–6008	03	November 6, 1990.
A300–600	A300–53–6008	04	April 28, 2003.
A310 series	A310–21–2041	1	December 10, 1990.
A310 series	A310–21–2041	02	June 13, 2003.
A310 series	A310–53–2027	02	November 6, 1990.
A310 series	A310–53–2027	03	May 2, 2003.

Request To Revise Airbus Maintenance Planning Document (MPD) Reference

Two commenters request that we revise paragraph (h) of the original NPRM to correct references to certain tasks in the Airbus MPD. One commenter states that Task Number 541531–01–1 does not exist. The commenter states that the correct reference is to MPD Task Number 531531–01–1, which describes detailed inspections of the lower bulkhead at frame 39. Another commenter notes that there is a reference in the same paragraph to MPD Task Number 538295–0603–01. The commenter states that the correct reference is to MPD Task Number 538295–0603–1.

We concur with the commenter's request. The incorrect references were typographical errors. We have revised paragraph (h) of this supplemental NPRM accordingly.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

The change to the applicability statement discussed above expands the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD, at an average labor rate of $65 per work hour.

ESTIMATED COSTS

Action	Models	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modifying the Thermal Insulation System.	A300 B2/B4	5	$567	$892	23	$20,516
Modifying the Thermal Insulation System.	A300 B4–600, B4–600R, and F4–600R series; and A300 C4–605R Variant F (collectively called A300–600).	4	567	827	116	95,932
Modifying the Thermal Insulation System.	A310	4	567	827	47	38,869
Modifying the Fuselage Drainage System.	A300 B2/B4	38	1,857	4,327	23	99,521
Modifying the Fuselage Drainage System.	A300 B4–600, B4–600R, and F4–600R series; and A300 C4–605R Variant F (collectively called A300–600).	36	1,378	3,718	116	431,288
Modifying the Fuselage Drainage System.	A310	27	1,451	3,206	47	150,682
Maintenance Program Revision	All	1	None	65	186	12,090

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this supplemental NPRM. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2004–19534; Directorate Identifier 2004–NM–99–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by June 13, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B2 and B4 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and C4–605R Variant F airplanes (collectively called A300–600); and A310 series airplanes; certificated in any category; except those on which both Airbus Modifications 5946 and 8057 were done during production.

Unsafe Condition

(d) This AD was prompted by reports of corrosion in the lower part of the pressure bulkhead at fuselage frames (FR) 39 and 54. We are issuing this AD to prevent accumulation of condensation in the insulation blankets of certain fuselage FRs, which could cause corrosion that could result in reduced structural integrity of the fuselage and consequent rapid decompression of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modification of Thermal Insulation and Fuselage Drainage Systems

(f) Within 22 months after the effective date of this AD, modify the thermal insulation system of applicable fuselage frames and modify the fuselage drainage system, by doing all actions in the Accomplishment Instructions of the applicable service bulletins specified in Table 1 of this AD.

TABLE 1.—RELEVANT SERVICE BULLETINS

For Airbus models—	Modify the thermal insulation according to Airbus Service Bulletin—	And modify the fuselage drainage system according to Airbus Service Bulletin—
A300 B2 and B4 series	A300–21–0116, Revision 03, dated January 29, 2004.	A300–53–0201, Revision 05, dated July 15, 2004.
A300 B4–600, B4–600R, and F4–600R series; and A300 C4–605R Variant F (collectively called A300–600).	A300–21–6025, Revision 02, dated January 29, 2004.	A300–53–6008, Revision 05, dated July 15, 2004.
A310 series	A310–21–2041, Revision 03, dated January 29, 2004.	A310–53–2027, Revision 04, dated July 15, 2004.

Modifications Accomplished According to Previous Issues of Service Bulletins

(g) Modifications accomplished before the effective date of this AD according to the service bulletins listed in Table 2 are considered acceptable for compliance with the corresponding action specified in paragraph (f) of this AD.

TABLE 2.—ADDITIONAL SERVICE BULLETINS

Models	Airbus Service Bulletin	Revision	Date level
A300 B2 and B4 series	A300–21–116	1	March 24, 1992.
A300 B2 and B4 series	A300–21–0116	02	June 13, 2003.
A300 B2 and B4 series	A300–53–0201	04	May 2, 2003.
A300–600	A300–21–6025	01	June 13, 2003.
A300–600	A300–53–6008	02	August 10, 1989.

TABLE 2.—ADDITIONAL SERVICE BULLETINS—Continued

Models	Airbus Service Bulletin	Revision	Date level
A300–600	A300–53–6008	03	November 6, 1990.
A300–600	A300–53–6008	04	April 28, 2003.
A310 series	A310–21–2041	1	December 10, 1990.
A310 series	A310–21–2041	02	June 13, 2003.
A310 series	A310–53–2027	02	November 6, 1990.
A310 series	A310–53–2027	03	May 2, 2003.

Maintenance Program Revision

(h) Within 90 days after doing the actions required by paragraph (f) of this AD, or within 90 days after the effective date of this AD, whichever is later: Incorporate into the FAA-approved maintenance inspection program repetitive detailed inspections for corrosion or cracking of fuselage structure from FR 38.2 to 39, and at FR 54, as applicable, as described in Airbus Maintenance Planning Document Task Numbers 538295–0603–1 (for Airbus Model A300 B2 and B4 series airplanes), and 531531–01–1 and 531533–01–1 (for Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and C4–605R Variant F airplanes (collectively called A300–600); and Model A310 series airplanes). Then, thereafter, comply with the applicable requirements.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Alternative Methods of Compliance (AMOCs)

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

Related Information

(j) French airworthiness directive 2003–317(B), dated August 20, 2003, also addresses the subject of this AD.

Issued in Renton, Washington, on May 11, 2005.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–9879 Filed 5–17–05; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2005–NC–0001–200503; FRL–7914–6]

Approval and Promulgation of Implementation Plans—North Carolina: Approval of Revisions to the Visible Emissions Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the Visible Emissions portion of a State Implementation Plan (SIP) revision submitted to EPA, by the State of North Carolina, on December 14, 2004. EPA is proposing to approve the Visible Emissions Rule, in its entirety, as submitted December 14, 2004, and does not intend to act on previous versions of the rule.

DATES: Written comments must be received on or before June 17, 2005.

ADDRESSES: Submit your comments, identified by R04–OAR–2005–NC–0001, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
2. E-mail: *spann.jane@epa.gov.*
3. Fax: 404–562–9019.
4. Mail: ''R04–OAR–2005–NC–0001'', Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. Hand Delivery: Deliver your comments to: Jane Spann, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to R04–OAR–2005–NC–0001. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are

Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jane Spann, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9029. Ms. Spann can also be reached via electronic mail at *spann.jane@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. EPA's Action

A. What Action Is EPA Proposing Today?

EPA is proposing to approve, in its entirety, the Visible Emissions portion of the SIP revision submitted on December 14, 2004, by the State of North Carolina. The language in this submittal replaces all prior versions of rule NCAC 2D .0521 Visible Emissions submitted to EPA.

B. Why Is EPA Proposing This Action?

On April 16, 2001, the North Carolina Department of Environment and Natural Resources submitted to EPA a revision to the North Carolina SIP modifying rule NCAC 2D .0521 Visible Emissions. In a letter dated March 29, 2002, EPA provided comments to North Carolina explaining additional requirements that must be met in order for EPA to approve this rule. These requirements included the submittal of a demonstration proving that such an exemption would not violate the National Ambient Air Quality Standards. On July 10, 2002, North Carolina submitted a demonstration to EPA they believed to address the ''worst case'' for air quality. A proposed rule and direct final rule were published June 6, 2003, (see 68 FR 33898 and 68 FR 33873) approving the SIP revision submitted by the North Carolina Department of Environment and Natural Resources on April 16, 2001, for the purpose of amending rule NCAC 2D .0521 Visible Emissions. Due to adverse comment, EPA withdrew the direct final rule on August 5, 2003, (see 68 FR 46101). In the interim, on April 4, 2003, the North Carolina Department of Environment and Natural Resources submitted to EPA another SIP revision that included additional changes to the Visible Emissions rule. EPA approved the April 4, 2003, submittal with the exception of the Visible Emissions portion.

On October 14, 2004, and then again on December 14, 2004, the North Carolina Department of Environment and Natural Resources submitted to EPA revisions to the North Carolina SIP. EPA is proposing to approve the version of the NCAC 2D.0521, in its entirety, as submitted December 14, 2004, and does not intend to act on previous versions of the rule.

In the December 14, 2004 submittal, the State of North Carolina requested adoption of new rules and amendments to existing rules including NCAC 2D.0521 Visible Emissions. Today's **Federal Register** notice addresses only the NCAC 2D .0521 Visible Emissions portion of the December 14, 2004, submittal. Action on the remaining portions of that submittal will be taken in a separate notice.

The purpose of the amendment to rule .0521 is to include the following changes:

1. The existing Visible Emissions rule exempts start-ups made according to procedures approved under rule NCAC 2D .0535. Rule NCAC 2D .0535 includes start-ups, shutdowns and malfunctions. An exemption for shutdowns and malfunctions was added to rule NCAC 2D .0521 to be consistent with the already existing rule, NCAC 2D .0535.

2. The revised rule states that sources subject to a visible emission standard in NCAC 2D .0506, Particulates from Hot Mix Asphalt Plants, shall meet that standard instead of the standard found in this revised NCAC 2D .0521. The revised rule also states that sources subject to a visible emission standard in NCAC 2D .0543, .0544, .1205, .1206 and .1210, shall meet their respective standards instead of the standard found in this revised NCAC 2D .0521. With the exception of NCAC 2D .0506, these rules are not part of the federally approved SIP and are not applicable to today's action.

3. An exemption for engine maintenance and testing controls where visible emissions controls are infeasible was added to rule NCAC 2D .0535. This exemption applies to maintenance and repair on engines in order for diagnostics to be performed. The exemption does not apply, however, to the testing of peak shaving and emergency generators. The rule also states that the Director shall consider emissions, capital cost of compliance, annual incremental compliance cost and environmental and health impacts in deciding if controls are infeasible.

4. The revised rule has changed from stating that sources manufactured after July 1, 1971 ''may'' be allowed to ''shall'' be allowed a 40 percent opacity when averaged over a six-minute period and allowed to exceed a 40 percent opacity under certain conditions if the source demonstrates compliance with mass emissions standards and compliance with the National Ambient Air Quality Standards (NAAQS).

5. The revised rule provides sources required to install, operate and maintain continuous opacity monitors (COMs), the ability to comply with the visible emissions rule by allowing these sources to aggregate exceedences on a daily basis rather than being restricted to one exceedence per hour. Specifically, under the new amendment, sources with COMs are allowed no more than 4 six-minute periods to exceed the opacity standard in any one day provided that no excess emissions exempted here cause or contribute to a violation of any mass emission standard or any ambient air quality standard. The new amendment also requires that the percent of excess emissions shall not exceed 0.8 percent of the total operating hours in a calendar quarter. This restriction adds a quarterly cap on exemptions that is more restrictive than the four six minute exemptions per day. Exceedences of the opacity limit greater than 0.8 percent of the total operating hours will be considered a violation of this rule.

On April 15, 2005 North Carolina sent EPA a letter stating that any revised standards issued by North Carolina, pursuant to NCAC 2D .0521, .0606, and .0608, shall be submitted to EPA to be approved as revisions to the federally-enforceable SIP. The letter also states that North Carolina understands that EPA can continue to enforce the current SIP standard until such time as EPA approves any new standard generated pursuant to NCAC 2D .0521, .0606 or .0608 as part of the federally-enforceable SIP.

II. Proposed Action

EPA is proposing to approve, in its entirety, the Visible Emissions portion of a SIP revision submitted to EPA by the State of North Carolina on December 14, 2004.

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, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: May 11, 2005.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 05–9904 Filed 5–17–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0081; FRL–7713–8]

Aminopyridine, Ammonia, Chloropicrin, Diazinon, Dihydro-5-heptyl-2(3H)-furanone, Dihydro-5-pentyl-2(3H)-furanone, and Vinclozolin; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke specific tolerances and tolerance exemptions for residues of the bird repellent 4-aminopyridine, fungicides ammonia and vinclozolin, and insecticides chloropicrin, diazinon, dihydro-5-heptyl-2(3*H*)-furanone, and dihydro-5-pentyl-2(3*H*)-furanone. EPA canceled food use registrations or deleted food uses from registrations following requests for voluntary cancellation or use deletion by the registrants, or non-payment of registration maintenance fees. EPA expects to determine whether any individuals or groups want to support these tolerances. The regulatory actions proposed in this document contribute toward the Agency's tolerance reassessment requirements under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances that were in existence on August 2, 1996. The regulatory actions proposed in this document pertain to the proposed revocation of 39 tolerances and tolerance exemptions of which 33 would be counted as tolerance reassessments toward the August 2006 review deadline.

DATES: Comments must be received on or before July 18, 2005.

ADDRESSES: Submit your comments, identified by docket identification (ID) number OPP–2005–0081, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Agency Website*: *http://www.epa.gov/edocket/*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail*: Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0081.
- *Mail*: 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–2005–0081.
- *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0081. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number OPP–2005–0081. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in

the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail *address:nevola.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 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 IIA. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/.*

C. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

D. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to revoke certain specific tolerances and tolerance exemptions for residues of the bird repellent 4-aminopyridine, fungicides ammonia and vinclozolin, and insecticides chloropicrin, diazinon, dihydro-5-heptyl-2(3*H*)-furanone, and dihydro-5-pentyl-2(3*H*)-furanone because these specific tolerances and tolerance exemptions correspond to uses which are no longer current or registered under FIFRA in the United States. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the

proposal indicates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

1. *4-Aminopyridine.* In the **Federal Register** notice of October 27, 2004 (69 FR 62666) (FRL–7683–7), EPA announced registration cancellations, including certain 4-aminopyridine (avitrol) registrations, for non-payment of year 2004 registration maintenance fees. The cancellation orders permitted registrants to sell and distribute existing stocks of the canceled products until January 15, 2005, 1 year after the date on which the fee was due. Earlier, on December 17, 2003, the registrant had submitted a written request for voluntary cancellation of the food uses of 4-aminopyridine. The Agency believes that end users will have sufficient time to exhaust existing stocks and for treated commodities to have cleared the channels of trade by January 15, 2006. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.312 for residues of the bird repellent 4-aminopyridine in or on corn, forage; corn, field, grain; corn, pop, grain; corn, stover; corn, sweet, kernels plus cob with husks removed; and sunflower, seed with an expiration/revocation date of January 15, 2006.

Also, EPA is proposing to revise the commodity terminology in 40 CFR 180.312 to conform to current Agency practice as follows: ''corn, forage'' to ''corn, field, forage'' and ''corn, sweet, forage;'' ''corn, stover'' to ''corn, field, stover;'' ''corn, pop, stover;'' and ''corn, sweet, stover;'' and ''corn, sweet, kernels plus cob with husks removed'' to ''corn, sweet, kernel plus cob with husks removed.'' In addition, in 40 CFR 180.312, EPA is proposing to remove the ''(N)'' designation from all entries to conform to current Agency administrative practice (''(N)'' designation means negligible residues).

2. *Ammonia.* Because there have been no active registered uses of ammonia on food since 1987, the associated tolerance exemptions are no longer needed. Therefore, EPA is proposing to revoke the tolerance exemptions in 40 CFR 180.1003 for residues of the fungicide ammonia when used after harvest on grapefruit, lemons, oranges, and corn grain for feed use only.

3. *Chloropicrin.* Because there have been no active registrations of chloropicrin concerning post-harvest uses on grain since 1991, the associated tolerance exemptions are no longer needed. Also, the Agency believes that chloropicrin is not found in the formulation of other fumigant pesticides with active registrations for post-harvest use on grains. In addition, the Agency believes that it is unlikely that detectable residues of chloropicrin will be found in or on any raw agricultural commodity in formulations where it is used as a warning agent (2% or less) due to its volatility.

Therefore, EPA is proposing to revoke the tolerance exemptions in 40 CFR 180.1008 for residues of chloropicrin when used as a fumigant after harvest on barley, buckwheat, corn (including popcorn), oats, rice, rye, grain sorghum, and wheat.

4. *Diazinon.* In the **Federal Register** notice of May 30, 2001 (66 FR 29310) (FRL–6785–2), EPA announced the receipt of requests to voluntarily cancel and amend certain diazinon registrations. The Agency published the cancellation order in the **Federal Register** of July 19, 2001 (66 FR 37673)(FRL–6791–9) and made the registration cancellations and amendments effective on July 19, 2001, and registrant sale and distribution of existing stocks was permitted for 1 year; i.e., until July 19, 2002.

Also, in the **Federal Register** notice of September 13, 2001 (66 FR 47658) (FRL–6800–6), EPA announced the receipt of requests to voluntarily cancel and amend certain diazinon registrations. The Agency published the cancellation order in the **Federal Register** of November 15, 2001 (66 FR 57440)(FRL–6809–5) and made the registration cancellations and amendments effective on November 15, 2001, and registrant sale and distribution of existing stocks was permitted for one year; i.e., until November 15, 2002.

EPA believes that end users have had sufficient time, more than 2 years, to exhaust those existing stocks and for treated commodities to have cleared the channels of trade. Therefore, the Agency is proposing to revoke the tolerances in 40 CFR 180.153 for residues of the insecticide diazinon in or on alfalfa, fresh; alfalfa, hay; guar, seed; clover, forage; clover, hay; cotton, undelinted seed; cowpea; cowpea, forage; lespedeza; sorghum, forage; and sorghum, grain; and all revocations to be effective on the date of publication of the final rule in the **Federal Register**.

Further, EPA is proposing to revise commodity terminology in 40 CFR 180.153 to conform to current Agency practice as follows: ''Banana (NMT 0.1 ppm shall be present in the pulp after peel is removed)'' to ''banana;'' ''corn, forage'' to ''corn, field, forage'' and ''corn, sweet, forage;'' ''corn, kernel plus cob with husks'' to ''corn, sweet, kernel plus cob with husks removed;'' ''endive (escarole)'' to ''endive;'' ''ginseng, root'' to ''ginseng, roots;'' ''hop'' to ''hop, dried cones;'' ''onion'' to ''onion, dry bulb'' and ''onion, green;'' ''peavine hay'' to ''pea, field, hay;'' ''peavines'' to ''pea, field, vines;'' ''pea with pods (determined on pea after removing any shell present when marketed)'' to ''pea, succulent;'' and ''rutabagas'' to ''rutabaga.''

Additional information can be found in the 2002 diazinon Interim Reregistration Eligibility Decision (IRED). A printed copy of the diazinon IRED may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419, telephone 1–800–490–9198; fax 1–513–489–8695; internet at *http://www.epa.gov/ncepihom/* and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 1–800–553–6847 or 703–605–6000; internet at *http://www.ntis.gov/*. An electronic copy of the diazinon IRED is available on the internet at *http://www.epa.gov/pesticides/reregistration/status.htm*.

On March 23, 2005 (70 FR 14618) (FRL–7701–4), EPA published in the **Federal Register** a proposed rule which included a proposal to revoke diazinon tolerances in 40 CFR 180.153 on coffee bean and dandelion, leaves effective on the date of final rule publication. Because EPA expects the final rule follow-up to the March 23, 2005 proposal to be published in the **Federal Register** prior to follow-up publication of a final rule action to this document, the Agency does not show either the coffee bean or dandelion, leaves tolerances in the codification table for diazinon in this document. However, if these two tolerances are not revoked prior to final action on this document, then the Agency will list them in the codification table for diazinon in that final rule.

5. *Dihydro-5-heptyl-2(3H)-furanone.* In the **Federal Register** notice of October 27, 2004 (69 FR 62666), EPA announced registration cancellations, including a certain dihydro-5-heptyl-2(3*H*)-furanone registration, for non-payment of year 2004 registration maintenance fees. The cancellation orders permitted registrants to sell and distribute existing stocks of the canceled products until January 15, 2005, one year after the date on which the fee was due. The Agency believes that end users have had sufficient time to exhaust existing stocks and for treated commodities to have cleared the channels of trade. Therefore, EPA is proposing to revoke the tolerance exemptions in 40 CFR 180.528 for residues of the insecticide dihydro-5-

heptyl-2(3*H*)-furanone in or on animal feed and processed food.

Also, EPA is proposing to revise paragraph (a)(1) in 40 CFR 180.539 and remove dihydro-5-heptyl-2(3*H*)-furanone from the tolerance exemption expression for d-Limonene.

6. *Dihydro-5-pentyl-2(3H)-furanone.* In the **Federal Register** notice of October 27, 2004 (69 FR 62666), EPA announced registration cancellations, including a certain dihydro-5-pentyl-2(3*H*)-furanone registration, for non-payment of year 2004 registration maintenance fees. The cancellation orders permitted registrants to sell and distribute existing stocks of the canceled products until January 15, 2005, one year after the date on which the fee was due. The Agency believes that end users have had sufficient time to exhaust existing stocks and for treated commodities to have cleared the channels of trade. Therefore, EPA is proposing to revoke the tolerance exemptions in 40 CFR 180.529 for residues of the insecticide dihydro-5-pentyl-2(3*H*)-furanone in or on animal feed and processed food.

Also, EPA is proposing to revise paragraph (a)(1) in 40 CFR 180.539 and remove dihydro-5-pentyl-2(3*H*)-furanone from the tolerance exemption expression for d-Limonene.

7. *Vinclozolin.* In the **Federal Register** notice of August 22, 2001 (66 FR 44134) (FRL–6795–7), EPA announced use cancellations for certain vinclozolin registrations, including uses of the fungicide vinclozolin on kiwi, chicory, lettuce, and succulent beans with a last date for legal use as January 30, 2004; January 30, 2004; November 30, 2005, and November 30, 2005, respectively. The Agency believes that end users will have had sufficient time to exhaust existing stocks and for treated kiwi and chicory commodities to have cleared the channels of trade. Further, pursuant to FFDCA section 408(l)(5), treated lettuce and succulent bean commodities that have been legally treated on or before November 30, 2005 and whose residues are within the tolerance set to expire on that date, will not be considered adulterated, even if they have not yet cleared channels of trade. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.380(a) for the combined residues of the fungicide vinclozolin and its metabolites containing the 3,5-dichloroaniline moiety in or on Belgian endive, tops and kiwifruit on the date of publication of the final rule, and also lettuce, head and lettuce, leaf; each with an expiration/revocation dates date of November 30, 2005.

Also, while the tolerance for vinclozolin residues of concern in or on bean, succulent currently has an expiration/revocation date of September 30, 2005 in 40 CFR 180.380(a), EPA is proposing to extend that date until November 30, 2005 in order to be consistent with the last date for legal use identified in the **Federal Register** Notice of August 22, 2001 (66 FR 44134).

Further, EPA is proposing to revise commodity terminology in the table in 40 CFR 180.380(a) to conform to current Agency practice as follows: ''grape, (wine)'' to ''grape, wine.''

On March 23, 2005 (70 FR 14618), EPA published in the **Federal Register** a rule which included a proposal to revoke vinclozolin tolerances in 40 CFR 180.380 on onion, dry bulb and raspberry effective on the date of final rule publication. Because EPA expects the final rule follow-up to the March 23, 2005 proposal to be published in the **Federal Register** prior to follow-up publication of a final rule action to this document, the Agency does not show either the onion, dry bulb or raspberry tolerances in the codification table for vinclozolin in this document. However, if these two tolerances are not revoked prior to final action on this document, then the Agency will list them in the codification table for vinclozolin in that final rule.

B. What is the Agency's Authority for Taking this Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. 136 et seq.). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section

408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

C. When do These Actions Become Effective?

With the exception of certain tolerances for 4-aminopyridine and vinclozolin, for which EPA is proposing specific expiration/revocation dates, the Agency is proposing that these tolerance and tolerance exemption revocations, tolerance commodity terminology revisions, and removal of dihydro-5-heptyl-2(3*H*)-furanone and dihydro-5-pentyl-2(3*H*)-furanone from the tolerance expression in 40 CFR 180.539 for d-limonene become effective on the date of publication of the final rule in the **Federal Register**. With the exception of 4-aminopyridine and vinclozolin, the Agency believes that existing stocks of pesticide products labeled for the uses associated with the tolerance actions proposed herein have been exhausted and that treated commodities have cleared the channels of trade. EPA is proposing expiration dates of January 15, 2006 for specific 4-aminopyridine tolerances and November 30, 2005 for tolerances of vinclozolin residues of concern on bean, succulent; lettuce, head; and lettuce, leaf. The Agency believes that these revocation dates allow users to exhaust stocks and allow sufficient time for passage of treated commodities through the channels of trade. However, if EPA is presented with other information and that information is verified, the Agency will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under **SUPPLEMENTARY INFORMATION.**

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006 to reassess the tolerances that were in existence on August 2, 1996. As of May 6, 2005, EPA has reassessed over 7,190 tolerances. This document proposes to revoke a total of 39 tolerances of which 33 would be counted in a final rule as tolerance reassessments toward the August 2006 review deadline under FFDCA section 408(q), as amended by FQPA in 1996. For the purpose of tolerance reassessment, the commodity entry ''corn (including popcorn)'' in 40 CFR 180.1008 for chloropicrin represents two tolerances; i.e., corn (postharvest) and corn, pop, grain (postharvest). Therefore, it is counted herein as two proposed revocations and the Agency expects in a final rule to count this as two tolerance reassessments. In addition, while the corn, field, grain and corn, pop, grain tolerances for 4-aminopyridine are counted as two proposed revocations, EPA expects in a final rule to count them as one tolerance reassessment because the Agency counted them as one tolerance at the beginning of FQPA when these were listed in 40 CFR 180.312 as one tolerance; i.e., corn, grain. Finally, the vinclozolin tolerances were previously reassessed.

III. Are the Proposed Actions Consistent With International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standard established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select ''Laws, Regulations, and Dockets,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under '' **Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require

Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this proposed action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does notapply to this proposed rule.

List of Subjects in 40 CFR Part 180

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

Dated: May 6, 2005.

James Jones,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.153 is amended by revising the table in paragraph (a)(1) to read as follows:

§ 180.153 Diazinon; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
Almond	0.5
Almond, hulls	3.0
Apple	0.5
Apricot	0.5
Banana	0.2
Bean, lima	0.5
Bean, snap, succulent	0.5
Beet, garden, roots	0.75
Beet, garden, tops	0.7
Beet, sugar, roots	0.5
Beet, sugar, tops	10.0
Blackberry	0.5
Blueberry	0.5
Carrot, roots	0.75
Cattle, fat	0.7
Celery	0.7
Cherry	0.75
Citrus	0.7
Corn, field, forage	40.0
Corn, sweet, kernel plus cob with husks removed	0.7
Corn, sweet, forage	40.0
Cranberry	0.5
Cucumber	0.75
Endive	0.7
Fig	0.5
Filbert	0.5
Ginseng, roots	0.75
Grape	0.75
Hop, dried cones	0.75
Kiwifruit	0.75
Lettuce	0.7
Loganberry	0.75
Melon	0.75
Mushroom	0.75
Nectarine	0.5
Olive	1.0
Onion, dry bulb	0.75
Onion, green	0.75
Parsley, leaves	0.75
Parsnip	0.5
Peach	0.7
Pear	0.5
Pea, field, hay	10.0
Pea, field, vines	25.0
Pea, succulent	0.5
Pepper	0.5
Pineapple	0.5
Plum, prune, fresh	0.5
Potato	0.1
Potato, sweet	0.1
Radicchio	0.7
Radish	0.5
Raspberry	0.5
Rutabaga	0.75
Sheep, fat	0.7
Sheep, meat (fat basis)	0.7
Sheep, meat by-products (fat basis)	0.7
Spinach	0.7
Squash, summer	0.5
Squash, winter	0.75
Strawberry	0.5
Swiss chard	0.7
Tomato	0.75
Turnip, roots	0.5
Turnip, greens	0.75
Vegetable, brassica, leafy, group 5	0.7

Commodity	Parts per million
Walnut	0.5
Watercress	0.7

* * * * *

3. Section 180.312 is amended by revising paragraph (a) to read as follows:

§ 180.312 4-Aminopyridine; tolerances for residues.

(a) *General.* Tolerances are established for residues of the bird repellent 4-aminopyridine in or on the following food commodities:

Commodity	Parts per million	Expiration/Revocation Date
Corn, field, forage	0.1	1/15/06
Corn, field, grain	0.1	1/15/06
Corn, field, stover	0.1	1/15/06
Corn, pop, grain	0.1	1/15/06
Corn, pop, stover	0.1	1/15/06
Corn, sweet, forage	0.1	1/15/06
Corn, sweet, kernel plus cob with husks removed	0.1	1/15/06
Corn, sweet, stover	0.1	1/15/06
Sunflower, seed	0.1	1/15/06

* * * * *

4. Section 180.380 is amended by revising paragraph (a) to read as follows:

§ 180.380 Vinclozolin; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the fungicide vinclozolin (3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione) and its metabolites containing the 3,5-dichloroaniline moiety in or on the food commodities in the table below. There are no U.S. registrations for grape (wine) as of July 30, 1997.

Commodity	Parts per million	Expiration/Revocation Date
Bean, succulent	2.0	11/30/05
Canola, seed	1.0	11/30/08
Cattle, fat	0.05	11/30/08
Cattle, meat	0.05	11/30/08
Cattle, meat byproducts	0.05	11/30/08
Egg	0.05	11/30/08
Goat, fat	0.05	11/30/08
Goat, meat	0.05	11/30/08
Goat, meat byproducts	0.05	11/30/08
Grape, wine	6.0	None
Hog, fat	0.05	11/30/08
Hog, meat	0.05	11/30/08
Hog, meat byproducts	0.05	11/30/08
Horse, fat	0.05	11/30/08
Horse, meat	0.05	11/30/08
Horse, meat byproducts	0.05	11/30/08
Lettuce, head	10.0	11/30/05
Lettuce, leaf	10.0	11/30/05
Milk	0.05	11/30/08
Poultry, fat	0.1	11/30/08
Poultry, meat	0.1	11/30/08
Poultry, meat byproducts	0.1	11/30/08
Sheep, fat	0.05	11/30/08
Sheep, meat	0.05	11/30/08
Sheep, meat byproducts	0.05	11/30/08

* * * * *

§ 180.528 [Removed]

5. Section 180.528 is removed.

§ 180.529 [Removed]

6. Section 180.529 is removed.

7. Section 180.539 is amended by revising paragraph (a)(1) to read as follows:

§ 180.539 d-Limonene; tolerances for residues.

(a) *General.* (1) The insecticide d-limonene may be safely used in insect-repellent tablecloths and in insect-repellent strips used in food- or feed-handling establishments.

* * * * *

§ 180.1003 [Removed]

8. Section 180.1003 is removed.

§ 180.1008 [Removed]

9. Section 180.1008 is removed.

[FR Doc. 05–9776 Filed 5–17–05; 8:45 a.m.]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[ET Docket No. 05–182; FCC 05–94]

Technical Standards for Satellite-Delivered Network Signals

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Notice of inquiry.

SUMMARY: This document begins an inquiry into the adequacy of the digital signal strength standard and testing procedures used to determine whether households are eligible to receive distant broadcast digital television (DTV) network signals from satellite communications providers. We request comment and information on whether the existing statutes and/or regulations concerning the digital television signal strength standard and testing procedures as used for identifying if households are unserved by local network TV signals for purposes of determining eligibility to receive distant signals from satellite services need to be revised.

DATES: Comments must be filed on or before June 17, 2005, and reply comments must be filed on or before July 5, 2005.

ADDRESSES: You may submit comments, identified by (ET Docket No. 05–182) by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Sturdivant, Office of Engineering and Technology, (202) 418–1227, e-mail: *David.Sturdivant@fcc.gov,* TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Inquiry* (NOI), ET Docket No. 05–182, FCC 05–94, adopted April 29, 2005, and released May 3, 2005. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternate formats are available to persons with disabilities at TTY (202) 418–7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before June 17, 2005, and reply comments on or before July 5, 2005. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Summary of Notice of Inquiry

1. In accordance with The Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) (Pub. L. 108–447, section 207, 118 Stat. 2809, 3393 (2004) (to be codified at 47 U.S.C. 325), 204(b)) the Commission requests comment and information to assist us in determining if existing statutes and/or regulations that establish a television signal strength standard for identifying households that are unserved by local network TV signals are adequate for use in identifying household unserved by digital television broadcast signals (DTV). Households that are unserved by a local broadcast television station are eligible to receive distant network signals from satellite services. The Commission also requests comment on whether statutes and regulations need to be revised to take into account the types of antennas and receiving equipment that are available to consumers for reception of digital television signals. The record obtained through this inquiry will be used to prepare a report to Congress describing the results of this study and any changes that should be made to the applicable Federal statutes or regulations.

2. This Inquiry will review current regulations that identify households that are unserved by a local analog broadcast television stations in order to determine if the regulations may be accurately applied to local digital broadcast stations for the same purpose. The Commission has been directed by SHVERA to review six specific factors related to determining if a household will be classified as unserved concerning the reception of digital television signals.

3. We are requesting relevant technical information to determine if a new standard should account for the fact that an antenna can be mounted on a roof or placed in a home and whether the antenna will be placed in a fixed mounting or be capable of rotating. Information about the cost and the ease of deployment as well as the effects of the use of a rotor with the antenna should be included with comments.

4. We will consider whether 47 CFR 73.686(d) should be amended to create different procedures for determining the requisite digital signal strength at a location. Portions of § 73.686(d) require an individual conducting measurement of the television signal available in a specific location to utilize characteristics of an analog television

signal to complete the measurement. We request information regarding amending the rule so that it will be able to account for the measurement of digital television signals, such as where to tune and the proper setting for the i.f. bandwidth of the measurement equipment. The Commission will also consider a procedure for measuring signal intensity indoors along with criteria that would determine when an indoor or outdoor measurement should be performed.

5. The Commission further asks if a standard that does not require the presence of a signal of a certain strength to ensure that a household can receive a high-quality picture using antennas of reasonable cost and ease of installation should be developed. Suggested standards should include sufficient information as to how the standard will insure that reception of service will occur and how the standard may be affected by currently available or soon-to-be available reception equipment.

6. The Commission also seeks comment on whether to develop a predictive methodology for determining whether a household is unserved by an adequate digital signal under 17 U.S.C. 119(d)(10). We seek to determine if the modified Longley-Rice model, with appropriate modifications, would accurately predict digital signal coverage at a specific location, or whether there is some other predictive model that would be more appropriate for this purpose. Commenting parties are asked to propose specific modifications to the model and provide detailed analysis as to how the changes will result in a more accurate model when accounting for environmental features and possible signal interference. If an alternative model is suggested, we ask that it include specific technical information concerning its effectiveness in predicting DTV service at a location as well as information that will enable its use by the Commission.

7. We request information as to whether there is a wide variation in the ability of reasonably priced consumer digital television sets to receive over-the-air signals, such that at a given signal strength some may be able to display high-quality pictures while others cannot, whether such variation is related to the price of the television set, and whether such variation should be factored into setting a standard for determining if a household is unserved by an adequate digital signal. Commenting parties should provide information regarding the sensitivity of various receivers and their interference rejection capability. We ask that these comments be accompanied by price data and analysis regarding the correlation between performance and price. We also ask if there are specific parameters that we should measure when performing our own analysis on the DTV receiving equipment. We ask if significant differences in digital receiver performance quality exist, should those differences be accounted for when determining whether a household is unserved by an adequate digital signal. If the Commenting parties recommend that digital receiver quality be a factor we ask that the parties provide detailed analysis and explain how receiver quality can be used in ascertaining whether a household is unserved. Finally, we ask how limitations in receivers can be mitigated through the use of higher performance antennas or auxiliary devices.

8. Finally, we seek comment on whether to account for factors such as building loss, external interference sources, or undesired signals from both digital television and analog television stations using either the same or adjacent channels in nearby markets, foliage, and man-made clutter. In particular, interference from both co-channel and adjacent channel TV transmitters could cause interference to the desired signal and we ask for comment pertaining to this type of interference. We request comment on how well digital TV receivers and satellite set-top-boxes with built-in off-air receivers perform when contending with interference and should performance specifications be taken into account by the Commission in order to determine when a household is unserved by an adequate digital signal? Finally, what additional factors, if any, should be included when determining the availability of a DTV signal at an individual location?

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–9823 Filed 5–17–05; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 70, No. 95
Wednesday, May 18, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 12, 2005.

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 technological collection techniques 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), *OIRA_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) 720–8958.

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.

Animal and Plant Health Inspection Service

Title: Phytosanitary Export Certification.

OMB Control Number: 0579–0052.

Summary of Collection: The Animal & Plant Health Inspection Service (APHIS) among other things provides export certification services to assure other countries that the plants and plant products they receive from the United States are free of plant pests specified by the receiving country. The Federal Plant Pest Act authorizes the Department to carry out this mission. APHIS will collect information using several forms.

Need and Use of the Information: APHIS will use the information collected to locate shipments, guide inspection, and issue a certificate to meet the requirements of the importing country. Failure to provide this information would have an impact on many U.S. exporters who would no longer be able to engage in the business of exporting plants and plant products overseas.

Description of Respondents: Business or other for-profit; Farm; Individual or households; Not-for-profit institutions; Federal Government; State, local or tribal government.

Number of Respondents: 23,225.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 600,481.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–9843 Filed 5–17–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Advisory Committee on Beginning Farmers and Ranchers

AGENCY: Farm Service Agency, USDA.

ACTION: Notice requesting nominations.

SUMMARY: The Secretary of Agriculture intends to renew the charter of the Advisory Committee on Beginning Farmers and Ranchers (Committee). The Committee provides advice to the Secretary on ways to encourage Federal and State beginning farmer programs to provide joint financing to beginning farmers and ranchers, and other methods of creating new farming and ranching opportunities. Nominations of persons to serve on the Committee are invited.

DATES: Nominations will be accepted through June 17, 2005, and should be submitted to Mark Falcone, Designated Federal Official (DFO) for the Committee, at the address below.

ADDRESSES: Mark Falcone, DFO for the Advisory Committee on Beginning Farmers and Ranchers, Farm Service Agency, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0522, Washington, DC 20250–0522; telephone (202) 720–1632; FAX (202) 690–1117; e-mail *mark.falcone@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Falcone at (202) 720–1632.

SUPPLEMENTARY INFORMATION: Section 5 of the Agricultural Credit Improvement Act of 1992 (Pub. L. 102–554) required the Secretary of Agriculture to establish the Committee for the purpose of advising the Secretary on the following: (1) The development of a program of coordinated financial assistance to qualified beginning farmers and ranchers under section 309(i) of the Consolidated Farm and Rural Development Act (Federal and State beginning farmer programs provide joint financing to beginning farmers and ranchers); (2) methods of maximizing the number of new farming and ranching opportunities created through the program; (3) methods of encouraging States to participate in the program; (4) the administration of the program; and (5) other methods of creating new farming or ranching opportunities.

The law requires that members include representatives from the following groups: (1) The Farm Service Agency (FSA); (2) State beginning farmer programs (as defined in section 309(i)(5) of the Consolidated Farm and Rural Development Act); (3) commercial lenders; (4) private nonprofit organizations with active beginning farmer or rancher programs; (5) the Cooperative State Research, Education, and Extension Service; (6) Community colleges or other educational institutions with demonstrated experience in training beginning farmers or ranchers; and (7) other entities or persons providing lending or technical

assistance to qualified beginning farmers or ranchers. The Secretary has also appointed farmers and ranchers to the Committee.

USDA Departmental Regulation 1042–119 dated November 25, 1998, first established the Committee and designated FSA to provide support. Approximately one-third of the Committee membership was replaced when the Committee charter was reestablished on August 27, 2003. Approximately one-third of the 20 existing members will be replaced when the charter is renewed in August 2005. FSA is now accepting nominations of individuals to serve for a 2-year term on the Committee. Reappointments are made to assure effectiveness and continuity of operations. The duration of the Committee is indefinite. No member, other than a USDA employee, can serve for more than 6 consecutive years.

The Committee meets at least once a year and all meetings are open to the public. Committee meetings provide an opportunity for members to exchange ideas and provide advice on ways to increase opportunities for beginning farmers and ranchers. Members discuss various issues and draft recommendations, which are submitted to the Secretary in writing.

Nominations are being sought through the media, the **Federal Register**, and other appropriate methods. Persons nominated for the Committee will be required to complete and submit an Advisory Committee Membership Background Information Questionnaire (Form AD–755). Submission of this form will constitute a nomination. Letters of recommendation may also be submitted. The questionnaire is available on the Internet at *http://www.fsa.usda.gov/dafl/Downloads/ad755.pdf.* Questionnaires can be completed on-line. However, nominees must print their completed forms from an Adobe PDF file and mail or fax them to the above address or fax number. The form may also be requested by telephone, fax, or e-mail. All inquiries about the nomination process and submissions of the AD–755 should be made to Mark Falcone at the addresses and numbers listed above. Appointments to the Committee will be made by the Secretary of Agriculture. Equal opportunity practices, consistent with USDA policies, will be followed in making all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, persons with disabilities, and senior citizens.

Signed in Washington, DC, on April 29, 2005.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 05–9842 Filed 5–17–05; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest Advisory Board Public Meeting Dates Announced

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Black Hills National Forest Advisory Board (NFAB) has announced its meeting dates for the remainder of 2005. These meetings are open to the public, and public comment is accepted at any time in writing and during the last 15 minutes of each meeting for spoken comments. Persons wishing to speak are give three minutes to address the Board.

Meeting dates are:

June 15

July 20

August 17

September 21

October 19

November 16

December 14

January 4, 2006

ADDRESSES: Meetings will be given at 1 PM and end no later than 5 PM at the West River Ag Center, 1905 Plaza Boulevard, Rapid City, SD 57731.

AGENDAS: The Board will consider a variety of issues related to national forest management. Agendas will be announced in advance in the news media but principally concern travel management, fire and insect problems, invasive species, and forest fragmentation.

FOR FURTHER INFORMATION CONTACT: Frank Carroll, Black Hills National Forest, 25041 North Highway 16, Custer, SD 57730, (605) 673–9200.

Dated: May 11, 2005.

Marisue Hilliard,

Acting Forest Supervisor.

[FR Doc. 05–9877 Filed 5–17–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siuslaw Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siuslaw Resource Advisory Committee will meet in Florence, OR. The purpose of the meeting is to Review RAC FY06 Business, Public Forum and 2006 Project Review/Recommendations.

DATES: The meeting will be held June 9, 2005 beginning at 9:30 a.m.

ADDRESSES: The meeting will be held at the Siuslaw Valley Fire and Rescue Station, 2625 Hwy. 101, Florence, OR 97439.

FOR FURTHER INFORMATION CONTACT: Linda Stanley, Community Development Specialist, Siuslaw National Forest, (541) 928–7085 or write to Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, OR 97339.

SUPPLEMENTARY INFORMATION: A public input period will begin at 10 a.m. The meeting is expected to adjourn at 4 p.m.

Dated: May 12, 2005.

Joni Quarnstrom,

Acting Forest Supervisor.

[FR Doc. 05–9882 Filed 5–17–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Meeting of the Agricultural Air Quality Task Force

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of meeting.

SUMMARY: The Agricultural Air Quality Task Force (AAQTF) will meet to continue discussions on critical air quality issues in relation to agriculture. Special emphasis will be placed on obtaining a greater understanding about the relationship between agricultural production and air quality.

DATES: The meeting will convene on Wednesday, June 22, 2005, from 8 a.m. to 5 p.m., and will resume on Thursday, June 23, 2005, from 8 a.m. to 4:30 p.m. Individuals with written materials, and those who have requests to make oral presentations, should contact NRCS, at the address on the following page, on or before June 8, 2005.

ADDRESSES: The meeting will be held at the Ambassador Hotel, 3100 I–40 West,

Amarillo, Texas; telephone: (806) 358–6161. Written material and requests to make oral presentations should be sent to Elvis L. Graves, Acting Designated Federal Official, NRCS, 400 East Northwood Street, Suite 410, Greensboro, North Carolina 27401.

FOR FURTHER INFORMATION, CONTACT: Questions or comments should be directed to Elvis L. Graves, Acting Designated Federal Official; telephone: (336) 370–3347, extension 421; fax: (336) 370–3376; email: *elvis.graves@gnb.usda.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information concerning the AAQTF, may be found on the World Wide Web at *http://aaqtf.tamu.edu/.*

Draft Agenda of the June 22–23, 2005, Meeting of the AAQTF

A. *Welcome to Amarillo, Texas*
   1. Local and NRCS officials
B. *Discussion of Minutes from Meeting of Previous Task Force*
C. *Discussion of Documents to be Approved by the End of the Meeting and Subsequently Presented to Secretary Johanns*
D. *Subcommittee Presentations*
   1. Emerging Issues Committee Report
   2. Research Committee Report
   3. Policy Committee Report
   4. Education/Technology Transfer Committee Report
E. *Local Research Presentations*
   1. Texas A&M University—Field Research
F. *Regional Haze Rule—Rural Particle and Ammonia Monitoring Programs*
G. *Environmental Protection Agency Update*
H. *Pesticide Volatile Organic Compounds*
I. *Next Meeting, Time and Place*
J. *Public Input*

(Time will be reserved before lunch and at the close of each daily session to receive public comment. Individual presentations will be limited to 5 minutes).

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may give oral presentations during the meeting. Those persons wishing to make oral presentations should notify Mr. Graves no later than June 8, 2005. A person submitting written material that would like a copy distributed to each member of the committee in advance of the meeting should submit 30 copies to Mr. Graves no later than June 8, 2005.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Mr. Graves. The Department of Agriculture (USDA) prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA (not all prohibited bases apply to all programs). Persons with disabilities who require alternate means for communication of program information (Braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2000 (voice and TDD). USDA is an equal opportunity provider and employer.

Signed in Washington, DC on May 4, 2005.

Bruce I. Knight,

Chief.

[FR Doc. 05–9845 Filed 5–17–05; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for the Guaranteed Rural Rental Housing Program.

DATES: Comments on this notice must be received by July 18, 2005 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Arlene Nunes, Senior Loan Specialist, Multi-Family Housing Processing Guaranteed Loan Division, Rural Housing Service, USDA, Stop 0781, 1400 Independence Avenue., SW., Washington, DC 20250, telephone, (202) 401–2307.

SUPPLEMENTARY INFORMATION:

Title: Guaranteed Rural Rental Housing Program.

OMB Number: 0575–0174.

Expiration Date of Approval: October 31, 2005.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: On March 28, 1996, President Clinton signed the ''Housing Opportunity Program Extension Act of 1996.'' One of the provisions of the Act was the authorization of the Section 538 Guaranteed Rural Rental Housing Loan Program, adding the program to the Housing Act of 1949. The program has been designed to increase the supply of affordable multifamily housing through partnerships between RHS and major lending sources, as well as State and local housing finance agencies and bond issuers. Qualified lenders will be authorized to originate, underwrite, and close loans for multifamily housing projects requiring new construction or acquisition with rehabilitation of at least $6,500 per unit will be considered.

The housing must be available for occupancy only by low or moderate income families or persons, whose incomes at the time of initial occupancy do not exceed 115 percent of the median income of the area. After initial occupancy, a tenant's income may exceed these limits; however, rents, including utilities, are restricted to no more than 30 percent of the 115 percent of area median income for the term of the loan.

The Secretary is authorized under Section 510(k) to prescribe regulations to ensure that these federally funded loans are made to eligible applicants for authorized purposes. The lender must evaluate the eligibility, cost, benefits, feasibility, and financial performance of the proposed project. The information submitted by the lender to the Agency is used by the Agency to manage, plan, evaluate, and account for Government resources. This information is required to ensure the proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15.88 man hours per response.

Respondents: Nonprofit and for-profit lending corporations and public bodies.

Estimated Number of Respondents: 462.

Estimated Number of Responses per Respondent: 6.5.

Estimated Number of Responses: 3020.

Estimated Total Annual Burden on Respondents: 1,588 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Givelekian, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 15, 2005.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. 05–9938 Filed 5–17–05; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2004 Panel of the Survey of Income and Program Participation, Wave 6 Topical Modules.

Form Number(s): SIPP 24605(L) Director's Letter; SIPP/CAPI Automated Instrument; SIPP 24003 Reminder Card.

Agency Approval Number: 0607–0905.

Type of Request: Revision of a currently approved collection.

Burden: 148,028 hours.

Number of Respondents: 97,650.

Avg Hours Per Response: 30 Minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the Wave 6 topical module interview for the 2004 Panel of the Survey of Income and Program Participation (SIPP). We are also requesting approval for a few replacement questions in the reinterview instrument. The core SIPP and reinterview instruments were cleared under Authorization No. 0607–0905.

The SIPP is designed as a continuing series of national panels of interviewed households introduced every few years, with each panel having durations of 3 to 4 years. The 2004 Panel is scheduled for four years and will include twelve waves of interviewing. All household members 15 years old or over are interviewed a total of twelve times (twelve waves), at 4-month intervals, making the SIPP a longitudinal survey.

The survey is molded around a central ''core'' of labor force and income questions that remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as ''topical modules.'' The topical modules for the 2004 Panel Wave 6 are Medical Expenses and Utilization of Health Care (Adults and Children), Work-Related Expenses and Child Support Paid, and Assets, Liabilities, and Eligibility. These topical modules were previously conducted in the SIPP 2004 Panel Wave 3 instrument. Wave 6 interviews will be conducted from October 2005 through January 2006.

Data provided by the SIPP are being used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare or transfer payment programs, such as the Department of Health and Human Services and the Department of Agriculture. The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single and unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time. Monetary incentives to encourage non-respondents to participate is planned for all waves of the 2004 SIPP Panel.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or email (*susan_schechter@omb.eop.gov*).

Dated: May 12, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–9841 Filed 5–17–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend an Export Trade Certificate of Review.

SUMMARY: Export Trading Company Affairs (''ETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions

for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 88–9A016.''

Wood Machinery Manufacturers of America's original Certificate was issued on February 3, 1989 (54 FR 6312, February 9, 1989) and previously amended on June 22, 1990 (55 FR 27292, July 2, 1990); August 20, 1991 (56 FR 42596, August 28, 1991); December 13, 1993 (58 FR 66344, December 20, 1993); August 23, 1994 (59 FR 44408, August 29, 1994); September 20, 1996 (61 FR 50471, September 26, 1996); June 20, 1997 (62 FR 34440, June 26, 1997); and June 8, 1998 (63 FR 35567, June 30, 1998). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Wood Machinery Manufacturers of America, 100 North 20th Street, 4th Floor, Philadelphia, Pennsylvania 19103.

Contact: Harold Zassenhaus, Export Director, Telephone: (215) 564–3484.

Application No.: 88–9A016.

Date Deemed Submitted: May 9, 2005.

Proposed Amendment: Wood Machinery Manufacturers of America seeks to amend its Certificate to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Wood-Mizer Products, Inc., Indianapolis, Indiana; and The Original Saw Co., Britt, Iowa;

2. Delete the following companies as ''Members'' of the Certificate: CEMCO, Inc.,Whitesburg, Tennessee; Delta International Machinery Corporation, Pittsburgh, Pennsylvania; Industrial Woodworking Machine Company, Garland, Texas; Jenkins Division, Kohler General Corporation, Sheboygan Falls, Wisconsin; Machine Systems L.L.C., Bend, Oregon; Midwest Automation, Inc., Minneapolis, Minnesota; Onsrud Machine Corporation, Wheeling, Illinois; A.G. Raymond & Company, Inc., Raleigh, North Carolina; Powermatic, McMinnville, Tennessee; Ritter Manufacturing, Inc., Antioch, California; Terrco, Inc., Waterloo, South Dakota; Timesavers, Inc., Minneapolis, Minnesota; Viking Engineering and Development, Inc., Fridley, Minnesota; Wisconsin Knife Works, Beloit, Wisconsin; Yates-American Machine Co., Beloit, Wisconsin; North American Products Corporation, Jasper, Indiana; and Alexander Dodds Company, Grand Rapids, Michigan; and

3. Change the listing of the following Members: ''Unique Machine & Tool Co., Tempe, Arizona'' to the new listing ''Unique Machine & Tool Co., Phoenix, Arizona''; ''Carter Products, Inc., Grand Rapids, Michigan'' to the new listing ''Carter Products Co., Inc., Grand Rapids, Michigan''; ''Safranek Ent., Inc., Atascadero, California'' to the new listing ''Safranek Enterprises, Inc., Atascadero, California''; and ''Tyler Machinery Company, Inc., Warsaw, Indiana'' to the new listing ''Warsaw Machinery, Inc., Warsaw, Indiana.''

Dated: May 12, 2005.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E5–2492 Filed 5–17–05; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 050509124–5124–01; I.D. 050305B]

Listing Endangered and Threatened Wildlife and Plants; 90–Day Finding on a Petition to List Eastern Oyster as Threatened or Endangered under the Endangered Species Act

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

ACTION: Notice of petition finding; request for information.

SUMMARY: NMFS announces the 90–day finding for a petition to list eastern oyster (*Crassostrea virginica*) as endangered or threatened under the Endangered Species Act (ESA). NMFS finds that the petition presents substantial scientific information indicating the petitioned action may be warranted. NMFS will conduct a status review of eastern oysters to determine if the petitioned action is warranted. To ensure that the review is comprehensive, NMFS is soliciting information pertaining to this species from any interested party. NMFS also seeks suggestions from the public for peer reviewers to take part in the peer review process for the forthcoming status review.

DATES: Information related to this petition finding must be received by July 18, 2005.

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

- E-mail: *EasternOyster.Info@noaa.gov*. Include docket number (050509124–5124–01) in the subject line of the message.
- Fax: 978–281–9394, Attention Ms. Kimberly Damon-Randall.
- Mail: Information on paper, disk, or CD-ROM should be addressed to the Assistant Regional Administrator for Protected Resources, NMFS Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Damon-Randall, NMFS, Northeast Regional Office, (978) 281–9300 x6535, or Marta Nammack, NMFS, HQ, (301) 713–1401 x180; or Jennifer Moore, NMFS Southeast Regional Office, (727) 824–5312.

SUPPLEMENTARY INFORMATION:

Background

On January 11, 2005, NMFS received a petition from Mr. Wolf-Dieter N. Busch,

Ecosystem Initiatives Advisory Services, requesting that NMFS list eastern oyster (*Crassostrea virginica*) as endangered or threatened under the ESA. The petition contained information on the species, including the taxonomy; ecological and economic importance; distribution; physical and biological characteristics of its habitat and ecosystem relationships; population status and trends; and factors contributing to the population's decline. The petition addressed the five factors identified in section 4(a)(1) of the ESA: (1) Current or threatened habitat destruction or modification or curtailment of habitat or range; (2) over-utilization for commercial purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) other natural or man-made factors affecting the species' continued existence.

ESA Statutory Provisions and Policy Consideration

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)) requires that NMFS make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating the petitioned action may be warranted. ESA implementing regulations define ''substantial information'' as the amount of information that would lead a reasonable person to believe the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1)). In determining whether substantial information exists for a petition to list a species, NMFS takes into account several factors, including information submitted with, and referenced in, the petition and all other information readily available in NMFS files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition (16 U.S.C. 1533(b)(3)(A)), and the finding is to be published promptly in the **Federal Register**. If NMFS finds that a petition presents substantial information indicating that the requested action may be warranted, section 4 (b)(3)(A) of the ESA requires the Secretary of Commerce (Secretary) to conduct a status review of the species. Section 4 (b)(3)(B) requires the Secretary to make a finding as to whether the petitioned action is warranted within 12 months of the receipt of the petition. The Secretary has delegated the authority for these actions to the NOAA Assistant Administrator for Fisheries.

Under the ESA, a listing determination can address a species, subspecies, or a distinct population segment (DPS) of a vertebrate species (16 U.S.C. 1532 (16)). Since the eastern oyster is an invertebrate species, the entire species would have to be listed under the ESA (or a subspecies, if information indicates that there are subspecies of the eastern oyster) if it is endangered or threatened. A species is endangered if it is in danger of extinction throughout all or a significant portion of its range (ESA section 3(6)). It is threatened if is it likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA section 3(19)).

Under section 4(a)(1) of the ESA, a species shall be listed if it is determined to be threatened or endangered as a result of any one of the following factors: (1) present or threatened destruction, modification, or curtailment of habitat or range; (2) over-utilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the basis of the best scientific and commercial data available, after conducting a review of the status of the species and taking into account efforts made by any state or foreign nation to protect such species.

Life History of the Eastern Oyster

The eastern oyster is an estuarine bivalve, inhabiting subtidal and intertidal zones. Oysters form reefs, which are a dominant feature of many coastal estuaries. Oysters are often considered a ''keystone species,'' providing valuable shelter and habitat for many other estuarine organisms, improving water quality, and reducing bank erosion. Oysters are typically found in estuaries, sounds, bays, and tidal creeks from brackish water (5 parts per thousand [ppt] salinity) to full strength seawater (35 ppt salinity). The eastern oyster is distributed from the Gulf of St. Lawrence to the Gulf of Mexico and south through the Caribbean to the Yucatan Peninsula. They are very tolerant organisms, able to withstand wide variations in temperature, salinity, suspended sediments, and dissolved oxygen. Intertidal oysters typically have elongated, irregularly shaped shells. When submerged by the tide, oysters feed by filtering phytoplankton (microscopic plants) from the water column.

Adult oysters begin reproduction when water temperatures become greater than 68°F (20°C). Oysters are broadcast spawners, meaning they release eggs and sperm into the water column. A fertilized egg develops into a planktonic (free-swimming) trochophore larva in about 6 hours. A fully shelled veliger larva is formed within 12 to 24 hours. The larva remains planktonic for about 3 weeks. Towards the end of this period it develops a foot (hence, pediveliger) and settles to the bottom of the water column where it seeks a hard substrate. When a suitable surface (ideally adult oyster shell) is located, the larva cements itself and metamorphoses to the adult form. This newly attached oyster is known as a ''spat.''

Analysis of Petition

The petition asserts that the species warrants listing based on all five of the factors specified in the ESA (16 USC 1533(a)(1)). The petitioner contends that listing the eastern oyster is necessary because of the historic failure to protect the species' habitats from numerous documented anthropogenic stresses, resulting in a well-documented crash of the population. The petition states that while ''the living resources management agencies (LRMAs)'' had information regarding the catastrophic declines of the species off the Atlantic Coast and in the Chesapeake Bay, they did nothing other than increase the harvest restrictions. The petitioner contends that the LRMAs should have used their ''advisory authority under the Fish and Wildlife Coordination Act, the National Environmental Policy Act, and the Magnuson-Stevens Fishery Conservation and Management Act to force improvements and restoration of the quality and quantity of the degraded habitats.''

Habitat factors cited by the petitioner as leading to the decline of this species include sediment load and dredging of shipping channels and harbors, which have changed water flow patterns. Also, overall freshwater inflow has been reduced by consumptive water withdrawal and by dams. Excessive nutrients from point and non-point sources frequently overload the estuaries, and toxic chemicals and endocrine disrupters are discharged into the watersheds.

The petitioner includes harvest data for different regions of the Atlantic coast during the period 1880 through 2003, indicating that the annual Atlantic coastal landings of eastern oyster have decreased to less than two percent of their recorded historic value, and harvest from the Chesapeake Bay has decreased to 0.2 percent of its recorded historic value. The petitioner states that this is near ''extinction level.''

The petition states that two protozoan diseases have stressed the eastern

oyster, especially in the Chesapeake Bay. MSX is caused by *Haplosporidium nelsoni*, and Dermo is caused by *Perkinsus marinus*. In high salinity areas of both the Delaware Bay and Chesapeake Bay, *H. nelsoni* was responsible for the mortality of close to 100 percent of the adult standing stock biomass during a 3–year period in the late 1950s and early 1960s. Initially, MSX was found in coastal bays from North Carolina, Virginia, Maryland, Delaware, New Jersey, Connecticut, and New York, but associated mortalities did not occur south of Virginia or north of New Jersey. A range extension of the disease occurred in the 1980s, and MSX has now been documented from Maine to Florida. Since 1995, the range of MSX associated mortalities has expanded to include both Maine and New York. *P. marinus* is distributed along the East Coast of the United States from Maine to Florida and along the Gulf of Mexico coast. This parasite inhibits normal growth of the gonads in oysters and as such, reduces their reproductive capacity. Mortalities of up to 95 percent have occurred during the second summer following transfer to disease enzootic areas.

The petition states that harvest restrictions and enhancement efforts have not succeeded in restoring the eastern oyster populations. In addition, according to the petitioner, the LRMAs have not provided detailed water quality and physical habitat goals to the environmental enforcement agencies, making it difficult for them to address the needs of the living resources through enforcement under the Fish and Wildlife Coordination Act, the National Environmental Policy Act, and the Magnuson-Stevens Fishery Conservation and Management Act.

Finally, the petition expresses concern about the proposed introduction of the exotic Asian oyster, *Crassostrea ariakensis*, because it could result in the extinction of the eastern oyster through competition and hybridization, or because of its susceptibility to polydora (a native worm) and the introduction of diseases or activation of dormant diseases.

The petition alleges the threats to the eastern oyster population continue to occur and are accompanied by increased siltation and in some areas, periodic low levels of oxygen. These factors, which have led to the decreased abundance of the species, may lead to the extinction of the eastern oyster. While the exotic Asian oyster has not yet been introduced into the Chesapeake Bay, it presents a threat because there is a proposal to introduce it, and an Environmental Assessment is underway to evaluate its impacts on the environment. NMFS concludes that the petition presents substantial information concerning some or all of the factors identified in ESA section 4(a)(1) with respect to the eastern oyster along the Atlantic Coast.

Because the petitioner presents substantial information on the status of and threats to the Atlantic Coast populations of eastern oyster but little information regarding the status or threats in other areas such as the Gulf Coast and Caribbean, he apparently seeks one of two alternatives: (1) a determination that the Atlantic coast populations constitute a separate subspecies that is in danger of extinction throughout all or a significant portion of its range (i.e., endangered) or likely to become so in the foreseeable future (i.e., threatened); or alternatively, (2) a determination that the eastern oyster is in danger of extinction throughout a significant portion of its range (e.g., along the Atlantic coast or in the Chesapeake Bay) or likely to become so in the foreseeable future. There is some limited information in our files to indicate that it is possible to differentiate between eastern oysters from the Gulf and Atlantic Coasts using mtDNA analyses. During the status review, we intend to analyze additional data to determine whether the best available information supports the existence of subspecies of eastern oysters. Existence of two or more subspecies may influence a listing determination. For example, if the available genetic information indicates that the Chesapeake Bay population is part of a separate subspecies, there may be evidence that this subspecies is threatened or endangered. Even if a subspecies does not coincide with the exact areas where major threats exist, a particular portion of such a subspecies' range may be more likely to constitute a significant portion of the subspecies' range than a significant portion of the entire species' range. If we determine that no subspecies exist, we will evaluate whether the Chesapeake Bay, entire Atlantic Coast, or other areas constitute a significant portion of the range of the species so that we can make a determination on whether the species is in danger of extinction throughout that portion of its range or likely to become so in the foreseeable future.

Petition Finding

Based on the above information and the criteria specified in 50 CFR 424.14(b)(2), NMFS finds the petition presents substantial scientific and commercial information indicating that the petitioned action concerning the eastern oyster may be warranted. NMFS will consider whether there is a separate subspecies that is threatened or endangered and whether the entire species is in danger of extinction throughout all or a significant portion of its range or likely to become so in the foreseeable future. Under section 4(b)(3)(A) of the ESA, this finding requires NMFS to commence a status review of the species. NMFS is now initiating this review. The eastern oyster is now considered to be a candidate species (69 FR 19976, April 15, 2004). Within 12 months of the receipt of the petition (January 11, 2006), a finding will be made as to whether listing the eastern oyster as endangered or threatened is warranted, as required by section 4(b)(3)(B) of the ESA. If warranted, NMFS will publish a proposed rule and solicit public comments before developing and publishing a final rule.

Information Solicited

To ensure the status review is based on the best available scientific and commercial data, NMFS is soliciting information on whether the eastern oyster is endangered or threatened. Specifically, NMFS is soliciting information in the following areas: (1) historical and current distribution and abundance of this species throughout its range; (2) historic and current condition; (3) population status and trends; (4) information on any current or planned activities that may adversely impact the species, especially as related to the five factors specified in section 4(a)(1) of the ESA and listed above; (5) ongoing efforts to protect and restore the species and its habitat; (6) information indicating the existence of separate subspecies of eastern oysters based upon genetic data or other information; and (7) information on whether any particular portions of the range of the eastern oyster constitute significant portions of the range of the species or of any potential subspecies that may exist. NMFS requests that all information be accompanied by: (1) supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

Peer Review

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure listings are

based on the best scientific and commercial data available. NMFS is soliciting the names of recognized experts in the field that could take part in the peer review process for this status review. Independent peer reviewers will be selected from the academic and scientific community, tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: May 13, 2005.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 05–9918 Filed 5–17–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051005B]

Marine Fisheries Advisory Committee; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of meetings of the Marine Fisheries Advisory Committee (MAFAC). This will be the second of two meetings held in fiscal year 2005 to review and advise on management policies for living marine resources. Agenda topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meetings will be held June 7–9, 2005, from 9 a.m. to 5 p.m. and June 10, 2005, from 9 a.m. to 12 p.m.

ADDRESSES: The meetings will be held at the Phoenix Park Hotel 520 North Capitol Street, N.W., Washington, D.C. 20001.

Requests for special accommodations may be directed to MAFAC, Office of Constituent Services, National Marine Fisheries Service, 1315 East-West Highway #9508, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Laurel Bryant, MAFAC Executive Director; telephone: (301) 713–2379 x171.

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of meetings of MAFAC. MAFAC was established by the Secretary of Commerce (Secretary) on February 17, 1972, to advise the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. This Committee advises and reviews the adequacy of living marine resource policies and programs to meet the needs of commercial and recreational fisheries, and environmental, state, consumer, academic, tribal, and other national interests.

Matters to be Considered

June 7, 2005

General overview and full committee discussion regarding status of the U.S. Ocean Action Plan initiative and offshore aquaculture legislation. The Committee will also spend time on strategic planning and committee organization.

June 8, 2005

The Committee will receive briefings on status of ecosystem approach to managing fisheries, strengthening science in management, offshore aquaculture, and status updates on reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act. The Committee will then adjourn into breakout groups to take up these issues in more depth.

June 9, 2005

The full Committee will reconvene to receive and discuss breakout group reports.

June 10, 2005

The full committee will meet to continue any necessary discussions and actions on the issue reports, and complete any unfinished administrative issues. Committee will adjourn sine day on completion of business.

Time will be set aside for public comment on agenda items.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to MAFAC (see **ADDRESSES**).

Dated: May 12, 2005.

Gordon J. Helm

Acting Director, Office of Constituent Services, National Marine Fisheries Service.

[FR Doc. 05–9927 Filed 5–17–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051305A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject Exempted Fishing Permit (EFP) application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow one commercial fishing vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP, which would enable researchers to investigate the feasibility of using low profile gillnets to catch flounders while limiting cod bycatch, would allow for exemptions from the FMP as follows: Gulf of Maine (GOM) Rolling Closure Areas III, IV, and V.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before June 2, 2005.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on the GOM Low Profile Gillnet Study.'' Comments may also be sent via fax to (978) 281–9135, or submitted via e-mail to the following address: *da5–21@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Karen Tasker, Fishery Management Specialist, phone (978) 281–9273.

SUPPLEMENTARY INFORMATION: An application for an EFP was submitted on April 15, 2005, by Dr. Pingguo He of the University of New Hampshire (UNH) for a Northeast Consortium funded project. The primary goal of this joint project with the Massachusetts Division of Marine Fisheries is to test lower vertical profile flounder gillnets to reduce the catch of cod while retaining flounders, such as winter flounder, in inshore western GOM waters. Researchers anticipate that, if the experimental net is successful, data gathered during this study may be useful in the establishment of a Special Access Program for the use of B days-at-sea (DAS) in a future action.

The project, which is anticipated to be 11 months in duration and would be conducted between May 2005 and April 2006, would include flume tank trials and 20 days of at-sea trials. Two types of low profile gillnets, each 8 meshes deep with variations in flotation and hanging ratio, would be compared with three commercial cod and flounder gillnets, each 25 meshes deep. The participating vessel would fish the nets in fleets of 10 nets, two nets per type, alternately rigged so that two experimental nets can be compared with the three control nets. Forty nets would be fished per day and the nets would be soaked for 24 hours before hauling.

All specimens caught would be sampled and measured. All undersized fish would be returned to the sea as quickly as practical after measurement and examination. The researcher anticipates that a total of 13,409 lb (6,082 kg) of fish, including 4,918 lb (2,230 kg) of cod, 1,639 lb (743 kg) of flounders, 1,246 lb (565 kg) of monkfish, and 4,590 lb (2,082 kg) of dogfish, would be harvested and/or discarded throughout the course of the study. Other species that are anticipated to be caught are haddock, white hake, lobster, and skate. All legal-sized fish, within the possession limit, would be sold, with the proceeds returned to the project for the purpose of enhancing future research.

All at-sea research would be conducted from one fishing vessel fishing in an area west of west of 70°15′ W. long. and between from 42°40′ N. lat. and 43°10′ N. lat., excluding the Western GOM Closure Area. Researchers have asked for an exemption to the regulations establishing the GOM Rolling Closure Areas III, IV, and V because they believe that an optimum mixture of flounders and cod for testing the experimental gear will be present in the waters of the GOM. Therefore, because the aim of the project is to separate flounders and cod before the fish are brought onboard, an exemption from the GOM Rolling Closure Areas III, IV, and V is important to the success of the study. All research will be conducted using DAS.

The applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request.

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

Dated: May 13, 2005.

Alan D. Risenhoover,

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

[FR Doc. E5–2491 Filed 5–17–05; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, June 10, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–10034 Filed 5–16–05; 2:41 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, June 3, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–10035 Filed 5–16–05; 2:41 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, June 17, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–10036 Filed 5–16–05; 2:41 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, June 24, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–10037 Filed 5–16–05; 2:41 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense for

Personnel and Readiness announces the following proposed new public information collection and seeks public comment on the provisions thereof. 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 burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 18, 2005.

ADDRESSES: Written comments and recommmendations on the proposed information collection should be sent to the Principal Deputy Under Secretary of Defense for Personnel and Readiness, Morale, Welfare and Recreation Policy Directorate, 241 S. 18th Street, Arlington, VA 22202; ATTN: Colonel Michael A. Pachuta, e-mail: *Michael.Pachuta@osd.mil* or James Ellis, e-mail: *james.ellis@osd.mil;* telephone (703) 602–5001.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call (703) 602–5001.

Title and OMB Control Number: Commercial Solicitation on DoD Installation: Overseas; OMB CONTROL NUMBER 0704–TBD.

Needs and Uses: No person has authority to enter upon a DoD installation to transact personal commercial solicitation as a matter of right without meeting specific requirements. This information collection is necessary to ensure established annual procedures for the DoD registration requirement for the sale of insurance and securities on U.S. military overseas installations are met. Insurers are required to submit a letter of application certifying that they meet registration criteria. The letter received from the applicants provides information relative to the areas they intend to do business in, attest to their company's ability to pay claims as well as their rating within the insurance industry for the preceding business year. It also attests to their compliance with Department policies and procedures.

Affected Public: Business or other-for profit; Federal government.

Annual Burden Hours: 5.

Number of Respondents: 15.

Responses Per Respondent: 1.

Average Burden Pre Response: 20 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The purpose of this information collection is to assist the Secretary of Defense and Secretaries of the Military Departments in ensuring that established procedures are in place to protect our Service personnel from unscrupulous business people who would take advantage through the sale of insurance and financial products that may not meet their needs. On an annual basis, insurance companies will be required to complete a standard letter application, which is signed by the President, Vice President, or designated official of the insurance company, containing certifying statements that the company is in compliance with DoD criteria to register (or re-register) for solicitation privileges on overseas U.S. military installations. The registration application is forwarded to the Principal Deputy Under Secretary of Defense for Personnel and Readiness for approval to grant the insurance company solicitation privileges on overseas U.S. military installations.

Dated: May 11, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–9820 Filed 5–17–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0070]

Federal Acquisition Regulation; Information Collection; Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration(NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning payments. The clearance currently expires on July 31, 2005.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, 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; ways to enhance the quality, utility, and clarity of the information to be collected; 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.

DATES: Submit comments on or before July 18, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0070, Payments, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Contract Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms performing under Federal contracts must provide adequate documentation to support requests for payment under these contracts. The documentation may range from a simple invoice to detailed cost data. The information is usually submitted once, at the end of the contract period or upon delivery of the supplies, but could be submitted more often depending on the payment schedule established under the contract (see FAR 52.232–1 through 52.232–11). The information is used to determine the proper amount of payments to Federal contractors.

B. Annual Reporting Burden

*Respondents:*80,000.

Responses Per Respondent: 120.

Annual Responses: 9,600,000.

Hours Per Response: .025.

Total Burden Hours: 240,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from

the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0070, Payments, in all correspondence.

Dated: April 29, 2005

Julia B. Wise,

Director,Contract Policy Division.

[FR Doc. 05–9848 Filed 5–17–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0073]

Federal Acquisition Regulation; Information Collection; Advance Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning advance payments. The clearance currently expires on July 31, 2005.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, 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; ways to enhance the quality, utility, and clarity of the information to be collected; 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.

DATES: Submit comments on or before July 18, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Contract Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Advance payments may be authorized under Federal contracts and subcontracts. Advance payments are the least preferred method of contract financing and require special determinations by the agency head or designee. Specific financial information about the contractor is required before determinations by the agency head or designee. Specific financial information about the contractor is required before such payments can be authorized (see FAR Subpart 32.4 and 52.232–12). The information is used to determine if advance payments should be provided to the contractor.

B. Annual Reporting Burden

Respondents: 500.
Responses Per Respondent: 1.
Annual Responses: 500.
Hours Per Response: 1.
Total Burden Hours: 500.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0073, Advance Payments, in all correspondence.

Dated: April 29, 2005

Julia B. Wise,

Director, Contract Policy Division.

[FR Doc. 05–9849 Filed 5–17–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0074]

Federal Acquisition Regulation;Information Collection; Contract Funding—Limitation of Costs/Funds

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning limitation of costs/funds. The clearance currently expires on August 31, 2005.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, 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; ways to enhance the quality, utility, and clarity of the information to be collected; 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.

DATES: Submit comments on or before July 18, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson, Contract Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms performing under Federal cost-reimbursement contracts are required to notify the contracting officer in writing whenever they have reason to believe—

(1) The costs the contractors expect to incur under the contracts in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost of the contracts; or

(2) The total cost for the performance of the contracts will be greater or substantially less than estimated. As a part of the notification, the contractors must provide a revised estimate of total cost.

B. Annual Reporting Burden

Respondents: 53,456.
Responses Per Respondent: 1.

Annual Responses: 53,456.
Hours Per Response: .5.
Total Burden Hours: 26,728.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0074, Contracting Funding—Limitation of Costs/Funds, in all correspondence.

Dated: April 29, 2005

Julia B. Wise,

Director,Contract Policy Division.

[FR Doc. 05–9850 Filed 5–17–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare a Draft Programmatic Environmental Impact Statement for Basing a Global Strike Task Force, Andersen Air Force Base, Guam (U.S. Territory)

AGENCY: United States Air Force.

ACTION: Notice of intent to prepare a Draft Programmatic Environmental Impact Statement for basing a Global Strike Task Force, Andersen Air Force Base, Guam (U.S. territory).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA (40 Code of Federal Regulations (CFR) parts 1500–1508), and Air Force's Environmental Impact Analysis Process as implemented by 32 CFR part 989, the United States Air Force (Air Force) is issuing this notice to advise the public of our intent to prepare a Draft Programmatic Environmental Impact Statement (DPEIS) for the proposed basing of the Global Strike Task Force (GSTF) at Andersen Air Force Base (AFB), Guam. The DPEIS will analyze and evaluate the impacts of alternatives for the proposed establishment of an intelligence, surveillance, and reconnaissance, strike, and aerial refueling capability at Andersen AFB, as part of Pacific Command's GSTF initiative. The proposed action would base three Global Hawk unmanned aerial intelligence, surveillance, and reconnaissance aircraft and 12 aerial refueling aircraft at Andersen AFB. Additionally, 48 fighter and 6 bomber aircraft would rotate to Andersen AFB from bases in the 50 states. Approximately 2,400 additional military, civilian and contractor personnel would be required to support the proposed action. The action would also result in facility construction, addition, and alteration projects to support basing and operation.

This notice is being provided to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the DPEIS, to include alternatives to the proposed action and the potential for impacts. Public comments on the scope of the DPEIS, reasonable alternatives that should be considered, anticipated environmental concerns, and actions that might be taken to address these issues are requested. A public scoping meeting will be held to obtain agency and community input to ensure that all relevant concerns are identified and addressed in the DPEIS. Notification of the meeting location and time will be made in the local area and will be announced via local news media. Written comments will also be accepted at the address listed below.

FOR FURTHER INFORMATION CONTACT: All comments received at the meeting, and all written comments received by June 30, 2005 will be considered in preparing the DPEIS. Please submit written comments to Mr. Scott Whittaker, Environmental Flight Chief, Unit 14007, APO AP 96543–4007. For further information, please call (671) 366–2101.

Albert F. Bodnar,

Federal Register Liaison Officer.

[FR Doc. 05–9902 Filed 5–17–05; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF ENERGY

[FE Docket No. 05–11–NG, 05–15–NG, 05–12–LNG, 05–14–NG, 05–13–LNG, 05–16–NG, 05–17–NG, 05–18–NG, 04–19–NG, 05–19–NG, 05–20–NG, 05–21–NG, 05–23–NG, 05–26–NG, and 05–22–NG]

Office of Fossil Energy; Cargill, Incorporated, Progas U.S.A. Inc., Statoil Natural Gas LLC, Bay State Gas Company, Distrigas LLC, H.Q. Energy Services (U.S.) Inc., Avista Energy, Inc., Sempra Energy Trading Corp., Coral Canada U.S. Inc., Eagle Energy Partners I, L.P., Cinergy Marketing 7 Trading, L.P., BP West Coast Products LLC, Mexicana de Cobre, S.A. de C.V., Goldendale Energy Center, LLC, Dartmouth Power Associates Limited Partnership; Orders Granting 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 and April 2005, it issued Orders granting 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 Regulatory 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 May 10, 2005.

R.F. Corbin,

Manager, Natural Gas Regulation, Office of Natural Gas Regulatory Activities, Office of Fossil Energy.

Appendix—Orders Granting Import/Export Authorizations

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
2075	3–9–05	Cargill, Incorporated, 05–11–NG.	2,000 Bcf		Import and export a combined total of natural gas from and to Canada and Mexico, beginning on April 15, 2005, and extending through April 14, 2007.
2076	3–15–05	ProGas U.S.A. Inc., 05–15–NG.	800 Bcf ..	200 Bcf ..	Import and export natural gas from and to Canada, beginning on April 1, 2005, and extending through March 31, 2007.
2077	3–15–05	Statoil Natural Gas LLC, 05–12–LNG.	200 Bcf ..	.....	Import LNG from various international sources, beginning on June 1, 2006, and extending through May 31, 2007.

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
2078	3–16–05	Bay State Gas Company, 05–14–NG.	60 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on April 1, 2005, and extending through March 31, 2007.
2079	3–17–05	Distrigas LLC, 05–13–LNG ...	100 Bcf ..	.....	Import LNG from various international sources, beginning on December 9, 2004, and extending through December 8, 2006.
2080	3–17–05	H.Q. Energy Services (U.S.) Inc., 05–16–NG.	200 Bcf ..	200 Bcf ..	Import and export natural gas from and to Canada and Mexico, beginning on May 1, 2005, and extending through April 30, 2007.
2081	3–17–05	Avista Energy, Inc., 05–17–NG.	.....	219 Bcf ..	Export natural gas to Canada, beginning on May 1, 2005, and extending through April 30, 2007.
2082	3–23–05	Sempra Energy Trading Corp., 05–18–NG.	300 Bcf 300 Bcf 300 Bcf		Import and export a combined total of natural gas from and to Canada, and import and export natural gas from and to Mexico, and import LNG from other international sources, beginning on June 16, 2005, and extending through June 15, 2007.
1950–A	4–6–05	Coral Canada U.S. Inc., 04–19–NG.	.....	.....	Vacate blanket import and export authority.
2083	4–13–05	Eagle Energy Partners I, L.P., 05–19–NG.	100 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on April 13, 2005, and extending through April 12, 2007.
2084	4–25–NG	Cinergy Marketing & Trading, L.P., 05–20–NG.	730 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on June 1, 2005, and extending through May 31, 2007.
2085	4–25–05	BP West Coast Products LLC, 05–21–NG.	25 Bcf	25 Bcf	Import and export natural gas from and to Canada, beginning on July 2, 2005, and extending through July 1, 2007.
2086	4–27–05	Mexicana de Cobre, S.A. De C.V., 05–23–NG.	.....	17.52 Bcf	Export natural gas to Mexico, beginning on April 27, 2005, and extending though April 26, 2007.
2087	4–27–05	Goldendale Energy Center, LLC, 05–26–NG.	36.5 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on May 1, 2005, and extending through April 30, 2007.
2088	4–27–05	Dartmouth Power Associates Limited Partnership, 05–22–NG.	11.68 Bcf	.....	Import natural gas from Canada, beginning on May 7, 2005, and extending through May 6, 2007.

[FR Doc. 05–9871 Filed 5–17–05; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–852–008, et al.]

Edison Mission Marketing & Trading Inc., et al.; Electric Rate and Corporate Filings

May 11, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Edison Mission Marketing & Trading, Inc.

[Docket No. ER99–852–008]

Take notice that on May 6, 2005, Edison Mission Marketing & Trading, Inc. (EMMT) filed revisions to its market-based rate tariff in compliance with the Commission's order issued April 14, 2005 in *Midwest Generation, LLC.*, 111 FERC ¶61,034 (2005).

EMMT states that copies of this filing were served upon all persons on the service list in the above-referenced proceeding.

Comment Date: 5 p.m. eastern time on May 27, 2005.

2. Westar Energy, Inc.

[Docket Nos. ER05–307–001, ER05–308–001]

Take notice that on May 4, 2005, Westar Energy, Inc. (Westar) submitted a compliance filing pursuant to the Commission's letter order issued February 4, 2005 in Docket Nos. ER05–307–000 and ER05–308–000.

Westar states that copies of the filing were served upon the Kansas Corporation Commission, PR&W Electric Cooperative Association, Inc. and Flint Hills Electric Cooperative Association, Inc.

Comment Date: 5 p.m. eastern time on May 25, 2005.

3. Energy Investments, LLC

[Docket No. ER05–734–001]

Take notice that on May 4, 2005, Energy Investment, LLC, submitted an amendment to its March 28, 2005 filing in Docket No. ER05–734–000 of its Rate Schedule FERC No. 1, to include the market behavior rules and reporting requirements.

Comment Date: 5 p.m. eastern time on May 25, 2005.

4. Metropolitan Edison Company

[Docket No. ER05–943–000]

Take notice that on May 6, 2005, Metropolitan Edison Company, a FirstEnergy Company, (MetEd) submitted for filing an amended Generation Facility Transmission Interconnection Agreement (Agreement) between MetEd and Reliant Energy Hunterstown, LLC (Reliant), designated as First Revised Service Agreement No. 561 under PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff.

MetEd states that copies of this filing have been served on regulators in Pennsylvania, Reliant and PJM.

Comment Date: 5 p.m. eastern time on May 27, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2487 Filed 5–17–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD05–7–000]

Long Term Transmission Rights in Markets Operated by Regional Transmission Organizations and Independent System Operators; Notice Inviting Comments on Establishing Long Term Transmission Rights in Markets With Locational Pricing

May 11, 2005.

The Commission invites all interested persons to file comments addressing establishing long term transmission rights in electricity markets operated by Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs).

An important cost of transmission service is the congestion cost that customers incur when, due to the physical limitations of the grid, they are unable to obtain energy from the lowest cost generation resources. In markets with locational pricing, participants can hedge against congestion costs by holding Financial Transmission Rights (FTRs), which are generally allocated to historical users of the grid. Currently, the longest term FTR offered in any of the RTO or ISO markets is one year.

The Commission is aware of interest by some market participants and others to obtain transmission service at a known price for periods longer than one year in markets that use locational pricing. In response, the Commission staff has conducted informal outreach to get informal views on the need for, and issues raised by, establishing long term transmission rights. At this point, the Commission desires to obtain written comments by all interested parties. The Commission is particularly interested in comments that address the following:

- The need for long term transmission rights and the problems caused by the lack of them. Are such rights needed more by certain types of entities or in markets in certain regions?
- The impacts of introducing long term rights. What specific impediments or problems must be addressed?
- The plans of specific RTOs and ISOs to address long term transmission rights.
- Substantive and procedural options for the Commission to address long term transmission rights.

The Commission is aware that the adequacy of long term transmission rights may be an issue in markets that do not use locational pricing but believes that there are unique issues in markets with locational pricing that are best addressed separately.

A Commission staff document is available online at *http://www.ferc.gov* to assist parties in providing comments, but will not be published in the **Federal Register.** The staff document provides background on the need for long term transmission rights and the issues that must be addressed in introducing them into markets. The document also provides specific questions to address as well as general background on locational pricing and on FTR allocation methods in the existing RTOs and ISOs.

For further information, contact:

Wilbur Earley, Office of Markets Tariffs and Rates, 202–502–8087, *wilbur.earley@ferc.gov*.

Udi Helman, Office of Markets Tariffs and Rates, 202–502–8080, *udi.helman@ferc.gov*.

Jeffery Dennis, Office of General Counsel, 202–502–6027, *jeffery.dennis@ferc.gov*.

The Commission encourages electronic submission of comments in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the comment to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All filings in this docket are accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and will be available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on June 27, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2488 Filed 5–17–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7914–2]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566–1672, or e-mail at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1692.05; NESHAP for Petroleum Refineries (Renewal); in 40 CFR part 63, subpart CC; was approved 04/21/2005; OMB Number 2060–0340; expires 04/30/2008.

EPA ICR No. 2137.02; Standards of Performance for New and Existing

Stationary Sources: Electric Utility Steam Generating Units (Final Rule); in 40 CFR part 60, subparts Da and HHHH; was approved 04/22/2005; OMB Number 2060–0567; expires 04/30/2008.

EPA ICR No. 1805.04; NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semi-Chemical Pulp Mills; in 40 CFR part 63, subpart MM; was approved 04/22/2005; OMB Number 2060–0377; expires 04/30/2008.

EPA ICR No. 1125.04; NESHAP for Beryllium Rocket Motor Firing (Renewal); in 40 CFR part 61, subpart D; was approved 04/21/2005; OMB Number 2060–0394; expires 04/30/2008.

EPA ICR No. 1657.05; NESHAP for Pulp and Paper Production (Renewal); in 40 CFR part 63, subpart S; was approved 04/20/2005; OMB Number 2060–0387; expires 04/30/2008.

EPA ICR No. 0186.10; NESHAP for Vinyl Chloride (Renewal); in 40 CFR part 61, subpart F; was approved 04/20/2005; OMB Number 2060–0071; expires 04/30/2008.

EPA ICR No. 1506.10; NSPS for Municipal Waste Combustors (Renewal); in 40 CFR part 60, subparts Ea and Eb; was approved 04/21/2005; OMB Number 2060–0210; expires 04/30/2008.

EPA ICR No. 2158.01; Pretest of the Pollution Abatement Costs and Expenditures (PACE) Survey; was approved 04/14/2005; OMB Number 2010–0040; expires 04/30/2006.

EPA ICR No. 0559.08; Application for Reference and Equivalent Method Determination (Renewal); in 40 CFR part 53; was approved 05/02/2005; OMB Number 2080–0005; expires 05/31/2008.

EPA ICR No. 0959.12; Facility Ground-Water Monitoring Requirements (Renewal); in 40 CFR 264.98(c), (g)(1), (g)(5), (g)(6); 40 CFR 264.99(c), (g), (h)(1), (i)(1), (i)(2); 40 CFR 264.100 (e), (f), (g); 40 CFR 250.90–250.94; was approved 05/03/2005; OMB Number 2050–0033; expires 05/31/2008.

EPA ICR No. 2154.02; Technology Performance and Product Information to Support Vendor Information Summaries (Renewal); was approved 05/05/2005; OMB Number 2050–0194; expires 05/31/2008.

EPA ICR No. 0586.10; TSCA Section 8(a) Preliminary Assessment Information Rule (PAIR); in 40 CFR part 712, 40 CFR part 792; was approved 05/05/2005; OMB Number 2070–0054; expires 05/31/2008.

EPA ICR No. 2180.01; Recordkeeping and Reporting for the Performance-Based Qualification of Test Methods for Diesel Fuel; in 40 CFR part 80.29; 40 CFR part 80.240, 40 CFR part 80.530–532; 40 CFR part 80.535–536; 40 CFR part 80.550–555; 40 CFR part 80.560–561, 40 CFR part 80.590–594; 40 CFR part 80.597; 40 CFR part 80.600–604; 40 CFR part 80.607; 40 CFR part 80.620; was approved 05/05/2005; OMB Number 2060–0566; expires 09/20/2005.

EPA ICR No. 1800.03; Information Requirement for Locomotives and Locomotive Engines (Renewal); in 40 CFR part 92; was approved 05/05/2005; OMB Number 2060–0392; expires 05/31/2008.

EPA ICR No. 1702.04; Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (Renewal); in 40 CFR part 85, subpart O; was approved 05/05/2005; OMB Number 2060–0302; expires 05/31/2008.

EPA ICR No. 1723.04; Reporting and Recordkeeping Requirements for Importation of Nonroad Engines and Recreational Vehicles (Renewal); in 40 CFR part 89, subparts G and J; 40 CFR part 90, subparts G and J; 40 CFR part 91, subparts H and K; 40 CFR part 92, subparts I and J; 40 CFR part 94, subparts I and K; 40 CFR part 1068, subparts C and D; was approved 05/05/2005; OMB Number 2060–0320; expires 05/31/2008.

EPA ICR No. 1759.04; Worker Protection Standard Training and Notification; in 40 CFR part 170; was approved 05/05/2005; OMB Number 2070–0148; expires 05/31/2008.

OMB Disapproval

EPA ICR No. 1945.02; State Water Quality Program Management Resource (Gap) Analysis; was disapproved 04/15/05; OMB Number 2040–0216.

Dated: May 11, 2005.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. 05–9906 Filed 5–17–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2004–0006, FRL–7914–3]

Toxic Chemical Release Reporting; Request for Comment on Renewal of Proposed, EPA ICR Number 1363–14, OMB Control Number 2070–0093

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) pursuant to procedures described in 5 CFR 1320.12: Toxic Chemical Release Reporting (EPA ICR No. 1363–14, OMB No. 2070–0093.) This ICR involves a collection activity that is currently approved and scheduled to expire on January 31, 2006.

DATES: Comments, identified by Docket ID No. OEI–2004–0006 must be submitted on or before July 18, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OEI–2004–0006, by one of the following methods:

1. Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the online instructions for submitting comments.

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

3. E-mail: *oei.docket@epa.gov*.

4. Fax number: 202–566–0741.

5. Mail: Office of Environmental Information (OEI) Docket, Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attention Docket ID No. TRI–2004–0001.

6. Hand Delivery: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004, telephone: 202–566–1744, Attention Docket ID No. TRI–2004–0001. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OEI–2004–0006. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through

EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: EPA has established an official public docket for this action under Docket ID No. OEI–2004–0006. The public docket contains information considered by EPA in developing this ICR. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are electronically or physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not electronically or physically located in the docket, please consult the person listed in the following **FOR FURTHER INFORMATION CONTACT** section. All documents in the docket are listed in the EDOCKET index at: *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET, or in hard copy at the OEI Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752.

FOR FURTHER INFORMATION CONTACT: Cassandra Vail, Toxics Release Inventory Program Division, Office of Information Analysis and Access (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–0753; fax number: 202–566–0741; e-mail: *vail.cassandra@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

A. Does This Notice Apply to Me?

This document applies to facilities that submit annual reports under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). It specifically applies to those who submit the TRI Form R or Form A Certification Statement. (*See http://epa.gov/tri/report/index.htm#forms* for detailed information about EPA's TRI reporting forms.) To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

This document also is relevant to those who utilize EPA's TRI information, including State agencies, local governments, communities, environmental groups and other non-governmental organizations, as well as members of the general public.

B. How Can I Get Additional Information or Copies of this Document and Other Support Documents?

a. In Person

The Agency has established an official public docket for this action under Docket ID No. OEI–2004–0006. 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 this 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 OEI 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 OEI Docket is (202) 566–1752.

b. Electronic Availability

Electronic copies of the ICR are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under ''Current Laws and Regulations'' (*http://www.epa.gov/fedrgstr/*.) An electronic copy of the collection instrument referenced in this ICR and instructions for its completion are available at *http://www.epa.gov/tri/report/index.htm#forms*. 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 dockets, and access those documents in the public docket that are available electronically. Once in the system, select either ''quick search or advanced search,'' then key in the appropriate docket identification number (*i.e.*, OEI–2004–0006).

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online at *http://www.epa.gov/edocket/* or see 67 FR 38102, May 31, 2002.

C. How and to Whom Do I Submit Comments?

1. *Tips for Preparing Your Comments.* When submitting comments, remember to: Identify the notices/rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

a. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

b. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

c. Describe any assumptions and provide any technical information and/or data that you used.

d. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

e. Provide specific examples to illustrate your concerns, and suggest alternatives.

f. Explain your views as clearly as possible.

g. Make sure to submit your comments by the comment period deadline identified.

2. Submitting CBI. Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address only, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: OEI Document Control Officer, Mail Code: 2822T, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. 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). EPA will disclose information claimed as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(a) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

E. To What Information Collection Activity or ICR Does This Notice Apply?

EPA is seeking comments on the following ICR, as well as the Agency's intention to renew the corresponding OMB approval, which is currently scheduled to expire on January 31, 2006.

Title: Toxic Chemical Release Reporting; Request for Comments of Renewal and Proposed Changes

Abstract: EPCRA section 313 requires owners and operators of certain facilities that manufacture, process, or otherwise use any of over 650 listed toxic chemicals and chemical categories in excess of applicable threshold quantities to report annually to the Environmental Protection Agency and to the states in which such facilities are located on their environmental releases and transfers of and other waste management activities for such chemicals. In addition, section 6607 of the Pollution Prevention Act (PPA) requires that facilities provide information on the quantities of the toxic chemicals in waste streams and the efforts made to reduce or eliminate those quantities.

Annual reporting under EPCRA section 313 of toxic chemical releases and other waste management information provides citizens with a more complete picture of the total disposition of chemicals in their communities and helps focus industry's attention on pollution prevention and source reduction opportunities. EPA believes that the public has a right to know about the disposition of chemicals within communities and the management of such chemicals by facilities in industries subject to EPCRA section 313 reporting. This reporting has been successful in providing communities with important information regarding the disposition of toxic chemicals and other waste management information of toxic chemicals from manufacturing facilities in their areas.

EPA collects, processes, and makes available to the public all of the information collected. The information gathered under these authorities is stored in a database maintained at EPA and is available through the Internet. This information, commonly known as the Toxics Release Inventory (TRI), is used extensively by both EPA and the public sector. Program offices within EPA use TRI data, along with other sources of data, to establish priorities, evaluate potential exposure scenarios, and undertake enforcement activities. Environmental and public interest groups use the data in studies and reports, making the public more aware of releases of chemicals in their communities.

Comprehensive publicly-available data about releases, transfers, and other waste management activities of toxic chemicals at the community level are generally not available, other than under the reporting requirements of EPCRA section 313. Permit data are often difficult to obtain, are not cross-media and present only a limited perspective on a facility's overall performance. With TRI, and the real gains in understanding it has produced, communities and governments know what toxic chemicals industrial facilities in their area release, transfer, or otherwise manage as waste. In addition, industries have an additional tool for evaluating efficiency and progress on their pollution prevention goals.

Responses to the collection of information are mandatory (*see* 40 CFR part 372). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

F. What Are EPA's Burden and Cost Estimates for This ICR?

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of

information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The annual public burden for this collection of information, which is approved under OMB Control No. 2070–0093, is estimated to average 47.1 hours for facilities submitting a Form R certification statement for a single listed PBT chemical and 25.2 hours for a Form R certification statment for a single listed non-PBT chemical. The ICR supporting statement provides a detailed explanation of the burden estimates that are summarized in this notice. The following is a summary of the estimates taken from the ICR supporting statement: Estimated No. of Respondents: 22,000 respondents. Frequency of Responses: Annual. Estimated Total Annual Burden Hours: 3,796,414 burden hours. Estimated Total Annual Burden Costs: $ 1.75 million.

G. What Are the Proposed Changes This ICR?

No changes are proposed. EPA is seeking a two-year renewal of the current TRI ICR No. 1363.13.

H. Are There Changes in the Estimates From the Last Approval?

No changes are proposed in estimates used and approved in the current TRI ICR.

I. What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Dated: May 10, 2005.

Mike Flynn,

Office Director, Office of Information Analysis and Access.

[FR Doc. 05–9907 Filed 5–17–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7914–4]

Air Quality Management Subcommittee to the Clean Air Act Advisory Committee (CAAAC) Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical, scientific, and enforcement policy issues.

Open Meeting Notice: Pursuant to 5 U.S.C. App.2 Section 10(a)(2), notice is hereby given that the Air Quality Management subcommittee to the Clean Air Act Advisory Committee will hold its next open meeting on Thursday, June 16 and Friday, June 17, 2005 from approximately 10:00 a.m. to 6:00 p.m. at the EPA National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood Drive, Anne Arbor, MI. Any member of the public who wishes to submit written or brief oral comments; or who wants further information concerning this meeting should follow the procedures outlined in the section below titled ''Providing Oral or Written Comments at this Meeting''. Seating will be limited and available on a first come, first served basis. Because of security measures at EPA's Laboratory, members of the public wishing to attend this meeting must contact Mr. Jeffrey Whitlow, Office of Air and Radiation, U.S. EPA (919) 541–5523, Fax (919) 685–3307 or by mail at U.S. EPA, Office of Quality Planning and Standards (Mail code C 439–04), 109 T.W. Alexander Drive, Research Triangle Park, NC 27711 or by email at: *whitlow.jeff@epa.gov* by noon Eastern Time on June 10, 2005. The agenda for this meeting may be obtained by contacting Mr. Whitlow.

Inspection of Committee Documents: The subcommittee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with the meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket OAR–2004–0075. The Docket office can be reached by telephoning 202–260–7548; Fax 202–260–4400.

For further information concerning the Air Quality Management subcommittee to the CAAAC , please contact Mr. Jeffrey Whitlow, Office of Air and Radiation, U.S. EPA (919) 541–5523, Fax (919) 685–3307 or by mail at U.S. EPA, Office of Quality Planning and Standards (Mail code C 439–04), 109 T.W. Alexander Drive, Research Triangle Park, NC 27711 or email at: *whitlow.jeff@epa.gov.* Additional information on this meeting, the CAAAC, and its Subcommittees can be found on the CAAAC Web Site: *http://www.epa.gov/air/caaac.*

Providing Oral or Written Comments at this Meeting: It is the policy of the subcommittee to accept written public comments of any length, and to accommodate oral public comments whenever possible. The subcommittee expects that public statements presented at this meeting will not be repetitive of previously-submitted oral or written statements. Oral Comments: In general, each individual or group requesting an oral presentation at this meeting is limited to a total time of five minutes (unless otherwise indicated). However, no more than 30 minutes total will be allotted for oral public comments at this meeting; therefore, the time allowed for each speaker's comments will be adjusted accordingly. In addition, for scheduling purposes, requests to provide oral comments must be in writing (e-mail, fax or mail) and received by Mr. Whitlow no later than noon Eastern Time five business days prior to the meeting in order to reserve time on the meeting agenda. Written Comments: Although the subcommittee accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received by Mr. Whitlow no later than noon Eastern Time five business days prior to the meeting so that the comments may be made available to the subcommittee members for their consideration. Comments should be supplied to Mr. Whitlow (preferably via e-mail) at the address/contact information noted above, as follows: one hard copy with original signature, or one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files (in IBM–PC/Windows 98/2000/XP format).

Dated: May 12, 2005.

Mary E. Henigin,

Acting Deputy Director, Office of Air Quality Planning and Standards.

[FR Doc. 05–9908 Filed 5–17–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0036; FRL–7706–5]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products 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 identification (ID) number OPP–2005–0036, must be received on or before June 17, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Chris Pfeifer, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0031; e-mail address: *pfeifer.chris@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 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. 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–2005–0036. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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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–2005–0036. 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–2005–0036. 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–2005–0036.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0036. 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 applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 81978–R. *Applicant*: Codena, Inc., c/o Landis International, Inc., P.O. Box 5126, Valdosta, GA 31603–5126. *Product name*: FACIN TECHNICAL. Biochemical pesticide. *Active ingredient*: Chenopodium ambrosioides var. ambrosioides. *Proposed classification/Use*: Formulation into botanical insecticide/acaricide.

2. *File Symbol*: 81978–E. *Applicant*: Codena, Inc., c/o Landis International, Inc.,P.O. Box 5126, Valdosta, GA 31603–5126. *Product name*: FACIN 25 EC. Biochemical pesticide. *Active ingredient*: Chenopodium ambrosioides var. ambrosioides at 25%. *Proposed classification/Use*: For botanical insecticide/acaricide.

3. *File Symbol*: 81978–G. *Applicant*: Codena, Inc., c/o Landis International, Inc., P.O. Box 5126, Valdosta, GA 31603–5126. *Product name*: FACIN 50 ME. Biochemical pesticide. *Active ingredient*: Chenopodium ambrosioides var. ambrosioides at 50%. *Proposed classification/Use*: For botanical insecticide/acaricide.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: April 29, 2005.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 05–9723 Filed 5–17–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0356; FRL–7686–3]

Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Crompton Manufacturing Company and Gustafson LLC., to conditionally register the pesticide products Ipconazole Technical and Vortex Seed Treatment Fungicide containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Bryant Crowe, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0025; e-mail address: *crowe.bryant@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 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. 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–2004–0356. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, Arlington, VA (703) 305–5805. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Such requests should: (1) Identify the product name and registration number and (2) specify the data information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

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. Did EPA Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of Ipconazole, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of Ipconazole during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

III. Conditionally Approved Registrations

EPA issued a notice, published in the **Federal Register** of April 23, 2003 (68 FR 19988) (OPP–2003–0131) (FRL–7302–9), which respectively announced that Crompton Manufacturing Company, 74 Amity Drive, Bethany, CT 06524–3402 and Gustafson, LLC., 1400 Preston Road, Suite 400, Plano, TX 75093 submitted applications to register pesticide products. Crompton Manufacturing Company sought registration for Ipconazole Technical (EPA File Symbol 400–LRE), containing the new active ingredient Ipconazole at 97.4%. Gustafson, LLC., sought registration for Vortex Seed Treatment Fungicide (EPA File Symbol 7501–ROL), containing the new active ingredient Ipconazole at 40.7%. In each instance stated above, the active ingredient was not included in any previously registered products.

The application for the product Ipconazole Technical was approved for manufacturing or formulating purposes on September 10, 2004, to use for formulation into end-use seed treatment products (EPA Registration Number 400–512).

Vortex Seed Treatment Fungicide was approved as an end use product on

September 13, 2004, for non-food use fungicide seed treatment on various root and tuber vegetables, leafy vegetables (except brassica vegetables), brassica (cole) leafy vegetable group, cucurbit, cereal grains, cotton, sunflower, mustard, rape, canola, ornamental flowers, conifers and turf grass (EPA Registration Number 7501–195).

List of Subjects

Environmental protection, Pesticides and pest.

Dated: May 5, 2005.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 05–9777 Filed 5–17–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0097; FRL–7708–5]

Tebuconazole; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0097, must be received on or before June 17, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
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This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I 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–2005–0097. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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C. How and To Whom Do I Submit Comments?

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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.

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ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0097. 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–2005–0097.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0097. 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?

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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. Make sure to submit your comments by the deadline in this notice.

7. 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. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 29, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the

pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project No. 4 and Bayer CropScience LP

PP 9E6045, 9E6046, 9E6048, 0E6103, 0E6117, 0E6153, 0E6158, 0E6212, 6F4668, 7F4895, 0F6086, 0E6091, 0F6129, 1F6289, 4E6842, and 4F6854

EPA has received pesticide petitions 9E6045, 9E6046, 9E6048, 0E6103, 0E6117, 0E6153, 0E6158, and 0E6212 from Interregional Research Project No. 4 (IR4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. EPA has also received pesticide petitions 6F4668, 7F4895, 0F6086, 0E6091, 0F6129, 1F6289, 4E6842, and 4F6854 from Bayer CropScience LP, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180. by establishing a tolerance for residues of tebuconazole, alpha-[2–(4–Chlorophenyl)ethyl]-alpha-(1,1–dimethylethyl)–1H–1,2,4–triazole–1–ethanol in or on the raw agricultural commodities as follows:

1. PP 6F4668 proposes the establishment of tolerances in or on fruit, pome, group 11 at 0.05 parts per million (ppm).

2. PP 7F4895 proposes the establishment of tolerances in or on nut, tree, group 14 at 0.05 ppm; almond, hulls at 5.0 ppm; pistachio at 0.05 ppm; barley, hay at 6.0 ppm; barley, straw at 1.4 ppm; wheat, forage at 3.0 ppm; wheat, hay at 6.0 ppm; wheat, straw at 1.4 ppm.

3. PP 0F6086 proposes the establishment of tolerances in or on bean, succulent at 0.1 ppm; bean, dry, seed at 0.1 ppm; cotton, undelinted seed at 2.0 ppm; cotton, gin byproducts at 16 ppm.

4. PP 0E6091 proposes the establishment of import tolerances in or on asparagus at 0.01 parts per million (ppm); coffee, green bean, at 0.1 ppm; coffee, roasted bean, at 0.2 ppm; garlic, dry bulb at 0.1 ppm; onion, dry bulb at 0.1 ppm.

5. PP 0F6129 proposes the establishment of tolerances in or on corn, field, grain at 0.01 ppm; corn, field, forage at 3.0 ppm; corn, field, stover at 3.0 ppm; corn, pop, grain at 0.01 ppm; corn, pop, stover at 3.0 ppm; corn, sweet, kernel plus cob with husks removed at 0.5 ppm; corn, sweet, forage at 6.0 ppm; corn, sweet, stover at 5.0 ppm; soybean, seed at 0.01 ppm; soybean, forage at 0.01 ppm; soybean, hay at 0.05 ppm.

6. PP 1F6289 and 0E6117 proposes the establishment of tolerances in or on fruit, stone, group 12, except cherry at 1.0 ppm.

7. PP 9E6045 proposes the establishment of tolerances in or on turnip, greens at 8.0 ppm; turnip, roots at 0.4 ppm.

8. PP 9E6046 and 4E6842 proposes the establishment of tolerances in or on hop, dried cones at 30.0 ppm.

9. PP 9E6048 proposes the establishment of tolerances in or on vegetable, cucurbit, group 9 at 0.1 ppm.

10. PP 0E6103 proposes the establishment of tolerances in or on mango at 0.2 ppm.

11. PP 0E6153 proposes the establishment of tolerances in or on sunflower, seed at 0.05 ppm; sunflower, oil at 0.2 ppm; sunflower, meal at 0.2 ppm.

12. PP 0E6158 proposes the establishment of tolerances in or on okra at 1.0 ppm.

13. PP 0E6212 proposes the establishment of tolerances in or on lychee at 1.5 ppm.

14. PP 4F6854 proposes the establishment of tolerances in or on soybean, seed at 0.06ppm; soybean, forage at 17 ppm; soybean, hay at 45 ppm; soybean, hulls at 0.06 ppm and grain, aspirated fractions at 15 ppm.

15. Bayer CropScience proposes to add a post-harvest use on cherries at the current 0–day pre-harvest tolerance level of 4.0 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the residue in plants and animals is adequately understood. The residue of concern is the parent compound only, as specified in 40 CFR 180.474.

2. *Analytical method*. An enforcement method for plant commodities has been validated on various commodities. It has undergone successful EPA validation and has been submitted for inclusion in PAM II. The animal method has also been approved as an adequate enforcement method.

3. *Magnitude of residues*—i. *Almond*. Six residue crop field trial studies were conducted in EPA's Region 10 to evaluate the quantity of tebuconazole residue in almond nutmeat and almond hulls following treatment with Elite 45 DF. Tebuconazole residues were quantitated by gas chromatography using a thermionic specific detector. The LOQ for tebuconazole was 0.05 ppm for almond nutmeat and 0.1 ppm for almond hulls. Residues in all nutmeat samples were less than or equal to the LOQ. The highest average field trial residue value for almond hulls was 4.13 ppm. Therefore, tolerances of 0.05 and 5.0 ppm are being proposed for almond nutmeat and hulls, respectively.

ii . *Asparagus*. Three field trials were conducted in Peru to evaluate the quantity of tebuconazole residue in or on asparagus spears following four foliar applications of Folicur 3.6 F to asparagus ferns. Tebuconazole residues were quantitated by gas chromatography using a nitrogen phosphorus detector. The limit of quantitation (LOQ) for tebuconazole was 0.01 ppm. Since the residue of tebuconazole was < 0.01 ppm in all treated asparagus samples, a tolerance on 0.01 ppm is being proposed.

iii. *Bean (succulent)*. Studies were conducted to evaluate the quantity of tebuconazole residue on fresh bean pods and dry bean seed following treatments with Folicur 3.6 F. Twelve field trials were conducted on fresh beans, and fourteen field trials were conducted on dry beans. Tebuconazole residues were quantitated by gas chromatography using a thermionic specific detector. The limit of quantitation (LOQ) for tebuconazole was 0.05 ppm. The highest residue of tebuconazole was 0.06 ppm in fresh beans. The highest residue in dry beans was 0.08 ppm. Therefore, tolerances are being proposed at 0.1 ppm for both succulent and seed beans.

iv. *Coffee*. Four field trials were conducted in Brazil and four field trials were conducted in Guatemala to evaluate the quantity of tebuconazole residue in or on dried green coffee beans following applications of Folicur 3.6 F to coffee trees. Tebuconazole residues were quantitated by gas chromatography. The LOQ was 0.01 ppm. The maximum residue value was 0.07 with the majority of the residue values being below the LOQ. Therefore, a tolerance of 0.1 ppm is being requested for green beans.

A processing study was conducted on dried green coffee beans from a field trial in Guatemala. Tebuconazole residues in dried green coffee beans, roasted coffee beans, and instant coffee were quantitated by gas chromatography. The LOQ for tebuconazole was 0.01 in green coffee beans, 0.8 ppm in roasted coffee beans and 0.04 ppm in instant coffee. The highest average residue found in this study was 0.04 ppm in dried green coffee beans, 0.08 ppm in roasted coffee

and 0.03 ppm in instant coffee. The data show that there is no concentration of residues as a result of processing into instant coffee and a slight concentration from dry beans (0.04 ppm) to roasted beans (0.08) ppm. A 0.2 ppm tolerance is being proposed for roasted coffee beans.

v. *Corn*. Field trials were conducted on field corn and sweet corn to support establishing tolerances for field, sweet, and popcorn. Based on these data, tolerances are being requested for grain, forage and stove of field corn; grain and stover of popcorn; K + CWHR, stove, and forage of sweet corn.

vi. *Cotton*. Studies were conducted to evaluate the quantity of tebuconazole residue in undelinted cotton seed and cotton gin byproducts (gin trash) following treatment of cotton plants with Folicur 3.6 F. Tebuconazole residues in undelinted cotton seed were quantitated by gas chromatography. The limit of LOQ was 0.05 ppm in undelinted cotton seed and 0.2 ppm in gin trash. The highest measured residue in undelinted cotton seed was 1.89 ppm and 15.2 ppm in cotton gin trash at a 29-day PHI. Therefore, tolerances are being proposed at 2.0 ppm for undelinted cotton seed and 16.0 ppm for cotton gin trash.

A cotton processing study was conducted with Folicur 3.6 F at 5 times the maximum season proposed label use rate. Processing was performed using procedures which simulate commercial processing practices. The undelinted seed, meal, hull, and refined oil were evaluated for the residue of tebuconazole by gas chromatography. The LOQ in undelinted seed was 0.02 ppm. The LOQ in the processed products of meal, hull and refined oil was 0.04 ppm. Residue of tebuconazole in cotton undelinted seed was 0.04 ppm, while residue in the processed commodities were < 0.04 ppm. Therefore, no tolerances are being requested for processed products.

vii. *Cucurbit*. Data from summer squash, cucumber and cantaloupe residue crop field trials were used to evaluate the quantity of tebuconazole residue in cucurbits. Data on summer squash were collected from California, Florida, Georgia, New York and Ohio. Data on cucumbers were collected from Florida, Georgia, Michigan, North Carolina, Ohio and Texas. Cantaloupe trials were conducted in California, Georgia, Ohio and Texas. Residue levels from all cucurbits ranged from 0.02 to 0.076 ppm. A tolerance of 0.1 ppm is being proposed by Interregional Research Project No. 4.

viii. *Garlic*. Three field trials were conducted in Mexico to evaluate the quantity of tebuconazole residue in or on garlic bulbs after a seed (clove) treatment of Folicur 3.6 F. Tebuconazole residues were quantitated by gas chromatography. The limit of quantitation for tebuconazole was 0.10 ppm. Since all average validated tebuconazole residues were at or below the LOQ, a tolerance of 0.1 ppm is being proposed.

ix. *Hops*. Three field trials were conducted by IR–4 in Oregon and Washington and eight field trials were conducted in Germany during 1998 and 1999 in order to provide information on the magnitude of tebuconazole residues on hops. Based on these data and the 30 mg/kg MRL 1 established by Germany on hops, a tolerance of 30 ppm is requested.

x. *Mango*. Three trials were conducted at a tropical fruit packing facility in order to provide information on the magnitude of tebuconazole residues on mango (post-harvest). Tebuconazole residues were quantitated by gas chromatography. All residue values were < 0.05. A tolerance of 0.2 ppm is being proposed by Interregional Research Project No. 4.

xi. *Onion*. Three field trials were conducted in Mexico to evaluate the quantity of tebuconazole residue in or on onion bulbs following foliar applications of Folicur 3.6 F. Tebuconazole residues were quantitated by gas chromatography. The limit of quantitation for tebuconazole was 0.10 ppm. Since the highest average field trial (HAFT) was below the LOQ, a tolerance of 0.1 ppm is being proposed.

xii. *Pecan*. Five residue crop field trial studies were conducted to evaluate the quantity of tebuconazole residue in pecan nutmeat following treatment of pecan trees with Folicur 3.6 F. These five trials were conducted in Regions II, IV, VI and VIII as required in EPA's June 1994 guidance on number and location of trials. Residues of tebuconazole were quantitated using gas chromatography. Residues in all nutmeat samples were less than or equal to the LOQ of 0.05 ppm. Therefore, a tolerance of 0.05 ppm is being proposed.

xiii. *Plum*. Residue data from pre-harvest applications plus IR-4's pre-harvest plus post-harvest trials provide information on the magnitude of tebuconazole residues on plums. The highest tebuconazole residue detected in plums was 0.5 ppm. These data along with data on peaches previously submitted by Bayer support a tolerance of 1.0 ppm on stone fruit except cherries.

xiv. *Pome fruit*. Data from apple field and a processing trial and pear field trials were conducted to evaluate the quantity of tebuconazole residue from foliar applications to pome fruit. These data support a tolerance of 0.05 ppm on pome fruit.

xv. *Soybean (rotational crop)*. Field trials were conducted in 20 locations to evaluate the quantity of tebuconazole residue in rotational soybeans following treatment of winter wheat with FOLICUR 3.6F. At 30 days following the application of FOLICUR 3.6F, the wheat crop was destroyed, and soybeans were planted-back into the same plots, except for a single field trial in which the plant-back interval was increased to 45–days due to weather conditions. Tebuconazole residue was quantitated by liquid chromatography-tandem mass spectrometry (lc-ms/ms). The limits of quantitation (LOQ's) for tebuconazole were 0.01 ppm in soybean forage and seed and 0.02 ppm in soybean hay. Tebuconazole residue in soybean forage and seed was < 0.01 ppm in all samples. The highest average field trial (HAFT) tebuconazole residue in soybean hay was 0.03 ppm.

A total of 20 field trials (18 harvest and two decline) were conducted to measure the magnitude of tebuconazole residue in/on soybean forage, hay, and seed following three foliar spray applications of FOLICUR 3.6 F at a target rate of 0.1125 lb ai/acre/application. The residue of tebuconazole was quantitated in soybean forage, hay, and seed by liquid chromatography/mass spectrometry-mass spectrometry (lc/ms-ms). The limit of quantitation (LOQ) was 0.01 ppm in soybean forage and seed and 0.05 ppm in soybean hay. The highest average field trial (HAFT) tebuconazole residue found in forage, seed, and hay were 14.5 ppm, 0.05 ppm, and 42.1 ppm, respectively.

A processing study was conducted to evaluate the quantity of tebuconazole residue in soybean aspirated grain fractions and soybean processed commodities from the rotational crop of soybeans following treatment of winter wheat with FOLICUR 3.6F. A single foliar spray application of FOLICUR 3.6F was made to winter wheat at a rate of 0.589 Ib ai/acre (5X the maximum recommended label use rate. At a 30–day plant-back interval following the application of FOLICUR 3.6F, the wheat was destroyed, and soybeans were planted back into the same test plots. Soybean seed was collected from the field trial at the earliest dry harvest, and processed to produce processed commodities of hulls, meal, and refined-bleached-deodorized oil. Tebuconazole residue was quantitated by liquid chromatography-tandem mass spectrometry (lc-ms/ms). The limit of

quantitation (LOQ) for tebuconazole in soybean seed was 0.01 ppm. Tebuconazole residue in the treated soybean seed was < 0.01 ppm. No tebuconazole residue above the limit of quantitation was measured in the soybean seed from the 5X exaggerated rate.

A processing study was conducted to measure the magnitude of tebuconazole residue in/on soybean seed, aspirated grain fractions, hulls, meal, refined oil, defatted flour, full fat flour, and protein isolate following three foliar spray applications of FOLICUR 3.6 F at a five-fold (5X) exaggerated rate. Processing was performed using batch procedures that simulated commercial processing practices. The residues of tebuconazole were quantitated by high-pressure liquid chromatography/triple stage quadrupole mass spectrometry (lc/ms-ms). The limit of quantitation (LOQ) for tebuconazole in all matrices was 0.01 ppm. Concentration of tebuconazole residues were only seen in the soybean aspirated grain fractions (concentration factor = 276X) and soybean hulls (concentration factor = 1.1X).

xvi. *Soybean*. Field trials were conducted in 20 locations to evaluate the quantity of tebuconazole residue in rotational soybeans following treatment of winter wheat with FOLICUR 3.6F. At 30 days following the application of FOLICUR 3.6F, the wheat crop was destroyed, and soybeans were planted-back into the same plots, except for a single field trial in which the plant-back interval was increased to 45-days due to weather conditions. Tebuconazole residue was quantitated by liquid chromatography-tandem mass spectrometry (lc-ms/ms). The limits of quantitation (LOQ's) for tebuconazole were 0.01 ppm in soybean forage and seed and 0.02 ppm in soybean hay. Tebuconazole residue in soybean forage and seed was < 0.01 ppm in all samples. The highest average field trial (HAFT) tebuconazole residue in soybean hay was 0.03 ppm.

A total of 20 field trials (18 harvest and two decline) were conducted to measure the magnitude of tebuconazole residue in/on soybean forage, hay, and seed following three foliar spray applications of FOLICUR 3.6 F at a target rate of 0.1125 lb ai/acre/ application. The residue of tebuconazole was quantitated in soybean forage, hay, and seed by liquid chromatography/mass spectrometry-mass spectrometry (lc/ms-ms). The limit of quantitation (LOQ) was 0.01 ppm in soybean forage and seed and 0.05 ppm in soybean hay. The highest average field trial (HAFT) tebuconazole residue found in forage, seed, and hay were 14.5 ppm, 0.05 ppm, and 42.1 ppm, respectively.

A processing study was conducted to evaluate the quantity of tebuconazole residue in soybean aspirated grain fractions and soybean processed commodities from the rotational crop of soybeans following treatment of winter wheat with FOLICUR 3.6F. A single foliar spray application of FOLICUR 3.6F was made to winter wheat at a rate of 0.589 lb ai/acre (5X the maximum recommended label use rate. At a 30–day plant-back interval following the application of FOLICUR 3.6F, the wheat was destroyed, and soybeans were planted back into the same test plots. Soybean seed was collected from the field trial at the earliest dry harvest, and processed to produce processed commodities of hulls, meal, and refined-bleached-deodorized oil. Tebuconazole residue was quantitated by liquid chromatography-tandem mass spectrometry (lc-ms/ms). The limit of quantitation (LOQ) for tebuconazole in soybean seed was 0.01 ppm. Tebuconazole residue in the treated soybean seed was < 0.01 ppm. No tebuconazole residue above the limit of quantitation was measured in the soybean seed from the 5X exaggerated rate.

A processing study was conducted to measure the magnitude of tebuconazole residue in/on soybean seed, aspirated grain fractions, hulls, meal, refined oil, defatted flour, full fat flour, and protein isolate following three foliar spray applications of FOLICUR 3.6 F at a five-fold (5X) exaggerated rate. Processing was performed using batch procedures that simulated commercial processing practices. The residues of tebuconazole were quantitated by high-pressure liquid chromatography/ triple stage quadrupole mass spectrometry (lc/ms-ms). The limit of quantitation (LOQ) for tebuconazole in all matrices was 0.01 ppm. Concentration of tebuconazole residues were only seen in the soybean aspirated grain fractions (concentration factor = 276X) and soybean hulls (concentration factor = 1.1X).

xvii. *Sunflower*. IR–4 received requests from Kansas and North Dakota for the use of tebuconazole on sunflowers. To support these requests, magnitude of residue data were collected from seven field trials located in EPA region 5. Three of the trials were conducted in Kansas; the remaining four trials were located in North Dakota. Since all residues in the 1X field trails are less than the LOQ of 0.04 ppm, a tolerance of 0.05 ppm is being proposed for sunflower seed. Based on a processing study on peanuts completed by Bayer Corporation, a processing study was deemed not necessary and tolerances of 0.2 ppm are being requested for sunflower oil and sunflower meal.

xviii. *Turnip*. Five field trials were conducted in order to provide information on the magnitude of tebuconazole residues on turnip tops and roots following foliar applications of Folicur 3.6 F. Trials were conducted in Georgia, New Jersey, Ohio, Tennessee and Texas. Residue levels ranged from 0.75 ppm to 5.62 ppm for turnip tops and < 0.05 ppm to 0.234 ppm for turnip roots. A tolerance of 8.0 ppm for turnip tops and 0.4 ppm for turnip roots is being proposed by Interregional Research Project No. 4.

xvix. *Wheat*. Nineteen residue crop field trial studies were conducted to evaluate the quantity of tebuconazole residue in wheat following a foliar application of Folicur 3.6 F. These trials were conducted in EPA Regions II, IV, V, VI, VII, VIII and XI. Residues of tebuconazole were quantitated by gas chromatography using a thermionic specific detector. The limit of quantitation (LOQ) for green forage, hay, and straw was 0.1 ppm. The LOQ for grain was 0.05 ppm. The highest average field trial (HAFT) was 2.51 ppm for green forage, 5.31 ppm for wheat hay, and 1.27 ppm for wheat straw. The residues of tebuconazole in wheat grain were less than the LOQ of 0.05 ppm. Data from a 5x processing study also showed residues of tebuconazole in wheat grain less than the LOQ of 0.05 ppm.

xx. *Cherry (post-harvest)*. IR–4 conducted four field trials in Michigan, California, and Washington (2 trials) to support the use of tebuconazole as a post-harvest fresh market use on cherries. Each trial received 6 pre-harvest foliar applications at 0.225 lb ai/A with a 0 or 1 day PHI plus a post-harvest treatment at 0.225 to 0.450 lab ai/100 gal. Neither the rate nor type of post-harvest use appeared to correspond strongly to residue levels observed. Data support the presently established tolerance of 4 ppm for pre-harvest applications to cherries.

B. Toxicological Profile

1. *Acute toxicity*. Tebuconazole exhibits moderate toxicity. The rat acute oral LD_{50} = 3,933 milligram/kilogram (mg/kg) (category III); the rabbit acute dermal LD_{50} > 5,000 mg/kg (category IV); and the rat acute inhalation LC_{50} > 0.371 milligram/ Liter (mg/L) (category II). Technical tebuconazole was slightly irritating to the eye (category III) and was not a skin irritant (category IV) in rabbits. Tebuconazole was not a dermal sensitizer.

2. *Genotoxicity*. An Ames test with *Salmonella sp.,* a mouse micronucleus assay, a sister chromatid exchange assay with Chinese hamster ovary cells, and an unscheduled DNA synthesis assay with rat hepatocytes provided no evidence of mutagenicity.

3.*Reproductive and developmental toxicity*.—i. In a developmental toxicity study, pregnant female rats were gavaged with technical tebuconazole at levels of 0, 30, 60, or 120 mg/kg/day between days 6 and 15 of gestation. The maternal NOAEL was 30 mg/kg/day and the maternal LOAEL was 60 mg/kg/day based on increased absolute and relative liver weights. The developmental NOAEL was 30 mg/kg/day and the developmental LOAEL was 60 mg/kg/day based on delayed ossification of thoracic, cervical and sacral vertebrae, sternum and limbs plus an increase in supernumerary ribs.

ii. In a developmental toxicity study, pregnant female rabbits were gavaged with technical tebuconazole at levels of 0, 10, 30, or 100 mg/kg/day between days 6 and 18 of gestation. The maternal NOAEL was 30 mg/kg/day and the maternal LOAEL was 100 mg/kg/day based on minimal depression of body weight gains and food consumption. The developmental NOAEL was 30 mg/kg/day and the developmental LOAEL was 100 mg/kg/day based on increased postimplantation losses, malformations in 8 fetuses out of 5 litters (including peromelia in 5 fetuses/4 litters; palatoschisis in 1 fetus/1 litter), hydrocephalus and delayed ossification.

iii. In a developmental toxicity study, pregnant female mice were gavaged with technical tebuconazole at levels of 0, 10, 30, or 100 mg/kg/day between days 6 and 15 of gestation (part 1 of study) or at levels of 0, 10, 20, 30, or 100 mg/kg/day between days 6 and 15 of gestation (part 2 of study). The maternal NOAEL was 10 mg/kg/day and the maternal LOAEL was 20 mg/kg/day. Maternal toxicity (hepatocellular vacuolation and elevations in AST, ALP and alkaline phosphatase) occurred at all dose levels but was minimal at 10 mg/kg/day. Reduction in mean corpuscular volume in parallel with reduced hematocrit occurred at doses greater than or equal to 20 mg/kg/day. The liver was the target organ. The developmental NOAEL was 10 mg/kg/day and the developmental LOAEL was 30 mg/kg/day based on an increase in the number of runts.

iv. In a developmental toxicity study, pregnant female mice were administered dermal doses of technical tebuconazole applied at levels of 0, 100, 300, or 1,000 mg/kg/day between days 6 and 15 of gestation. Equivocal maternal toxicity was observed 1,000 mg/kg/day. The maternal NOAEL was nearly-eq 1,000 mg/kg/day. The developmental NOAEL was 1,000 mg/kg/day.

v. In a 2-generation reproduction study, rats were fed technical tebuconazole at levels of 0, 100, 300, or 1,000 ppm, (0, 5, 15, or 50 mg/kg/day, males and females). The parental maternal NOAEL was 15 mg/kg/day and the parental LOAEL was 50 mg/kg/day based on depressed body weights, increased spleen hemosiderosis and decreased liver and kidney weights. The reproductive NOAEL was 15 mg/kg/day and the reproductive LOAEL of 50 mg/kg/day based on decreased pup body weights from birth through 3–4 weeks.

vi. In a developmental neurotoxicity study, pregnant female rats were fed a nominal concentration of 0, 100, 300 or 1,000 ppm of tebuconazole in the diet. The NOAEL for maternal toxicity in this study was 300 ppm (based on mortality, body weight and feed consumption reductions, and prolonged gestation in the1000 ppm dosage group). The 1,000 ppm dose level was considered to be excessively toxic for the F1 offspring, based on mortality, marked reductions in pup body weight and body weight gain, reduction in pup absolute brain weight (at postpartum day (PD) 12 and adult), a developmental delay in vaginal patency, and decreased cerebellar thickness. The effects on brain weight and morphology are considered to represent incomplete compensation for the marked decrease in body weight gain during development. By approximately day 80 postpartum, the body weight had completely recovered in the females but was still reduced (89% of the control group value) in the males. The brain weights had shown an incomplete recovery (90% to 93% of the control group values) in both sexes. The EPA has determined that the LOAEL for offspring toxicity in this study is 100 ppm. Technical grade tebuconazole did not cause any specific neurobehavioral effects in the offspring when administered to the dams during gestation and lactation at dietary concentrations up to and including 1,000 ppm.

4. *Subchronic toxicity*.—i. In a 90–day oral feeding study, rats were administered technical tebuconazole at levels of 0, 100, 400, or 1,600 ppm (0, 8, 34.8, or 171.7 mg/kg/day for males or 0, 10.8, 46.5, or 235.2 mg/kg/day for females). In males, the no observed adverse effect level (NOAEL) was 34.8 mg/kg/day and the lowest observed adverse effect level (LOAEL) was 171.7 mg/kg/day based on decreased body weight and decreased body weight gain, adrenal vacuolation and spleen hemosiderosis. In females, the NOAEL was 10.8 mg/kg/day and the LOAEL of 46.5 mg/kg/day was based on adrenal vacuolation.

ii. In a 90–day oral feeding study, Beagle dogs were administered technical tebuconazole at levels of 0, 200, 1,000, or 5,000 ppm (0, 74, 368, or 1,749 mg/kg/day for males or 0, 73, 352, or 1,725 mg/kg/day for females). In females, the NOAEL was 73 mg/kg/day and the LOAEL was 352 mg/kg/day based on decreased body weight and decreased body weight gain, decreased food consumption and increased liver N-demethylase activity. At the highest dose tested (HDT), lens opacity was seen in all males and in one female and cataracts were seen in three females.

iii. In a 21–day dermal toxicity study, rabbits were exposed dermally to technical tebuconazole 5 days a week at doses of 0, 50, 250, or 1,000 mg/kg/day. No significant systemic effects were seen. The systemic NOAEL >1,000 mg/kg/day.

iv. In a 21–day inhalation toxicity study, rats were exposed to technical tebuconazole (15 exposures –6 hours/day for 3 weeks) at airborne concentrations of 0, 0.0012, 0.0106, or 0.1558 mg/L/day. The NOAEL was 0.0106 mg/L/day and the LOAEL was 0.1558 mg/L/day based on piloerection and induction of liver N-demethylase.

5.*Chronic toxicity*.—i. In a 2–year combined chronic feeding/carcinogenicity study, rats were administered technical tebuconazole at levels of 0, 100, 300, or 1,000 ppm (0, 5.3, 15.9, or 55 mg/kg/day for males or 0, 7.4, 22.8, or 86.3 mg/kg/day for females). In males, the NOAEL was 5.3 mg/kg/day and the LOAEL was 15.9 mg/kg/day based on C-cell hyperplasia in the thyroid gland. In females, the NOAEL was 7.4 mg/kg/day and the LOAEL was 22.8 mg/kg/day based on body weight depression, decreased hemoglobin, hematocrit, mean corpuscular volume and mean corpuscular hemoglobin concentration and increased liver microsomal enzymes. No evidence of carcinogenicity was found at the levels tested.

ii. In a 1–year chronic feeding study, Beagle dogs were administered technical tebuconazole at levels of 0, 40, 200, or 1,000 (weeks 1-39) and 2,000 ppm (weeks 40-52) (0, 1, 5 or 25/50 mg/kg/day for males and females). The NOAEL was 1 mg/kg/day and the LOAEL was 5 mg/kg/day based on ocular lesions (lenticular and corneal opacity) and hepatic toxicity (changes in the appearance of the liver and increased siderosis).

iii. In a 1–year chronic feeding study, Beagle dogs were administered technical tebuconazole at levels of 0, 100, or 150 ppm (0, 3.0, or 4.4 mg/kg/day for males or 0, 3.0 or 4.5 mg/kg/day for females). The NOAEL was 3.0 mg/kg/day and the LOAEL was 4.4 mg/kg/day based on adrenal affects in both sexes. In males there was hypertrophy of adrenal zona fasciculata cells amounting to 4/4 at 150 ppm and to 0/4 at 100 ppm and in controls. Other adrenal findings in males included fatty changes in the zona glomerulosa (3/4) and lipid hyperplasia in the cortex (2/4) at 150 ppm vs. (1/4) for both effects at 100 ppm and control dogs. In females there was hypertrophy of zona fasciculata cells of the adrenal amounting to 4/4 at 150 ppm and to 0/4 at 100 ppm and 1/4 in controls. Fatty changes in the zona glomerulosa of the female adrenal amounted to 2/4 at 150 ppm and to 1/4 at 100 ppm and in controls.

iv. In a 91–week carcinogenicity study, mice were administered technical tebuconazole at levels of 0, 500, or 1,500 ppm (0, 84.9, or 279 mg/kg/day for males or 0, 103.1, or 365.5 mg/kg/day for females). Neoplastic histopathology consisted of statistically significant increased incidences of hepatocellular neoplasms; adenomas (35.4%) and carcinomas (20.8%) at 1,500 ppm in males and carcinomas (26.1%) at 1,500 ppm in females. Statistically significant decreased body weights and increased food consumption were reported that were consistent with decreased food efficiency at 500 and 1,500 ppm in males and at 1,500 ppm in females. Clinical chemistry values (dose-dependent increases in plasma GOT, GPT and Alkaline Phosphatase) for both sexes were consistent with hepatotoxic effects at both 500 and 1,500 ppm. Relative liver weight increases reached statistical significance at both 500 and 1,500 ppm in males and at 1,500 ppm in females. Non-neoplastic histopathology included dose-dependent increases in hepatic pancinar fine fatty vacuolation, statistically significant at 500 and 1,500 ppm in males and at 1,500 ppm in females. Other histopathology included significant oval cell proliferation in both sexes and dose-dependent ovarian atrophy that was statistically significant at 500 and 1,500 ppm. The Maximum Tolerated Dose (MTD) was achieved at or around 500 ppm.

6. *Animal metabolism*. Rats were gavaged with 1 or 20 mg/kg radio-labeled technical tebuconazole. 98.1 % of the oral dose was absorbed. Within 72 hours of dosing, over 87% of the dose was excreted in urine and feces. At sacrifice (72 hours post dosing), total residue (-GI tract) amounted to 0.63% of the dose. A total of 10 compounds were identified in the excreta. A large fraction of the identified metabolites corresponded to successive oxidations steps of a methyl group of the test material. At 20 mg/kg, changes in detoxication patterns may be occurring.

7. *Endocrine disruption*. No special studies investigating potential estrogenic or endocrine effects of tebuconazole have been conducted. However, the standard battery of required studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects but no such effects were noted in any of the studies with either tebuconazole or its metabolites.

C. Aggregate Exposure

1. *Dietary exposure*. An aggregate risk assessment was conducted for residues of tebuconazole using Exponent Inc.'s Dietary Exposure Evaluation Model (DEEM™) software. Crops included in this risk assessment are all registered uses for tebuconazole, Section 18 uses, and all pending uses which include barley, wheat, tree nut crop group, pistachio, beans, cotton, pome fruit, asparagus, coffee, garlic, onion, corn, soybean, stone fruit, turnips, hops, cucurbits crop group, mango, sunflower, okra, and lychee. For the acute assessment, the LOAEL of 8.8 mg/kg/day from Bayer's rat developmental neurotoxicity study was used. The populations adjusted dose for acute dietary (aPAD) was determined by dividing the LOAEL by an uncertainty factor of 1,000 (10X for interspecies differences, 10X for intraspecies variability, and 10X for an FQPA safety factor): aPAD = 8.8/1000 =0.0088 mg/kg bw/day. For the chronic risk assessment, Bayer used the NOAEL of 3.0 mg/kg/day from a 1–year dog feeding study. The population adjusted dose for chronic dietary (cPAD) was determined by dividing the NOAEL by an uncertainty factor of 100 (10x for interspecies differences and 10X for intraspecies variability): cPAD = 3/100-0.03 mg/kg bw/day.

i. *Food*. In acute and chronic, Tier 3 dietary (food) risk assessments were conducted using data from field trials and data from PDP where appropriate. The acute analysis indicated that the most highly exposed population subgroup was Children (1–2 yrs) with an exposure equal to 27.6% of the aPAD. The U.S. total population had an exposure equal to 17.5% of the aPAD. The chronic analysis also showed that the most highly exposed population subgroup was children (1–2 yrs) with an exposure equal to 0.3% of the cPAD. The total U.S. population had a chronic exposure equal to 0.1% of the cPAD. These exposure estimates are below EPA's level of concern.

ii. *Drinking water*. No monitoring data are available for residues of tebuconazole in drinking water and EPA has established no health advisory levels or maximum contaminant levels for residues of tebuconazole in drinking water. The potential concentrations of tebuconazole in drinking water were determined using the TIER II PRZM/EXAMS model for surface water and the SCI-GROW model for groundwater. Since the estimated groundwater concentrations were considerably lower than the surface water concentrations, the more conservative surface water estimates were used to calculate the Drinking Water Estimated Concentration (DWEC). The PRZM/EXAMS model estimated an acute DWEC of 33.8 ppb and a chronic DWEC of 19.2 ppm.

Bayer has calculated an acute Drinking Water Level of Comparison (aDWLOC) for the total U.S. population at 254 ppb and an aDWLOC for the most highly exposed population subgroup (children (1–2 yrs)) at 64 ppb. Chronic DWLOCs for the U.S. total population and children (1–2 yrs) were calculated to be 1,049 and 299, respectively. Since these DWLOCs are greater than their respective DWECs determined by the PRZM/EXAMS model, tebuconazole exposure from drinking water is below EPA's level of concern.

2. *Non-dietary exposure*. Tebuconazole is currently registered for use on the following residential non-food sites: Residential application to roses, flowers, trees and shrubs; the formulation of wood-based composite products; wood products for in-ground contact; plastics; exterior paints, glues and adhesives. Residential exposure to homeowners who mix, load and apply tebuconazole to roses, flowers, trees and shrubs as well as post-application exposure of adults and youth (age 10–12) to tebuconazole residues from this use was assessed. (Based on the US EPA residential exposure SOPs, the use pattern precludes likely post-application exposure to younger age groups.) Short-term and intermediate-term margins of exposure for homeowners mixing, loading and applying tebuconazole using pump sprayers and hose-end sprayers were 3,040 and 218, respectively. Chronic margins-of-exposure for the homeowner

mixer/loader/applicator using the same equipment were 14,900 and 1,070 ppm, respectively. Short-term and intermediate-term margins of post-application exposure for adults ranged from 408 - 2,120. The margins-of exposure for youth ranged from 712 to 3,700. Chronic margins of post-application exposure exceeded 4,930 for adults and youth.

For the remaining uses (wood treatment, plastics, paints, glues and adhesives) EPA has determined that exposure via incidental ingestion (by children) and inhalation is not a concern for these products which are used outdoors. A non-dietary assessment of exposure to tebuconazole from the copper tebuconazole-treated wood showed all tebuconazole MOEs exceeding 10,000. Therefore, there is no unacceptable risk associated with this use for tebuconazole.

D. Cumulative Effects

Tebuconazole is a member of the triazole class of systemic fungicides. At this time, the EPA has not made a determination that tebuconazole and other substances that may have a common mechanism of toxicity would have cumulative effects. Therefore, for this tolerance petition, it is assumed that tebuconazole does not have a common mechanism of toxicity with other substances and only the potential risks of tebuconazole in its aggregate exposure are considered. The cumulative effects of the primary common metabolites (1,2,4-triazole and its TA and TAA conjugates are being addressed by the US Triazole Task Force.

E. Safety Determination

1. *U.S. population*. Based on the exposure assessments described in C under aggregate exposure and on the completeness and reliability of the toxicity data, it can be concluded that aggregate exposure estimates from all label and pending uses of tebuconazole are 17.5% of the aPAD and 0.1% percent of the cPAD for dietary exposures. Exposure estimates calculated from tebuconazole in drinking water are below the EPA's level on concern. In addition, no unacceptable risks were determined for non-dietary exposure.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of tebuconazole, data from developmental toxicity studies in mice, rats, rabbits and a 2–generation reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

Using the conservative exposure assumptions described above under Aggregate Exposure, it can be concluded that the aggregate dietary exposure estimates from the proposed uses of tebuconazole would not exceed 27.6% of the aPAD and 0.3% of the cPAD for the most sensitive population subgroup children (1–2 years). Exposure estimates calculated from tebuconazole in drinking water are below the EPA's level on concern. In addition, no unacceptable risks were determined for non-dietary exposure.

F. International Tolerances

For tebuconazole uses pending with the EPA, CODEX MRLs have been established for barley at 0.2 mg/kg; barley straw and fodder, dry at 10 mg/kg; cucumber at 0.2 mg/kg; pome fruits at 0.5 mg/kg; summer squash at 0.02 mg/kg; wheat at 0.05 mg/kg and wheat straw and fodder, dry at 10 mg/kg.

[FR Doc. 05–9590 Filed 5–17–05; 8:45 am]

BILLING CODE 6560–50–S

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

Summary: The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

Time and Place: Wednesday, June 1, 2005, from 9:30 a.m. to 12 p.m. the meeting will be held at Ex-Im Bank in the Main Conference Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: Agenda items include discussions on small business and Ex-Im Bank's Annual Competitiveness Report to Congress.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to May 24, 2005, Teri Stumpf, Room 1203, 811 Vermont Avenue, NW., Washington, DC 20571, voice (202) 565–3502 or TDD (202) 565–3377.

Further Information: For further information, contact Teri Stumpf, Room 1203, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3502.

Peter Saba,

General Counsel.

[FR Doc. 05–9900 Filed 5–17–05; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

May 9, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before July 18, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Cathy Williams, Federal Communications Commission, Room 1–

C823, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at 202–418–2918 or via the Internet at *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0175.

Title: Section 73.1250, Broadcasting Emergency Information.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 50.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 50 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.1250 requires that AM station licenses submit a report to the FCC regarding the emergency information broadcast over increased facilities and by any broadcast licensee whose broadcast facilities were used for transmission of point-to-point messages during an emergency. The data is used by FCC staff to evaluate need and nature of emergency broadcast to confirm that an actual emergency existed.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–9816 Filed 5–17–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 9, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 17, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0291.

Title: Sections 90.477(a), (b)(2), (d)(2), and (d)(3), Interconnected Systems.

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local, and tribal government.

Number of Respondents: 12,024.

Estimated Time Per Response: .25–2 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 4,803 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission is seeking an extension (no change) for this information collection in order to obtain the full three-year clearance from OMB. Section 90.477(a) requires licensees of interconnected land stations maintain as part of their station records a detailed description of how interconnection is accomplished. Sections 90.477(b)(2) and (d)(2) requires that at least one licensee participating in any cost sharing arrangement for telephone service must maintain cost sharing records, the costs must be distributed at least once a year, and a report of the distribution must be placed in the licensee's station records and made available to participants in the sharing arrangement and the Commission upon request. Section 90.477(d)(3) requires licensees in the Industrial/Business Pool and those licensees who establish eligibility pursuant to 47 CFR 90.20(a)(2), other than persons or organizations charged with specific fire protection activities, persons or organizations charged with specific forestry-conservation activities, or medical emergency systems in the 450–470 MHz band, and who seek to connect within 120 km (75 mi.) of 25 cities specified in section 90.477(d)(3), must obtain the consent of all co-channel licensees located both within 120 km of the center of the city, and within 120 km of the interconnected base station transmitter. Consensual agreements must specifically state the terms agreed upon and a statement must be submitted to the Commission indicating that all co-channel licensees have consent to the use of interconnection.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–9817 Filed 5–17–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

May 6, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper

performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 17, 2005. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*. If you would like to obtain or view a copy of this new or revised information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0850.

Title: Quick Form Application for Authorization in the Ship, Amateur, Restricted and Commercial Operator, and General Mobile Radio Services.

Form No.: FCC Form 605.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 175,000.

Estimated Time Per Response: .44 hours (26.4 minutes).

Frequency of Response: Recordkeeping requirement, third party disclosure requirement, and on occasion and every 5 and 10 year reporting requirements.

Total Annual Burden: 77,000 hours.

Total Annual Cost: $2,537,500.

Privacy Act Impact Assessment: Yes.

Needs and Uses: The Commission is revising FCC Form 605 to incorporate a question asking of the change of name is due to a change in ownership, corporate structure or entity and to clarify existing instructions for the public. The FCC uses the information in the FCC Form 605 to determine whether the applicant is legally, technically, and financially qualified to obtain a license. Without such information, the Commission cannot determine whether to issue the licenses to the applicants that provide telecommunications services to the pubic, and therefore, to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended. Information provided on this form will also be used to update the database and to provide for proper use of the frequency spectrum a well as enforcement purposes.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–9818 Filed 5–17–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

May 6, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 17, 2005. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*. If you would like to obtain or view a copy of this new or revised information collection, you may do so by visiting the FCC PRA web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0795.

Title: Associate WTB Call Signs and Antenna Registration Numbers with Licensee's FRN.

Form No.: FCC Form 606.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 429,000.

Estimated Time Per Response: 1 hour.

Frequency of Response: Third party disclosure requirement, and on occasion reporting requirement.

Total Annual Burden: 429,000 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: Yes.

Needs and Uses: The Commission is revising the FCC Form 606 to make various changes to the form to update the mailing address and Web site addresses and also to change contact telephone numbers and web site addresses. The information collected in the FCC Form 606 will be used to populate the Universal Licensing System (ULS) for licensees and antenna structure registration owners who interact with ULS. This information will also be used to match records in the ULS database to the Collection System records to validate payment for application and for debt collection purposes.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–9821 Filed 5–17–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

May 6, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 17, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0589.

Title: FCC Remittance Advice and Continuation Sheet, Bill for Collection, FCC Remittance Advice for Regulatory Fees (E-Form).

Form Number(s): FCC Forms 159, 159–C, 159–B, and 159–E.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit entities; not-for-profit institutions; Federal government; and State, local, or tribal government.

Number of Respondents: 150,000.

Estimated Time per Response: 10 minutes to 4 hours.

Frequency of Response: On occasion and annual reporting requirements; Third party disclosure.

Total Annual Burden: 37,500 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Needs and Uses: The Commission has created a new streamlined electronic form, FCC Form 159–E, to associate a mailed or faxed payment with regulatory fees, which were filed on-line. Pertinent information will be taken directly from the regulatory fee electronic filing system (Fee Filer) and populated on the FCC Form 159–E, which can be printed by the filer. The FCC Form 159–E, essentially a simple payment voucher, will contain summary information, which will distinguish the payment but not detailed information about the fee(s). Specific associated fee information will be available on a separate report, which the filer does not need to remit. Beginning with FY 2005 regulatory fees, the FCC Form 159–E must accompany all payments derived from the regulatory fee electronic filing system, except on-line payments, which do not require any paper submission. Payment may be made by check or money order, credit card or wire transfer.

The Commission will use this information to apply credit for the remittance against all regulatory fees within the associated electronic submission. The payment instrument must be in the dollar amount specified on the FCC Form 159–E for full credit to be applied. Expanded use of the FCC Form 159–E is possible in the future as additional streamlining for this process is implemented. This form may be used in lieu of pre-populated FCC Form 159's, which are currently produced to facilitate remittance for various electronic filings. The FCC Form 159–E may, therefore, impact users of all electronic filing systems, as well as users of an FCC bill paying system (currently Fee Filer and the Red Light Display system).

This information collection may affect some individuals or households; however, the Commission has in place a registration process *http://www.fcc.gov*, which issues a Federal Registration Number (FRN) to each applicant/licensee, etc., for use in filing any of these FCC Forms 159/159–C, 159–B, and 159–E. As part of the registration process, the applicant/licensee's SSN or TIN is stored in a secure environment, which minimizes any potential privacy risks.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–9822 Filed 5–17–05; 8:45 am]

BILLING CODE 6712–10–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 may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via e-mail at *tradeanalysis@fmc.gov*. 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.: 010099–042.

Title: International Council of Containership Operators.

Parties: A.P. Moller-Maersk Sealand; ANL Container Line Pty Ltd.; American President Lines, Ltd.; APL Co. PTE Ltd.; APL Limited; Atlantic Container Line AB; Australia-New Zealand Direct Line; Canada Maritime Limited; Cast Line Limited; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; Companhia Libra de Navegacao; Compania Sud-Americana de Vapores S.A.; Contship Containerlines; Cosco Container Lines Company Limited; CP Ships; Crowley Maritime Corporation; Delmas SAS; Evergreen Marine Corporation, Ltd.; Hamburg-Sud; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Italia di Navigazione, LLC; Kawasaki Kisen Kaisha, Ltd.; Lykes Lines Limited, LLC; Malaysian International Shipping Company; Mediterranean Shipping Company S.A.; Mitsui O.S.K. Lines, Ltd.; Montemar Maritima S.A.; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha; Norasia Container Lines Limited; Orient Overseas Container Line, Limited; Pacific International Lines (PTE) Ltd.; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; Safmarine Container Line N.V.; Senator Lines GmbH; TMM Lines Limited, LLC; United Arab Shipping Company; Yang Ming Transport Marine Corp.; Wan Hai

Lines Ltd.; Zim Integrated Shipping Services Ltd.

Filing Party: John Longstreth, Esq.; Preston Gates Ellis & Rouvelas Meeds LLP; 1735 New York Avenue, Suite 500; Washington, DC 20006–5209.

Synopsis: The amendment reflects a name change for Lykes Lines Limited to CP Ships (USA) LLC and the merger of TMM Lines and Italia di Navigazione LLC into CP Ships (USA).

Agreement No.: 010051–035.

Title: Mediterranean Space Charter Agreement.

Parties: Farrell Lines, Inc.; Italia di Navigazione, LLC; CP Ships (USA) LLC; A.P. Moller-Maersk A/S; Mediterranean Shipping Company, S.A.; P&O Nedlloyd Limited; P&O Nedlloyd B.V.; Hapag-Lloyd Container Linie GmbH; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes Evergreen Marine Corp (Taiwan) Ltd. as a party to the agreement, changes Lykes Lines Limited, LLC name to CP Ships (USA) LLC, and reflects the resignation of Italia di Navigazione, LLC.

Agreement No.: 010979–041.

Title: Caribbean Shipowners Association.

Parties: Bernuth Lines, Ltd.; CMA CGM, S.A.; Crowley Liner Services, Inc.; Interline Connection, N.V.; Lykes Lines Limited; Seaboard Marine Ltd.; Seafreight Line, Ltd.; TMM Lines, LLC; Tropical Shipping and Construction Co., Ltd.; and Zim Israel Navigation Co., Ltd.

Filing Party: Veronica Majewski; Director of Regulatory Activities; Transportation Services Inc.; Galleria Professional Building; 915 Middle River Drive, Suite 414; Fort Lauderdale, FL 33304–3561.

Synopsis: The amendment deletes Sea Star Line LLC from the agreement, updates Zim's corporate name and address, and updates the membership of the discussion sections of the agreement.

Agreement No.: 010982–037.

Title: Florida-Bahamas Shipowner and Operators Association.

Parties: Atlantic Caribbean Line, Inc.; Crowley Liner Services, Inc.; G&G Marine, Inc.; Pioneer Shipping Ltd.; Seaboard Marine, Ltd.; and Tropical Shipping and Construction Co., Ltd.

Filing Party: Veronica Majewski; Director of Regulatory Activities; Transportation Services Inc.; Galleria Professional Building; 915 Middle River Drive, Suite 414; Fort Lauderdale, FL 33304–3561.

Synopsis: The amendment deletes Caicos Cargo Ltd. as a member to the agreement, removes the British West Indies from the geographic scope of the agreement, and expands the scope to include all ports on the U.S. Atlantic and Gulf Coasts.

Agreement No.: 011290–034.

Title: International Vessel Operators Hazardous Material Association Agreement.

Parties: Aliança Navegacao e Logistica Ltda.; APL Co. PTE Ltd.; Atlantic Container Line AB; Australia-New Zealand Direct Line; Bermuda Container Line; Canada Maritime Agencies Ltd.; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; Compania Latino Americana de Navegacion SA; Contship Containerlines; Crowley Maritime Corporation; Evergreen Marine Corp. (Taiwan) Ltd.; Hamburg-Südamerikanische Dampfschifffahrts-gesellschaft KG; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Linie GmbH; Horizon Lines, LLC; Hyundai Merchant Marine Co., Ltd.; Independent Container Line Ltd.; Italia di Navigazione, LLC; Kawasaki Kisen Kaisha Ltd.; Lykes Lines Limited, LLC; Marine Transport Lines, Inc.; Maruba SCA; Mitsui O.S.K. Lines, Ltd.; A.P. Moller-Maersk A/S; National Shipping Co. of Saudi Arabia; Nippon Yusen Kaisha Line; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; Safmarine Container Lines; Seaboard Marine Ltd.; Senator Lines GmbH; TMM Lines Limited; Tropical Shipping & Construction Co., Ltd.; United Arab Shipping Co. S.A.G.; Yang Ming Marine Transport Corp.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esquire; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment changes Lykes Lines name to CP Ships (USA) LLC and deletes Italia di Navigazione and TMM as parties to the agreement.

Agreement No.: 011587–012.

Title: United States South Europe Conference.

Parties: A.P. Moller-Maersk A/S; P&O Nedlloyd Limited; and Hapag-Lloyd Container Linie GmbH.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment clarifies the parties' authority regarding multi-carrier service contracts and adds provisions dealing with the responsibility for civil penalties.

Agreement No.: 011733–015.

Title: Common Ocean Carrier Platform Agreement.

Parties: A.P. Moller-Maersk A/S; P&O Nedlloyd Limited; Hamburg-Süd, Mediterranean Shipping Company S.A., CMA CGM S.A., Hapag-Lloyd Container Linie GmbH; and United Arab Shipping Company (SAG); as shareholder parties; and Alianca Navegacao e Logistica Ltda.; Safmarine Container Lines N.V.; Nippon Yusen Kaisha; CP Ships Limited; Tasman Orient Line C.V.; Mitsui O.S.K. Lines, Ltd.; CP Ships (USA) LLC; Kawasaki Kisen Kaisha Ltd.; FESCO Ocean Management Ltd.; and Senator Lines GmbH as non-shareholder parties.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment changes the name of Lykes Lines Limited, LLC to CP Ships (USA) LLC.

Agreement No.: 011859–002.

Title: TMM/Hanjin Slot Charter Agreement.

Parties: TMM Lines, Limited, LLC, Hanjin Shipping Co., Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes TMM as a party, replacing it with CP Ships (USA) LLC, and makes corresponding changes consistent with the foregoing substitution.

Agreement No.: 011894–001.

Title: Lykes/TMM/Montemar Slot Swap Agreement.

Parties: Lykes Lines Limited, LLC; TMM Lines Limited, LLC; and Montemar Maritima, S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment changes Lykes' name to CP Ships (USA) LLC, reflects TMM's resignation from the agreement, and makes conforming changes based on the foregoing.

By Order of the Federal Maritime Commission.

Dated: May 13, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–9928 Filed 5–17–05; 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 part 515.

License No.	Name/address	Date reissued
004471F	B.R.A.L. Miami, Inc., 7766 NW., 46th Street, Miami, FL 3316	April 17, 2005.
014151N	Continental Consolidating Corporation, 8507 NW., 72nd Street, Miami, FL 33166	April 20, 2005.
015490N	Max Cargo, Inc., 9111 S. La Cienega Blvd., #104, Ste. 107, Inglewood, CA 90301	April 30, 2005.
011170F	Sage Freight System Inc., dba Sage Container Lines, 182–130 150th Road, Room 108, Jamaica, NY 11413.	April 8, 2005.
016528NF	Uni International, America Corp., dba Unistar Lines, 4615 Gulf Blvd., Suite 116, St. Petersburg, FL 33706.	February 5, 2005.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 05–9930 Filed 5–17–05; 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: 017760N.
Name: Cendian Corporation.
Address: Six Concourse Parkway, Suite 2800, Atlanta, GA 30328.
Date Revoked: May 22, 2005.
Reason: Surrendered license voluntarily.

License Number: 014766NF.
Name: China Container Line (USA) Inc., c/o China Container Line Ltd.
Address: 17800 Castleton Street, Suite 158, City of Industry, CA 91748.
Date Revoked: May 1, 2005.
Reason: Surrendered license voluntarily.

License Number: 018963N.
Name: Crane Logistics Inc.
Address: 150–14 132nd Avenue, Second Floor, Jamaica, NY 11434.
Date Revoked: May 5, 2005.
Reason: Failed to maintain a valid bond.

License Number: 013154N.
Name: Fastpak Express Corporation.
Address: 21818 South Wilmington Avenue, Suite 411, Long Beach, CA 90810.
Date Revoked: May 4, 2005.
Reason: Failed to maintain a valid bond.

License Number: 017693N.
Name: GSA Shipping, Inc.
Address: 500 W. 140th Street, Gardena, CA 90248.
Date Revoked: May 6, 2005.
Reason: Failed to maintain a valid bond.

License Number: 012108N.
Name: IET-International Exhibits Transport, Inc.
Address: 444 Madison Avenue, 37th Floor, New York, NY 10022.
Date Revoked: May 6, 2005.
Reason: Failed to maintain a valid bond.

License Number: 015771F.
Name: Juan Holguin dba Metrofreight International.
Address: 6515 Blvd., East, Suite 1P, West New York, NJ 07093.
Date Revoked: April 30, 2003.
Reason: Surrendered license voluntarily.

License Number: 004591F.
Name: KMC Int'l, Inc.
Address: 5796 Edgar Tumbleston Road, Meggett, SC 29449.
Date Revoked: April 30, 2005.
Reason: Failed to maintain a valid bond.

License Number: 003957N.
Name: Marmara, Inc.
Address: 6 Self Boulevard, Carteret, NJ 07008.
Date Revoked: April 22, 2005.
Reason: Failed to maintain a valid bond.

License Number: 015490F.
Name: Max Cargo, Inc.
Address: 9111 S. La Cienega Blvd., #104, Suite 107, Inglewood, CA 90301.
Date Revoked: April 30, 2005.
Reason: Failed to maintain a valid bond.

License Number: 016400N.
Name: North American (U.K.) Limited.
Address: 7–8 Borrowdale Road, Workingham, Berkshire RG41 5UX, United Kingdom.
Date Revoked: May 4, 2005.
Reason: Failed to maintain a valid bond.

License Number: 019391N.
Name: United Logistics Management Inc.
Address: 17022 De Groot Place, Cerritos, CA 90703.
Date Revoked: May 9, 2005.
Reason: Surrendered license voluntarily.

License Number: 016622NF.
Name: U.S. Rim Inc. dba U.S. Rim Shipping.
Address: 9420 Telstar Avenue, Suite 205, El Monte, CA 91731.
Date Revoked: April 13, 2005.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 05–9931 Filed 5–17–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder=Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Four Seasons Logistics Inc., 42–32 College Point Blvd., Flushing, NY 11355.
Officer: Mun Lai Chang, President (Qualifying Individual).

Dakota Export, LLC, 1413 7th Street South, Fargo, ND 58103.
Officer: Dmitry Kovalyov, General Manager (Qualifying Individual).

G. B. Logistics (USA), Inc., 22010 S. Wilimington Ave., Suite 201, Carson, CA 90745.

Officers: Jenny M. Ma, Vice President Exports, (Qualifying Individual) Richard Yuan, Treasurer.

RPM Cargo Express, Inc. dba Carib-Link Services, 7150 NW, 36th Avenue, Miami, FL 33147.

Officer: Vladimir Vazquez, President (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

USL Logistics, LLC, 3621 S. Harbor Blvd., Suite 225, Santa Ana, CA 92704.

Officers: Robert A. Beilin, President, (Qualifying Individual) Kevin W. T. Kroft, Treasurer.

Dated: May 13, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–9929 Filed 5–17–05; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and 60 FR 56605–06, dated November 9, 1995, and as amended most recently at 69 FR 77756, dated December 28, 2004) is amended to reflect the realignment of functions within the Centers for Disease Control and Prevention (CDC). The reorganization of CDC is being undertaken to better align CDC's organizational structure and workforce to achieve public health goals, increase health protection, health impact, and ensure CDC's emergency response capabilities to public health threats and events. The changes are as follows:

A. Under Part C, the Centers for Disease Control and Prevention (CDC), as an Operating Division within the Department of Health and Human Services, is headed by a Director, who reports directly to the Secretary, and includes the following organizational components:

- Office of the Director (CA)
- Coordinating Office for Global Health (CW)
- Coordinating Office for Terrorism Preparedness and Emergency Response (CG)
- Coordinating Center for Environmental Health & Injury Prevention (CT)

—National Center for Environmental Health (CTB)

—National Center for Injury Prevention and Control (CTC)

- Coordinating Center for Health Information and Services (CP)

—National Center for Health Marketing (CPB)

—National Center for Health Statistics (CPC)

—National Center for Public Health Informatics (CPE)

- Coordinating Center for Health Promotion (CU)

—National Center on Birth Defects and Developmental Disabilities (CUB)

—National Center for Chronic Disease Prevention and Health Promotion (CUC)

—Office of Genomics and Disease Prevention (CUE)

- Coordinating Center for Infectious Diseases (CV)

—National Center for HIV, STD, & TB Prevention (CVB)

—National Center for Infectious Diseases (CVC)

—National Immunization Program (CVE)

- National Institute for Occupational Safety and Health (CC)

B. Under Part C, delete the following organizational units in their entireties:

National Center on Birth Defects and Developmental Disabilities (CF)
National Center for Chronic Disease Prevention and Health Promotion (CL)
National Center for Environmental Health (CN)
National Center for Health Statistics (CS)
National Center for HIV, STD, & TB Prevention (CK)
National Center for Infectious Diseases (CR)
National Center for Injury Prevention and Control (CE)
National Immunization Program (CJ)
Office of Genomics and Disease Prevention (CAK)
Office of Global Health (CAB)

C. Under Part C, Section titled Functions, add the following changes:

1. *Coordinating Office for Global Health (CW)*

2. *Coordinating Office for Terrorism Preparedness and Emergency Response (CG)*

3. *Coordinating Center for Environmental Health and Injury Prevention (CT):* The Coordinating Center for Environmental Health and Injury Prevention (CCEHIP), which is headed by a Coordinating Center Director, shall include an Office of the Director (CTA) and the following components are transferred intact to the CCEHIP: National Center for Environmental Health (CTB); and the National Center for Injury Prevention and Control (CTC).

4. *Coordinating Center for Health Information and Services (CP):* The Coordinating Center for Health Information and Services (CCHIS), is headed by a Coordinating Center Director and shall include: An Office of the Director (CPA); the National Center for Health Marketing (CPB) and the National Center for Public Health Informatics (CPE); and the National Center for Health Statistics (CPC) is transferred intact to the CCHIS.

5. *Coordinating Center for Health Promotion (CU):* The Coordinating Center for Health Promotion (CCHP), which is headed by a Coordinating Center Director, shall include an Office of the Director (CUA) and the following components are transferred intact to the CCHP: National Center on Birth Defects and Developmental Disabilities (CUB); National Center for Chronic Disease Prevention and Health Promotion (CUC); and the Office of Genomics and Disease Prevention (CUE).

6. *Coordinating Center for Infectious Diseases (CV):* The Coordinating Center for Infectious Diseases (CCID), which is headed by a Coordinating Center Director, shall include an Office of the Director (CVA) and the following components are transferred intact to the CCID: National Center for HIV, STD, & TB Prevention (CVB); National Center for Infectious Diseases (CVC); and the National Immunization Program (CVE).

C. *Continuation of Policy:* Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to the Centers for Disease Control and Prevention heretofore issued and in effect prior to the date of this reorganization are continued in full force and effect.

D. *Delegations of Authority:* All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or other successors pending further redelegation, provided they are consistent with this reorganization.

E. *Funds, Personnel and Equipment.* Transfer of organizations and functions affected by this reorganizations shall be accompanied in each instance by direct and support funds, positions, personnel, records, equipment and other resources.

Dated: May 6, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–9899 Filed 5–17–05; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1269–N4]

Medicare Program; Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group (TAG) Meeting—June 15, 2005 Through June 17, 2005

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2), this notice announces the second meeting of the Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group (TAG). The purpose of the EMTALA TAG is to review regulations affecting hospital and physician responsibilities under EMTALA to individuals who come to a hospital seeking examination or treatment for medical conditions. The primary purpose of the second meeting is to enable the EMTALA TAG to hear testimony and consider written responses from medical societies and other organizations on specific issues considered by the TAG at its initial meeting. However, the public is permitted to attend this meeting and, to the extent that time permits and at the discretion of the Chairperson, the EMTALA TAG may hear comments from the floor.

DATES: *Meeting Dates:* The meetings of the EMTALA TAG announced in this notice are as follows:

Wednesday, June 15, 2005, 11 a.m. to 5 p.m.

Thursday, June 16, 2005 from 9 a.m. to 5 p.m.

Friday, June 17, 2005 from 9 a.m. to 12 noon.

Registration and Deadline: You may register by sending an e-mail to *EMTALATAG@cms.hhs.gov*, sending a fax to the attention of Ronda Allen at fax number (410) 786–0681 or (410) 786–0169, or calling (410) 786–4548. To attend this meeting, all individuals must register by June 8, 2005.

Comment Deadline: Comments to be distributed to the EMTALA TAG may be submitted in writing up to three business days following the meeting. If anyone wishes to submit written comments, Beverly J. Parker must receive the comments by 5 p.m., June 22, 2005 at the address listed below.

Special Accommodations: Individuals requiring sign-language interpretation or other special accommodations should send a request for these services to Beverley J. Parker by 5 p.m., June 1, 2005 at the address listed below.

ADDRESSES: *Meeting Address:* The EMTALA TAG meeting will be held in Room 705A at the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Mailing and Email Addresses for Inquiries or Comments: Inquiries or comments regarding this meeting may be sent to—Beverly J. Parker, Division of Acute Care, Centers for Medicare & Medicaid Services, Mail Stop C4–08–06, 7500 Security Boulevard, Baltimore, MD 21244–1850. Inquiries or comments may also be emailed to *EMTALATAG@cms.hhs.gov*.

Web Site Address for Additional Information: For additional information on the EMTALA TAG meeting agenda topics, updated activities, and to obtain Charter copies, please search our Internet Web site at: *http://www.cms.hhs.gov/faca/emtalatag/emtalatagpage.asp*.

FOR FURTHER INFORMATION CONTACT: Beverly J. Parker at (410) 786–5320 or George Morey at (410) 786–4653. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1866(a)(1)(I), 1866(a)(1)(N), and 1867 of the Social Security Act (the Act) impose specific obligations on Medicare-participating hospitals that offer emergency services. These obligations concern individuals who come to a hospital emergency department and request or have a request made on their behalf for examination or treatment for a medical condition. EMTALA applies to all these individuals, regardless of whether or not they are beneficiaries of any program under the Act. Section 1867 of the Act sets forth requirements for medical screening examinations for emergency medical conditions, as well as necessary stabilizing treatment or appropriate transfer.

Regulations implementing the EMTALA legislation are set forth at 42 CFR 489.20(l), (m), (q) and (r)(1), (r)(2), (r)(3), and 489.24. Section 945 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173), requires that the Secretary establish a Technical Advisory Group (TAG) for advice concerning issues related to EMTALA regulations and implementation.

Section 945 of the MMA specifies that the EMTALA TAG—

- Review the EMTALA regulations;
- Provide advice and recommendations to the Secretary concerning these regulations and their application to hospitals and physicians;
- Solicit comments and recommendations from hospitals, physicians, and the public regarding implementation of these regulations; and
- Disseminate information concerning the application of these regulations to hospitals, physicians, and the public.

The EMTALA TAG, as chartered under the legal authority of section 945 of the MMA, is also governed by the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2) for the selection of members and the conduct of all meetings.

In the May 28, 2004 **Federal Register** (69 FR 30654), we specified the statutory requirements regarding the charter, general responsibilities, and structure of the EMTALA TAG. That notice also solicited nominations for members based on the statutory requirements for the EMTALA TAG. We received no nominations. In the August 27, 2004 **Federal Register** (69 FR 52699), we again solicited nominations for members in two categories (patient representatives and a State survey agency representative.) In the March 15, 2005 **Federal Register** (70 FR 12691), we announced the inaugural meeting of the EMTALA TAG and the membership selection.

II. Meeting Format, Agenda, and Suggested Presentation Topics

A. Meeting Format

The initial portion of the meeting (convening at 11 a.m. on June 15) will involve opening remarks and presentations by CMS staff, as requested by the TAG, followed by testimony from representatives of organizations invited to present information on specific topics. TAG members will have the opportunity to ask questions, prioritize the topics presented, and to conduct other necessary business. At the conclusion of each day's meeting, to the extent that time is available and at the discretion of the Chairperson, the public will be permitted a reasonable time to comment on issues being considered by the TAG.

B. Tentative Meeting Agenda

The tentative agenda for the EMTALA TAG meetings is as follows:

Day 1

Convenes at 11 a.m.
Welcome, call to order, and opening remarks
- Administrative and housekeeping issues
- CMS staff presentations on EMTALA

Presentations by invited organizations concerning:
- On-call/transfer issues
- Nurse-midwife responsibilities under EMTALA
- Public comment

Adjourns at 5 p.m.

Day 2

Convenes at 9 a.m.
Presentations by invited organizations (cont'd)
- Subcommittee reports
- Discussion of current business
- Public comment

Adjourns at 5 p.m.

Day 3

Convenes at 9 a.m.
Discussion of current business (cont'd)
Adjourns at 12 noon

III. Registration Instructions

While there is no registration fee, individuals must register to attend. As specified in the **DATES** section of this notice, individuals who wish to attend the meeting must register by June 8, 2005. You may register by sending an e-mail to *EMTALATAG@cms.hhs.gov*, sending a fax to the attention of Ronda Allen at fax number (410) 786–0681 or (410) 786–0169, or calling (410) 786–4548. All registration requests must include your name, name of the organization (if applicable), address, telephone and fax numbers, e-mail address (if available). You will receive a registration confirmation with instructions for your arrival at the Hubert H. Humphrey Building. If seating capacity has been reached, you will be notified that the meeting has reached capacity. All registrants are asked to arrive at the Humphrey Building no later than 20 minutes before the scheduled starting time of each meeting session they wish to attend.

IV. Security Information

Since this meeting will be held in a Federal government building, Federal security measures are applicable. As noted above, in planning your arrival time, we recommend allowing additional time to clear security. In order to gain access to the building, participants must bring a government-issued photo identification (for instance, a driver's license or passport) and a copy of your confirmation of registration for the meeting. Access may be denied to persons without proper identification.

All persons entering the building must pass through a metal detector. In addition, all items brought to the building, whether personal, or for the purpose of demonstration, or to support a presentation are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a presentation.

Authority: Section 945 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 10, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–9852 Filed 5–17–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Survey of State Practices and Policies Regarding Participation of Children in Foster Care in Clinical Drug Trials.

OMB No.: New Request.

Description: The Administration for Children and Families is requesting State child welfare agencies to voluntarily complete a survey to ascertain States' policies and practices related to children in foster care participating in clinical drug trials. This information collection is in response to a Congressional inquiry.

Respondents: State child welfare agencies.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hour per response	Total burden hours
Survey	52	1	2	104

Estimated Total Annual Burden Hours: 104 hours.

Additional Information: ACF is requesting that OMB grant a 90-day approval for this information collection under procedures for emergency processing by May 18, 2005. A copy of this information collection, with applicable supporting documentation, may be obtained by calling Greta Johnson at the Administration for Children and Families at (202) 401–9384. In addition, a request may be made by sending an e-mail request to: *grjohnson@acf.hhs.gov.*

Comments and questions about the information collection described above should be directed to the following address by May 18, 2005: Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project, Desk Officer for ACF, Attention E-mail: *Katherine_T._Astrich@omb.eop.gov.*

Dated: May 12, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–9911 Filed 5–17–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families Office of Community Services; Grant to the Rural Community Assistance Program

AGENCY: Office of Community Services, Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Award announcement.

CFDA #: The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.570. The title is Rural

Community Development Activities Program (RF Program).

Amount of Award: $500,000.

SUMMARY: Notice is hereby given that a noncompetitive grant award is being made to the Rural Community Assistance Program, Inc. to provide training and technical assistance to small communities struggling to deal with the safety and security of small and very small community water and wastewater treatment systems. This award addresses Congressional concern that many small and very small community water and wastewater treatment systems might be most vulnerable to terrorist attack, yet the least prepared to deal with the issues.

The application is not within the scope of any existing or expected to be issued program announcement for the Fiscal Year 2005—Rural Community Development Activities Program (RF) as authorized under the Community Services Block Grant Act of 1998, as amended; Sections 680(a)(3)(B) of the Community Opportunities Accountability, and Training and Educational Services (COATES) Act (Pub. L. 105–285). This application is expected to provide valuable on-site training and technical assistance to small and very small communities struggling to deal with the safety and security of small community water and wastewater treatment systems. This announcement is inviting application for a 12-month budget period and a 12 month project period.

The funds are not being competed due to the Senate appropriation language in FY 2005 that directs the Office of Community Services to support a Rural Community Assistance Program Small Community Infrastructure Safety and Training and Technical project. Congress intends the funds to go to an organization that is capable of conducting a project that is national in scope that provides State, regional and national infrastructure safety training workshops and on-site technical assistance targeted to small and very small community water and wastewater treatment systems.

Contact for Further Information: Administration for Children and Families, Office of Community Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Veronica Terrell—(202) 401–5295, *vterrell@acf.hhs.gov.*

Dated: May 5, 2005.

Josephine B. Robinson,

Director, Office of Community Services.

[FR Doc. 05–9912 Filed 5–17–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0564]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Temporary Marketing Permit Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of April 8, 2005 (70 FR 18029). The document announced a submission for the Office of Management and Budget review and request for comments on temporary marketing permit applications. The document was published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 05–7021, appearing on page 18029 in the **Federal Register** of Friday, April 8, 2005, the following correction is made:

1. On page 18029, in the first column, in the heading of the document, ''[Docket No. 2005N–0564]'' is corrected to read ''[Docket No. 2004N–0564]''.

Dated: May 11, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–9808 Filed 5–17–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0498]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Medical Devices; Medical Device Tracking

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Medical Devices; Medical Device Tracking'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

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 the **Federal Register** of March 4, 2005 (70 FR 10648), 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 0910–0442. The approval expires on April 30, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: May 11, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–9809 Filed 5–17–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0525]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Reports of Corrections and Removals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Reports of Corrections and Removals'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

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 the **Federal Register** of March 4, 2005 (70 FR 10647), 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 0910–0359. The approval expires on April 30, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: May 11, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–9810 Filed 5–17–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0263] (formerly Docket No. 03D–0263)

Guidance for Industry on Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations.'' This guidance presents FDA's general policy for implementing the channels of trade provision in the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Food Quality Protection Act of 1996 (the FQPA), for food containing residues of pesticide chemicals, for which tolerances have been revoked, suspended, or modified pursuant to dietary risk considerations.

DATES: You may submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to Michael E. Kashtock, Office of Plant and Dairy Foods, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Include a self-addressed adhesive label to assist that office in processing your request. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2022, e-mail: *mkashtoc@cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 23, 2003 (68 FR 43535), FDA announced the availability of a draft guidance document entitled ''Guidance for Industry: Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency.'' This guidance presents FDA's general policy for implementing the channels of trade provision in the act, as amended by the FQPA. Interested persons were given until September 22, 2003, to comment on the draft guidance.

FDA received five written comments on the draft guidance document. The agency reviewed and evaluated these comments and has modified the guidance where appropriate. In particular, FDA has modified the guidance document, including its title, to make it clear that it applies solely to food commodities that contain residues of pesticide chemicals for which the applicable tolerance was revoked, suspended, or modified by the Environmental Protection Agency (EPA) pursuant to dietary risk considerations as addressed under section 408(l)(2) of the FQPA. A comment pointed out that this condition was implied in the draft guidance document, but that it should be explicit in the final guidance.

FDA is issuing this guidance as a level 1 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on its planned enforcement approach to the channels of trade provision of the act and how that provision relates to FDA-regulated products with residues of pesticide chemicals for which tolerances have been revoked, suspended, or modified by EPA pursuant to dietary risk considerations. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in this guidance was approved under OMB Control No. 0910–0562. The approval expires on May 31, 2008. 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.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this 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. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Interested persons also may access the guidance document at *http://www.cfsan.fda.gov/guidance.html.*

Dated: March 10, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–9811 Filed 5–17–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; 5 A Day Customized Survey

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of

Management and Budget (OMB) for review and approval.

Proposed Collection

Title: 5 A Day Customized Survey.

Type of Information Collection Request: NEW.

Need and Use of Information Collection: The purpose of the 5 A Day Customized Survey is to further the development of standardized measures of consumer knowledge, attitudes, and behaviors regarding the consumption of fruits and vegetables. Specifically, the Survey will allow for validation of the new ''cup'' portion sizes (consistent with the 2005 Dietary Guidelines) and identify the most efficacious short screener methods of fruit and vegetable intake. In addition, the 5 A Day Customized Survey will measure established predictors of the fruit and vegetable consumption at the national level and explore new predictors and constructs not previously examined for fruit and vegetable consumption. The sample will be drawn from a consumer opinion panel methodology using balancing techniques to mirror the U.S. general population on a set of key demographic variables. A separate sample of African Americans will be drawn from the panel. Prior to fielding the Customized Survey, a pilot study will be conducted with a 200 individuals to assess validity of the two fruit and vegetable screeners (which are embedded in the Customized Survey). In the pilot study, respondents will initially complete three 24-hour dietary recalls over the phone and receive the 5 A Day Customized Survey by mail as a follow-up.

Fruit and vegetable consumption as assessed by the average of the three 24-hour recalls will be compared with fruit and vegetable consumption as assessed separately by the two fruit and vegetable screener methods from the Customized Survey. In addition, the psychometric properties of the remaining items from the Customized Survey will be evaluated. Based on the pilot study findings, minor modifications may be made to the Customized Survey, and a final instrument will be submitted to OMB for review prior to the main implementation of the Customized Survey.

Frequency of response: One-time for the main implementation. For the pilot, subjects will complete three 24-hour dietary recalls over the phone and also complete a mailed copy of the 5 A Day Customized Survey.

Affected public: Individuals.

Type of Respondents: U.S. adults, Pilot Survey, 5 A Day Customized Survey. The annual reporting burden is presented in exhibit 1 below. There are no Operating or Maintenance Costs to report.

EXHIBIT 1

	Estimates of respondent hour burden			
	Number of respondents	Frequency of response	Average burden hours per response	Annual hour burden
Pilot Study	200	4	0.50	400
5 A Day Customized Survey main implementation	4,000	1	0.50	2,000
Total	4,200			2,400

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 proposed performance of the functions of the agency, including whether the information shall have practical utility; (2) The accuracy of the estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information Contact: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Amy Lazarus Yaroch, Ph.D, Project Officer, National Cancer Institute, NIH, EPN 4074, 6130 Executive Boulevard MSC 7335, Bethesda, Maryland 20892–7335, or call non-toll-free number 301–402–8425, or FAX your request to 301–480–2087, or E-mail your request, including your address, to *yarocha@mail.nih.gov.*

Comments due date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: May 10, 2005.

Rachelle Ragland-Greene,

National Institutes of Health, NCI Project Clearance Liaison.

[FR Doc. 05–9853 Filed 5–17–05; 8:45 am]

BILLING CODE 4101–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 Cancer Institute Initial Review Group. Subcommittee I—Career Development.

Date: June 14–15, 2005.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Robert Bird, PhD, Scientific Review Administrator, Resources and Training Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., MSC 8328, Room 8113, Bethesda, MD 20892–8328. (301) 496–7978, *birdr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction;

93.393, Cancer Cause and Prevention Research. 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9858 Filed 5–17–05; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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, Bioengineering Approaches for Overweight and Obesity.

Date: June 17, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Rouge, 1315 16th Street, NW., Washington, DC 20036.

Contact Person: Charles Joyce, PhD, Review Branch, NHLBI, National Institutes of Health, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301/435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93,839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 11, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9860 Filed 5–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Genetic Factors in Birth Defects.

Date: June 7, 2005.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852. (Telephone conference call.)

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892. (301) 435–6902. *khanh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 10, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9854 Filed 5–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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: Allergy, Immunology, and Transplantation Research Committee, Allergy, Immunology and Transplantation Research Review Committee.

Date: June 14, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Quirijn Vos, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. (301) 451–2666. *qvos@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 10, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9855 Filed 5–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: June 9, 2005.

Open: 8 a.m. to 2 p.m.

Agenda: (1) A report by the Director, NICHD; (2) a presentation by the Mental Retardation and Developmental Disabilities Branch Presentation; (3) annual review of the Statement of Understanding; (4) a presentation of the Subcommittee on Planning and Policy; and other business of the Council.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 2 p.m. to 5:15 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Yvonne T. Maddox, PhD., Deputy Director, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike MSC 7510, Building 31, Room 2A03, Bethesda, MD 20892. (301) 496–1848.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/nachhd.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 10, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9856 Filed 5–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Pediatrics Subcommittee.

Date: June 8–9, 2005.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 496–1487. *anandr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 10, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9857 Filed 5–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Child Health and Human Development Council, NACHHD Subcommittee on Planning and Policy.

Date: May 31, 2005.

Time: 3 p.m. to 4:30 p.m.

Agenda: Topics to be discussed include: (1) Budget Updates; (2) Congressional Updates; (3) Agenda for Next Meeting.

Place: National Institutes of Health, Building 31, 31 Center Drive, Room 2A48, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Yvonne T. Maddox, PhD, Deputy Director, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike MSC 7510, Building 31, Room 2A03, Bethesda, MD 20892. (301) 496–1848.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/nachhd.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy

[FR Doc. 05–9859 Filed 5–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel to review Small Research Grants (R03s).

Date: May 17, 2005.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817 (Telephone conference call).

Contact Person: Erich H. Brown, MS, PhD., Scientific Review Administrator, National Institute of Arthritis, Musculoskeletal & Skin Diseases, National Institutes of Health, 6701 Democracy Blvd, Room 824, MSC 4872, Bethesda, MD 20892–4872, (301) 435–0815, *browneri@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. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 11, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9862 Filed 5–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Pilot & Feasibility for Osteoporosis.

Date: June 6, 2005.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Hotel, Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Yan Z. Wang, MD, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd, Suite 820, Bethesda, MD 20892, (301) 594–4957.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 11, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9865 Filed 5–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders C.

Date: June 14–15, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Andrea Sawczuk, DDS, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda, MD 20892, 301–496–0660, *sawczuka@ninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders A.

Date: June 23–24, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant application.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Richard D. Crosland, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: Training Grant and Career Development Review Committee.

Date: June 23–24, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Ave., NW., Washington, DC 20036.

Contact Person: Raul A. Saavedra, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC; 6001 Executive Blvd., Ste. 3208, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders B.

Date: June 23–24, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: W. Ernest Lyons, PhD., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders K, Neurological Diseases.

Date: June 23–24, 2005.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Katherine M. Woodbury, PhD., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 11, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9866 Filed 5–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Muscle.

Date: June 3, 2005.

Time: 8:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bolger Center, 9600 New Bridge Drive, Potomac, MD 20854.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–594–6376, *ansaria@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Tumor Microenvironment Study Section.

Date: June 6–7, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Eun AhCho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–4467, *choe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Biomaterials, Devices, and Hemodynamics.

Date: June 7, 2005.

Time: 9:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhindsad@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hyperaccelerated Award/Mechanisms in Immunomodulation Trials.

Date: June 7, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering.

Date: June 14, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854 (Telephone Conference Call).

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–594–6376, *ansaria@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genetics of Health and Disease Study Section.

Date: June 15–16, 2005.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Musculoskeletal Rehabilitation Sciences Study Section.

Date: June 15–17, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786, *pelhamj@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genetic Variation and Evolution Study Section.

Date: June 16–17, 2005.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892, 301/435–1038, *remondid@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Host Interactions with Bacterial Pathogens Study Section.

Date: June 20–21, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3212, MSC 7808, Bethesda, MD 20892, (301) 435–1147, *henryt@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Prokaryotic Cell and Molecular Biology Study Section.

Date: June 21–22, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Diane L. Stassi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–435–2514, *stassid@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Human Brain Project/NeuroInformatics.

Date: June 22, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Robert C. Elliott, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Synthetic and Biological Chemistry A Study Section.

Date: June 22–23, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Robert Lees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7806, Bethesda, MD 20892, (301) 435–2684, *leesro@csr.nih.gov*.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Myocardial Ischemia and Metabolism Study Section.

Date: June 23–24, 2005.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, 301–435–4522, *gibsonj@csr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Developmental Brain Disorders Study Section.

Date: June 23–24, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Sherry L. Stuesse, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1785, *stuesses@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function B Study Section.

Date: June 23–24, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Nancy Lamontagne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *lamontan@csr.nih.gov*.

Name of Committee: Health of the Population Integrated Review Group, Behavioral Genetics and Epidemiology Study Section.

Date: June 23–24, 2005.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Avenue, Washington, DC 20037.

Contact Person: Yvette M. Davis, VMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906, *davisy@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative Nutrition and Metabolic Processes Study Section.

Date: June 23–24, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Sooja K. Kim, PhD, RD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, (301) 435–1780, *kims@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Diagnostic and Treatment.

Date: June 23–24, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Hungyi Shau, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–1720, *shauhung@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mitochondria and Neurodegeneration.

Date: June 23–24, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Toby Behar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435–4433, *behart@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Site Specific Approaches to Prevention or Management of Pediatric Obesity.

Date: June 23–24, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Gaithersburg Washingtonian, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Steven H. Krosnick, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028A, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *krosnics@csr.nih.gov*.

Name of Committee: Biology of Development and Aging Integrated Review Group, Aging Systems and Geriatrics Study Section.

Date: June 23, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021, *duperes@csr.nih.gov*.

Name of Committee: Hematology Integrated Review Group, Erythrocyte and Leukocyte Biology Study Section.

Date: June 23, 2005.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Delia Tang, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–2506, *tangd@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group, Hypersensitivity, Autoimmune, and Immune-mediated Diseases.

Date: June 23–24, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Bahiru Gametchu, DVM, MS, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1225, *gametchb@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Molecular Genetics A Study Section.

Date: June 23–24, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Michael M. Sveda, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, 301–435–3565, *svedam@csr.nih.gov*.

Name of Committee: Oncological Sciences Integrated Review Group, Drug Discovery and Molecular Pharmacology Study Section.

Date: June 23–24, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Morris I. Kelsey, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–1718, *kelseym@csr.nih.gov*.

Name of Committee: Health of the Population Integrated Review Group, Health Services Organization and Delivery Study Section.

Date: June 23–24, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel, 5701 Marinelli Road, North Bethesda, MD 20852.
Contact Person: Kathy Salaita, SCD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1014–2, MSC 7770, Bethesda, MD 20892, 301–451–8504, *salaitak@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.
Date: June 23–24, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20015.
Contact Person: Julius Cinque, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, 301–435–1252, *cinquej@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Clinical Neuroplasticity and Neurotransmitters Study Section.
Date: June 23–24, 2005.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *benzingw@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Cellular and Molecular Immunology—A.
Date: June 23–24, 2005.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Westin Embassy Row, 2100 Massachusetts Avenue, NW., Washington, DC 20008.
Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, 301–435–1152, *edwardss@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Social Sciences and Population Studies Study Section.
Date: June 23–24, 2005.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Bob Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694, *wellerr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BCMB–A Roadmap Initiative for Membrane Proteins.
Date: June 23, 2005.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: John L. Bowers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1725, *bowersj@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Behavioral Medicine, Interventions and Outcomes Study Section.
Date: June 23–24, 2005.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Lee S. Mann, MA, JD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677, *manni@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function C Study Section.
Date: June 23–24, 2005.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7824, Bethesda, MD 20892, (301) 435–1153, *revzina@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Cognition and Perception Study Section.
Date: June 23–24, 2005.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261, *wiggsc@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurobiology of Learning and Memory Study Section.
Date: June 23–24, 2005.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuroepidemiology, Aging and Musculoskeletal Epidemiology.
Date: June 23–24, 2005.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814
Contact Person: Mary Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7770, Bethesda, MD 20892, (301) 451–8011, *guadagma@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Enabling Bioanalytical and Biophysical Technologies Study Section.
Date: June 23–24, 2005.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.
Contact Person: Noni Byrnes, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7806, Bethesda, MD 20892, (301) 435–1217, *byrnesn@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Epidemiology of Cancer Study Section.
Date: June 23–24, 2005.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Denise Wiesch, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684, *wieschd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Behavioral Medicine, Interventions and Outcomes Linked Studies.
Date: June 23, 2005.
Time: 12 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Lee S. Mann, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 11, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9861 Filed 5–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institues of Health

Center for Scientific Review; Amended Notice of Meeting

Notice if hereby given of a change in the meeting of the Gastrointestinal Cell and Molecular Biology Study Section, June 6, 2005, 8 a.m. to June 7, 2005, 5 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814, which was published in the **Federal Register** on May 3, 2005, 70 FR 22895–22897.

The meeting will be held June 5, 2005, 6 p.m. to June 6, 2005 5 p.m. The location remains the same. The meeting is closed to the public.

Dated: May 11, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9863 Filed 5–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Clinical and Integrative Gastrointestinal Pathobiology Study Section, June 6, 2005, 8:30 a.m. to June 7, 2005, 5 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on May 6, 2005, 70 FR 24099–24102.

The meeting will be held June 5, 2005, 6 p.m. to June 6, 2005, 5 p.m. The location remains the same. The meeting is closed to the public.

Dated: May 11, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9864 Filed 5–17–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD05–05–039]

Virginia Area Maritime Security Committee

AGENCY: Coast Guard, DHS.

ACTION: Solicitation for membership.

SUMMARY: This notice requests individuals interested in serving on the Virginia Area Maritime Security (VA AMS) Committee to submit their applications for membership to the Captain of the Port (COTP) Hampton Roads.

DATES: Requests for membership should reach the U.S. Coast Guard COTP Hampton Roads by June 17, 2005.

ADDRESSES: Applications for membership should be submitted to the Captain of the Port at the following address: United States Coast Guard, Marine Safety Office Hampton Roads, Norfolk Federal Building, 200 Granby Street, Suite 700, Norfolk, Virginia 23510–1888.

FOR FURTHER INFORMATION CONTACT: For questions about submitting an application or about the VA AMS Committee in general, contact the VA AMS Committee Executive Secretary, Mr. Roger Tomlinson at (757) 668–5590.

SUPPLEMENTARY INFORMATION:

Authority

Section 102 of the Maritime Transportation Security Act (MTSA) of 2002 (Pub. L. 107–295) added section 70112 to title 46 of the U.S. Code, and authorized the Secretary of the Department in which the Coast Guard is operating to establish Area Maritime Security Advisory Committees for any port area of the United States. (*See* 33 U.S.C. 1226; 46 U.S.C. 70112(a)(2); 33 CFR 1.05–1, 6.01; Department of Homeland Security Delegation No. 0170.1). The MTSA includes a provision exempting these AMS Committees from the Federal Advisory Committee Act (FACA), Public Law 92–436, 86 Stat. 470 (5 U.S.C. App. 2).

The VA AMS Committee will assist the Captain of the Port in the development, review, and update of the AMS Plan for their area of responsibility. Such matters may include, but are not limited to: Identifying critical port infrastructure and operations; identifying risks (threats, vulnerabilities, and consequences); determining mitigation strategies and implementation methods; developing and describing the process to continually evaluate overall port security by considering consequences and vulnerabilities, how they may change over time, and what additional mitigation strategies can be applied; and providing advice to, and assisting the Captain of the Port in developing the Area Maritime Security Plan.

AMS Committee Membership

At least seven members of the VA AMS Committee need to have at least 5 years experience related to maritime or port security operations. The Virginia AMS Committee is made up of an Executive Committee which currently has 17 members selected by the Federal Maritime Security Coordinator and also four chartered subcommittees with various members. The four subcommittees are Law Enforcement, Assessment, Response Organization and Port Readiness.

The Law Enforcement Subcommittee deals with law enforcement, jurisdictional training and operational issues. The Assessment Subcommittee assists the FMSC by conducting assessments or overseeing assessments contracted by the Federal government. The Response Organization Subcommittee evaluates local, State and Federal response plans for areas of overlap, jurisdictional issues and/or inconsistencies. The Port Readiness Subcommittee deals with issues relative to military out load activities in the port. Other subcommittees and working groups are established on an as needed basis. Future subcommittees may include a Recreational Boating Safety/Security Subcommittee.

This advisory solicits members from the maritime community that would like to serve on one of the four designated subcommittees. We are seeking to add additional members to the subcommittees with this solicitation. Applicants may be required to pass a background check prior to appointment to a committee. Members' terms of office will be for 5 years; however, a member may be eligible to serve an additional term of office. Members will not receive any salary or other compensation for their service on an AMS Committee. In support of the policy of the U.S. Coast Guard on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Request for Applications

Those seeking membership are not required to submit formal applications to the local COTP. However, because we do have an obligation to ensure that a specific number of members have the prerequisite maritime security

experience, we encourage the submission of resumes highlighting experience in the maritime and security industries.

Dated: May 3, 2005.

Robert R. O'Brien Jr.,

U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 05–9829 Filed 5–17–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Reports, Forms, and Recordkeeping Requirements: Agency Information Collection Activity Under OMB Review; TSA Customer Comment Card

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: This notice announces that TSA has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and clearance of an extension of a currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on March 8, 2005, 70 FR 11255.

DATES: Send your comments by June 17, 2005. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1995; facsimile (571) 227–2594.

SUPPLEMENTARY INFORMATION:

Transportation Security Administration (TSA)

Title: Customer Comment Card.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0030.

Forms(s): TSA Customer Comment Card.

Affected Public: Airport passengers.

Abstract: This information collection established a voluntary program for airport passengers to provide feedback to TSA regarding their experiences with TSA security procedures. The collection allows TSA to determine and respond to customer concerns about security procedures and policies. TSA intends to continue to make available to airports a Customer Comment Card, which will collect feedback and, if the passenger desires, contact information so that TSA staff can respond to the passenger's comment. For passengers who deposit their cards in the designated drop-boxes, TSA airport staff will collect the cards, categorize comments, enter the results into an online system for reporting, and respond to passengers as necessary. Passengers also have the option to mail the cards directly to TSA. TSA also will continue to provide the TSA Contact Center for passengers to make comments independently of airport involvement. The TSA is requesting an extension so that it can continue to immediately collect and respond in a timely manner to comprehensive feedback, which serves as critical input when the TSA must modify its screening procedures.

Number of Respondents: 1,783,800.

Estimated Annual Burden Hours: An estimated 150,880 hours.

TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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 agency's estimate of the burden;

(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 technological collection techniques or other forms of information technology.

Issued in Arlington, Virginia, on May 12, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 05–9895 Filed 5–17–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4950–C–1B]

Notice of HUD's Fiscal Year (FY) 2005 Notice of Funding Availability, Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD Discretionary Grant Programs; correction.

SUMMARY: On March 21, 2005, HUD published its Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA), Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs. This document makes corrections to the Indian Community Development Block Grant Program (ICDBG), the Hispanic-Serving Institutions Assisting Communities (HSIAC) Program, the Community Outreach Partnership Centers (COPC) Program, the Housing Counseling Program, the Lead-Based Paint Hazard Control Grant Program, the Healthy Homes Technical Studies Program, the Lead Technical Studies Program, the Lead Outreach Grant Program, the Lead Hazard Reduction Demonstration Grant Program, the Healthy Homes Demonstration Grant Program, the Operation Lead Elimination Action Program, the Youthbuild Program, the Public Housing Neighborhood Networks Program, the Public Housing Resident Opportunity and Self-Sufficiency (ROSS) Program, the Public Housing Family Self Sufficiency Program, the Assisted Living Conversion Program, and the Continuum of Care Program. This notice also extends the application submission dates for the ICDBG Program, the Housing Counseling Program, the Public Housing Neighborhood Networks Program, and the Public Housing Family Self-Sufficiency Program. These changes affect the NOFAS listed, but do not affect the application packages on Grants.gov

DATES: The application submission dates for the following program sections of the SuperNOFA have been extended as follows:

Indian Community Development Block Grant Program: June 20, 2005.

Housing Counseling Program: June 27, 2005.

Public Housing Neighborhood Networks Program: June 11, 2005.

Public Housing Family Self-Sufficiency Program: June 28, 2005.

With the exception of the Section 811 Supportive Housing for Persons with Disabilities Program NOFA for which HUD published a technical correction and deadline extension (May 10, 2005, 70 FR 24609), the application submission dates for all other program sections of the SuperNOFA remain as published in the **Federal Register** on March 21, 2005.

FOR FURTHER INFORMATION CONTACT: For the programs listed in this notice, please contact the office or individual listed under Section VII of the individual program sections of the SuperNOFA, published on March 21, 2005.

SUPPLEMENTARY INFORMATION: On March 21, 2005 (70 FR 13575), HUD published its Notice of HUD's Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA), Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs. The FY2005 SuperNOFA announced the availability of approximately $2.26 billion in HUD assistance. This notice published in today's **Federal Register** makes technical corrections to the Indian Community Development Block Grant Program (ICDBG), the Hispanic-Serving Institutions Assisting Communities (HSIAC) Program, the Community Outreach Partnership Centers (COPC) Program, the Housing Counseling Program, the Lead-Based Paint Hazard Control Grant Program, the Healthy Homes Technical Studies Program, the Lead Technical Studies Program, the Lead Outreach Grant Program, the Lead Hazard Reduction Demonstration Grant Program, the Healthy Homes Demonstration Grant Program, the Operation Lead Elimination Action Program, the Youthbuild Program, the Public Housing Neighborhood Networks Program, the Public Housing Resident Opportunity and Self-Sufficiency (ROSS) Program, the Public Housing Family Self Sufficiency Program, the Assisted Living Conversion Program, and the Continuum of Care Program.

Summary of Technical Corrections

Summaries of the technical corrections made by this document follow. The page number shown in brackets identifies where the individual funding availability announcement that is being corrected can be found in the March 21, 2005, SuperNOFA. The technical correction described in today's **Federal Register** will also be reflected in the application instructions located on Grants.gov/Apply. Applicants submitting their applications electronically are encouraged to read the instructions located on Grants.gov/Apply prior to submitting their application.

General Section [Page 13575]

On page 13593, HUD is publishing a revised Appendix A, entitled ''HUD 2005 SuperNOFA Funding Chart that contains revised and extended deadlines for ICDBG Program, the Housing Counseling Program, the Public Housing Neighborhood Networks Program, and the Public Housing Family Self-Sufficiency Program. The revised Funding Chart also reflects the extended deadline for the Section 811 Program as established by HUD's technical correction published on May 10, 2005, (70 FR 24609).

Indian Community Development Block Grant Program (ICDBG) [Page 13654]

On page 13655, Overview Information, section F., first column is revised to reflect an extension of the application submission date.

On page 13655, section I.C., third column, HUD mistakenly referenced FY2004 when establishing the grant ceiling for imminent threat requests. The $425,000 grant ceiling for imminent threat requests is for FY2005.

On page 13657, section II.C 3., first column, HUD incorrectly provided that grantees, by accepting a grant, must provide assurance that it will comply with 24 CFR part 95. In fact, grantees must provide assurance that they will comply with 24 CFR part 85.

On page 13666, section V.A. under Rating Factor 2, paragraph (b), third column, HUD incorrectly listed the dollar range needed to obtain 10 points for New Housing Construction, Housing Rehabilitation, Land Acquisition to support New Housing and Homeownership Assistance Projects. Consistent with Appendix A of the program NOFA, grantees will receive 10 points if the dollar amount for the Indian Tribe for this factor is $676–$1,200.

On page 13667, section V.A. under Rating Factor 3, paragraph (1), first column, HUD incorrectly noted that applicants must include anticipated cost savings due to innovative program design ''or'' construction methods. In fact, applicants must include anticipated cost savings due to innovative program design or construction methods or both.

On page 13670, section V.A. under Rating Factor 5, paragraph (1), first column, HUD inadvertently failed to indicate that up to two points are available for this selection factor. In addition, on page 13670, section V.A. under Rating Factor 5, paragraph (2), first column, HUD inadvertently failed to indicate that up to three points are available for this selection factor.

On page 13670, section V.B.2., middle column, paragraph entitled ''Threshold Compliance,'' HUD's cross-reference contained a typographic error. The cross-reference should direct readers to section III.C.3 and 4 of the ICDBG program NOFA.

These corrections are also reflected in the instructions found on Grants.gov/Apply. HUD encourages applicants to read the instructions on Grants.gov/Apply prior to submitting your application in response to the ICDBG Program funding opportunity.

Hispanic-Serving Institutions Assisting Communities (HSIAC) Program [Page 13711]

On page 13712, section G.3., middle column, and on page 13712, in section III.A., third column, HUD inadvertently misdirected readers to the General Section for a definition of ''Colonias.'' Readers should be directed to Attachment C of the HSIAC program NOFA for the definition of ''Colonias.''

On page 13718, section V.B.3., third column, HUD intends to add a sentence that provides that it will fund the two highest rated application that serve Colonias areas that score above 75 points.

These corrections are also reflected in the instructions found on Grants.gov/Apply. HUD encourages applicants to read the instructions on Grants.gov/Apply prior to submitting your application in response to the HSIAC Program funding opportunity.

Community Outreach Partnership Centers (COPC) [Page 13743]

On page 13744, section G.3., second column, page 13745, section III.A, first column, and on page 13753, section V.B.3., first column, HUD inadvertently misdirected readers to the General Section for a definition of ''Colonias.'' Readers should be directed to Attachment C of the COPC for the definition of ''Colonias.''

This correction is also reflected in the instructions found on Grants.gov/Apply. HUD encourages applicants to read the instructions on Grants.gov/Apply prior to submitting your application in response to the COPC Program funding opportunity.

Housing Counseling Programs [Page 13806]

On page 13807, Overview Information, section F., first column, the application submission date is extended to June 13, 2005.

On pages 13807 to 13808, sections II.A, II.B.1. and 2., and II.C.1 and 2.,

HUD had originally earmarked $2.75 million for housing counseling training and had planned to make this assistance available through a separate NOFA. HUD has now decided not to issue a housing counseling training NOFA and to allocate the $2.75 million to this Housing Counseling Program NOFA. As a result, the total amount of assistance now available through this NOFA is increased from $38.914 million to $41.664 million. HUD has decided to increase the amount of assistance for comprehensive counseling for intermediaries by $1.0 million, increase HECM counseling by $1.0 million and increase comprehensive counseling for Local Housing Counseling Agencies by $750,000. In addition, this notice corrects an error in the chart following section II.B.1., that listed comprehensive counseling funds for the Denver HOC as $345,317 instead of $3,345,317. With the distribution of the $2.75 million now allocated to this NOFA, the new comprehensive total for Denver is $3,539,511. This change also affects amounts available for individuals awards under the LHCA and the HUD-approved intermediaries initiatives.

On page 13811, section III.C.3.b., first column, HUD inadvertently omitted the word ''comprehensive'' from the text. The word ''comprehensive'' is significant because grant awards are calculated based on a score for comprehensive funds. All applicants that achieve a fundable score are awarded a base amount for comprehensive counseling.

On page 13812, section III.C.4.b., subsections (4) and (5), second column, HUD is republishing these paragraphs to clarify eligibility requirement.

On page 13812, section III.C.4.c.(1)(a), third column, HUD incorrectly cited section 501(c)(3) of the Internal Revenue Code in defining nonprofit status. The correct cite should be section 501(c) of the Internal Revenue Code.

On page 13814, section IV.B.2., first and second columns, HUD is clarifying the period of performance that should be reflected on the required form HUD–9902. HUD also inadvertently included, as part of the application checklist, ''Letters, Contracts and MOU's.'' HUD is removing this requirement consistent with Rating Factor 4.

On page 13818, section V.A.3.c.(1)(e), first column, HUD is republishing this subsection to clarify the information requested.

On page 13818, section V.A.3.c.(2)(b) and section V.A.3.c.(2)(c), third column, HUD is republishing these subsections to correct the cross-references.

On page 13819, section V.A.3.c.(3)(a), first column, HUD is republishing the first paragraph of this subsection to correct the cross-reference.

On page 13820, section V.A.3.c.(5)(b) and (c), first column, HUD is republishing the paragraphs (b) and (c) to correct the cross-references.

On page 13821, first column, section V.A.3.d, first column, HUD is clarifying the period of performance regarding the requested leveraged resources.

On page 13821, section V.A.3.d.(3), first and second columns, HUD is republishing the paragraph to indicate that HUD's interest regarding leveraged resources is limited to those resources corresponding to anticipated sub-grantees and not the entire network of affiliated counseling agencies.

On page 13821, section V.A.3.e.(1)(a), third column, HUD is revising the bulleted text in order to clarify the requirements.

On page 13822, section V.B., second column, HUD is publishing a description of funding methodology as well as an explanation of reallocation of unspent funds.

These corrections are also reflected in the instructions found on Grants.gov/Apply. HUD encourages applicants to read the instructions on Grants.gov/Apply prior to submitting your application in response to the Housing Counseling Program funding opportunity.

Lead-Based Paint Hazard Control Program [Page 13836]

On page 13838, section III.A.1.a., third column, HUD incorrectly defined ''general applicant,'' specifically as related to previously funded lead-based paint hazard control grantees. Consistent with the chart at page 13839, general applicants are new applicants, previously funded lead-based paint hazard control grantees whose period of performance ended prior to the NOFA submission date, and current grantees with grants ending on or before December 31, 2005 (including those who are not awarded under the Competitive Performance-Based Renewal category).

On page 13848, section V.A.3, third column, HUD incorrectly listed 30 available points for Rating Factor 3: Soundness of Approach, however consistent with information at sections V.A.3.a., V.A.3.b., and V.A.3.d. there are actually 40 available points for this rating factor.

These corrections are also reflected in the instructions found on Grants.gov/Apply. HUD encourages applicants to read the instructions on Grants.gov/Apply prior to submitting your application in response to the Lead-Based Paint Hazard Control Program funding opportunity.

Healthy Homes Technical Studies Program [Page 13860]

On page 13864, section IV.B.1.i, third column and continuing to page 13865, first column, under ''Required Forms and Budget Material,'' HUD is deleting the bullet reading, ''Form HUD 2994 Client Comments and Suggestions (Optional)'' and substituting the ''Form HUD–2993 Acknowledgement of Application Receipt, applicable to paper copy submissions only.''

This correction is also reflected in the instructions found on Grants.gov/Apply. HUD encourages applicants to read the instructions on Grants.gov/Apply prior to submitting your application in response to the Health Home Technical Studies Program funding opportunity.

Lead Technical Studies [Page 13871]

On page 13876, section IV.B.1.j., first column, under ''Required Forms and Budget Material,'' among the list of required forms and budget material, HUD is adding Form HUD–2993 Acknowledgement of Application Receipt, applicable to paper copy submissions only. This technical correction amends the instructions found on Grants.gov/Apply as Instructions to be downloaded along with the electronic application for the Lead Technical Studies Program funding opportunity made available on Grants.gov/Apply.

Lead Outreach Grant Program [Page 13881]

On page 13884, section IV.B.2.b.(7), third column, HUD is removing from the list of required documentation, the copy of the HUD-approved waiver from electronic submission requirement.

On pages 13891–13895, the forms were not intended for this program and were inadvertently included. The forms, HUD–96012, 96013, 96014, and 96015, and Work Plan Development Worksheet should be disregarded and were not included in the application package on Grants.gov.

These corrections are also reflected in the instructions found on Grants.gov/Apply. HUD encourages applicants to download and read the instructions on Grants.gov/Apply prior to submitting your application in response to the Lead Outreach Grant Program funding opportunity.

Lead Hazard Reduction Demonstration Program [Page 13896]

On page 13900, section V.B., third column, HUD is removing from the list of required forms, the copy of the HUD-

approved waiver from electronic submission requirement.

This correction is also reflected in the instructions found on Grants.gov/Apply. HUD encourages applicants to download and read the instructions on Grants.gov/Apply prior to submitting your application in response to the Lead Hazard Reduction Demonstration Program funding opportunity.

Healthy Homes Demonstration Program [Page 13919]

On page 13920, section G.1, first column, HUD is making a clarification related to the content of appendices.

On page 13923, section III.C.3.n., third column, HUD is correcting a typographical error in a cross-reference. The section reference in the last sentence is being revised to read, section V.A.2.c.

On page 13924, section IV.B.7., under ''Checklist for Healthy Homes Demonstration Program Applicants,'' beginning on the second column and continuing to the third column, HUD inadvertently listed forms HUD–96013 and HUD–96014, which are not part of this application. The forms, located on pages 13933 and 13934 should be disregarded. The electronic application package and instructions did not contain these forms.

On page 13924, section IV.B.7., under ''Checklist for Healthy Homes Demonstration Program Applicants,'' beginning on the second column and continuing to the third column, HUD is removing from the list of required documentation, the copy of HUD's approved waiver from electronic submission requirement.

On page 13924, section IV.B.7. under ''Checklist for Healthy Homes Demonstration Program Applicants,'' beginning on the second column and continuing to the third column under, ''Required materials in response to rating factors,'' although referenced on page 13928, HUD did not include Form HUD–27300 in the checklist. Therefore, the checklist is corrected to include Form HUD–27300 Questionnaire for HUD's Initiative on Removal of Regulatory Barriers and the application instructions are amended to include the form as a file for attachment to the electronic application either as an attached, scanned or faxed document.

On page 13926, section V.A.2.a.(4), middle column, the table referenced at Web site *http://www.HUD.gov/offices/adm/grants/fundsavail.cfm* is located at the end of the NOFA.

On page 13929, section V.A.2.d.(2), first column, a clarification is made that indicates that the Rating Factor 4 Table can be found at the end of the NOFA.

On page 13931, section VIII.B, third column, a change is necessary to clarify the contents of the appendix.

Operation Lead Elimination Action Program [Page 13936]

On page 13939, section IV.B.a.(2), third column, under ''Checklist and Submission Table of Contents Lead Elimination Action Program,'' HUD is removing from the list of required documentation, the copy of HUD's approved waiver from electronic submission requirement.

This technical correction amends the instructions found on Grants.gov/Apply as Instructions to be downloaded along with the electronic application for the Operation Lead Elimination Action Program funding opportunity made available on Grants.gov/Apply.

Youthbuild [Page 13977]

On page 13985, section V.E., middle column, two changes are made to correct typographical errors. First, in the sixth bulleted item, it is made clear that the numerator is the number of graduates who have entered employment or enrolled in post secondary education. Second, in the seventh bulleted item, it is made clear that it is the number and percentage of participants, not graduates, who made literacy and numeracy gains.

This correction is also reflected in the instructions found on Grants.gov/Apply. HUD encourages applicants to download and read the instructions on Grants.gov/Apply prior to submitting your application in response to the Youthbuild Program funding opportunity.

Public Housing Neighborhood Networks [Page 14023]

On page 14024, Overview Information, section F., first column, the application submission deadline is extended to July 11, 2005.

On page 14027, section III.C.1, first column, a new paragraph ''g,'' and on page 14028, section IV.B.4.(2), middle column a new paragraph ''4'' is added to clarify and make consistent the requirements for site control for off-site property.

On page 14028, section IV.B.4.(2), tab 2, middle column, HUD is adding a new paragraph ''4'' that addresses documentation of site control.

On page 14028, section IV.E.2.c, third column, additional explanation is added concerning salaries of staff that provide direct services to residents. Direct services staff are defined as housing authority personnel who, as their primary responsibility, provide services directly to residents that participate in the activities described in this application.

On page 14028, section IV.E.4.f., third column, to avoid confusion, the paragraph is revised stating that salaries and fringe benefits for staff that are not direct services staff are among the list of ineligible activities/costs.

These corrections are also reflected in the instructions found on Grants.gov/Apply. HUD encourages applicants to download and read the instructions on Grants.gov/Apply prior to submitting your application in response to the Public Housing Neighborhood Networks Program funding opportunity.

Public Housing Resident Opportunities and Self-Sufficiency (ROSS) Program [Page 14054]

On page 14063, section III.C.2.i., first column, a modification is made to indicate that Tribal/TDHE applicants must provide a letter that certifies compliance with the requirement that such applicants to the HSS program have a Low-Income Homeownership Program outlined in their current Indian Housing Plan.

On page 14065, section IV.E.6.h., third column, HUD is removing a provision that was unintentionally included in the NOFA. This correction will delete the paragraph (h) that incorrectly lists ''Elderly/Disabled Service Coordinator salary and fringe benefits.''

These corrections are also reflected in the instructions found on Grants.gov/Apply. HUD encourages applicants to download and read the instructions on Grants.gov/Apply prior to submitting your application in response to the ROSS Program funding opportunity.

Public Housing Family Self-Sufficiency Program [Page 14087]

On page 14087, section F. under ''Overview Information,'' the due date of June 20, 2005 is extended to June 28, 2005.

On page 14088, section A.3. under ''Overview Information'', second column, the ''Award Amounts'' paragraph is revised to better explain the salary and fringe benefit provisions. A corresponding change is made in the table in the third column.

On page 14089, section III.C., second column, add a new paragraph III.C.1 that explains that FSS grant funds may only be used to pay for the annual salary and fringe benefits of a FSS Program Coordinator. Subsequent paragraphs will be renumbered accordingly.

On page 14090, section III.C.2.g., second column, HUD is revising this section in order to make clarifications concerning renewal of FSS program

coordinator salary as well as staffing expansion.

On pages 14107 and 14108, HUD Form 52767, HUD is correcting typographical errors. First, in 5.d and 10.a the amount $63,000 should read ''$65,000.'' In addition, there are three references in number 9 that will be changed from ''03'' to ''04.''

These corrections are also reflected in the instructions found on Grants.gov/Apply. HUD encourages applicants to download and read the instructions on Grants.gov/Apply prior to submitting your application in response to the Public Housing Family Self-Sufficiency Program funding opportunity.

Assisted Living Conversion Program [Page 14148]

On page 14149, section I, middle column, last full paragraph, HUD is revising the amount of funds set-aside for the emergency capital repairs.

On page 14150, section III.A.1, first column, HUD is adding owners of assisted living facilities to the list of ineligible applicants.

On page 14157, section IV.F., middle column, HUD is adding a new paragraph, IV.F.5. that explains application submission procedures for applicants that are granted a waiver from the electronic submission requirement. If an applicant is granted a waiver, the applicant must submit an original and four copies of the application to the director of the appropriate Multifamily Hub Office.

On page 14160, section VII.A, third column, HUD is adding additional instructions for applicants in how they may contact HUD Multifamily Hubs.

These corrections are also reflected in the instructions found on Grants.gov/Apply. HUD encourages applicants to download and read the instructions on Grants.gov/Apply prior to submitting your application in response to the ALCP Program funding opportunity.

Continuum of Care Homeless Assistance Programs [Page 14272]

On page 14279, section III.C.3.e.(2)(b), middle column, HUD is adding additional explanation about calculating administrative allocation.

On page 14288, section 2, on page 14289, sections 3, 4, and 5, and on page 14290, section 6, Form HUD–2992 ''Certification Regarding Debarment and Suspension'' was inadvertently included with the list of forms. HUD is eliminating this form from the lists of required forms.

On page 14294, Exhibit 1: Continuum of Care Narrative and Form HUD–40076 CoCB instruction, section e., HUD is amending the section to indicate that in order to obtain a higher competitive score for ''participation,'' planning participants must attend more than 80 percent of the planning or committee meetings or both. HUD is also amending the related reference for this section in regard to the 30 page limit.

On page 14342, Exhibit 2R: SHP Project Information—Continued, HUD is revising the instructions to state that renewal applicants for a dedicated HMIS project should answer items 1, 3, 4C and D.

These corrections are also reflected in the instructions found on Grants.gov/Apply. HUD encourages applicants to download and read the instructions on Grants.gov/Apply prior to submitting your application in response to the Continuum of Care Program funding opportunity.

Accordingly, in the Notice of HUD's Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA), Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs, beginning at 70 FR 113575, in the issue of March 21, 2005, the following corrections are made.

1. General Section, beginning at page 13576:

On page 13593, HUD is republishing a corrected Appendix A entitled, HUD 2005 SuperNOFA Funding Chart.

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Appendix A
HUD 2005 SuperNOFA Funding Chart

Program Name	Funding Available (Approximate)	Application Submission Date. (All applications must be submitted and received by Grants.gov no later than 11:59:59 P.M. Eastern Time on the application submission date. See submission details in the General Section)
Community Development $351.84 million		
Community Development Technical Assistance (CD-TA) Programs:	**$30.12 million**	
HOME TA CFDA No.: 14.239 OMB Approval No.: 2506-0166	$ 7.22 million	Wednesday, June 1, 2005
CHDO (HOME) TA CFDA No.: 14.239 OMB Approval No.: 2506-0166	$ 7.44 million	Wednesday, June 1, 2005
McKinney-Vento Homeless Assistance Programs TA CFDA No.: 14.235 OMB Approval No.: 2506-0166	$ 9 million	Wednesday, June 1, 2005
HOPWA TA CFDA No.: 14.241 OMB Approval No.: 2506-0133	$ 2 million	Wednesday, June 1, 2005
CDBG TA State Grants CFDA No.: 14.228 OMB Approval No.: 2506-0166 Entitlement Grants CFDA No.: 14.218 OMB Approval No.: 2506-0077 Small Cities CFDA No.: 14.219 OMB Approval No.: 2506-0020 Insular Areas CFDA No.: 14.225 OMB Approval No.: 2506-0077 Section 108 CFDA No.: 14.248 OMB Approval No.: 2506-0161	$ 1.39 million	Wednesday, June 1, 2005
Youthbuild TA CFDA No.: 14.243 OMB Approval No.: 2506-0142	$ 3.07 million	Wednesday, June 1, 2005

Appendix A
HUD 2005 SuperNOFA Funding Chart

Program Name	Funding Available (Approximate)	Application Submission Date. (All applications must be submitted and received by Grants.gov no later than 11:59:59 P.M. Eastern Time on the application submission date. See submission details in the General Section)
Indian Community Development Block Grant Program	**$64.42 million**	
Indian Community Development Block Grant Program (ICDBG) CFDA No.: 14.862 OMB Approval No.: 2577-0191	$64.42 million	Monday, June 20, 2005
University and College Programs:	**$ 33.6 million**	
Historically Black Colleges and Universities Program (HBCU) CFDA No.: 14.520 OMB Approval No.: 2528-0235	$13.2 million	Wednesday, May 25, 2005
Hispanic-Serving Institutions Assisting Communities Program (HSIAC) CFDA No.: 14.514 OMB Approval No.: 2528-0198	$ 6.6 million	Monday, June 13, 2005
Alaska Native/Native Hawaiian Institution Assisting Communities Program (AN/NHIAC) CFDA No.: 14.515 OMB Approval No.: 2528-0206	$ 4.2 million	Thursday, June 16, 2005
Tribal Colleges and Universities Program (TCUP) CFDA No.: 14.519 OMB Approval No.: 2528-0215	$ 3 million	Thursday, June 16, 2005
Community Outreach Partnerships Centers (COPC) CFDA No.: 14.511 OMB Approval No.: 2528-0180	$ 6.6 million	Thursday, June 23, 2005
Student Research and Study Programs:	**$ 3.75 million**	
Early Doctoral Student Research Grant Program CFDA No.: 14.517 OMB Approval No.: 2528-0216	$150,000	Wednesday, May 18, 2005
Doctoral Dissertation Research Grant Program CFDA No.: 14.516 OMB Approval No.: 2528-0213	$400,000	Wednesday, May 18, 2005
Community Development Work Study Program CFDA No.: 14.512 OMB Approval No.: 2528-0175	$ 3.2 million	Wednesday, May 18, 2005

Appendix A
HUD 2005 SuperNOFA Funding Chart

Program Name	Funding Available (Approximate)	Application Submission Date. (All applications must be submitted and received by Grants.gov no later than 11:59:59 P.M. Eastern Time on the application submission date. See submission details in the General Section)
Fair Housing Initiatives Programs:	**$ 18.04 million**	
Fair Housing - Private Enforcement Initiative (PEI) CFDA No.: 14.408 OMB Approval No.: 2529-0033	$ 13 million	Monday, May 23, 2005
Fair Housing Education and Outreach Initiative (EOI) EOI - Minority Serving Institutions Component EOI - Asian Americans Pacific Islander Fair Housing Awareness Component EOI - Disability Component EOI - General Component CFDA No.: 14.408 OMB Approval No.: 2529-0033	$ 3.94 million $400,000 $400,000 $800,000 $2,340,000	Monday, May 23, 2005
Fair Housing Organizations Initiative (FHOI) CFDA No.: 14.408 OMB Approval No.: 2529-0033	$ 1.1 million	Monday, May 23, 2005
Housing Counseling Programs:	**$ 38.91 million**	
Housing Counseling Local Housing Counseling Agencies (LHCA) National and Regional Intermediaries Housing Counseling - State Housing Finance Agencies (SHFA) Housing Counseling Supplemental Funding Colonias Predatory Lending Section 8 Homeownership Voucher Program Counseling HECM Counseling CFDA.: 14.169 OMB Approval No.: 2502-0261	 $12.92 million $17.2 million $2.0 million $394,000 $2.7 million $1.7 million $2.0 million	Monday, June 27, 2005

Appendix A
HUD 2005 SuperNOFA Funding Chart

Program Name	Funding Available (Approximate)	Application Submission Date. (All applications must be submitted and received by Grants.gov no later than 11:59:59 P.M. Eastern Time on the application submission date. See submission details in the General Section)
Healthy Homes and Lead Hazard Control Programs:	**$163 million**	
Lead-Based Paint Hazard Control Grant Program CFDA No.: 14.900 OMB Approval No.: 2539-0015	$93.6 million	Tuesday, June 7, 2005
Healthy Homes Technical Studies CFDA No.: 14.906 OMB Approval No.: 2539-0015	$2 million	Wednesday, June 8, 2005
Lead-Technical Studies CFDA No.: 14.902 OMB Approval No.: 2539-0015	$3 million	Wednesday, June 8, 2005
Lead Outreach Grant Program CFDA No.: 14.904 OMB Approval No.: 2539-0015	$2 million	Tuesday, June 14, 2005
Lead Hazard Reduction Demonstration Grant Program CFDA No.: 14.905 OMB Approval No.: 2539-0015	$49.4 million	Tuesday, June 14, 2005
Healthy Homes Demonstration Program CFDA No.: 14.901 OMB Approval No.: 2539-0015	$5 million	Wednesday, June 15, 2005
Operation Lead Elimination Action Program (LEAP) CFDA No.: 14.903 OMB Approval No.: 2539-0015	$8 million	Thursday, June 9, 2005

Appendix A
HUD 2005 SuperNOFA Funding Chart

Program Name	Funding Available (Approximate)	Application Submission Date. (All applications must be submitted and received by Grants.gov no later than 11:59:59 P.M. Eastern Time on the application submission date. See submission details in the General Section)
Economic Development and Empowerment Programs $ 255.15 million		
Economic Development Programs:	**$174.08 million**	
Brownfields Economic Development Initiative CFDA No.: 14.246 OMB Approval No.: 2506-0153	$ 24.4 million	Friday, June 17, 2005
Youthbuild CFDA No.: 14.243 OMB Approval No.: 2506-0142	$56.4 million	Tuesday, June 21, 2005
Housing Choice Voucher Family Self-Sufficiency (FSS) Program Coordinators CFDA No.: 14.871 OMB Approval No.: 2577-0178	$45.6 million	Friday, May 20, 2005
Rural Housing & Economic Development (RHED) CFDA #: 14.250 OMB Approval Number: 2506-0169	$23.8 million	Tuesday, May 17, 2005
Public Housing Neighborhood Networks Program CFDA No.: 14.870 OMB Approval No.: 2577-0229	$23.88 million	Monday, July 11, 2005
Public Housing Resident Opportunity and Self-Sufficiency (ROSS)	**$81.07 million**	
Resident Services Delivery Models- Elderly/Persons with Disabilities CFDA No.: 14.870 OMB Approval No.: 2577-0229	$16.27 million	Wednesday, July 6, 2005
Resident Services Delivery Models-Family CFDA No.: 14.870 OMB Approval No.: 2577-0229	$22.95 million	Monday, July 25, 2005
Homeownership Supportive Services Program CFDA No.: 14.870 OMB Approval No.: 2577-0229	$18.9 million	Thursday, May 26, 2005
Public Housing Family Self-Sufficiency Program CFDA No.: 14.870 OMB Approval No.: 2577-0229	$22.95 million	Tuesday, June 28, 2005

Appendix A
HUD 2005 SuperNOFA Funding Chart

Program Name	Funding Available (Approximate)	Application Submission Date. (All applications must be submitted and received by Grants.gov no later than 11:59:59 P.M. Eastern Time on the application submission date. See submission details in the General Section)
Targeted Housing and Homeless Assistance Programs $1.651 billion		
Housing Opportunities for Person with AIDS (HOPWA) CFDA No.: 14.241 OMB Approval No.: 2506-0133	$37 million	Friday, May 27, 2005
Housing for People who are Homeless and Addicted to Alcohol CFDA No.: 14.235 OMB Approval No.: Pending	$10 million	Thursday, May 19, 2005
Assisted-Living Conversion Program for Eligible Multifamily Projects CFDA No.: 14.314 OMB Approval No.: 2502-0542	$ 35 million	Wednesday, June 22, 2005
Service Coordinators in Multifamily Housing CFDA No.: 14.191 OMB Approval No.: 2502-0447	$ 10 million	Friday, June 24, 2005
Section 202 Supportive Housing for the Elderly CFDA No.: 14.157 OMB Approval No.: 2502-0267	$ 462.9 million	Tuesday, May 31, 2005
Section 811 Supportive Housing for Persons with Disabilities CFDA No.: 14.181 OMB Approval No.: 2502-0462	$ 95.8 million	Friday June 10, 2005
Continuum of Care Homeless Assistance Programs	**$1 billion**	
Supportive Housing Program (SHP) CFDA No.: 14.235 OMB Approval No.: Pending		Friday, June 10, 2005
Shelter Plus Care (S+C) CFDA No.: 14.238 OMB Approval No.: Pending		Friday, June 10, 2005
Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals CFDA No.: 14.249 OMB Approval No.: Pending		Friday, June 10, 2005

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2. Indian Community Development Block Grant Program (ICDBG), beginning at page 13654:

On page 13655, Overview Information, section F, the paragraph is revised to read as follows:

F. *Dates:* Application Deadline. The application submission date is June 20, 2005.

On page 13655, section I.C., third column, in the paragraph that begins in the middle column, remove the term, ''FY 2004,'' and add in its place, ''FY2005.''

On page 13657, section II.C 3., first column, remove the reference to 24 CFR part 95 and add in its place a reference to 24 CFR part 85.

On page 13666, section V.A. under Rating Factor 2, paragraph (b), third column, remove the dollar amount range ''$67–$1,200'' and add in its place the following dollar amount range: ''$676–$1,200.''

On page 13667, section V.A. under Rating Factor 3, paragraph (1), first column, in the paragraph that begins, ''(14 points)* * * ,'' the fifth sentence is revised to read as follows: The application must also include anticipated cost savings due to innovative program design or construction methods or both.

On page 13670, section V.A. under Rating Factor 5, paragraph (1), first column, remove the parenthetical that reads ''(2 points),'' and add in its place the following: ''(up to 2 points).''

On page 13670, section V.A. under Rating Factor 5, paragraph (2), first column, remove the parenthetical that reads ''(3 points),'' and add in its place the following: ''(up to 3 points).''

On page 13670, section V.B.2. middle column, remove the reference to IIIV.C.3 and 4 and add in its place a reference to III.C.3 and 4.

3. Hispanic-Serving Institutions Assisting Communities (HSIAC) Program, beginning at page 13711:

On page 13712, section G.3., middle column, remove the parenthetical phrase ''(as defined in the General Section),'' and add in its place the following: (refer to Attachment C of the HSIAC NOFA for the definition of ''Colonias).'' Attachment C is appended to this correction notice.

On page 13712, in section III.A., third column, remove the parenthetical phrase ''(as defined in the General Section),'' and add in its place the following: ''(refer to Attachment C of the HSIAC NOFA for the definition of ''Colonias).''

On page 13718, section V.B.3., third column, add the following at the end of paragraph 3.: ''HUD intends to fund the two highest rated application that serve Colonias areas that score above 75 points.''

On page 13721, after ''Attachment B (All Required Forms),'' insert the following:

Attachment C
Definition of Colonias

Colonias means any identifiable, rural community that:

(1) Is located in Arizona, California, New Mexico, or Texas;

(2) Is within 150 miles of the border between the United States and Mexico; and

(3) Is determined to be a colonia on the basis of objective need criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, sanitary, and accessible housing.

4. Community Outreach Partnership Centers (COPC), beginning at page 13743:

On page 13744, section G.3., second column, remove the parenthetical note, ''(as defined in the General Section),'' and add in its place the following: ''(refer to Attachment C of the COPC NOFA for the definition of ''Colonias).''

On page 13745, section III.A, first column, remove the parenthetical note, ''(as defined in the General Section),'' and add in its place the following: ''(refer to Attachment C of the COPC NOFA for the definition of ''Colonias).'' Attachment C is appended to this correction notice.

On page 13753, section V.B.3., first column, remove the parenthetical note, ''(as defined in the General Section),'' and add in its place the following: ''(refer to Attachment C of the COPC NOFA for the definition of ''Colonias).''

On page 13762, after ''Attachment B (All Required Forms),'' insert the following:

Attachment C
Definition of Colonias

Colonias means any identifiable, rural community that:

(1) Is located in Arizona, California, New Mexico, or Texas;

(2) Is within 150 miles of the border between the United States and Mexico; and

(3) Is determined to be a colonia on the basis of objective need criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, sanitary, and accessible housing.

5. Housing Counseling Programs, beginning at page 13806:

On page 13807, Overview Information, section F. first column, is revised to read as follows:

F. *Dates.* The application submission date is June 27, 2005. Please see the General Section of the SuperNOFA for application submission and receipt procedures.

On pages 13807 and 13808, beginning in the third column, sections II.A and II.B.1 and 2 are corrected to read as follows:

A. *Amount Allocated.* Approximately $41.664 million is appropriated for housing counseling in FY2005, all of which is available for eligible applicants under this NOFA. Specifically, $33.87 million is available for comprehensive counseling, $2.7 million is available for counseling services that address predatory lending, $1.7 million is available for counseling in conjunction with HUD's Homeownership Voucher Program, $394,000 is available for counseling services that specifically target Colonias, and $3.0 million is available for HECM counseling.

B. Specific Allocations. Funding is allocated to each Homeownership Center (HOC), regional HUD offices that oversee the Housing Counseling Program in their jurisdiction, by a formula that incorporates first-time homebuyer rates, default rates, HECM endorsements, and minority homebuyers.

Applicant categories	Who is eligible	Total amount available
Category 1—LHCAs	HUD-approved Local Housing Counseling Agencies	$15,704,946
Category 2—Intermediaries	HUD-approved National and Regional Intermediaries	23,575,181
Category 3—SHFAs	State Housing Finance Agencies	2,383,873

1. Category 1—Local Housing Counseling Agencies (LHCAs). Approximately $15,704,946 is available from HUD to directly fund HUD-approved LHCAs, including $13,670,000 for comprehensive counseling, $1,199,880 in supplemental funding for predatory lending, $722,500 in supplemental funding for counseling

in conjunction with HUD's Homeownership Voucher Program, and $112,566 for counseling targeting Colonias.

HOC	Comprehensive counseling	Predatory lending	Homeownership voucher counseling	Colonias	Total
Philadelphia	$3,715,562	$326,127	$196,376	.....	$4,238,065
Atlanta	3,921,762	344,246	207,285	.....	4,473,293
Denver	3,539,511	310,649	187,055	56,283	4,093,498
Santa Ana	2,493,165	218,858	131,784	56,283	2,900,090
Total	13,670,000	1,199,880	722,500	112,566	15,704,946

2. Category 2—Intermediaries. Approximately $23,575,181 is available from HUD to directly fund HUD-approved Intermediaries, including $18,200,000 for comprehensive counseling, $1,300,050 in supplemental funding for predatory lending, $850,000 in supplemental funding for counseling in conjunction with HUD's Homeownership Voucher Program, $225,131 for counseling targeting Colonias, and $3.0 million for HECM counseling.

On page 13808, sections II.C.1 and 2., first column, are corrected to read as follows:

C. *Individual Awards.*

1. Category 1: No individual LHCA may be awarded more than $290,000, which includes any supplemental funding. Specifically, the limit for Comprehensive Counseling is $180,000. The limit for supplemental funding for predatory lending is $40,000, the limit for supplemental funding for Homeownership Voucher Counseling is $30,000, and the limit for supplemental funding for Colonias is $40,000. HUD anticipates that the average total award for LHCAs will be approximately $45,000.

2. Category 2: Awards for individual HUD-approved intermediaries may not exceed $4.0 million, which includes any supplemental funding. The limit for Comprehensive Counseling is $3.0 million. The limit for supplemental funding for predatory lending is $325,000, the limit for supplemental funding for Homeownership Voucher Counseling is $275,000, the limit for supplemental funding for Colonias is $300,000 and the limit for HECM counseling is $3.0 million. HUD anticipates that the average total award for Intermediaries will be $1.5 million.

On page 13811, section III.C.3.b., first column, is corrected to read as follows:

b. Minimum grant request. Applications must contain a request for comprehensive funds of not less than $15,000 from LHCAs, not less than $50,000 from SFHAs and not less than $200,000 from Intermediaries. Applications for lesser amounts will not be considered. If supplemental funding is also being requested, applicants must specifically and separately identify ''Comprehensive'' and the specific amount requested on form SF–424A, Section B, as well as separately identify each supplemental category applied for.

On page 13812, section III.C.4.b., subsections (4) and (5), second column, are corrected to read as follows:

(4) Sub-grantees or branches funded under Categories 2 or 3 must not have directly applied for or received a grant under Category 1 of this NOFA, or applied for or received a sub-grant or funding from another intermediary or SHFA under Category 2 or 3 of this NOFA.

(5) Sub-grantees or branches may apply for and receive funding from only one intermediary or SHFA under Category 2 or 3, but not both. The only exception to this rule is that sub-grantees or branches that have one or more HECM Network Counselors that receive a sub-grant or funding from an intermediary or SHFA under Category 2 or 3 may also receive a sub-grant or be reimbursed exclusively for HECM counseling activities, from a HUD-approved intermediary that exclusively provides HECM counseling.

On page 13812, section III.C.4.c.(1)(a), third column, is corrected to read as follows:

(a) Nonprofit Status. An applicant and its branches or affiliates for approval must function as private or public nonprofit organizations. The applicant must submit evidence of nonprofit status as demonstrated by section 501(c) of the Internal Revenue Code approval (or pending approval) to support its nonprofit status and that of its branches or affiliates.

On page 13814, section IV.B.2., first column, revise the bulleted text concerning Form HUD–9902 to read as follows: ''HUD–9902, Housing Counseling Agency Fiscal Year Activity Report, covering the period October 1, 2003—September 30, 2004.''

On page 13814, section IV.B.2., second column, remove the bulleted text that reads ''Letters, Contracts, MOUs and/or other documentation that shows leveraged resources.''

On page 13818, section V.A.3.c.(1)(e), first column, is corrected to read as follows:

(e) The number of clients recorded on the Form HUD–9902 submitted with this application, covering the period October 1, 2003, through September 30, 2004, that participated in both group sessions or workshops and one-on-one counseling:

On page 13818, section V.A.3.c.(2)(b) and section V.A.3.c.(2)(c), third column, is corrected to read as follows:

(b) Describe the level of effort and time required to provide the housing counseling services described in part (a) and to meet the needs of clients. Explain the average counseling time per client figures provided in Section V.A.3.c (1)(a). Scoring will be based on the degree to which the applicant demonstrates that sufficient time and resources were devoted to ensure that clients received quality counseling.

(c) Explain the figures provided in Section V.A.3.c (1)(d)–(f) regarding group session participation and one-on-one counseling. Describe how clients come to participate in one or the other, the relationship between the two, and the role that each plays in the applicant's overall service provision.

On page 13819, section V.A.3.c.(3)(a), first column, is corrected to read as follows:

(a) Indicate how location, type of counseling, client type, and expenses may have affected client volume that appears on the Form HUD–9902, and in Section V.A.3.c (1)(d)–(f), that were served under the column ''All Counseling Activities.'' This total should reflect all the counseling activities performed by the applicant during the period October 1, 2003 through September 30, 2004, both with HUD housing counseling grant funds, if applicable, and with other leveraged resources.

On page 13820, section V.A.3.c.(5)(b) and (c), first column, are corrected to read as follows:

(b) Describe the level of effort and time the applicant anticipates is required to provide the proposed counseling services to, and meet the needs of, the number of clients it indicates in Rating Factor 5, Section V.A.3.e (1)(a) that it will serve with the proposed grant. Explain and describe the activities corresponding to the average counseling time figures for each counseling type provided in Section V.A.3.c.(5)(a).

(c) Explain the figures provided in Section V.A.3.e (1)(a) regarding proposed group session participation and one-on-one counseling. Describe how clients are selected for one or the other, the relationship between the two, and the role that each will play in the overall service provision.

On page 13821, section V.A.3.d, first column, first sentence of the second paragraph is corrected to read as follows: ''Applicants will be evaluated based on their ability to show that they have obtained additional resources for their housing counseling activities, for the period October 1, 2005—September 30, 2006, including: Direct financial assistance; in-kind contributions, such as services, equipment, office space, labor; etc.''

On page 13821, section V.A.3.d.(3), first column, is corrected to read as follows:

(3) Intermediaries and SHFAs should include information on leveraged resources for only anticipated sub-grantees and branches that will be funded through this application.

On page 13821, section V.A.3.e.(1)(a), third column, the bulleted text is revised as follows:

- Provide the following figures. Do not provide ranges or percentages, but a specific numbers of clients. These amounts should represent individuals to be served entirely with HUD housing counseling funding. If, in reality, various funding sources will contribute to the services provided each individual, the applicant must prorate their response to reflect a figure representing services provided with only funding from the proposed grant.
- The total number of clients the applicant projects it and, if applicable, sub-grantees, will serve under the total proposed HUD grant, including all requested supplemental funding.
- If requesting supplemental funding, indicate the specific number of clients the applicant projects it, or if applicable, sub-grantees, will serve under the comprehensive counseling portion of the requested award.
- If requesting supplemental funding, separately indicate for each specific type of supplemental funding being requested, the number of clients the applicant projects it, or if applicable, sub-grantees, will serve under the proposed supplemental funding.
- The total number of clients that will receive Homebuyer Education Workshops or other types of classes offered as group sessions with the proposed award in general, and under each of the applicable supplemental funding types. In other words, the projected totals for Sections 6a and 6b on the form HUD–9902 that will correspond with the proposed grant year.
- The number of clients that will participate in one-on-one counseling, with the proposed award in general, and under each of the applicable supplemental funding types. In other words, the projected total for all of Section 7 on the form HUD–9902 that will correspond with the proposed grant year.
- The number of clients that will participate in both group sessions or workshops *and* one-on-one counseling, with the proposed award in general, and under each of the applicable supplemental funding types.

On page 13822, section V.B., middle column, add new paragraphs 5 and 6 after paragraph 4. to read as follows:

5. Funding Methodology

a. Comprehensive Counseling. The following funding formula will be used to calculate the comprehensive counseling portion of the awards under Categories 1–3. Only applicants who receive a score of 75 points or above will be considered eligible for funding. All eligible applicants will then be funded in proportion to the score they receive. Regarding the comprehensive counseling portion of an award, all grantees will receive the lower of either the comprehensive award amount determined with the formula, or the amount actually requested by the applicant, as indicated on the form SF–424A, Section B. This amount must be labeled ''Comprehensive'' to distinguish it from requested supplemental funds, if applicable. The formula will work as follows for each category:

(1) Funding Round 1. Every applicant that scores 75 points or above will receive a base award ($15,000 for LHCAs; $50,000 for SHFAs; and $200,000 for intermediaries). The total number of applicants receiving the base award will be multiplied by the relevant base amount, and that amount will be subtracted from the total amount available under the Category, or in the cases of Categories 1 and 3, available to the HOC.

(2) Funding Round 2. Then, the remaining balance after funding the Round 1 base awards will be divided by the total number of points all applicants in that Category, and HOC in the cases of Categories 1 and 3, score that are above the 75-point cutoff. The calculation will result in a dollar value for each point. The number of points that all applicants in a Category, and in a HOC in the cases of Categories 1 and 3, score above the 75 point base will be multiplied by that dollar value. The result of that calculation will be added to the base award. Any remaining funds after this calculation will carry over into the next funding round.

(3) This same methodology will be used for each subsequent round of funding until all available funds are awarded, or until all eligible applicants are funded to the maximum dollar amount allowed. Subsequent rounds of calculations, if needed, will distribute remaining funds to applicants that scored above 95 points, 91–95 points, 86–90 points, and 80–85 points, respectively.

b. Supplemental Funding. The same methodology described above in section a will be used to distribute the available supplemental funds for Predatory Lending, Homeownership Voucher Counseling, and Colonias to eligible applicants. Regarding supplemental funding, all grantees will receive the lower of either the supplemental award amount determined with the formula, or the specific amount of supplemental funding actually requested by the applicant, as indicated on Form SF–424A, Section B. Each applicant will only submit one application and receive a score based on the application for the comprehensive counseling grant. Comprehensive counseling funds will be allocated based on this score. Subsequently, for each supplemental funding category requested, responses to each rating factor will be evaluated on a yes/no, adequate/inadequate basis. An adequate response will result in a score for the supplemental funding identical to the comprehensive score on each respective rating factor. An inadequate supplemental response will result in a 1-point deduction from the comprehensive score. After all five rating factors have been evaluated, the adjusted ratings will result in a distinct score for the supplemental funds. This method will result in scores for supplemental funding that may be equal to the comprehensive score, or up to five points less than the comprehensive score. In no case can an applicant receive a higher score on an application for supplemental funding that it received on its comprehensive application. This process will be repeated for each supplemental funding

allocation. An applicant will receive a separate score for its application for comprehensive counseling, and each supplemental funding category for which it applies. The base awards for the three supplemental funding categories eligible to all applicants will be $2,000 for LHCAs, $10,000 for SHFAs, and $40,000 for intermediaries. Only applicants scoring 75 points or above are eligible for supplemental funding. However, because of the limited amount of funds available, all applicants scoring 75 points or above are not guaranteed supplemental funding.

(1) For National and regional intermediaries, up to the top 5 scoring applicants (scoring 75 points or above) for supplemental funding for predatory lending and Homeownership Voucher Counseling that are eligible for supplemental funds, and have not already been fully funded in accordance with the funding methodology described in this section, will receive supplemental funding. For supplemental funding for Colonias, up to the top three scoring intermediary applicants (scoring 75 points or above) that are eligible for supplemental funds, and have not already been fully funded in accordance with the funding methodology described in this section, will receive supplemental funding. For supplemental funding for HECM, the top scoring intermediary applicant (scoring 75 points or above) that is eligible for supplemental funds, and has not already been fully funded in accordance with the funding methodology described in this section, will receive supplemental funding.

(2) For SHFAs, up to the top 2 scoring applicants (scoring 75 points or above) in each HOC for each supplemental category that are eligible for the supplemental funds, and have not already been fully funded, will receive supplemental funding.

(3) For LHCAs, up to the top 10 scoring applicants (scoring 75 points or above) in each HOC for each supplemental category that are eligible for the supplemental funds, and have not already been fully funded, will receive supplemental funding.

6. Reallocation of Unspent Funds. If funds designated for a specific grant Category, HOC, or for supplemental funding remain unspent after the formulas have been run and award recommendations are determined, HUD may, at its discretion, reallocate those funds to any other funding Category or supplemental funding area under this NOFA. Additionally, HUD may reallocate unspent funds to any HOC jurisdiction or to HUD Headquarters for awards under this NOFA. HUD may also reallocate unspent funds for housing counseling support activities.

6. Lead-Based Paint Hazard Control Program, beginning at page 13836:

On page 13838, section III.A.1.a., third column, is corrected to read as follows: a. ''General applicants'' are new applicants, previously funded lead-based paint hazard control grantee applicants whose period of performance ended prior to the NOFA submission date, and current grantees with grants ending on or before December 31, 2005 (including those who are not awarded under the Competitive Performance-Based Renewal category), and will be evaluated and scored as a separate group. Grantee applicants that are eligible to compete under the Competitive Performance-Based Renewal category will be evaluated and scored as a separate group.

On page 13848, section V.A.3, third column, the heading is corrected to read as follows: ''3. Rating Factor 3: Soundness of Approach, (40 points).''

7. Healthy Homes Technical Studies Program, beginning at page 13860:

Beginning on page 13864, section IV.B.1.i., first column and continuing to page 13865, under ''Required Forms and Budget Material,'' delete the bullet reading, ''Form HUD 2994 Client Comments and Suggestions (Optional)'' and substitute the following:

—Form HUD–2993 Acknowledgement of Application Receipt (applicable to paper copy submissions only)

8. Lead Technical Studies, beginning at page 13871:

On page 13876, section IV.B.1.j, first column, under ''Required Forms and Budget Material,'' add the following:

—Form HUD–2993 Acknowledgment of Application Receipt (applicable to paper copy submissions only)

9. Lead Outreach Grant Program, beginning at page 13881:

On page 13884, section IV.B.2.b.(7), third column, remove the bullet that reads, ''HUD's waiver from submitting electronically (if applicable)''

On pages 13891–13895, delete the forms, HUD–96012, 96013, 96014, and 96015, and Work Plan Development Worksheet.

10. Lead Hazard Reduction Demonstration Program, beginning on page 13896:

On page 13900, section V.B., third column, remove the bullet that reads, ''HUD's waiver from submitting electronically (if applicable).''

11. Healthy Homes Demonstration Program, beginning at page 13919:

On page 13920, Overview Information, section G.1., first column, the last sentence is corrected to read as follows: ''Appendix A, which contains forms that are required to be completed and submitted as part of your response to the rating factors that are discussed in Section V, can be found at the end of the NOFA. Appendices A through D can be found and downloaded from HUD's Web site at: *http://www.hud.gov/offices/adm/grants/fundsavail.cfm*.''

On page 13923, section III.C.3.n., third column, correct the last sentence to read as follows: ''See section V.A.2.c., Rating Factor 3.3 for recommendations for implementing Section 3 Employment Opportunities.''

On page 13924, section IV, ''Checklist for Healthy Homes Demonstration Program Applicants,'' third column, remove forms HUD–96013 and HUD–96014, which are not part of this application.

On page 13924, section IV.B.7, third column, remove the item that reads ''HUD's Waiver from submitting electronically (if applicable).''

On page 13924, section IV B.7. under ''Checklist for Healthy Homes Demonstration Program Applicants,'' beginning on the second column and continuing to the third column under, ''Required materials in response to rating factors,'' third column, is corrected by adding ''Form HUD–27300 Questionnaire for HUD's Initiative on Removal of Regulatory Barriers.''

On page 13926, section V.A.2.a.(4), middle column, the second paragraph of this section that begins on the top of the middle column is revised to read as follows:

You must complete and submit the Factor 1, Table 1 Capacity of the Applicant and Relevant Organizational Experience (which may be found at the end of this NOFA) to support narrative information submitted. Include this table in supporting materials for your application. It will not be counted toward your page limit.

On page 13929, section V.A.2.d.(2), first column, the last two sentences of this paragraph is revised to read as follows: ''Letters of support (letters that indicate support, but do not specify a monetary commitment to the project) will not be considered in the scoring of Rating Factor 4 (Factor 4 table may be found at the end of this NOFA). Include information to address the following elements:''

On page 13931, section VIII.B, third column, is revised to read as follows:

Appendix A contains forms that are required to be completed and submitted as part of your response to the rating factors that are discussed in Section V and can be found at the end of this NOFA.

12. Operation Lead Elimination Action Program, beginning at page 13936:

On page 13939, section IV.B.a.(2), third column, under ''Checklist and Submission Table of Contents Lead Elimination Action Program,'' remove the item that reads: ''HUD's' Waiver from submitting electronically (if applicable)''

13. Youthbuild, beginning at page 13977:

On page 13985, section V.E., middle column, the sixth and seventh bulleted items are corrected to read as follows:

- Number and percent of graduates placed in employment or education (for percentage calculation, numerator: The number of graduates who have entered employment or enrolled in post secondary education; denominator: The number of graduates from the Youthbuild program); and
- Number and percentage of participants who made literacy and numeracy gains (measures the increase in literacy and numeracy skills of participants through a common assessment tool administered at program registration and regular intervals thereafter); for percentage calculation, numerator: The number of Youthbuild program participants who increase one or more education functioning levels; denominator: The number of Youthbuild program participants who have completed a year in the program

14. Public Housing Neighborhood Networks, beginning at page 14023:

On page 14024, Overview Information, section F., first column, is revised to read as follows:

F. Dates. The application submission date is July 11, 2005. Please see the General Section of the SuperNOFA for application submission and timely receipt requirements.

On page 14027, section III.C.1., first column, add a new paragraph ''g.,'' to read as follows:

g. Off-site Physical Improvements. Physical improvements that relate to providing space for a Neighborhood Networks center are eligible activities, including for off-site centers. If renovation, conversion, or repair is done off-site, the PHA must describe this circumstance in their narrative and provide documentation with its application that it has control of the proposed property for at least five years. Control can be demonstrated through a lease agreement, ownership documentation, or other appropriate documentation.

On page 14028, section IV.B.4.(2), tab 2, middle column, a new paragraph ''4'' is added to read as follows:

4. If applicable, documentation of site control (for 5 years) for off-site physical improvements.

On page 14028, section IV.E.2.c, third column, is corrected to read as follows:

c. NN funds may only be used for the types of salaries described in this section according to the restrictions described herein. NN funds may not be used to pay for salaries of any other kind. NN funds may only be used to pay for salaries of staff that provide direct services to residents. Direct services staff, for purposes of this NOFA, are defined as housing authority personnel who, as their primary responsibility, provide services directly to residents that participate in the activities described in this application, *e.g.*, computer skills trainer.

On page 14028, section IV.E.4.f., third column, is revised to read as follows:

f. Salaries and fringe benefits for staff that are not direct services staff. Direct services staff, for purposes of this NOFA, are defined as housing authority personnel who, as their primary responsibility, provide services directly to residents that participate in the activities described in this application, *e.g.*, computer skills trainer.

15. Public Housing Resident Opportunities and Self-Sufficiency (ROSS) Program, beginning at page 14054:

On page 14063, section III.C.2.i., first column, is revised by adding the following: ''Tribal/TDHE applicants must provide a letter certifying that they will comply with this requirement.''

On page 14065, section IV.E.6.h., third column, remove paragraph (h).

16. Public Housing Family Self-Sufficiency Program, beginning at page 14087:

On page 14087, section F. under ''Overview Information,'' change the application submission date of ''June 20, 2005'' to ''June 28, 2005.''

On page 14088, section A.3. under ''Overview Information'', middle column, the paragraph is revised to read as follows:

3. Award Amounts: Award amounts will be used to pay only for the annual salary and fringe benefits of a FSS program coordinator(s). Award amounts will be based on locality pay rates for professions similar to that of an FSS program coordinator. Individual award amounts will not exceed $65,000 per FSS program coordinator for which the applicant is eligible. The maximum grant amount for new applicants is $65,000 because new applicants may apply only for funding for one FSS program coordinator.

On page 14088, revise the table to read as follows:

Grant program	Total funding	Eligible applicants	Maximum grant amount
Public and Indian Housing Family Self-Sufficiency.	$22,950,000	PHAs, tribes/TDHEs only.	$65,000 maximum salary amount per FSS program coordinator for which the applicant is eligible. Maximum grant amount for new applicants is $65,000 because they may apply only for one FSS program coordinator.

On page 14089, section III.C., middle column, add a new paragraph III.C.1, and renumber subsequent paragraphs accordingly, to read as follows:

1. Eligible Activities. FSS grant funds may only be used to pay for the annual salary and fringe benefits of a FSS Program Coordinator(s).

On page 14090, section III.C.2.g., middle column, is revised to read as follows:

g. Number of Program Coordinators.

(1) Renewal Applicants.

(a) Maintaining Program Size. Applicants that received funding from the Operating Fund or the 2004 FSS NOFA may apply for renewal of each FSS coordinator position(s) that has been filled by the applicant in either of the past two years under the Operating Fund or the 2004 FSS NOFA.

Funding for renewal of more than one program coordinator position is contingent upon HUD field office approval. For renewal applicants, HUD will fund the renewal of the FSS program coordinator(s) salary and fringe benefits, not to exceed $65,000.

(b) Expanding Program Size. Applicants wishing to expand their FSS program may in addition to requesting funds for their current FSS program coordinator(s), also request funds for one additional FSS coordinator. Applicants seeking one additional FSS coordinator, must demonstrate why the current FSS program coordinator

staffing is not sufficient to manage resident needs and how they plan to expand their program. See rating factors under section V. for relevant criteria. Note: Funding priority will be given to renewing existing staff positions for renewal applicants and to applicants wishing to implement a new program (see new applicants below). If sufficient funding is available to fund expanding applicants' existing programs, HUD will do so in accordance with the selection process under Section V(B).

(2) New Applicants. A PHA or tribe/TDHE that has not received funding under the Operating Fund for a PH FSS Program Coordinator may apply for only one program coordinator position as follows:

(a) Up to one full-time FSS coordinator position for a PHA or tribe/TDHE with HUD approval to administer an FSS program of 25 or more FSS slots.

(b) Up to one full-time position per application for joint PHA/tribe/TDHE applicants that have HUD approval to administer a total of at least 25 FSS slots between or among them.

On pages 14107, section 5.d., remove the dollar amount ''63,000'' and add in its place the following amount, ''$65,000.''

On page 14108, section 10.a, remove the dollar amount ''$63,000'' and add in its place the following amount, ''$65,000.''

On page 14108, section 9, remove the three references to ''9/30/03'' and add in its place a reference to the following date, ''9/30/04.''

17. Assisted Living Conversion Program, beginning at page 14148:

On page 14149, section I, middle column, third sentence of the last full paragraph, revise to read, ''The Department has set-aside approximately $15 million for emergency capital repairs.''

On page 14150, section III.A.1, first column, add a new paragraph ''g.'' to read as follows: g. Owner of an Assisted Living Facility.

On page 14157, section IV.F., middle column, add a new paragraph ''5.'' to read as follows:

5. Hubs and Field Offices addresses. If you are granted a waiver to the electronic application submission requirement, you must submit an original and four copies of the ALCP application to the director of the appropriate HUD Multifamily Hub Office with jurisdiction over the housing development identified in your application. For your use in determining the appropriate HUD Multifamily Hub Office to which you must submit your application, see HUD's Web site at *http://www.HUD.gov/offices/adm/grants/nofa05/grpalcp.cfm.* The HUD Program Centers are under each Hub. If you send your application to the wrong Hub Office, it will be rejected. Therefore, if you are uncertain as to which Hub Office to submit your application, you are encouraged to contact the local HUD Office that is closest to your project's location to ascertain the Office's jurisdiction and to ensure that you submit your application to the correct local HUD Multifamily Hub Office.

On page 14160, section VII.A, third column, the first paragraph is revised to read as follows:

You should contact the HUD Multifamily Hub where you will be mailing your ALCP application. For a list of HUD's Multifamily Hub Offices, see HUD's Web site at *http://www.HUD.gov/offices/adm/grants/nofa05/grpalcp.cfm.*

18. Continuum of Care Homeless Assistance Programs, beginning at page 14272:

On page 14279, section III.C.3.e.(2)(b), middle column, is revised to read as follows:

(b) The total request for each renewable project cannot exceed the average yearly amount received in your current grant for that project; which for the first time, must include the exact amount awarded for administration in that grant. Grants being renewed, which current award included hard development costs, must in the competition, recalculate their administrative allocation not to exceed five percent of the average yearly amount of the activities being renewed. Projects proposing both to renew the existing project and expand the number of units or number of participants receiving services must submit a new project proposal for the expansion portion of the project. HMIS activities being renewed should be included on the HMIS budget chart.

On page 14288, section 2., delete the Form HUD–2992 ''Certification Regarding Debarment and Suspension.''

On page 14289, sections 3, 4, and 5, delete the Form HUD–2992 ''Certification Regarding Debarment and Suspension.''

On page 14290, section 6, delete the Form HUD–2992 ''Certification Regarding Debarment and Suspension.''

On page 14294, Exhibit 1: Continuum of Care Narrative and Form HUD–40076 CoCB instruction, section e. is revised to read as follows:

e. List, using the format in HUD 40076 CoC—B:(1) The specific names and types of organizations involved in your Continuum of Care (CoC) planning process, such as State and local government agencies, Public Housing Authorities (PHAs), nonprofit organizations, individual businesses or business associations, homeless or formerly homeless persons, and others, including law enforcement, hospital or medical facility representatives, and funders; (2) the one or two subpopulation(s) the organization/entity primarily serves and whose interests they are specifically focused on representing; and (3) each organization's level of participation in the planning process; *i.e.*, the percentage of meetings attended. High participation levels might include: steering committee member attends all monthly planning meetings, housing subcommittee member attends most CoC planning meetings, gaps analysis subcommittee chairperson attends all group meetings and most CoC planning meetings, etc. Medium attendance levels include attending between 40 percent and 80 percent of CoC planning meetings. Participants who attend less than 40 percent of CoC planning meetings have low participation levels. In order to obtain a higher competitive score for ''participation,'' planning participants must attend more than 80 percent of the planning and/or committee meetings. In addition, if more than one geographic area is claimed on the 2005 Application Summary page, you must indicate which geographic area(s) each organization represents in your Continuum of Care planning process. (Although you may require multiple pages to respond to 1e, your response will count as only one page toward the 30-page limit.)

On page 14342, Exhibit 2R: SHP Project Information—Continued, revise the statement under ''Project Information Instructions'' to read as follows:

Items 1, 2, and 3 are self-explanatory. Renewal applicants for a dedicated HMIS project should answer items 1, 3, 4C, and D.

Dated: May 12, 2005.

Darlene F. Williams,

General Deputy Assistant, Secretary for Administration.

[FR Doc. 05–9831 Filed 5–17–05; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Notice of Meeting

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the *Exxon Valdez* Oil Spill Public Advisory Committee.

DATES: June 11, 2005, at 10 a.m.

ADDRESSES: Native Village of Eyak Masonic Hall, 500 1st Street, Cordova, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska 99501, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The meeting agenda will feature a dialogue with Trustee Council members and discussions on project proposals for fiscal year 2006.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 05–9901 Filed 5–17–05; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (''we'') solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before June 17, 2005.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–2063; fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above. Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–101462

Applicant: Peter Sarafian, Los Osos, California.

The applicant requests a permit to take (capture, relocate, and release) the Morro shoulderband snail (*Helminthoglypta wakeriana*) in conjunction with habitat restoration activities in San Luis Obispo County, California, for the purpose of enhancing its survival.

Permit No. TE–800291

Applicant: Anne C. Wallace, Grass Valley, California.

The permittee requests an amendment to take (capture and collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardi*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–101743

Applicant: Scott Larsen, Oakhurst, California.

The applicant requests a permit to take (capture and collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardi*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–102310

Applicant: Mitchell Dallas, Morro Bay, California.

The applicant requests a permit to take (capture and collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardi*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–102439

Applicant: Amy J. Kokx, Fresno, California.

The applicant requests a permit to take (capture and collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardi*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–837306

Applicant: Robert Lauri, San Diego, California.

The permittee requests an amendment to remove and reduce to possession (collect) the *Piperia yadonii* (Yadon's piperia) in conjunction with research and monitoring in Monterey County, California, for the purpose of enhancing its survival.

Permit No. TE–041673

Applicant: Rachel O'Malley, Santa Cruz, California.

The permittee requests an amendment to take (capture, handle, collect, and sacrifice) the Mount Hermon June beetle (*Polyphylla barbata*) in conjunction with life history research in Santa Cruz County, California, for the purpose of enhancing its survival.

Permit No. TE–103398

Applicant: Laurie Monarres, San Diego, California.

The applicant requests a permit to take (harass by survey) the light-footed clapper rail (*Rallus longirostris levipes*),

the southwestern willow flycatcher (*Empidonax traillii extimus*), and the California least tern (*Sterna antillarum browni*), and take (nest monitor) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys in Ventura, Los Angeles, Orange, and San Diego Counties, California, for the purpose of enhancing their survival.

Permit No. TE–076322

Applicant: Kimberly Toal, Ventura, California.

The applicant requests a permit to take (capture and mark) the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the Stephens' kangaroo rat (*Dipodomys stephensi*), and the Pacific pocket mouse (*Perognathus longimembris pacificus*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–077395

Applicant: Jason Kurnow, San Diego, California.

The permittee requests an amendment to take (capture and collect and sacrifice) the Riverside fairy shrimp (*Streptocephalus wootoni*) and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys and monitoring throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–103400

Applicant: Terese Kastner, Menlo Park, California.

The applicant requests a permit to take (harass by survey and nest monitor) the southwestern willow flycatcher (*Empidonax traillii extimus*) and take (nest monitor) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–797267

Applicant: H.T. Harvey and Associates, San Jose, California.

The permittee requests an amendment to take (harass by survey, capture, band, and color-band) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–103707

Applicant: California State University, Long Beach, California.

The applicant requests a permit to take (harass) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with vocalization research in San Diego and Kern Counties, California, and Gila and Mojave Counties, Arizona, for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: May 5, 2005.

Michael Fris,

Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. 05–9886 Filed 5–17–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (''we'') solicits review and comment from the public, and from local, State, and Federal agencies on the following permit requests.

DATES: Comments on these permit applications must be received on or before June 17, 2005.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–2063; fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above. Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–103595

Applicant: Gregg Lomnicky, Corvallis, Oregon.

The applicant requests a permit to take (capture and release) the Oregon chub (*Oregonichthys crameri*) in conjunction with research in Marion and Linn Counties, Oregon, for the purpose of enhancing its survival.

We solicit public review and comment on this recovery permit application.

Don Weather,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 05–9881 Filed 5–17–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting of the Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Trinity Adaptive Management Working Group (TAMWG). The TAMWG affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River restoration efforts to the Trinity Management Council. Primary objectives of the meeting will include: TAMWG orientation, organization, and operation, Trinity River Restoration Program budget process, priorities, and FY 2006 budget. Completion of the agenda is dependent on the amount of time each item takes. The meeting could end early if the agenda has been completed. The meeting is open to the public.

DATES: The Trinity Adaptive Management Working Group will meet from 1 p.m. to 5 p.m. on Monday, June 13, 2005, and from 8:30 a.m. to 5 p.m. on Tuesday, June 14, 2005.

ADDRESSES: The meeting will be held at the Weaverville Victorian Inn, 1709 Main Street, Weaverville, CA 96093. Telephone: (530) 623–4432

FOR FURTHER INFORMATION CONTACT: Mike Long of the U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, California 95521, (707) 822–7201. Mike Long is the

working group's Designated Federal Official.

SUPPLEMENTARY INFORMATION: For background information and questions regarding the Trinity River Restoration Program, please contact Douglas Schleusner, Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, California 96093, (530) 623–1800.

Dated: May 12, 2005.

John Engbring,

Acting Manager, California/Nevada Operations Office, Sacramento, CA.

[FR Doc. 05–9888 Filed 5–17–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Amendment to Notice of Intent To Prepare an Environmental Impact Statement for the Pueblo of Jemez's Proposed Trust Acquisition and Casino Project, Dona Ana County, New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) is amending its Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the Pueblo of Jemez's Proposed Trust Acquisition and Casino Project, Dona Ana County, New Mexico, published in the **Federal Register** on March 1, 2005 (70 FR 9963–9964), which described the proposed action. In response to a request by an interested party, and in the interest of providing the public the fullest reasonable opportunity to participate in the scoping process for this EIS, this amendment reopens the public comment period for an additional 30 days.

DATES: Written comments on the scope of the EIS or implementation of the proposal must arrive by June 17, 2005.

ADDRESSES: You may mail or hand carry written comments to Mr. Larry Morrin, Regional Director, Southwest Regional Office, Bureau of Indian Affairs, P.O. Box 26567, Albuquerque, New Mexico 87125. Please include your name, return address, and the caption, ''DEIS Scoping Comments, Pueblo of Jemez Trust Acquisition and Casino Project,'' on the first page of your written comments.

FOR FURTHER INFORMATION CONTACT: Dawn Selwyn, (505) 563–3106.

SUPPLEMENTARY INFORMATION: Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by the law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

This notice is published in accordance with section 1503.1 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.l.

Dated: May 6, 2005.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–9846 Filed 5–17–05; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK964–1410–HY–P; AA–6669–C, AA–6669–K, BBA–3]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

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 Igiugig Native Corporation. The lands are located in Lot 9, U.S. Survey No. 7982, Alaska, and T. 10 S., Rs. 37 and 41 W., Seward Meridian, Alaska, in the vicinity of Igiugig, Alaska, and contains 4,302.30 acres. Notice of the decision will also be published four times in the Anchorage Daily News.

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 June 17, 2005 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: John Leaf, by phone at (907) 271–3283, or by e-mail at *John_Leaf@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Leaf.

John Leaf,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. 05–9844 Filed 5–17–05; 8:45 am]

BILLING CODE 4310–$$–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–653 (Second Review)]

Sebacic Acid From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on sebacic acid from China would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on April 1, 2004 (69 FR 17233) and determined on July 6, 2004 that it would conduct a full review (69 FR

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

45075, July 28, 2004). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on July 28, 2004 (69 FR 45075). Notice of cancellation of the public hearing scheduled in connection with this review (due to lack of interest) was published in the **Federal Register** on December 7, 2004 (69 FR 70705). Notice of the revised scheduling of the review was published in the **Federal Register** on January 28, 2005 (70 FR 4150).

The Commission transmitted its determination in this review to the Secretary of Commerce on May 11, 2005. The views of the Commission are contained in USITC Publication 3775 (May 2005), entitled *Sebacic Acid from China: Investigation No. 731–TA–653 (Second Review).*

Issued: May 11, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–9839 Filed 5–17–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

A–1 Distribution Wholesale; Denial of Registration

On October 8, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to A–1 Distribution Wholesale (A–1) proposing to deny its September 19, 2002, application for DEA Certificate of Registration as a distributor of list I chemicals. The Order to Show Cause alleged that granting A–1's application would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(h). The order also notified A–1 that should no request for a hearing be filed within 30 days, its hearing right would be deemed waived.

According to the DEA investigative file, the Order to Show Cause was sent by certified mail to A–1 at its proposed registered location at 6751 Macon Road, Suite 18, Columbus, Georgia 31909. It was then forwarded by the U.S. Postal Service to A–1's new address at 7565 Chattsworth Road, Midland, Georgia 31820–4026, where it was received on October 18, 2004. DEA has not received a request for a hearing or any other reply from A–1 or anyone purporting to represent the company in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days have passed since delivery of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that A–1 has waived its hearing right. *See* Aqui Enterprises, 67 FR 12,576 (2002). After considering relevant material from the investigative file, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1309.53(c) and (d) and 1316.67. The Deputy Administrator finds as follows.

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. As noted in previous DEA final orders, methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a persistent and growing problem in the United States. *See e.g.,* Direct Wholesale, 69 FR 11,654 (2004); Branex, Inc., 69 FR 8,682 (2004); Yemen Wholesale Tobacco and Candy Supply, Inc., 67 FR 9,997 (2002); Denver Wholesale, 67 FR 99,986 (2002).

The Deputy Administrator's review of the investigative file reveals that on or about September 19, 2002, an application was submitted by the owner of A–1, Mr. David Smith, seeking registration to distribute ephedrine and pseudoephedrine list I chemical products. The application originally included phenylpropanolamine, but that listed chemical product was eventually deleted from the request.

In connection with the pending application, an on-site pre-registration investigation was conducted at the proposed premises in April 2003. Investigators were advised that A–1 was a sole proprietorship, operated by Mr. Smith and his wife, with no other employees. It commenced operations in June 2002 and was a wholesale distributor of general merchandise such as health and beauty aids, automotive products, sunglasses and other sundry items. A–1 provided a list of products it intended to carry which included 60 tablet bottles of Mini Two Way and Two Way brand combination ephedrine, as well as Pseudo 60 brand pseudoephedrine. The majority of A–1's proposed customers were gas stations, small retail markets and convenience stores in the Columbus, Georgia area. Neither Mr. Smith nor his wife had any prior experience with the distribution of list I chemicals.

DEA is aware that small illicit laboratories operate with listed chemical products often procured, legally or illegally, from non-traditional retailers of over-the-counter drug products, such as gas stations and small retail markets. Some retailers acquire product from multiple distributors to mask their acquisition of large amounts of listed chemicals. In addition, some individuals utilize sham corporations or fraudulent records to establish a commercial identity in order to acquire listed chemicals.

The Deputy Administrator has previously found that the illegal production of methamphetamine continues unabated within the DEA Atlanta region. The adjacent State of Tennessee leads the region in the number of clandestine laboratories seized, accounting for approximately 50 percent of the clandestine laboratories seized during the second quarter of 2002. When compared with the third quarter of 2001, the increase in clandestine laboratory seizures is notable. According to later records for the Atlanta region, 360 clandestine laboratories were seized during the third quarter of 2002. Of the 360 laboratories seized during that reporting period, 207 were located in Tennessee, 103 in Georgia, 35 in South Carolina and 15 in North Carolina. *See* CWK Enterprises, Inc. (CWK), 69 FR 69,400 (2004); Prachi Enterprises, Inc. (Prachi), 69 FR 69,407 (2004).

In the State of Georgia, there has been a consistent increase in the number of illicit laboratories and enforcement teams continue to note a trend toward smaller capacity laboratories. This is likely due to the ease of concealment associated with smaller laboratories, which continue to dominate seizures and cleanup responses. The adjacent State of Tennessee also has a substantial methamphetamine abuse problem in the Chattanooga and Eastern Tennessee areas and DEA is aware of a past history of trafficking in precursors in these locations. Distributors or retailers selling the illicit methamphetamine trade observe no borders and trade across state lines. In fact, where precursor laws are stringent, out-of-state distributors often make direct shipments to retainers without observing state requirements. *See* CKW, *supra,* 69 FR 69,400; Prachi, *supra*, 69 FR 69,407.

DEA knows by experience that there exists a ''gray market'' in which certain high strength, high quantity pseudoephedrine and ephedrine products are distributed only to convenience stores and gas stations,

from where they have a high incidence of diversion. These grey market products are not sold in large discount stores, retail pharmacies or grocery stores, where sales of therapeutic over-the-counter drugs predominate. ''Two-way'' ephedrine and single entity pseudoephedrine products are prime products in this gray market industry and are rarely found in any retail store serving the traditional therapeutic market.

DEA also knows from industry data, market studies and statistical analysis that over 90% of over-the-counter drug remedies are sold in drug stores, supermarket chains and ''big box'' discount retailers. Less than one percent of cough and cold remedies are sold in gas stations or convenience stores. Studies have indicated that most convenience stores could not be expected to sell more than $20.00 to $40.00 worth of products containing pseudoephedrine per month. The expected sales of ephedrine products are known to be even smaller. Most convenience stores handling gray market products often order more product than what is required for the legitimate market and obtain chemical products from multiple distributors.

Pursuant to 21 U.S.C. 823(h), the Deputy Administrator may deny an application for a Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires that the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one of a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See, e.g.*, Energy Outlet, 64 FR 14,269 (1999). *See also*, Henry J. Schwartz, Jr., M.D., 54 FR 16,422 (1989).

The Deputy Administrator finds factors four and five relevant to the pending application for registration.

With regard to factor four, the applicant's past experience in the distribution of chemicals, the Deputy Administrator finds this factor relevant based on Mr. and Mrs. Smith's lack of knowledge and experience regarding the laws and regulations governing handling of list I chemical products. In prior DEA decisions, this lack of experience in handling list I chemical products has been a factor in denying pending applications for registration. *See, e.g.*, CWK, *supra*, 69 FR 69,400; Prachi, *supra*, 69 FR 69,407; Direct Wholesale, *supra*, 69 FR 11,654; ANM Wholesale, 69 FR 11,652 (2004); Xtreme Enterprises, Inc., 67 FR 76,195 (2002).

With regard to factor five, other factors relevant to and consistent with the public safety, the Deputy Administrator finds this factor weighs heavily against granting the application. Unlawful methamphetamine use is a growing public health and safety concern throughout the United States and Southeast. Ephedrine and pseudoephedrine are precursor products needed to manufacture methamphetamine and operators of illicit methamphetamine laboratories regularly acquire the precursor products needed to manufacture the drug from convenience stores and gas stations which, in prior DEA decisions, have been identified as constituting the grey market for list I chemical products. It is apparent that A–1 intends on being a participant in this market.

While there are no specific prohibitions under the Controlled Substances Act regarding the sale of listed chemical products to these entities, DEA has nevertheless found these establishments serve as sources for the diversion of large amounts of listed chemical products. *See, e.g.*, ANM Wholesale, *supra*, 69 FR 11,652; Xtreme Enterprises, Inc., 67 FR 76,195; Sinbad Distributing, 67 FR 10,232 (2002); K.V.M. Enterprises, 67 FR 70,968 (2002).

The Deputy Administrator has previously found that many considerations weighed heavily against registering a distributor of list I chemicals because, ''[v]irtually all of the Respondent's customers, consisting of gas station and convenience stores, are considered part of the grey market, in which large amounts of listed chemicals are diverted to the illicit manufacture of amphetamine and methamphetamine.'' Xtreme Enterprises, Inc., *supra*, 67 FR at 76,197. As in Xtreme Enterprises, Inc., lack of a criminal record and intent to comply with the law and regulations are far outweighed by A–1's lack of experience and the company's intent to sell ephedrine and pseudoephedrine primarily to the gray market. *See also*, CWK, *supra*, 69 FR 69,400; Prachi, *supra*, 69 FR 69,407.

Based on the foregoing, the Deputy Administrator concludes that granting the pending application would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders the pending application for DEA Certificate of Registration, previously submitted by A–1 Distribution Wholesale, be, and it hereby is, denied. This order is effective June 17, 2005.

Dated: May 9, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–9833 Filed 5–17–05; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Robert A. Burkich, M.D.; Revocation of Registration

On August 23, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert A. Burkich, M.D. (Dr. Burkich) of Nashville, Tennessee, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BB4812043, as a practitioner, under 21 U.S.C. 824(a)(3) and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f). As a basis for revocation, the Order to Show Cause alleged that Dr. Burkich is not currently authorized to practice medicine or handle controlled substances in Tennessee, his state of registration and practice.

On September 15, 2004, Dr. Burkich, acting *pro se,* filed a Waiver of Hearing and Written statement (Written Statement) with the Hearing Clerk of the DEA Office of Administrative Law Judges. The investigative file and Written Statement were than forwarded to the Deputy Administrator for her final order.

The Deputy Administrator finds Dr. Burkich waived his right to a hearing and, in lieu of a hearing, submitted a Written Statement regarding his

position on the matters of fact and law that are involved in this proceeding. Accordingly, after considering material from the investigative file and Dr. Burkich's Written Statement, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(c) and (e) and 1301.46.

The Deputy Administrator finds Dr. Burkich currently possesses DEA Certificate of Registration BB4812043, which expires on July 31, 2005. The Deputy Administrator further finds that on March 17, 2004, Tennessee Board of Medical Examiners (Tennessee Board) issued a Final Order revoking Dr. Burkich's license to practice medicine in Tennessee. The Tennessee Board's action was based upon its findings of fact that Dr. Burkich had been convicted in the United States District Court for the Eastern District of Tennessee of one felony count of mail fraud (18 U.S.C. 1341) and that the Georgia Composite State Board of Medical Examiners (Georgia Board) had revoked Dr. Burkich's license to practice medicine in Georgia, as a result of that conviction.

In his Written Statement, Dr. Burkich concedes he pled guilty to the criminal charge. However, he alleges he had a viable defense of entrapment and only pled guilty after being misadvised by his retained defense counsel who, Dr. Burkich asserts, was ineffective and had a conflict of interest. Attached to his Written Statement is a Motion for a Certificate of Appealability, which Dr. Burkich filed in the United States Court of Appeals for the Sixth Circuit (Case No. 04–6027). In that Motion, Dr. Burkich asserts in detail the factual and legal basis for the claims in his Written Statement.

The Deputy Administrator has determined that on November 23, 2004, the court of Appeals issued an Order denying Dr. Burkich's Motion for a Certificate of Appealability. He subsequently filed a Petition for an En Banc Rehearing which has not yet been acted upon by the Court. Accordingly, the federal conviction which was the underlying basis for Dr. Burkich's license revocation remains a valid judgment.

More significantly for purposes of this proceeding, Dr. Burkich does not contend in either his Written Statement or the accompanying Motion, that the Tennessee Board's Final Order has been stayed, modified or terminated or that either of his state medical licenses have been reinstated. Further, there is no evidence in the investigative file indicating the Tennessee Board's Final Order is no longer in effect.

Therefore, the Deputy Administrator finds Dr. Burkich is not currently authorized to practice medicine in the States of Tennessee and Georgia. As a result, it is reasonable to infer he is also without authorization to handle controlled substances in either state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Stephen J. Graham, M.D., 69 FR 11661 (2004); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear Dr. Burkich's Tennessee medical license has been revoked and he is not currently licensed to handle controlled substances in that state, where he is registered with DEA. Therefore, he is not entitled to a DEA registration in Tennessee.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BB4812043, issued to Robert A. Burkich, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective June 17, 2005.

Dated: May 9, 2005.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Salvatore DeFrank, D.P.M. Revocation of Registration

On October 28, 2004, the Deputy Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause and Immediate Suspension of Registration to Salvatore DeFrank, D.P.M. (Dr. DeFrank) of Dallas, Texas. Dr. DeFrank was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BD8259346, as a practitioner, and deny any pending applications for renewal or modification of such registration pursuant to 21 U.S.C. 823(f) and 824(a)(4) for reason that his continued registration would be inconsistent with the public interest. Dr. DeFrank was further notified that his DEA registration was immediately suspended as an imminent danger to the public health and safety pursuant to 21 U.S.C. 824(d).

The Order to Show Cause and Immediate Suspension of Registration alleged in sum, that Dr. DeFrank was illegally prescribing controlled substances over the Internet without personal contacts, examinations or bona fide physician/patient relationships with the customers ordering the medications. These prescriptions were not issued ''in the usual course of professional treatment'' and violated 21 CFR 1306.04 and 21 U.S.C. 841(a).

According to the investigative file, the order to Show Cause and Immediate Suspension of Registration was personally accepted on Dr. DeFrank's behalf by his attorney in Carrolltown, Texas, on November 4, 2004. More than thirty days have passed since service of the Order to show Cause and Immediate Suspension of Registration and DEA has not received a request for hearing or any other reply from Dr. DeFrank or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause and Immediate Suspension of Registration to Dr. DeFrank's attorney, and (2) no request for hearing having been received, concludes that Dr. DeFrank is deemed to have waived his hearing right. *See* David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

While some consumers use Internet pharmacies for convenience, privacy and cost savings, others, including minor children, use the anonymity of the Internet to procure controlled substances illegally. The role of a legitimate online pharmacist is to dispense prescription medications and to counsel patients about the proper use of these medications, not to write or originate prescriptions. Internet profiteers are online suppliers of prescription drugs, be they owners, operators, pharmacists, or doctors, who illegally and unethically market controlled substances via the Internet for quick profit. Operation PHARMNET, which this Order to show Cause and Immediate Suspension of Registration is a part of, is a nationwide action by the DEA to disrupt and dismantle this illegal and dangerous cyberspace threat to the public health and safety.

The Controlled Substances Act (CSA) establishes a ''closed system'' of distribution regulating the movement of controlled medications from their importation or manufacture, through delivery to the ultimate user patient, pursuant to a lawful order of a practitioner. The regulations implementing the CSA explicitly describe the parameters of a lawful prescription as follows: ''A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a).

Prescriptions issued not in the ''usual course of professional treatment'' are not ''prescriptions'' for purposes of the CSA and individuals issuing and filling such purported prescriptions are subject to the penalties for violating the CSA's controlled substances provisions.

In *United States* v. *Moore*, 423 U.S. 122 (1975), the Supreme Court held that, ''Implicit in the registration of a physician is the understanding that he is authorized only to act 'as a physician.' '' *Id.*, at 141. In Moore the court implicitly approved a jury instruction that acting ''as a physician'' is acting ''in the usual course of a professional practice and in accordance with a standard of medical practice generally recognized and accepted in the United States.'' *Id.*, at 138–139; see, *United States* v. *Norris*, 780 F.2d 1207, 1209 (5th Cir. 1986).

Responsible professional organizations have issued guidance in this area. The American Medical Association's guidance for physicians on the appropriate use of the Internet in prescribing medication (H–120.949 Guidance for Physicians on Internet Prescribing) states:

''Physicians who prescribe medications via the Internet shall establish, or have established, a valid patient-physician relationship, including, but not limited to, the following components. The physician shall:

I. Obtain a reliable medical history and perform a physical examination of the patient, adequate to establish the diagnosis for which the drug is being prescribed and to identify underlying conditions and/or contraindications to the treatment recommended/provided;

ii. Have sufficient dialogue with the patient regarding treatment options and the risks and benefits of treatment(s);

iii. As appropriate, follow up with the patient to assess the therapeutic outcome;

iv. Maintain a contemporaneous medical record that is readily available to the patient and, subject to the patient's consent, to his or hear other health care professionals; and

v. Include the electronic prescription information as part of the patient medical record.''

In April 2000, the Federation of State Medical Boards adopted Model Guidelines for the Appropriate Use of the Internet in Medical Practice, which state, in pertinent part, that:

''Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional (face-to-face) settings. Treatment, including issuing a prescription, based solely on an online questionnaire or consultation does not constitute an acceptable standard of care.''

The CSA regulations establish certain responsibilities not only on individual practitioners who issue prescriptions for controlled substances, but also on pharmacists who fill them. A pharmacist's ''corresponding responsibility'' regarding the proper dispensing of controlled substances is explicitly described in 21 CFR 1306.04(a). It provides:

''A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.''

In an April 21, 2001, policy statement, entitled, Dispensing and Purchasing Controlled Substances Over the Internet, 66 FR 21 181 (2001), DEA delineated certain circumstances in which prescribing over the Internet is unlawful. The policy provides, inter alia, that a controlled substance should not be issued or dispensed unless there was a bona fide doctor/patient relationship. Such a relationship requires that the patient have a medical complaint, a medical history taken, a physical examination performed and some logical connection between the medical complaint, the medical history, the physical examination and the drug prescribed. The policy statement specifically explains that the completion of ''a questionnaire that is then reviewed by a doctor hired by the Internet pharmacy could not be considered the basis for a doctor/patient relationship * * *''*Id.*, at 21 182–21183.

Rogue Internet pharmacies bypass a legitimate doctor-patient relationship, usually by use of a cursory and incomplete online questionnaire or perfunctory telephone ''consult'' with a doctor, who usually has a contractual arrangement with the online pharmacy and is often paid on the basis of prescriptions issued. The Food and Drug administration (FDA) considers the questionnaire, in lieu of face-to-face interaction, to be a practice that undermines safeguards of direct medical supervision and amounts to substandard medical care. *See* U.S. Food and Drug Administration, Buying Medicines and Medical Products Online, General FAQs (*http://fda.gov/oc/buyonline/default.htm*).

The National Association of Boards of Pharmacy considers Internet pharmacies to be suspect if:

''they dispense prescription medications without requiring the consumer to mail in a prescription, and if they dispense prescription medications and do not contact the patient's prescriber to obtain a valid verbal prescription. Further, online pharmacies are suspect if they dispense prescription medications solely based upon the consumer completing an online questionnaire without the consumer having a pre-existing relationship with a prescriber and the benefit of an in-person physical examination. State boards of pharmacy, boards of medicine, the FDA, as well as the AMA, condemn this practice and consider it to be unprofessional.''

See National Association of Boards of Pharmacy, VIIPS Program, Most Frequently Asked questions (*http://www.nabp.net/vipps/consumer/faq.asp*).

Rogue Internet pharmacies often use persons with limited or no knowledge of medications and standard pharmacy practices to fill prescriptions, do not advertise the availability of pharmacists for medication consultation, and focus on select medications, usually lifestyle, obesity and pain mediations. Rogue Internet pharmacies generally do not protect the integrity of original faxed prescriptions by requiring that they be received directly from the prescriber (not the patient) and do not verify the authenticity of suspect prescriptions.

When the established safeguards of an authentic doctor-patient relationship are lacking, controlled substance prescription drugs can not only be misused, but also present potentially serious health risks to patients. Rogue Internet pharmacies facilitate the easy circumvention of legitimate medical practice. The FDA has stated:

''We know that adverse events are under-reported and we know from history that tolerating the sale of unproven, fraudulent, or adulterated drugs results in harm to the public health. It is reasonable to expect that the illegal sales of drugs over the Internet and the number of resulting injuries will increase as sales on the Internet grow. Without clear and effective law enforcement, violators will have no reason to stop their illegal practices.

Unless we begin to act now, unlawful conduct and the resulting harm to consumers most likely will increase.''

See U.S. Food and Drug Administration, Buying Medicines and Medical Products Online, General FAQs (*http://fda.gov/oc/buyonline/default.htm*).

The Deputy Administrator finds that Dr. DeFrank is currently registered with DEA as a practitioner under DEA Registration, BD8259346 with a registered address in Dallas, Texas. He is licensed as a podiatrist in the State of Texas.

Prior to October 2003, Dr. ''J.D.'' had been issuing large amounts of controlled substances from his clinic, the Mid-Florida Medical Clinic (MFMC), located in Haines City, Florida. These prescriptions, issued pursuant to an unlawful Internet scheme as described above, were dispensed directly from MFMC and from National Scripts, Inc. (NSI), a pharmacy located in Earth City, Missouri, which was filling thousands of Internet prescriptions authorized by various physicians, in addition to Dr. J.D.

On October 16, 2003, as a result of a DEA investigation into these activities, Dr. J.D. was served with an Order to Show Cause and Immediate Suspension of his DEA practitioner's registration. Shortly thereafter, Dr. DeFrank met with Dr. J.D. and others associated with MFMC and NSI, to discuss who would take over Dr. J.D.'s role, now that he could no longer issue prescriptions because of the suspension order. Dr. DeFrank agreed to take over Dr. J.D.'s prescribing responsibilities.

On October 21, 2003, after a diversion investigator from DEA's Orlando District Office discovered Dr. DeFrank was issuing controlled substance prescriptions from MFMC's Florida location, he contacted Dr. DeFrank to advise him he was not authorized to issue Internet prescriptions in Florida, as he was not licensed to practice in that state. Dr. DeFrank responded that his prescribing was lawful, because it was done over the Internet. The investigator then advised Dr. DeFrank that they knew that Dr. DeFrank's Florida-licensed physician assistants were authorizing Internet controlled substance prescriptions in Dr. DeFrank's name, which was a violation of Florida law. The investigator further advised Dr. DeFrank that issuing prescriptions for controlled substances without a face-to-face examination was illegal and that this practice was the basis for the immediate suspension of Dr. J.D.'s registration, which was ultimately surrendered in lieu of further proceedings.

On November 20, 2003, an investigator from DEA's Dallas Field Division contacted Dr. DeFrank's Texas attorney to advise him that DEA prohibited issuance of controlled substance prescriptions without a face-to-face examination and that such prescribing practices also violated Texas law.

On December 4, 2003, DEA served a Federal search warrant on the NSI pharmacy in Earth City, Missouri. Over 3,000 controlled substance dispensing records were recovered showing Dr. DeFrank had prescribed controlled substances over the Internet, mostly hydrocodone, a Schedule III controlled substance. These records showed Dr. DeFrank continued Internet prescribing even after he and his attorney were specifically warned of its illegal nature and put on notice that DEA was investigating this activity.

On February 24, 2004, Dr. DeFrank's Texas attorney was again contracted by DEA investigators. They advised counsel that his client was continuing to unlawfully prescribe controlled substances through the Internet and unsuccessfully sought surrender of Dr. DeFrank's registration.

On April 9, 2004, a DEA undercover investigator went online to order a controlled substance prescription through the Web site *http://www.mypainmeds.com.* He falsely filled out an Internet questionnaire indicating he was overweight and suffering from back pain and insomnia. After providing an undercover phone number where he could be contacted, at a designated time the investigator was called by an unknown male and asked a few questions. While refusing to order one controlled medication because of its high asking price, the investigator agreed to purchase 60 dosage units of 10 mg. hydrocodone, at a price which included a $38.00 doctor's ''consultation'' fee. The hydrocodone was then shipped via Federal Express to an undercover address in Florida and Dr. DeFrank was listed on the vial's label as the prescribing physician.

While Dr. DeFrank was issuing controlled substance prescriptions over the Internet, he was licensed in the State of Texas as a podiatrist. Because Texas law permits a podiatrist to issue controlled substances *only* for the treatment of foot ailments, Dr. DeFrank's Internet prescribing for complaints that were unrelated to foot ailments was prohibited by state law.

Further, as of December 1999, Texas has imposed the following requirements, (1) A physician must verify the identity of the person requesting medication. (2) The physician must establish a diagnosis with accepted medical practices such as patient history, mental status exam, physical exam and appropriate diagnostic and laboratory testing. (3) The physician must discuss with the patient the diagnosis and evidence of the medical complaint and the risks and benefits of treatment options. (4) The physician must insure the availability of appropriate follow-up care. The Internet prescriptions issued by Dr. DeFrank did not comply with these state requirements.

On September 15, 2004, Dr. DeFrank was interviewed by two detectives from the Sheriff's Department of Ventura County, California. Dr. DeFrank admitted he was then-currently managing a web site call center which employed one physician and a physician's assistant to issue controlled substance prescriptions over the Internet. The California investigation also discovered that between July 16 and 28, 2004, Dr. DeFrank personally issued 32 controlled substance prescriptions for Internet customers.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal of such registration, if she determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See* Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

In this case, the Deputy Administrator finds factors two, four and five relevant to a determination of whether Dr. DeFrank's continued registration

remains consistent with the public interest.

With regard to factor one, the recommendation of the appropriate state licensing board or professional disciplinary authority, there is no evidence in the investigative file that Dr. DeFrank has been the subject of a state disciplinary proceeding, nor is there evidence demonstrating that his state podiatry license or state controlled substance authority are currently restricted in any form. Nevertheless, state licensure is a necessary, but not sufficient condition for registration, and therefore, this factor is not dispositive. *See e.g.,* Wesley G. Harline, M.D., 65 FR 5665–5672 (2000); James C. LaJevic, D.M.D., 64 FR 55962 (1999).

With regard to factors two and four, the Deputy Administrator finds the primary conduct at issue in this proceeding (*i.e.,* the unlawful prescribing and dispensing of controlled substance prescriptions for use by Internet customers) relates to Dr. DeFrank's experience in prescribing controlled substances, as well as his compliance with applicable state, federal, or local laws relating to controlled substances.

A DEA registration authorizes a physician to prescribe or dispense controlled substances only within the usual course of his or her professional practice. For a prescription to have been issued within the course of a practitioner's professional practice, it must have been written for a legitimate medical purpose within the context of a valid physician-patient relationship. *See* Mark Wade, M.D., 69 FR 7018 (2004). Legally, there is absolutely no difference between the sale of an illicit drug on the street and the illicit dispensing of a licit drug by means of a physician's prescription. *See* Floyd A. Santner, M.D., 55 FR 37581 (1990).

The Deputy Administrator concludes from a review of the record that Dr. DeFrank did not establish valid physician-patient relationships with the Internet customers to whom he prescribed controlled substances. DEA has previously found that prescriptions issued through Internet websites under these circumstances are not considered as having been issued in the usual course of medical practice, in violation of 21 CFR 1306.04 and has revoked DEA registrations of several physicians for participating in Internet prescribing schemes similar to or identical to that of Dr. DeFrank. *See,* Marvin L. Gibbs, Jr., M.D., 69 FR 11658 (2004); Mark Wade, M.D., supra, 69 FR 7018; Ernesto A. Cantu, M.D., 69 FR 7014–7015 (2004); Rick Joe Nelson, M.D., 66 FR 30752 (2001).

Similarly, DEA has issued orders to show abuse and subsequently revoked DEA registrations of pharmacies which have failed to fulfill their corresponding responsibilities in Internet prescribing operations similar to, or identical to that of Dr. DeFrank. *See,* EZRX, L.L.C. (EZRX), 69 FR 63178 (2004); Prescriptiononline.com, 69 FR 5583 (2004).

In the instant case, Dr. DeFrank and other practitioner associated with this Internet scheme, authorized prescriptions for controlled substances without the benefit of face-to-face physician-patient contact, physical exam or medical tests. Beyond occasional phone calls to customers or their family members, there is no information in the investigation file demonstrating that Dr. DeFrank and other issuing physicians even took time to corroborate responses to the questionnaire submitted by the customers. Here, it is clear that the issuance of controlled substance prescriptions to persons whom Dr. DeFrank had not established a valid physician-patient relationship is a radical departure from the normal course of professional practice and he knowingly participated in this scheme.

With regard to factor three, Dr. DeFrank's conviction record under federal or state laws relating to the dispensing of controlled substances, the record does not reflect that he has yet been convicted of a crime related to controlled substances.

Regarding factor five, such other conduct which may threaten the public health or safety, the Deputy Administrator finds this factor particularly relevant. Dr. DeFrank continued prescribing to Internet customers, not only after issuance of policy statements designed to assist licensed practitioner and pharmacies in the proper prescribing and dispensing of dangerous controlled drugs, but after multiple warnings were personally delivered to Dr. DeFrank and his attorney and he was put on notice of the reason for his MFMC predecessor's immediate suspension. That he continued this activity after being made aware of its illegal nature and that it was the focus of an investigation, speaks volumes regarding Dr. DeFrank's willingness to abandon his responsibilities as a practitioner and registrant.

The Deputy Administrator has previously expressed her deep concern about the increased risk of diversion which accompanies Internet controlled substance transactions. Given the nascent practice of cyber-distribution of controlled drugs to faceless individuals, where interaction between individuals is limited to information on a computer screen or credit card, it is virtually impossible to insure that these highly addictive, and sometimes dangerous products will reach the intended recipient, and if so, whether the person purchasing these products has an actual need for them. The ramifications of obtaining dangerous and highly addictive drugs with the ease of logging on to a computer and the use of a credit card are disturbing and immense, particularly when one considers the growing problem of the abuse of prescription drugs in the United States. *See,* EZRX, *supra,* 69 FR at 63181; Mark Wade, M.D., *supra,* 69 FR 7018.

The Deputy Administrator has also previously found that in a 2001 report, the National Clearinghouse for Alcohol and Drug Information estimated that 4 million Americans ages 12 and older had acknowledged misusing prescription drugs. That accounts for 2% to 4% of the population—a rate of abuse that has quadrupled since 1980. Prescription drug abuse—typically of painkillers, sedatives and mood-altering drugs— accounts for one-third of all illicit drug use in the United States. *See,* EZRX, *supra,* 69 FR at 63181–63182; Mark Wade, M.D., *supra,* 69 FR 7018.

The Deputy Administrator finds that with respect to Internet transactions involving controlled substances, the horrific untold stories of drug abuse, addiction and treatment are the unintended, but foreseeable consequence of providing highly addictive drugs to the public without oversight. The closed system of distribution, brought about by the enactment of the Controlled Substances Act, is completely compromised when individuals can easily acquire controlled substances without regard to age or health status. Such lack of oversight describes Dr. DeFrank's practice of issuing prescriptions for controlled substances to indistinct Internet customers which were then filled by pharmacies participating in the scheme. Such conduct contributes to the abuse of controlled substances by Dr. DeFrank's customers and is relevant under factor five, further supporting revocation of his DEA Certificate of Registration.

Blindly motivated by financial gain, Dr. DeFrank demonstrated a cavalier disregard for controlled substance laws and regulations and a disturbing indifference to the health and safety of individuals purchasing dangerous drugs through the Internet. Such lack of character and flaunting of the responsibilities inherent with a DEA registration show, in no uncertain terms,

that Dr. DeFrank's continued registration would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration DB8259346, issued to Salvatore DeFrank, D.P.M., be, and it hereby is revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective June 17, 2005.

Dated: May 9, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–9838 Filed 5–17–05; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 04–30]

Lance L. Gooberman, M.D.; Denial of Registration

On March 15, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lance L. Gooberman, M.D. (Dr. Gooberman), notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AG9773703, as a practitioner, pursuant to 21 U.S.C. 824(a)(3) and (a)(4) and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f).

The Order to Show Cause alleged that Dr. Gooberman's license to practice medicine in New Jersey, where he was registered, had been suspended by the State of New Jersey, Board of Medical Examiners (New Jersey Board) and he was not authorized to handle controlled substances in that state.

On April 13, 2004, Dr. Gooberman, acting pro se, requested a hearing and on April 20, 2004, Administrative Law Judge Gail A. Randall (Judge Randall) issued an Order for Prehearing Statements. On July 7, 2004, in response to a Government motion for Consolidation, Judge Randall ordered Dr. Gooberman's case consolidated with the pending case of David W. Bradway, M.D. (Docket No. 04–27). Dr. Bradway had been in practice with Dr. Gooberman and they had been disciplined by the New Jersey Board in a joint proceeding, for the same professional misconduct.

After authorized delays, on September 8, 2004, counsel for the Government filed a Motion for Summary Disposition. It alleged that on July 14, 2004, the Commonwealth of Pennsylvania, Department of State, State Board of Medicine (Pennsylvania Board) issued an Adjudication and Order suspending Dr. Gooberman's Pennsylvania medical license. That action was predicated on the New Jersey Board's Final Order of March 10, 2003, which suspended Dr. Gooberman's New Jersey medical license for a period of two years from the Order's effective date of June 19, 2003. The Government attached a copy of both the Pennsylvania and New Jersey Orders and argued that, since Dr. Dooberman's licenses to practice medicine in New Jersey and Pennsylvania were both suspended, he was not authorized to handle controlled substances in the jurisdiction of his registration and ineligible for a modification of location to Pennsylvania.

Judge Randall issued an order allow Dr. Gooberman to respond to the Government's motion. Having noticed that Dr. Gooberman's DEA Certificate of Registration had expired prior to initiation of the show cause proceedings, she also directed the Government to address the impact of its apparent expiration.

The Government replied that Dr. Gooberman submitted a renewal application one week before his registration's expiration. On the application, Dr. Gooberman noted he had left New Jersey and requested a change in registered location to an address in Pennsylvania. Judge Randall agreed with the Government that Dr. Gooberman's New Jersey registration was terminated by operation of law and that his request for an address modification must be treated as an application for registration in Pennsylvania. See 21 CFR 1301.51 and 1301.52.

The Government argued Dr. Gooberman's application was thus still pending before the administrative law judge and, based on lack of state authority to handle controlled substances in Pennsylvania, the Government moved for summary disposition. When Dr. Gooberman was given an opportunity to respond, he acknowledged his New Jersey and Pennsylvania licenses were suspended and that he did not ''have a basis on which to hold a DEA Certificate of reigstration at this time.'' Thus, he did not oppose the Government's motion.

On October 14, 2004, Judge Randall issued her Order, Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Randall granted the Government's Motion for Summary Disposition, finding Dr. Gooberman's New Jersey DEA registration had terminated by operation of law and he lacked authorization to handle controlled substances in Pennsylvania, the jurisdiction where he was seeking registration.

In granting the Government's motion, Judge Randall recommended that Dr. Gooberman's application to renew and modify his registration be denied. No exceptions to the Opinion and Recommended Decision were filed and on November 23, 2004, Judge Randall forwarded her Opinion and Recommended Decision to the Deputy Administrator for final order pursuant to 21 CFR 1316.65(c).

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds Dr. Gooberman currently possesses DEA Certificate of Registration AG9773703, as a practitioner in schedules II through V, with a registered location in Merchantville, New Jersey. On September 30, 2003, that registration was due to expire. However, a week earlier, Dr. Gooberman submitted a renewal application, requesting a change to a Pennsylvania location. Because Dr. Gooberman had abandoned his New Jersey registered location, Certificate of Registration AG9773703 was terminated under 21 CFR 1301.52.

The Deputy Administrator finds Dr. Gooberman's license to practice medicine in New Jersey was suspended by the New Jersey Board's Final Order of March 10, 2003, and his Pennsylvania license was suspended by the Pennsylvania Board's Adjudication and Order of July 14, 2004. There is no evidence before the Deputy Administrator that either the New Jersey or Pennsylvania Orders have been lifted, stayed or modified. Therefore, the Deputy Administrator finds Dr. Gooberman is currently not licensed to practice medicine in either New Jersey or Pennsylvania. As a result, it is reasonable to infer he is also without authorization to handle controlled substances in either state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). this prerequisite has been consistently upheld. See Stephen J. Graham, M.D., 69 FR 11,661 (2004); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11,919 (1988). Revocation is also appropriate when a State license has been suspended, but with possibility of future reinstatement. See Alton E. Ingram, Jr., M.D., 69 FR 22,562 (2004); Ann Lazar Thorn, M.D., 62 FR 847 (1997)

Here, it is clear Dr. Goobermen is not currently licensed to handle controlled substances in Pennsylvania, where he seeks registration with DEA. Therefore, he is not entitled to such a registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application of Lance L. Gooberman, M.D., for registration be, and it hereby is, denied. This order is effective June 17, 2005.

Dated: May 9, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–9834 Filed 5–17–05; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 05–01]

Katarzyna Rygiel, M.D.; Revocation of Registration

On September 3, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Katarzyna Rygiel, M.D. (Dr. Rygiel) of San Diego, California, notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration BK4222179, as a practitioner, pursuant to 21 U.S.C. 824(a)(3) and deny any pending applications for renewal of that registration pursuant to 21 U.S.C. 823(f). As the basis for revocation, the Order to Show Cause alleged that Dr. Rygiel's license to practice medicine in California had been revoked and accordingly, she was not authorized to handle controlled substances in California, the state in which she is registered.

In a letter dated October 6, 2004, through her counsel, Dr. Rygiel timely requested a hearing in this matter. In that letter she admitted the California Medical Board had revoked her license but argued that decision was being reviewed by the Superior Court of California, County of San Diego.

On October 13, 2004, the government filed a Motion for Summary Disposition, requesting that Administrative Law Judge Gail A. Randall (Judge Randall) summarily dismiss the action, arguing that Dr. Rygiel lacked state authority to handle controlled substances in California. On October 14, 2004, Judge Randall issued an Order staying proceedings and affording Dr. Rygiel an opportunity to respond to the Government's motion. Dr. Rygiel then filed a Motion for Further Stay of Proceedings and Opposition to Government's Motion for Summary Adjudication and Alternatively, Motion for Stay of Judgment (Response). In that Response Dr. Rygiel acknowledged she was currently without state authority to practice medicine in California but argued the DEA hearing should be stayed until the San Diego Superior Court had issued an anticipated decision in her favor.

On November 22, 2004, Judge Randall issued her Order, Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Randall granted the Government's Motion for Summary Disposition, finding Dr. Rygiel lacked authorization to handle controlled substances in California, the jurisdiction in which she is registered. Judge Randall recommended that Dr. Rygiel's DEA registration be revoked. No exceptions were filed by either party to the Opinion and Recommended Decision and on January 11, 2005, the record of these proceedings was transmitted to the Office of the DEA Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that Dr. Rygiel holds DEA Certificate of Registration, BK4222179. The Deputy Administrator further finds that on March 16, 2004, the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs, State of California (Board) issued a Decision revoking Dr. Rygiel's Physician and Surgeon's Certificate. In that Decision, the Board adopted a February 13, 2004, Proposed Decision of a California Administrative Law Judge which recommended revocation of Dr. Rygiel's medical license on certain enumerated grounds.

There is no evidence in the record indicating the Board's Decision has been stayed or set aside by judicial action, rescinded by the Board or that Dr. Rygiel's license has been reinstated. Therefore, the Deputy Administrator finds that Dr. Rygiel is currently not licensed to practice medicine in California and, as a result, it is reasonable to infer that she is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which she conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Gabriel Sagun Orzame, M.D., 69 FR 58959 (2004); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Dr. Rygiel is not currently authorized to handle controlled substances in California, where she is registered with DEA. Therefore, she is not entitled to maintain that registration. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BK4222179, issued to Katarzyna Rygiel, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective June 17, 2005.

Dated: May 9, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–9837 Filed 5–17–05; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Rebecca Sotelo Denial of Registration

On October 6, 2004, the Deputy Assistant Administrator, Office of

Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Rebecca Sotelo (Respondent) who was notified of an opportunity to show cause as to why DEA should not deny her application for registration as a mid-level practitioner, pursuant to 21 U.S.C. 824(a)(3) and 823(f).

The Order to Show Cause alleged that Respondent had not been granted Prescribing and Dispensing Authority by the Arizona State Board of Nursing and was not authorized to handle controlled substances in Arizona, the State in which she practices. The Order to Show Cause also notified Respondent that should no request for a hearing be filed within 30 days, her hearing right would be deemed waived.

The Order to Shaw Cause was sent by certified mail to Respondent's residence at 4479 N. Camino Del Ray, Tucson, Arizona 85718. According to the return receipt, the Order to Show Cause was delivered to Respondent on October 18, 2004. DEA has not received a request for a hearing or any other reply from Respondent or anyone purporting to represent her in the matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause to the Respondent and (2) no request for hearing having been received, concludes that Respondent is deemed to have waived her hearing right. *See* David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that on March 3, 2004, Respondent, a nurse practitioner, applied for registration with DEA as a mid-level practitioner in Schedules II–V (Control No. E06325608N). She had previously been registered with DEA in that same status under Certificate of Registration MS0233222 but allowed the registration to expire on March 29, 2003, and it was retired from the DEA registration system.

Respondent had been licensed as a Registered Nurse with the Arizona State Board of Nursing (Board) and possessed a Certificate for Advance Practice, which is required by the Board for a nurse to act as a Nurse Practitioner. Under Arizona law and regulations, Nurse Practitioners may prescribe and dispense controlled substances if they are registered with DEA and the Board had granted them Prescribing and Dispensing Authority.

Respondent's initial Prescribing and Dispensing Authority expired on December 31, 1998, and her state nursing license, together with her Advance Practice Certificate, expired on June 30, 2003. In February 2004, she renewed her nursing license and Advanced Practice Certificate. However, she did not attempt to renew her Prescribing and Dispensing Authority.

In June 2004, after Respondent submitted her current application for DEA registration, the Board notified DEA investigators that because of public complaints lodged against her, Respondent's Prescribing and Dispensing Authority would not be renewed without an investigation and resolution of the allegations. On July 15, 2004, the State board advised DEA the Respondent ''has not possessed the authority to prescribe and/or dispense medications as a nurse practitioner in the state of Arizona from January 1, 1999, to present.''

There is no evidence before the Deputy Administrator that Respondent's Prescribing and Dispensing Authority has been since been renewed. Therefore, the Deputy Administrator finds that Respondent is not currently authorized to handle controlled substances in the State of Arizona.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which she conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Rory Patrick Doyle, M.D., 69 FR 11,655 (2004); Dominick A. Ricci, M.D., 58 FR 51,104 (1993); Bobby Watts, M.D., 53 FR 11,919 (1988).

Here, it is clear Respondent is not currently authorized to handle controlled substances in Arizona, where she currently practices. Therefore, she is not entitled to a DEA registration in that State.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for a DEA Certificate of Registration, submitted by Rebecca Sotelo, be, and it hereby is, denied. This order is effective June 17, 2005.

Dated: May 9, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–9835 Filed 5–17–05; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Combating Exploitive Child Labor Through Education in Guyana; Correction

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Correction.

SUMMARY: In notice document 05–9284 beginning on page 24632 in the issue of Tuesday, May 10, 2005, make the following correction:

On page 24632 in the third column, the population statistics previously listed in the second sentence under the heading ''Barriers to Education for Working Children in Guyana'' are incorrect. This sentence should be changed to read ''UNICEF has estimated that 27 percent of children ages 5 to 14, or approximately 44,500 children, were working in Guyana in 2000.''

Dated: May 11, 2004.

Valerie Veatch,

Grant Officer.

[FR Doc. 05–9870 Filed 5–17–05; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL2–2001]

TUV America, Inc., Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of TUV America, Inc., (TUVAM) for expansion of its recognition to use additional test standards, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: You must submit information or comments, or any request for extension of the time to comment, by the following dates:

- Hard copy: Your information or comments must be submitted (postmarked or sent) by June 2, 2005.
- Electronic transmission or facsimile: Your comments must be sent by June 2, 2005.

ADDRESSES: You may submit information or comments to this notice—identified by docket number NRTL2–2001—by any of the following methods:

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

• OSHA Web site: *http://ecomments.osha.gov.* Follow the instructions for submitting comments on OSHA's Web page.

• Fax: If your written comments are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.

• Regular mail, express delivery, hand delivery and courier service: Submit three copies to the OSHA Docket Office, Docket No. NRTL2–2001, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210; telephone (202) 693–2350. (OSHA's TTY number is (877) 889–5627). OSHA Docket Office hours of operation are 8:15 a.m. to 4:45 p.m., e.s.t.

Instructions: All comments received will be posted without change to *http://dockets.osha.gov*, including any personal information provided. OSHA cautions you about submitting personal information such as social security numbers and birth dates.

Docket: For access to the docket to read background documents or comments received, go to *http://dockets.osha.gov.* Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions.

Extension of Comment Period: Submit requests for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210. Or fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that TUV America, Inc., (TUVAM) has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). TUVAM's expansion request covers the use of additional test standards. OSHA's current scope of recognition for TUVAM may be found in the following informational Web page: *http://www.osha-slc.gov/dts/otpca/nrtl/tuvam.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational Web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html.*

The most recent notice published by OSHA for TUVAM's recognition covered its initial recognition, which became effective on January 25, 2002 (67 FR 3737).

The current addresses of the TUVAM facilities already recognized by OSHA are: TUV Product Services (TUVAM), 5 Cherry Hill Drive, Danvers, Massachusetts 01923; TUV Product Services (TUVAM), 10040 Mesa Rim Road, San Diego, California 92121; and TUV Product Services (TUVAM), 1775 Old Highway 8 NW, Suite 104, New Brighton (Minneapolis), Minnesota 55112.

General Background on the Application

TUVAM has submitted an application, dated August 1, 2003, (see Exhibits 7 and 7–1) to expand its recognition to include 45 additional test standards. The NRTL Program staff has determined that one of these standards is not an ''appropriate test standard'' within the meaning of 29 CFR 1910.7(c). The staff makes this determination in processing the expansion request of any NRTL. Therefore, OSHA would approve 44 test standards for the expansion.

Following review of the application, OSHA requested certain additional information from TUVAM and deferred action on the application pending receipt of this information. The NRTL adequately responded recently to that request, permitting OSHA to resume processing of the application.

TUVAM seeks recognition for testing and certification of products for demonstration of conformance to the following 44 test standards:

UL 22 Amusement and Gaming Machines.
UL 197 Commercial Electric Cooking Appliances.
UL 250 Household Refrigerators and Freezers.
UL 291 Automated Teller Systems.
UL 427 Refrigerating Units.
UL 467 Electrical Grounding and Bonding Equipment.
UL 471 Commercial Refrigerators and Freezers.
UL 499 Electric Heating Appliances.
UL 507 Electric Fans.
UL 508a Industrial Control Panels.
UL 508c Power Conversion Equipment.
UL 541 Refrigerated Vending Machines.
UL 551 Transformer-Type Arc-Welding Machines.
UL 763 Motor-Operated Commercial Food Preparing Machines.
UL 873 Temperature-Indicating and -Regulating Equipment.
UL 923 Microwave Cooking Appliances.
UL 963 Sealing, Wrapping, and Marking Machines.
UL 982 Motor-operated Household Food Preparing Machines.
UL 998 Humidifiers.
UL 1004 Electric Motors.
UL 1005 Electric Flatirons.
UL 1017 Vacuum Cleaners, Blower Cleaners, and Household Floor Finishing Machines.
UL 1026 Electric Household Cooking and Food Serving Appliances.
UL 1082 Household Electric Coffee Makers and Brewing-Type Appliances.
UL 1083 Household Electric Skillets and Frying-Type Appliances.
UL 1090 Electric Snow Movers.
UL 1236 Battery Chargers for Charging Engine-Starter Batteries.
UL 1278 Movable and Wall- or Ceiling-Hung Electric Room Heaters.
UL 1310 Class 2 Power Units.
UL 1448 Electric Hedge Trimmers.
UL 1450 Motor-Operated Air Compressors, Vacuum Pumps and Painting Equipment.
UL 1492 Audio-Video Products and Accessories.

UL 1585 Class 2 and Class 3 Transformers.
UL 164 Motor-Operated Massage and Exercise Machines.
UL 1662 Electric Chain Saws.
UL 1740 Industrial Robots and Robotic Equipment.
UL 1995 Heating and Cooling Equipment.
UL 2200 Stationary Engine Generator Assemblies.
UL 60335–1 Safety of Household and Similar Electrical Appliances, Part 1: General Requirements.
UL 60335–2–8 Household and Similar Electrical Appliances, Part 2; Particular Requirements for Electric Shavers, Hair Clippers, and Similar Appliances.
UL 60335–2–34 Household and Similar Electrical Appliances, Part 2; Particular Requirements for Motor-Compressors.
UL 61010A–2–010 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for the Heating of Materials.
UL 61010A–2–041 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Autoclaves Using Steam for the Treatment of Medical Materials for Laboratory Processes.
UL 61010A–2–051 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for Mixing and Stirring.

OSHA's recognition of TUVAM, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, any NRTL's scope of recognition excludes any product(s) that fall within the scope of a test standard, but for which OSHA standards do not require NRTL testing and certification.

Many of the UL test standards listed above also are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization for the standard as opposed to the ANSI designation. Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. You may contact ANSI to find out whether or not a test standard is currently ANSI-approved.

Preliminary Finding on the Application

TUVAM has submitted an acceptable request for expansion of its recognition as an NRTL. In connection with this request, OSHA performed an on-site review of TUVAM's NRTL Danvers facility and, in the on-site review report, the assessor recommended the expansion for the additional standards (see Exhibit 8). Our review of the application file, the on-site review report, and other pertinent documents indicate that TUVAM can meet the requirements, as prescribed by 29 CFR 1910.7, for the expansion for the additional test standards listed above. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether TUVAM has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comments should consist of pertinent written documents and exhibits. Should you need more time to comment, you must request it in writing, including reasons for the request. OSHA must receive your written request for extension at the address provided above no later than the last date for comments. OSHA will limit any extension to 30 days, unless the requester justifies a longer period. We may deny a request for extension if it is not adequately justified. You may obtain or review copies of TUVAM's requests, the on-site review report, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. Docket No. NRTL2–2001 contains all materials in the record concerning TUVAM's application.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant TUVAM's expansion request. The Agency will make the final decision on granting the expansion and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC this 9th day of May, 2005.

Jonathan L. Snare,

Acting Assistant Secretary.

[FR Doc. 05–9868 Filed 5–17–05; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL1–2001]

TUV Product Services GmbH, Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of TUV Product Services GmbH (TUVPSG) for expansion of its recognition to use additional test standards, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: You must submit information or comments, or any request for extension of the time to comment, by the following dates:

- Hard copy: Your information or comments must be submitted (postmarked or sent) by June 2, 2005.
- Electronic transmission or facsimile: Your comments must be sent by June 2, 2005.

ADDRESSES: You may submit information or comments to this notice—identified by docket number NRTL1–2001—by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- OSHA Web site: *http://ecomments.osha.gov.* Follow the instructions for submitting comments on OSHA's Web page.
- Fax: If your written comments are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.
- Regular mail, express delivery, hand delivery and courier service: Submit three copies to the OSHA Docket Office, Docket No. NRTL1–2001, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210; telephone (202) 693–2350. (OSHA's TTY number is (877) 889–5627). OSHA Docket Office hours of operation are 8:15 a.m. to 4:45 p.m., e.s.t.

Instructions: All comments received will be posted without change to *http://dockets.osha.gov,* including any personal information provided. OSHA cautions you about submitting personal information such as social security numbers and birth dates.

Docket: For access to the docket to read background documents or

comments received, go to *http://dockets.osha.gov.* Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions.

Extension of Comment Period: Submit requests for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210. Or fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that TUV Product Services GmbH (TUVPSG) has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). TUVPSG's expansion request covers the use of additional test standards. OSHA's current scope of recognition for TUVPSG may be found in the following informational Web page: *http://www.osha-slc.gov/dts/otpca/nrtl/tuvpsg.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational Web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html.*

The most recent notice published by OSHA for TUVPSG's recognition covered an expansion of recognition, which became effective on April 22, 2003 (68 FR 19856).

The current address of the TUVPSG facility already recognized by OSHA is: TUV Product Services GmbH, Ridlerstrasse 65, D–80339, Munich, Germany.

General Background on the Application

TUVPSG has submitted an application, dated September 18, 2003 (see Exhibit 10) to expand its recognition to include 5 additional test standards. The NRTL Program staff has determined that each of these standards is an ''appropriate test standard'' within the meaning of 29 CFR 1910.7(c). Therefore, OSHA would approve these five test standards for the expansion. Following review of the application, OSHA requested certain additional information from TUVPSG and deferred action on the application pending receipt of this information. The NRTL adequately responded recently to that request, permitting OSHA to resume processing of the application.

TUVPSG seeks recognition for testing and certification of products for demonstration of conformance to the following five test standards:

UL 201 Garage Equipment
UL 325 Door, Drapery, Gate, Louver and Window Operator and Systems
UL 696 Electric Toys
UL 697 Toy Transformers
UL 1029 High-Intensity-Discharge Lamp Ballasts

OSHA's recognition of TUVPSG, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, any NRTL's scope of recognition excludes any product(s) that fall within the scope of a test standard, but for which OSHA standards do not require NRTL testing and certification.

A few of the UL test standards listed above also are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization for the standard as opposed to the ANSI designation. Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. You may contact ANSI to find out whether or not a test standard is currently ANSI-approved.

Preliminary Finding on the Application

TUVPSG has submitted an acceptable request for expansion of its recognition as an NRTL. In connection with this request, OSHA evaluated the NRTL's capability for the standards during an on-site review of TUVPSG's NRTL facilities, and the assessor has recommended the expansion for the additional standards (see Exhibit 11). Our review of the application file, the assessor's recommendation, and other pertinent documents indicate that TUVPSG can meet the requirements, as prescribed by 29 CFR 1910.7, for the expansion for the additional test standards listed above. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether TUVPSG has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comments should consist of pertinent written documents and exhibits. Should you need more time to comment, you must request it in writing, including reasons for the request. OSHA must receive your written request for extension at the address provided above no later than the last date for comments. OSHA will limit any extension to 30 days, unless the requester justifies a longer period. We may deny a request for extension if it is not adequately justified. You may obtain or review copies of TUVPSG's requests, the on-site review report, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. Docket No. NRTL1–2001 contains all materials in the record concerning TUVPSG's application.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant TUVPSG's expansion request. The Agency will make the final decision on granting the expansion and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of

this final decision in the **Federal Register**.

Signed in Washington, DC this 9th day of May, 2005.

Jonathan L. Snare,

Acting Assistant Secretary.

[FR Doc. 05–9869 Filed 5–17–05; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–090)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Turfgrass Management, Inc., a Nevada corporation, has applied for a partially exclusive license to practice the inventions described and claimed in U.S. Patent Numbers 5,433,766 (''Slow-Release Fertilizer'') and 5,451,242 (''Active Synthetic Soil''). These patents are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the Johnson Space Center.

DATES: Responses to this Notice must be received within 15 days from date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Theodore Ro, Patent Attorney, NASA Johnson Space Center, Mail Stop AL, Houston, TX 77058–8452; telephone (281) 244–7148.

Dated: May 5, 2005.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. 05–9937 Filed 5–17–05; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–33802, License No. 50–23220–02, and EA–05–023]

In the Matter of R&M Engineering Consultants, Fairbanks, AK; Confirmatory Order Modifying License (Effective Immediately)

R&M Engineering Consultants (R&M or Licensee) is the holder of NRC License No. 50–23220–02 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes the Licensee to possess portable nuclear density gauges containing sealed sources of byproduct material and maintain them in storage until termination of the license. The possession and storage-only license was originally issued March 24, 1995, was last modified on September 21, 1999, with an expiration date of February 28, 2005.

An inspection conducted by NRC Region IV in June 2004 identified an apparent failure on the part of R&M to leak-test two portable nuclear density gauges in accordance with the conditions of the license. License Condition 12.D. requires, in part, that no sealed source or detector cell shall be stored for a period of more than three (3) years without being tested for leakage and/or contamination. This requirement was proposed by R&M in information submitted to the NRC with the 1995 license amendment request to modify the license to possess and store byproduct material. In addition, the inspection identified an apparent failure on the part of R&M to provide accurate information to the NRC in accordance with the requirements of 10 CFR 30.9.

Specifically, Mr. James Wellman, R&M's President, informed the NRC in a September 17, 2002, e-mail that he had performed leak tests of the gauges and had sent swabs to Radiation Detection Company in Sunnyvale, California for evaluation. The inspection found no evidence that R&M's portable nuclear gauges had been leak-tested since the possession and storage-only license was issued in 1995. A follow-up investigation by the NRC's Office of Investigations (OI) concluded in December 2004 that Mr. Wellman willfully failed to leak-test the portable gauges in accordance with the requirements of the license. In addition, based on a review of the information in the investigation report, it appears that Mr. Wellman willfully failed to provide NRC accurate information in his September 2002 e-mail.

On February 8, 2005, representatives of NRC Region IV contacted Mr. Wellman by telephone to discuss the results of the inspection and investigation. NRC Region IV informed Mr. Wellman that the NRC was considering escalated enforcement action, including possible monetary civil penalties for the apparent violations described above. Mr. Wellman has previously stated his intent to transfer the gauges and terminate the license. During the telephonic discussion, NRC Region IV asked Mr. Wellman if he would agree to take prompt action to transfer the gauges and request termination of R&M's NRC license in lieu of NRC pursuing escalated enforcement action. Mr. Wellman agreed to these actions during the telephone call, and subsequently consented to these actions in response to a letter and a copy of the Confirmatory Order containing the proposed conditions that the NRC sent to Mr. Wellman on February 25, 2005.

In a consent form signed on March 16, 2005, R&M Engineering Consultants agreed to all of the commitments described in Section IV below. The Licensee further agreed that this Order would be effective upon issuance and that R&M waived its right to a hearing on this Order. Implementation of these commitments will ensure that licensed material is appropriately handled and disposed of.

I find that the Licensee's commitments as described in Section IV below are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and Licensee's consent, this Order is immediately effective upon issuance. Accordingly, pursuant to Sections 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, it is hereby ordered, effective immediately, that license No. 50–23220–02 is modified as follows:

1. Within 30 days of the date of the Confirmatory Order, leak test and obtain the results of leak tests for all sealed sources contained in portable nuclear gauging devices possessed under the authority of License No. 50–23220–02.

2. Within 35 days of the date of the Confirmatory Order, provide the Director, Division of Nuclear Materials Safety, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, with a copy of the results of the leak tests.

3. Within 45 days of the date of the Confirmatory Order, complete the transfer of all portable nuclear gauging devices possessed under the authority of License No. 50–23220–02 to an authorized recipient.

4. Within 50 days of the date of the Confirmatory Order, provide the Director, Division of Nuclear Materials Safety, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, with copies of documents demonstrating that the transfer has taken place.

5. Within 60 days of the date of the Confirmatory Order, submit to the

Director, Division of Nuclear Materials Safety, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, a request for termination of License No. 50–23220–02, using NRC Form 314.

The Regional Administrator, Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

In accordance with 10 CFR 2.202, any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing on this Order within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011, and to the Licensee. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d)(1) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated this 9th day of May, 2005.

Frank J. Congel,

Director, Office of Enforcement.

[FR Doc. E5–2490 Filed 5–17–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on June 1–3, 2005, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, November 24, 2004 (69 FR 68412).

Wednesday, June 1, 2005, Conference Room T–2b3, Two White Flint North, Rockville, Maryland

8:30 a.m.—8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.—9:45 a.m.: Interim Review of the License Renewal Application for the Point Beach Nuclear Plant, Units 1 and 2 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Management Company, LLC regarding the license renewal application for the Point Beach Nuclear Plant, Units 1 and 2 and the associated draft Safety Evaluation Report prepared by the NRC staff, as well as the progress being made by the NRC staff and the applicant in resolving the issue of potential common-mode failure of the auxiliary feedwater pumps due to operator actions specified in the plant procedures, and related issues.

10 a.m.—11:30 a.m.: Draft Commission Paper on Policy Issues Related to New Plant Licensing (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft Commission paper on policy issues (integrated risk and level of safety) related to new plant licensing.

12:30 p.m.—2 p.m.: Fire Risk Requantification and Probabilistic Risk Analysis (PRA) Methodology for Nuclear Power Plants (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Electric Power Research Institute (EPRI) regarding draft final NUREG/CR–6850, ''EPRI/NRC–RES Fire PRA Methodology for Nuclear Power Facilities,'' and related matters.

2:15 p.m.—4:15 p.m.: Draft Commission Paper on Proposed Alternatives to the Existing Single Failure Criterion (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft Commission Paper on the proposed risk-informed and performance-based alternatives to the existing single failure criterion.

4:30 p.m.—7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting as well as a proposed report responding to the Commission request in the April 26, 2005 Staff Requirements Memorandum regarding the ACRS assessment of the quality of the NRC research projects.

Thursday, June 2, 2005, Conference Room T–2b3, Two White Flint North, Rockville, Maryland

8:30 a.m.—8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.—10 a.m.: Draft Safety Evaluation Report Related to Grand Gulf Early Site Permit Application (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and System Energy Resources Inc. regarding the NRC staff's draft Safety Evaluation Report related to the Grand Gulf Early Site Permit Application.

10:15 a.m.—11:45 a.m.: Draft Final Regulatory Guide, ''Risk-Informed, Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Energy Institute (NEI) regarding the draft final Regulatory Guide, ''Risk-Informed, Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants,'' which endorses, with certain exceptions, NEI document, NEI 04–02, ''Guidance for Implementing a

Risk-Informed, Performance-Based Fire Protection Program Under 10 CFR 50.48 (c),'' and the NRC staff's resolution of public comments.

12:45 p.m.—1:45 p.m.: Status Report on the Quality Assessment of Selected Research Projects (Open)—The Committee will hear a report by the Chairmen of the ACRS Panels regarding the status of the assessment of the quality of the thermal-hydraulic test program at the Penn State University and the containment capacity study being performed by the Sandia National Laboratories.

1:45 p.m.—2:30 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

2:30 p.m.—2:45 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

3 p.m.—7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Friday, June 3, 2005, Conference Room T–2b3, Two White Flint North, Rockville, Maryland

8:30 a.m.—5 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

5 p.m.—5:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 5, 2004 (69 FR 59620). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Cognizant ACRS staff (301–415–7364), between 7:30 a.m. and 4:15 p.m., e.t.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., e.t., at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: May 12, 2005.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. E5–2489 Filed 5–17–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51685; File No. SR–Amex–2005–050]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Options Marketing Fee for Options on SPDRs

May 11, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Amex. The Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Amex under Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its marketing fee imposed on certain transactions of specialists and registered options traders (''ROTs'') in connection with options on Standard & Poor's Depositary Receipts (''SPDRs''). The fee would be imposed at the rate of $1.00 per contract, instead of the rate of $0.40 per contract. The text of the proposed rule change is available on the Amex's Web site (*http://www.amex.com*), at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

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 its proposal and discussed any comments it had received regarding the proposal. The text of these statements may be examined at the places specified

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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

In June 2003, the Exchange reinstated its options marketing fee of $0.40 per contract on the transactions of specialists and ROTs in equity options.[5] Currently, the options marketing fee is eligible to be assessed on all equity options transactions (including options on exchange-traded funds and trust issued receipts). The Exchange proposes to amend the options marketing fee in connection with options on SPDRs to increase the fee from the current level of $0.40 to $1.00 per contract. All other equity options would continue to remain subject to the current options marketing fee level of $0.40 per contract.

The options marketing fee is assessed on only those specialist and ROT transactions involving customer orders from firms that accept payment for directing their orders to the Exchange (''payment accepting firms'') with whom a specialist has negotiated a payment for order flow arrangement. In addition, the options marketing fee is currently assessed only on transactions of specialists and ROTs with orders from customers of payment accepting firms that are for 200 contracts or less. The Exchange proposes to eliminate the restriction limiting the assessment of the marketing fee for options transactions of 200 contracts or less. Thus, the fee would be eligible to be assessed on all transactions in equity options regardless of the contract size.

The Exchange believes that the $1.00 per contract options marketing fee for SPDR options is an equitable allocation of a reasonable fee among members and is designed to enable the Exchange to compete with other markets in attracting SPDR options order flow.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Amex neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder.[9] Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–050 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2005–050. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–050 and should be submitted on or before June 8, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–2481 Filed 5–17–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51684; File No. SR–CBOE–2005–24]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to the Assignment of RAES Orders to Logged-In Market-Makers Participating on RAES

May 11, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 15, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission

[5] *See* Securities Exchange Act Release No. 48053 (June 17, 2003), 68 FR 37880 (June 25, 2003) (SR–Amex–2003–50).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add an alternative to the current procedures that apply to the assignment of orders on the Exchange's Retail Automatic Execution System (''RAES'') to CBOE market-makers logged on to participate in RAES. The text of the proposed rule change is set forth below. Proposed new language is in *italics* and proposed deletions are in brackets.

* * * * *

Rule 6.8—RAES Operations

(a)–(g) No change.

* * * * *

* * * Interpretations and Policies

.01–.05 No change.

.06 (a) In the exercise of their authority to determine the procedure for assigning RAES-eligible orders to Participating Market-Makers for execution, the appropriate FPCs have determined that in the absence of any specified alternative assignment methodology, an assigned Participating Market-Maker is required to buy/sell the entirety of each RAES order assigned to him up to the maximum size of RAES-eligible orders in that class of options. Alternatively, the appropriate FPC may specify that some or all options classes are subject to ''Variable RAES'', [or to] the ''100 Spoke RAES Wheel'', *or with respect to index option classes only, the ''1000 Spoke RAES Wheel''.* Other than immediately after the Commission initially approves the Exchange to use Variable RAES (in which case Variable RAES may be implemented without the requisite notice), any time the appropriate FPC intends to discuss an issue related to the RAES allocation method the FPC must provide at least three days' advance notice to the Exchange's membership and must provide members with either the opportunity to provide written comments or the opportunity to appear at the meeting, or both regarding the proposed change.

(b) No change.

(c) Under the ''100 Spoke RAES Wheel,'' RAES orders would be assigned to logged-in market makers [according to] *based on* the percentage of their in-person agency contracts traded in that class (excluding RAES contracts traded) compared to all of the market-maker in-person agency contracts traded (excluding RAES contracts) during the review period. The review period will be determined by the appropriate Floor Procedure Committee and may be for any period not in excess of 10 trading days within the previous 30 calendar days. The trading days within the review period may be for non-consecutive trading days. The percentage distribution will be calculated at the conclusion of each trading day and will be applied to the 100 Spoke RAES Wheel distribution on the following trading day. On each revolution of the RAES wheel, subject to the exceptions described below, each participating market-maker (who is logged onto RAES at the time) will be assigned enough contracts to replicate his percentage of contracts on RAES that he traded in-person in that class during the review period. A participation percentage will be calculated for each market-maker for each class that the market-maker trades. For this purpose all DPM Designees of the same DPM unit will have their percentage aggregated into a single percentage for the DPM unit.

Once a market-maker has logged onto RAES, he will be assigned contracts on the RAES Wheel until his market-maker participation percentage has been met. This may mean that multiple orders (or an order and a part of the succeeding order) will be assigned to the same market-maker on the Wheel. To understand how the RAES orders will actually be allocated to market-makers to meet those percentages, one must understand the concepts of ''spokes'' and ''wedges.'' A ''spoke'' is 1% of the RAES wheel and often may be equal to one contract. The appropriate Floor Procedure Committee may determine the number of contracts that make up one spoke. Each market-maker logged onto RAES for that class, regardless of his participation percentage, is entitled to be assigned at least one spoke on every revolution of the RAES wheel. For example, if a spoke equals one contract then there will be 100 [spokes] *contracts* that will be assigned to market-makers on every revolution of the RAES wheel. If a spoke is defined as five contracts then there will be 500 RAES contracts assigned to the participating market-makers before the RAES wheel completes one revolution. Generally, the RAES Wheel will consist of the number of spokes replicating the cumulative percentage of all market-makers logged onto the system who have a participation percentage plus one spoke for each market-maker that does not have a specific participation percentage.

A ''wedge'' is the maximum number of spokes that a market-maker may be consecutively assigned at any one time on the RAES wheel. Because the size of the wedge may be smaller than the number of contracts to which a particular market-maker is entitled during one revolution of the RAES Wheel, that market-maker will receive more than one turn during one revolution of the RAES wheel. The wedge size will be variable, at the discretion of the appropriate Floor Procedure Committee and may be different for different classes or the same for all classes. The appropriate Floor Procedure Committee will notify the membership of each class of options that is subject to the ''100 Spoke RAES Wheel''.

(*d*) *Under the ''1000 Spoke RAES Wheel'', which may only be implemented in index option classes, all of the terms and provisions set forth in CBOE Rule 6.8.06(c) with respect to the 100 Spoke RAES Wheel shall apply to the 1000 Spoke RAES Wheel, except that (i) the 1000 Spoke RAES Wheel is comprised of 1000 spokes, each of which generally represents .1% of the 1000 Spoke RAES Wheel, and (ii) the appropriate Floor Procedure Committee shall determine on a class by class basis whether the assignment of RAES orders to logged-in Market-Makers is based on the percentage of a Market-Maker's contracts traded in that index option class (excluding RAES contracts traded) compared to all Market-Maker contracts traded (excluding RAES contracts) during the review period, or the percentage of the Market-Maker's in-person agency contracts traded in that class (excluding RAES contracts traded) compared to all Market-Maker in-person agency contracts traded (excluding RAES contracts) during the review period.*

The appropriate Floor Procedure Committee will notify the membership of each class of options that is subject to the ''1000 Spoke RAES Wheel'' and the method of allocation for RAES orders under the 1000 Spoke RAES Wheel.

([d] *e*) The effectiveness of any other methodology for assigning RAES orders to Participating Market-Makers that may be adopted by an appropriate FPC shall be conditioned upon its having been filed with the Securities and Exchange Commission pursuant to Section 19(b) of the Securities Exchange Act of 1934.

.07–.09 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 6.8—RAES Operations—governs the execution of orders on RAES. CBOE Rule 6.8.06 sets forth alternatives available to the appropriate Floor Procedure Committee to implement the procedures for the assignment of RAES-eligible orders to CBOE market-makers logged on to RAES for execution. One alternative set forth in current Rule 6.8.06(c), the ''100 Spoke RAES Wheel,'' assigns RAES orders to logged-in market-makers based on the percentage of their in-person agency contracts traded in that class (excluding RAES contracts traded) compared to all of the market-maker in-person agency contracts traded (excluding RAES contracts) during the review period.[3] The proposed rule change sets forth a new alternative, available only in index option classes, that offers a wheel with 1000 spokes and assignment procedures that are similar to the assignment procedures applicable to the 100 Spoke RAES Wheel.

Under the proposed 1000 Spoke RAES Wheel, the appropriate Floor Procedure Committee will determine on a class-by-class basis whether the assignment of RAES orders to logged-in market-makers is based on the percentage of a market-maker's contracts traded in that index option class (excluding RAES contracts traded) compared to all market-maker contracts traded (excluding RAES contracts) during the review period, or the percentage of the market-maker's in-person agency contracts traded in that class (excluding RAES contracts traded) compared to all market-maker in-person agency contracts traded (excluding RAES contracts) during the review period. As is the case with the 100 Spoke RAES Wheel, the procedure for the 1000 Spoke RAES Wheel would provide that on each revolution of the wheel, each participating market-maker who is logged in RAES at the time will be assigned a number of contracts that approximates the percentage of contracts on RAES that he or she traded in-person in that index option class during the review period, subject to the restrictions set forth in current Rule 6.8.06(c).

The effect of utilizing the 1000 Spoke RAES Wheel instead of the 100 Spoke RAES Wheel is that the number of contracts allocated to a market-maker will increase by a factor of 10 for every revolution of the RAES wheel. This procedure is designed to reduce the rounding effects that result under the 100 Spoke RAES Wheel (the RAES system configuration rounds contracts to the nearest whole number). For example, if the percentage of a market maker's contracts traded in an index option class compared to all of the market-maker in person contracts traded during the review period is 1.34%, the 100 Spoke RAES Wheel would allocate 1 contract to the market-maker for every revolution of the RAES wheel. In contrast, the 1000 Spoke RAES Wheel would allocate 13 contracts to the market-maker (13.4 contracts, rounded to the nearest whole number) for every revolution.

Allocation Example. To better understand how RAES contracts would be assigned under the ''1000 Spoke RAES Wheel,'' the table below shows the allocations a market-maker would receive under each of the ''100 Spoke RAES Wheel'' and ''1000 Spoke RAES Wheel.'' The example assumes that one spoke on the 1000 Spoke RAES Wheel is equivalent to one contract.[4]

Market-maker	Percent of market-maker non-RAES volume	Number of contracts based on a 100 spoke wheel	Number of contracts based on 1000 spoke wheel
1	37.90	38	379
2	30.40	30	304
3	9.90	10	99
4	4.49	4	45
5	2.90	3	29
6	1.25	1	13
7	1.40	1	14
8	0.85	1	9
9	0.90	1	9
10	0.00	1	1

[3] As stated in CBOE Rule 6.8.06(c), the review period will be determined by the appropriate Floor Procedure Committee and may be for any period not in excess of 10 trading days within the previous 30 calendar days. The trading days within the review period may be for non-consecutive trading days. According to CBOE, the review period is re-determined, and thus participation percentages are re-calculated, on a daily basis. Thus, CBOE notes that while a new market-maker is entitled to be assigned at least one spoke on every revolution of the RAES wheel, the market-maker would on subsequent days be entitled to replicate the percentage of non-RAES contracts that he actually traded during the relevant review period. For example, if a new market-maker signs onto RAES and is allocated one spoke, but the market-maker trades enough non-RAES contracts on that day to qualify the market-maker for more than one spoke when the review period is re-determined on the following day, the market-maker would be entitled to such additional spoke or spokes. Telephone conferences between David M. Doherty, Assistant Secretary, CBOE, and Geoffrey C. Pemble, Special Counsel, Division of Market Regulation, Securities and Exchange Commission, on April 6, 2005 and between Mr. Doherty and David L. Orlic, Attorney, Division of Market Regulation, Securities and Exchange Commission, on April 22, 2005.

[4] Normally, one spoke on the wheel will be equivalent to one contract, except that the appropriate Floor Procedure Committee may establish a larger spoke size. Changing the spoke size (and thus, the wheel size) does not change the participation percentages of the individual market-makers. Each market-maker logged on to RAES is entitled to at least one spoke on every revolution of the wheel, regardless of what might otherwise be his entitlement based on his participation during the review period. This ensures that new market-makers logged on to RAES have a minimum participation in RAES transactions. These procedures are identical to the procedures governing the allocation of trades under the 100 Spoke RAES Wheel.

Market-maker	Percent of market-maker non-RAES volume	Number of contracts based on a 100 spoke wheel	Number of contracts based on 1000 spoke wheel
Totals	.....	90	902

The table set forth above demonstrates that the 1000 Spoke RAES Wheel more closely approximates a market-maker's participation percentage. The allocation of 902 contracts in the 1000 Spoke RAES Wheel also highlights the fluctuation of the RAES wheel size resulting from the rounding effects and the inclusion of new market-makers who do not have a participation percentage in the wheel.

The Exchange notes that the operation of the ''wedge'' allocation, which establishes the maximum number of spokes that a market-maker may be consecutively assigned at any one time on the wheel, would limit consecutive distributions to any one market-maker. A wedge is the maximum number of spokes that may be assigned to a market-maker in any one ''hit'' during a rotation of the RAES Wheel. The concept of the wedge system ensures that each market-maker eligible to participate during a particular review period will be assigned at least some contracts before market-makers entitled to a greater number of spokes are assigned all of their contracts in a given revolution. The wedge system also breaks up the distribution of contracts into smaller groupings in order to reduce exposure of any one market-maker to market risk. If the size of the wedge is smaller than the number of spokes to which a particular market-maker may be entitled based on his participation percentage, the market-maker will be assigned more than once during one revolution of the RAES Wheel. For example, in the table above, where one spoke on the 1000 Spoke RAES Wheel is equal to one contract, MM7 would receive a total of 14 contracts during one revolution of the RAES Wheel. If the wedge size is 10, MM7 will first be assigned 10 contracts on the RAES Wheel and then 4 contracts at a different place on the RAES Wheel during that same revolution. Thus, in one complete revolution of the RAES Wheel, he will be assigned two times for a total of 14 contracts, consisting of one 10-contract assignment and one 4-contract assignment. As set forth in current Rule 6.8.06(c), which rule would govern the 1000 Spoke RAES Wheel, the wedge size will be variable at the discretion of the appropriate Floor Procedure Committee and may be different for different index classes or the same for all index classes.

The proposed rule changes also propose to revise the type of trades that could be included in the percentage allocation under the 1000 Spoke RAES Wheel. Specifically, the proposed rule would permit the appropriate Floor Procedure Committee to determine on a class by class basis whether the assignment of RAES orders to logged-in market-makers is based on the percentage of a market-maker's contracts traded in that index option class (excluding RAES contracts traded) compared to all of the market-maker contracts traded (excluding RAES contracts) during the review period, or the percentage of the market-maker's in-person agency contracts traded in that class (excluding RAES contracts traded) compared to all of the market-maker in-person agency contracts traded (excluding RAES contracts) during the review period. The purpose of this proposed change is to recognize the trading dynamics that exist in index option trading crowds where trading between market makers is more prevalent.[5] Other than the proposed changes described above, all other terms and provisions that apply to the 100 Spoke RAES Wheel as provided in CBOE Rule 6.8.06(c) would apply to the 1000 Spoke RAES Wheel.

Lastly, the Exchange is revising CBOE Rule 6.8.06(c) to make clarifying changes to the description of the operation of the 100 Spoke RAES Wheel.

The Exchange believes the proposed 1000 Spoke RAES Wheel will provide a viable alternative to the 100 Spoke RAES Wheel, which was used in some equity option trading crowds prior to the transfer of equity option trading to the Exchange's Hybrid system. The Exchange developed the 100 Spoke RAES Wheel to better distribute RAES volume to those market-makers providing greater liquidity in the trading pits. However, index floor procedure committees have not employed the 100 Spoke RAES Wheel alternative because of the rounding effects that would occur in large trading crowds.[6] Specifically, as the trading crowds increase, the percentage allocation becomes more widely dispersed among the many market-makers in index trading crowds. The rounding requirements could erode allocations even further for market-makers with small percentage allocations, which would occur on a more frequent basis as the size of the crowd increases. The Exchange believes the 1000 Spoke RAES Wheel would diminish this effect, while at the same time preserving the distribution benefits to those market-makers providing greater liquidity in index trading pits.

2. Statutory Basis

CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. CBOE believes that the proposed rule change will enhance the ability of the Exchange to provide instantaneous automatic execution of public customer orders at the best available prices in index option classes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[5] Telephone conversation between David M. Doherty, Assistant Secretary, CBOE, and David L. Orlic, Attorney, Division of Market Regulation, Securities and Exchange Commission, on April 22, 2005.

[6] Telephone conversation between David M. Doherty, Assistant Secretary, CBOE, and David L. Orlic, Attorney, Division of Market Regulation, Securities and Exchange Commission, on April 22, 2005.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive any written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–24 on the subject line.

Paper comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2005–24. 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 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 Number SR–CBOE–2005–24 and should be submitted on or before June 8, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–2480 Filed 5–17–05; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Notice of Action Subject to Intergovernmental Review Under Executive Order 12372

AGENCY: U.S. Small Business Administration.

ACTION: Notice of action subject to intergovernmental review under Executive Order 12372.

SUMMARY: The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 22 existing Small Business Development Centers (SBDCs) for refunding on October 1, 2005, subject to the availability of funds. Six states do not participate in the EO 12372 process; therefore, their addresses are not included. A short description of the SBDC program follows in the **SUPPLEMENTARY INFORMATION** below.

The SBA is publishing this notice at least 120 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the address section. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order. Each SBDC application must be consistent with any area-wide small business assistance plan adopted by a State-authorized agency.

DATES: A State single point of contact and other interested State or local entities may submit written comments regarding an SBDC refunding within 30 days from the date of publication of this notice to the SBDC.

ADDRESSES:

Addresses or Relevant SBDC State Directors

Mr. Al Salgado, Region Director, Univ. of Texas at San Antonio, 501 West Durango Blvd., San Antonio, TX 78207. (210) 458–2450.

Mr. Conley Salyer, State Director, West Virginia Development Office, 950 Kanawha Boulevard, East, Charleston, WV 25301. (304) 558–2960.

Mr. Clinton Tymes, State Director, University of Delaware, One Innovation Way, Suite 301, Newark, DE 19711. (302) 831–2747.

Ms. Carmen Marti, SBDC Director, Inter American University of Puerto Rico, Ponce de Leon Avenue, #416, Edificio Union Plaza, Seventh Floor, Hato Rey, PR 00918. (787) 763–6811.

Mr. Michael Young, Region Director, University of Houston, 2302 Fannin, Suite 200, Houston, TX 77002. (713) 752–8425.

Ms. Becky Naugle, State Director, University of Kentucky, 225 Gatton College of Business Economics, Lexington, KY, 40506–0034. (859) 257–7668.

Ms. Liz Klimback, Region Director, Dallas Community College, 1402 Corinth Street, Dallas, TX 75212. (214) 860–5835.

Ms. Rene Sprow, State Director, Univ. of Maryland @ College Park, 7100 Baltimore Avenue, Suite 401, Baltimore, MD 20742–1815. (301) 403–8300.

Mr. Craig Bean, Region Director, Texas Tech University, 2579 South Loop 289, Suite 114, Lubbock, TX 79423–1637. (806) 745–3973.

Ms. Diane Wolverton, State Director, University of Wyoming, P.O. Box 3922, Laramie, WY 82071. (307) 766–3505.

Mr. Max Summers, State Director, University of Missouri, 1205 University Avenue, Suite 300, Columbia, MO 65211. (573) 882–1348.

Mr. Jon Ryan, State Director, Iowa State University, 340 Gerdin Business Building, Ames, IA 50011–1350. (515) 2942–2037.

Mr. James L. King, State Director, State University of New York, SUNY Plaza, S–523, Albany, NY 12246. (518) 443–5398.

Ms. Jane Howard, Acting State Director, Ohio Department of Development, 77 South High Street, 28th Floor, Columbus, OH 43216–1001. (614) 466–5095.

Mr. Donald L. Kelpinski, State Director, Vermont Technical College, P.O. Box 188, Randolph Center, VT 05061–0188. (802) 728–9101.

Mr. Warren Bush, SBDC Director, University of the Virgin Islands, 8000 Nisky Center, Suite 720, St. Thomas, US VI 00802–5804. (340) 776–3206.

FOR FURTHER INFORMATION CONTACT: Antonio Doss, Associate Administrator for SBDCs, U.S. Small Business Administration, 409 Third Street, SW., Sixth Floor, Washington, DC 20416.

SUPPLEMENTARY INFORMATION:

Description of the SBDC Program

A partnership exists between SBA and an SBDC. SBDCs offer training,

[9] 17 CFR 200.30–3(a)(12).

counseling and other business development assistance to small businesses. Each SBDC provides services under a negotiated Cooperative Agreement with SBA, the general management and oversight of SBA, and a State plan initially approved by the Governor. Non-Federal funds must match Federal funds. An SBDC must operate according to law, the Cooperative Agreement, SBA's regulations, the annual Program Announcement, and program guidance.

Program Objectives

The SBDC program uses Federal funds to leverage the resources of States, academic institutions and the private sector to:

(a) Strengthen the small business community;

(b) Increase economic growth;

(c) Assist more small businesses; and

(d) Broaden the delivery system to more small businesses.

SBDC Program Organization

The lead SBDC operates a statewide or regional network of SBDC service centers. An SBDC must have a full-time Director. SBDCs must use at least 80 percent of the Federal funds to provide services to small businesses. SBDCs use volunteers and other low cost resources as much as possible.

SBDC Services

An SBDC must have a full range of business development and technical assistance services in its area of operations, depending upon local needs, SBA priorities and SBDC program objectives. Services include training and counseling to existing and prospective small business owners in management, marketing, finance, operations, planning, taxes, and any other general or technical area of assistance that supports small business growth.

The SBA district office and the SBDC must agree upon the specific mix of services. They should give particular attention to SBA's priority and special emphasis groups, including veterans, women, exporters, the disabled, and minorities.

SBDC Program Requirements

An SBDC must meet programmatic and financial requirements imposed by statues, regulations or its Cooperative Agreement. The SBDC must:

(a) Locate service centers so that they are as accessible as possible to small businesses;

(b) Open all service centers at least 40 hours per week, or during the normal business hours of its state or academic Host Organization, throughout the year;

(c) Develop working relationships with financial institutions, the investment community, professional associations, private consultants and small business groups; and

(d) Maintain list of private consultants at each service center.

Dated: May 12, 2005.

Antonio Doss,

Associate Administrator for Small Business Development Centers.

[FR Doc. 05–9885 Filed 5–17–05; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 5083]

Notice Convening an Accountability Review Board for the January 29, 2005, Rocket Attack on the U.S. Embassy in Baghdad, Iraq, Which Caused the Deaths of LCDR Keith Taylor, USN, and Ms. Barbara Heald

Pursuant to section 301 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986, as amended (22 U.S.C. 4831 *et seq.*), the Secretary of State has determined that the January 29, 2005 deaths of LCDR Keith Taylor, USN, and Ms. Barbara Heald of the U.S. Embassy in Baghdad, Iraq, involved loss of life at or related to a U.S. mission abroad. Therefore, the Secretary has convened an Accountability Review Board, as required by that statute, to examine the facts and the circumstances of the attack and to report to me such findings and recommendations as it deems appropriate, in keeping with the attached mandate.

The Secretary has appointed Edward G. Lanpher, a retired U.S. Ambassador, as Chair of the Board. He will be assisted by M. Bart Flaherty, Frederick Mecke, Mike Absher, Laurie Tracy and by Executive Secretary to the Board, Douglas Hengel. They bring to their deliberations distinguished backgrounds in government service and/or in the private sector.

The Board will submit its conclusions and recommendations to Secretary Rice within 60 days of its first meeting, unless the Chair determines a need for additional time. Appropriate action will be taken and reports submitted to Congress on any recommendations made by the Board.

Anyone with information relevant to the Board's examination of this incident should contact the Board promptly at (202) 203–7149 or send a fax to the Board at (202) 203–7143.

This notice shall be published in the **Federal Register**.

Dated: May 10, 2005.

Christopher B. Burnham,

Acting Under Secretary for Management, Department of State.

[FR Doc. 05–9910 Filed 5–17–05; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Land at Nut Tree Airport, Vacaville, CA

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of request to release airport land.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the release of Solano County from the conditions and restrictions contained in applicable grant agreements with the United States for approximately 1.9 acres of undeveloped airport land obligated for airport purposes at Nut Tree Airport, Vacaville, California, and which is not needed for airport purposes. The airport land is needed for the realignment and widening of East Monte Vista Avenue, the primary access to the Airport. The improvements to East Monte Vista Avenue represent a compatible land use and will provide better access to the Airport and enhance the value and economic vitality of the Airport. Upon the release of this airport land, the City of Vacaville will acquire the land at appraised fair market value. Solano County will use the sale proceeds for needed airport improvements.

DATES: Comments must be received on or before June 17, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, **Federal Register** Comment, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Andrew Swanson, Airport Manager, Nut Tree Airport, 301 County Airport Road, Vacaville, California 95688.

FOR FURTHER INFORMATION CONTACT: Mr. Racior Cavole, Airports Compliance Specialist, San Francisco Airports District Office, Federal Aviation Administration, 831 Mitten Road, Room 210, Burlingame, California 94010,

telephone (650) 876–2778, extension 677, and fax (650) 876–2733. For airport-specific information regarding the release, contact Mr. Andrew Swanson, Airport Manager, Nut Tree Airport at the address above or (707) 469–4600.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Pub. L. 10–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport by the assurances in grant agreements.

The following is a brief overview of the request:

Solano County requested a release from the conditions and restrictions in applicable grant agreements with the United States for approximately 1.9 acres of undevelopment airport land obligated for airport purposes at Nut Tree Airport, Vacaville, California. The 1.9-acre parcel is not being used for airport purposes and is not needed for future airport development. This land is located next to the intersection of County Airport Road and the realigned East Monte Vista Avenue. The release will allow the City of Vacaville to acquire the property at the appraised fair market value of $351,000. Following acquisition, a major roadway improvement project will commence to widen and realign East Monte Vista Avenue. Airport access will be enhanced because East Monte Vista Avenue serves as the primary airport access road. The project will include water and sewer line upgrades. New development at the airport cannot take place without an improved water and sewerage system. The project will also include replacement of overhead power lines along East Monte Vista Avenue with underground joint trench. Solano County intends to use the sale proceeds of $351,000 to improve the water distribution system at Nut Tree Airport, which is needed for fire suppression, to meet local code, and promote needed airport development. The release will permit improvements that will provide tangible benefits to the airport and civil aviation.

Issued in Hawthorne, California, on April 1, 2005.

George Aiken,

Manager, Safety and Standards Branch, Airports Division, Western-Pacific Region.

[FR Doc. 05–9920 Filed 5–17–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability and Public Comment Period for the Draft Air Quality General Conformity Determination (DGCD) for Proposed New Runways and Associated Development at Chicago O'Hare International Airport, Chicago, IL

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

ACTION: Notice of availability of the Draft Air Quality General Conformity Determination and notice of public comment period.

Location of Proposed Action: O'Hare International Airport, Chicago, Illinois.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that a Draft Air Quality General Conformity Determination (DGCD) for the O'Hare Modernization Environmental Impact Statement at Chicago O'Hare International Airport has been prepared and is available for public review and comment. In accordance with section 176(c) of the Federal Clean Air Act, FAA has assessed whether the air emissions that would result from FAA's action in approving the proposed projects conform with the Illinois State Implementation Plan (SIP). This assessment is contained in the DGCD.

The comment period is open as of the date of this Notice of Availability and closes June 20, 2005. Comments must be sent to Michael W. MacMullen of the FAA at the address shown below, and written comments must be postmarked and emails must be sent by not later than midnight, June 20, 2005.

SUPPLEMENTARY INFORMATION: The City of Chicago (City), Department of Aviation, as owner and operator of Chicago O'Hare International Airport (O'Hare or the Airport), PO Box 66142, Chicago, IL, 60666, proposes to modernize O'Hare to address existing and future capacity and delay problems. The City initiated master planning and the process of seeking FAA approval to amend its airport layout plan to depict the O'Hare Modernization Program (OMP). The City is also seeking the other necessary FAA approvals to implement the OMP and associated capital improvements and procedures. The FAA has prepared a DEIS addressing specific improvements at and adjacent to Chicago O'Hare International Airport, Chicago, Illinois. FAA's DEIS, released on January 21, 2005, presents an evaluation of the City's proposed project and reasonable alternatives. Under the City's concept, O'Hare's existing seven-runway configuration would be replaced by an eight-runway configuration, in which six runways would be oriented generally in the east/west direction, the existing northeast/southwest-oriented Runways 4L/22R and 4R/22L would remain, and Runways 14L/32R and 14R/32L would be closed.

The DGCD is available for review until June 20, 2005, on the FAA's Web site (*http://agl.faa.gov/OMP/DEIS.htm*), and at the following locations:

Arlington Heights Memorial Library, 500 North Dunton Ave., Arlington Heights;
Bellwood Public Library, 600 Bohland Ave., Bellwood;
Bensenville Community Public Library, 200 S Church Rd., Bensenville;
Berkeley Public Library, 1637 Taft Ave., Berkeley;
Bloomingdale Public Library, 101 Fairfield Way, Bloomingdale;
College of DuPage Library, 425 Fawell Blvd., Glen Ellyn;
Des Plaines Public Library, 1501 Ellinwood Ave., Des Plaines;
Eisenhower Public Library, 4652 N Olcott Ave., Harwood Heights;
Elk Grove Village Public Library, 1001 Wellington Ave., Elk Grove;
Elmhurst Public Library, 211 Prospect Ave., Elmhurst;
Elmwood Park Public Library, 4 W. Conti Pkwy., Elmwood Park;
Franklin Park Public Library, 10311 Grand Ave., Franklin Park;
Glendale Heights Library, 25 E Fullerton Ave., Glendale Heights;
Glenview Public Library, 1930 Glenview Rd., Glenview;
Harold Washington Library, 400 S. State., Chicago;
Hoffman Estates Library, 1550 Hassell Rd., Hoffman Estates;
Itasca Community Library, 500 W. Irving Park Rd., Itasca;
Lombard Public Library, 100 W. Maple St., Lombard;
Maywood Public Library, 121 S. 5th Ave., Maywood;
Melrose Park Public Library, 801 N. Broadway, Melrose Park;
Morton Grove Public Library, 6140 Lincoln Ave., Morton Grove;
Mount Prospect Public Library, 10 S. Emerson St., Mount Prospect;
Niles Public Library, 6960 W. Oakton St., Niles;
Northlake Public Library, 231 N. Wolf Rd., Northlake;
Oak Park Public Library, 834 Lake St., Oak Park;
Oakton Community College Library, 1616 E. Golf Rd., Des Plaines;

Park Rige Public Library, 20 S. Prospect Ave., Park Ridge;
River Forest Public Library, 735 Lathrop Ave., River Forest;
River Grove Public Library, 8638 W. Grand Ave., River Grove;
Schaumbrug Township District Library, 130 S. Roselle Rod, Schaumburg;
Schiller Park Public Library, 4200 Old River Rd., Schiller Park;
Villa Park Public Library, 305 S. Ardmore Ave., Villa Park; and
Wood Dale Public Library, 520 N. Wood Dale Rd., Wood Dale.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENT CONTACT: Michael W. MacMullen, Airports Environmental Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, IL 60018, Telephone: 847–294–8330, FAX: 847–294–7046; e-mail address: *ompeis@faa.gov.*

Issued in Des Plaines, Illinois on May 20, 2005.

Barry Cooper,

Manager, Chicago Area Modernization Program Office, Great Lakes Region.

[FR Doc. 05–9923 Filed 5–17–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Draft Environmental Assessment for the Proposed New Air Traffic Control Tower at the St. Louis Downtown Airport in Cahokia, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of a Draft Environmental Assessment for the proposed new Air Traffic Control Tower at the St. Louis Downtown Airport in Cahokia, Illinois.

SUMMARY: the Federal Aviation Administration (FAA) has prepared and is making available the Draft Environmental Assessment (DEA) for the following proposed action at the St. Louis Downtown Airport: The construction of a new Air Traffic Control Tower, associated support building, parking lot, and access road.

The Draft EA is being prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, FAA Order 1050.1E ''Environmental Impacts: Policies and Procedures'', and FAA Order 5050.4A, ''Airport Environmental Handbook.'' The proposed development action is consistent with the National Airspace System Plan prepared by the U.S. Department of Transportation, Federal Aviation Administration (FAA).

A Draft Environmental Assessment will be available for public review and comment at the following locations:

St. Louis Downtown Airport, Administration Office, 1680 Sauget Industrial Parkway, Sauget, IL 62206–1449.
Cahokia Public Library, 140 Cahokia Park Drive, Cahokia, IL 62206.

ADDRESSES: Written comments are encouraged from persons or interested parties. Written comments concerning the Draft EA will be accepted until 5 p.m. c.s.t., Tuesday, June 15, 2005. Written comments may be sent to: Ms. Virginia Marcks, ANI–430, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Marcks, Environmental Engineer, ANI–430, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone number: (847) 294–7494.

SUPPLEMENTARY INFORMATION:

Background

The existing ATCT at the St. Louis Downtown Airport was built in 1973 and soon after was expanded by the addition of a mobile office trailer to house administrative personnel. The current tower stands approximately 52 feet in height with a controller's eye height of approximately 41 feet. Continual visibility problems, due to existing trees in an adjacent residential development, impeded the controller's line of sight for airfield movement areas and runway approaches. The visibility problem, due to trees obscuring significant portions of two runway ends, 4 and 30L, is ongoing and worsening. The proposed ATCT, with a total elevation of 138′ Above Ground Level (AGL) and a controller eye height of 116′ 4″ AGL would significantly improve visual capabilities.

Air traffic controller equipment in the existing tower has not been significantly upgraded since the ATCT was constructed in 1973, although there has been nearly a 50 percent increase in airport operations over the past 30 years. In the nearly 1970s, when the existing ATCT was constructed, annual aircraft operations recorded during operating hours of 7 a.m. to 9 p.m. totaled approximately 115,000. In 2001, the total number of operations recorded between the 7 a.m. to 9 p.m. timeframe was nearly 170,000. The proposed ATCT would allow for modernized equipment, enhancing the level of safety for the current number of aircraft operations at the St. Louis Downtown Airport.

Issued in Des Plaines, Illinois May 13, 2005.

Art V. Schultz,

Acting Manager, Chicago NAS Implementation Center, ANI–400 Great Lakes Region.

[FR Doc. 05–9921 Filed 5–17–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–28]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition of prior petition.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the disposition of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Kenna Sinclair (425) 227–1556), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave., SW., Renton, WA 98055–4056; or John Linsenmeyer (202) 267–5174), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on May 11, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Disposition of Petitions

Docket No.: FAA–2004–17909.
Petitioner: The Boeing Company.
Sections of 14 CFR Affected: 14 CFR 25.301, 25.303, 25.305, and 25.901(c).
Description of Relief Sought/ Disposition: A seven-year extension of FAA Partial Time Limited Exemption Number 8329A for Boeing Model 777 airplanes equipped with Pratt & Whitney or Rolls-Royce engines. This is

an exemption from the affected regulations as they relate to the structural strength, deformation, and failure of the thrust reverser inner wall panels under certain refused takeoff (RTO) conditions. *Partial Grant of Exemption, 04/29/2005, Exemption No. 8329B.*

[FR Doc. 05–9825 Filed 5–17–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–29]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. On January 13, 2005, a notice was published of a petition seeking relief from the requirements of 14 CFR 25.841(a)(2)(ii). By a letter dated March 4, 2005, the petitioner submitted additional information that indicated that it would also be necessary to obtain exemption from the related requirements of § 25.841(a)(2)(i). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before June 7, 2005.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2004–19937] by any of the following methods:

- Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Madeleine Kolb (425) 227–1134, Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056; or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on May 11, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2004–19937.

Petitioner: Embraer Empresa Brasileira de Aeronautica S.A.

Section of 14 CFR Affected: 14 CFR 25.841(a)(2)(i), and (a)(2)(ii)

Description of Relief Sought: To permit certification of the Embraer ERJ 190 series (including the ERJ 190–100 and ERJ 190–200 model) airplanes without meeting the requirements of § 25.841(a)(2)(i), and (a)(2)(ii), Amendment 25–87, which specify the maximum cabin altitude allowable under certain failure conditions.

[FR Doc. 05–9826 Filed 5–17–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Extend Comment Period for an Environmental Impact Statement: St. Louis City and St. Louis County, MO

AGENCY: Federal Highway Administration (FHWA); Transportation.

ACTION: Extend comment period for a final environmental impact statement.

SUMMARY: The FHWA is issuing this notice to advise the public that we are extending the comment period for a final environmental impact statement (EIS) for improvements on I–64 in the City of St. Louis and St. Louis County, Missouri.

FOR FURTHER INFORMATION CONTACT: Peggy J. Casey, Environmental Projects Engineer, FHWA Division Office, 209 Adams Street, Jefferson City, MO 65101; Telephone: (573) 636–7104 or Mr. Kevin Keith, Chief Engineer, Missouri Department of Transportation, P.O. Box 270, Jefferson City, MO 65102.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), prepared a final EIS for a project that has been proposed to improve the transportation system in the City of St. Louis and St. Louis County, Missouri. The Notice of Availability for the New I–64 EIS (volumes 1 and 2) was published in the **Federal Register** on April 15, 2005 (70 FR 19951). The end of the official comment period was to be May 20, 2005. However, the comment period has been extended to June 20, 2005. Comments or questions should be directed to the FHWA or MoDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 12, 2005.

Peggy J. Casey,

Environmental Projects Engineer; Jefferson City.

[FR Doc. 05–9883 Filed 5–17–05; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–20105]

Public Meeting To Discuss the Establishment of a National Registry of Certified Medical Examiners

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of public meeting.

SUMMARY: FMCSA announces a public meeting concerning a National Registry of Certified Medical Examiners (NRCME). If established, the NRCME would be a database of medical examiners certified by FMCSA (or a third party) to conduct medical examinations of interstate commercial motor vehicle (CMV) drivers and effectively determine their physical qualifications to operate such vehicles

in interstate commerce as defined in 49 CFR 391.41. If the NRCME is implemented, the FMCSA would only accept medical examinations conducted by persons listed in the NRCME as proof of the physical qualifications standards for interstate CMV drivers. The meeting is intended to provide a general introduction to the NRCME concept and an opportunity for discussion with subject matter experts.

DATES: The meeting will be held on June 22, 2005. The meeting will begin at 9 a.m. and end at 1:15 p.m.

ADDRESSES: The meeting will be held at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: For information, contact Dr. Mary D. Gunnels, Office of Bus and Truck Standards and Operations, Physical Qualifications Division, 202–366–4001.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Margo Weeks, Axiom Resource Management, Inc., 703–379–0412, ext 456.

SUPPLEMENTARY INFORMATION:

Background

Interest in certifying medical examiners to evaluate interstate commercial motor vehicle operators dates back to 1978, when the National Highway Traffic Safety Administration commissioned a feasibility study on the issue. This study addressed the primary weakness in the overall system—the lack of medical examiner understanding of the relationship of driver physical condition to the task of operating CMVs interstate. The study found that there were not enough doctors to support a certified medical examiner system. Instead, it recommended certifying a few medical examiners who would determine fitness when there was a conflict between a driver's physician and the motor carrier's physician.

In 1992, the Federal Motor Carrier Safety Regulations were amended to allow physicians' assistants, advanced nurse practitioners, and doctors of chiropractic to perform medical examinations of CMV operators, if permitted by state license (57 FR 33278; July 28, 1992). The number of potential medical examiners grew.

The idea of certification resurfaced during the National Transportation Safety Board's (NTSB) January 21, 2000 public hearing in New Orleans concerning a 1999 crash where it was determined that the CMV operator had several life-threatening medical conditions. The NTSB concluded that medical examiners might not have the knowledge and information necessary to make appropriate decisions about driver fitness. In its ''Highway Accident Report, Motorcoach Run-Off-The-Road Accident, New Orleans, Louisiana, May 9, 1999'' (NTSB/HAR–01/01, PB 2001—916201, Notation 7381, August 28, 2001), the NTSB recommended (H–01–017 through H–01–024) that the FMCSA ''Develop a comprehensive medical oversight program for interstate commercial drivers* * *'' that includes requirements to ensure ''Individuals performing medical examinations for drivers are qualified to do so and are educated about occupational issues for drivers.''

Most recently, the 107th Congress considered the issue of a National Registry in the Senate version of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (S. 1072, Sec. 4228). The legislation included language regarding the physical examinations required of CMV operators by medical examiners who are proficient in physical and medical examination standards and listed on a national registry maintained by the U.S. Department of Transportation.

Development and Implementation of the NRCME

Although Congress has not yet enacted legislation to require FMCSA to establish a registry of certified medical examiners, the Agency seeks to provide a general introduction to the NRCME concept and to initiate dialogue on the topic with subject matter experts. Through this dialogue, we also anticipate developing information that would allow us to exercise our current statutory authority under 49 U.S.C. 31316 (the Motor Carrier Safety Act of 1984) and 49 U.S.C. 31502 (the Motor Carrier Act of 1935) to better ensure the physical qualifications of interstate CMV drivers.

The NRCME would be used to identify medical examiners who have demonstrated to FMCSA that they have knowledge of the driver physical qualifications standards and all applicable advisory guidelines for use in determining whether an individual is qualified to operate CMVs in interstate commerce. Medical examiners listed in the NRCME would be trained and certified by FMCSA (or a third party) as being knowledgeable about the Federal driver physical qualifications standards. Medical examiners are not currently required to have specific training or demonstrate any special or unique understanding of motor carrier operations to medically certify CMV drivers.

The delivery of program services and the ongoing operation of the National Registry would require the participation of private sector organizations that have relevant existing experience. These organizations would include medical associations and societies that provide education and training, as well as organizations that develop, administer and analyze certification examinations. Quality management/quality control (certification, accreditation) for the program would be conducted using accepted existing practices in the private sector.

Meeting Participation

All interested parties are encouraged to attend, including medical examiners, representatives of medical associations, certification and accreditation organizations, motor carriers and drivers, state motor carrier enforcement agencies, safety advocates and organizations. View the following Web site for more information: *http://www.nrcme.fmcsa.dot.gov.*

Issued on: May 12, 2005.

Annette M. Sandberg,

Administrator.

[FR Doc. 05–9897 Filed 5–17–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–16066; Notice 2]

Subaru of America, Inc., Notice of Grant of Application for Decision of Inconsequential Noncompliance

Subaru of America, Inc. (Subaru) determined that approximately 2,531 model year 2004 Subaru Impreza STi vehicles do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 108, S7.7 (e) on ''headlamp ballast.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Subaru has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' A copy of the petition may be found in this docket.

A notice of receipt of an application was published in the **Federal Register** on September 30, 2003, with a thirty-day comment period (68 FR 56376). In summary, the affected vehicles were

produced during the period of February 4, 2003, through July 9, 2003, with high intensity discharge headlamp assemblies made by Ichikoh Industries, Ltd (Ichikoh). The affected headlamps are equipped with a ballast that is currently registered in Docket No. NHTSA–98–3397. However, Ichikoh used ballast units without all of the label information required in FMVSS No. 108, S7.7 (e) in assembling the complete headlamp assemblies. There were no comments on this notice from the public.

Subaru stated the following three reasons as justification for applying for a decision of inconsequentiality for the noncomplying ballast marking: (1) The ballast (part no.: NZMIC111LAC1000) and ignition module (part no.: NZMIC211LAC1000) used in these headlamp assemblies are the same ones as registered by Matsushita Electric Works, Ltd. according to Part 564, except that they are missing the information label. For this reason, Subaru believes that this noncompliance will not affect the luminous intensity distribution, mechanical performance or any other headlamp performance characteristic required by FMVSS No. 108. (2) The ballast is designed to have high durability during the vehicle's lifetime, and Subaru believes that the ballast, as well as the headlamp assembly, will not need to be replaced from a lack of durability. (3) A properly affixed ballast information label, which is on the bottom surface of the ballast, is not visible unless the headlamp assembly is removed from the vehicle.

NHTSA has reviewed the facts of this application for a decision of inconsequential noncompliance. In this instance, it appears that the ballasts are missing the following required markings: S7.7 (e)(2) ballast part number; S7.7 (e)(3) part number of the light source for which he ballast is designed; S7.7 (e)(4) rated laboratory life; S7.7 (e)(6) ballast output power and; S7.7 (e)(7) the symbol ''DOT''. While these markings are important for assuring proper application and replacement, especially when ballasts are separately installed parts on a motor vehicle, the fact that the subject ballasts are part of the headlamp assembly when delivered to the customer minimizes the risk of incorrect initial application. While it may not minimize the risk of incorrect replacement if the pertinent information is missing, auto parts supply companies generally offer parts by vehicle make and model as well as by OEM part number. As such the risk of incorrect selection is insignificant.

In consideration of these issues, the agency agrees with Subaru that the noncompliance will not have an impact on the vehicle on which the ballast was originally installed. We believe the ballast will remain with the headlamp unless it is faulty, and then it would likely be replaced with the correct, and correctly marked ballast.

Another issue related to whether inconsequentiality exists, is if an unmarked ballast is removed from a subject vehicle, possibly by a recycler, and inappropriately installed on a different make and model vehicle. Based on the information provided by Subaru, the omission of the ballast marking information is only a portion of the information required by our FMVSS No. 108. Required markings that were provided on the ballast included the ballast manufacturer's name, required by S7.7 (e)(1), and a severe electrical shock warning, required by S7.7 (e)(5). Supplemental markings included are a bar code label and associated number. Given that normal replacement ballasts are marked, the only way an unmarked ballast will end up on a vehicle other than the one on which it was delivered, is if the vehicle is in such a crash that the headlamp did not survive, but the attached ballast did. That would make it available as a part at an auto-recycling yard. Because it would have been associated with the 2004 Subaru Impreza STi and have some manufacturer markings, it is likely that it would be sold as a replacement for that particular make and model vehicle. While it could also be sold as a generic ballast, it is intended to fit and operate a standardized light source type, specifically D2R or either D2S. This should not create lighting performance problems. Further, the existing severe shock-warning label will provide the required risk notification to the installer of potential injury or death.

In consideration of the foregoing, NHTSA has decided that the applicant has met the burden of persuasion. The noncompliance with specific portions of FMVSS No. 108, S7.7 (e), regarding the marking of headlamp ballasts is inconsequential to motor vehicle safety. Accordingly, Subaru's application is granted and the company is exempted from providing the notification of the noncompliance that would be required by 49 U.S.C. 30118, and from remedying the noncompliance, as would be required by 49 U.S.C. 30120.

Authority: 49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 12, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–9919 Filed 5–17–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Harris Ellsworth & Levin on behalf of Trinity Industries, Inc. (WB605–5/5/2005) for permission to use certain data from the Board's 2003 Carload Waybill Sample. A copy of the requests may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. 05–9773 Filed 5–17–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34695]

Hainesport Industrial Railroad, LLC—Acquisition and Operation Exemption—Hainesport Industrial Park Railroad Association, Inc.

Hainesport Industrial Railroad, LLC (HIR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 1 mile of rail line owned by Hainesport Industrial Park Railroad Association, Inc. in Burlington County, NJ. The line is located within the Hainesport Industrial Park in the township of Hainesport, and connects with Consolidated Rail Corporation at milepost 12.6 in the South Jersey Conrail Shared Assets Area.

HIR certifies that its projected revenues will not exceed those that would quality it as a Class III rail carrier, and that its annual revenues will not exceed $5 million.

The transaction was expected to be consummated on or after April 28, 2005.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34695, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Linda J. Morgan, 1201 Pennsylvania Avenue, NW., Washington, DC 20004.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 10, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–9738 Filed 5–17–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34686]

Indiana & Ohio Railway Company—Merger Exemption—Indiana & Ohio Central Railroad, Inc.

Indiana & Ohio Railway Company (IORY), a Class III rail carrier that operates over approximately 498.23 miles of rail line in Michigan, Ohio, and Indiana, and Indiana & Ohio Central Railroad, Inc. (IOCR), a Class III rail carrier that operates over approximately 261.6 miles of rail line in Ohio, both of which are subsidiaries of RailAmerica, Inc., have filed a verified notice of exemption with respect to a proposed corporate restructuring, through which IOCR will merge into IORY, with IORY as the surviving entity. After the merger, IORY will remain a Class III rail carrier.

The transaction, which was scheduled to be consummated on or shortly after May 1, 2005, is intended to generate greater efficiencies through such actions as a reduction of IORY/IOCR's overhead expenses and their car accounting costs.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). IORY and IOCR state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because both of the carriers involved in this transaction are Class III rail carriers.

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. 34686, 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 Louis E. Gitomer, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 9, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–9739 Filed 5–17–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 11, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000,1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 17, 2005 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0052.

Form Numbers: FMS 458 and FMS 459.

Type of Review: Extension.

Title: Financial Institution Agreement and Application Forms for Designation as a Treasury Tax and Loan Depositary.

Description: Financial institutions are required to complete an agreement and application to participate in the Federal Tax Deposit/Treasury and Loan Program. The approved application designates the depositary as an authorized recipient of taxpayers' deposits for Federal taxes.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 450.

Estimated Burden Hours per Respondent: 30 minutes.

Frequency of Response: Other (once for duration of the authorization).

Estimated Total Reporting Burden: 225 hours.

Clearance Officer: Jiovannah L. Diggs, Financial Management Service, Administrative Programs Division, Records and Information Management Program, 3700 East West Highway, Room 144, Hyattsville, MD 20782, (202) 874–7662.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–9889 Filed 5–17–05; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 11, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 17, 2005, to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0018.
Form Number: TTB F 5100.24.
Type of Review: Extension.
Title: Application for Basic Permit under the Federal Alcohol Administration Act.
Description: TTB 5100.24 will be completed by persons intending to engage in a business involving beverage alcohol operation at distilled spirits plants, bonded wineries, or wholesaling/importing business. The information allows TTB to identify the applicant and the location of the business and to determine whether the applicant qualifies for a permit.
Respondents: Business of other for-profit.
Estimated Number of Respondents: 1,600.
Estimated Burden Hours per Respondent: 1 hour, 45 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,800 hours.

OMB Number: 1513–0019.
Form Number: TTB F 5100.18.
Type of Review: Extension.
Title: Application for Amended Basic Permit under the Federal Alcohol Administration Act.
Description: TTB 5100.18 is completed by permittees who change their operations that require a new permit to be issued or a notice to be issued or a notice to be received by TTB. The information allows TTB to identify the permittee, the changes to the permit or business and to determine whether the applicant qualifies.
Respondents: Business of other for-profit.
Estimated Number of Respondents: 1,200
Estimated Burden Hours per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 600 hours.

OMB Number: 1513–0021.
Form Number: TTB F 5154.1.
Type of Review: Extension.
Title: Formula and Process for Nonbeverage Product.
Description: Businesses using taxpaid distilled spirits to manufacture nonbeverage products may receive drawback (*i.e.*, a refund or remittance) or tax, if they can show that the spirits were used in the manufacture of products unfit for beverage use. This showing is based on the formula for the product, which is submitted on TTB Form 5154.1.
Respondents: Business of other for-profit.
Estimated Number of Respondents: 611.
Estimated Burden Hours per Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,500 hours.

OMB Number: 1513–0023.
Form Numbers: TTB F 5000.29 and TTB F 5000.30.
Type of Review: Extension.
Title: TTB F 5000.29: Environmental Information. TTB F 5000.30: Supplemental Information on Water Quality Consideration under 33 U.S.C. 1342(a).
Description: ''Environmental impact statements, Water Pollution Environmental evaluation'' TTB F 5000.29 and TTB F 5000.30 implement regulations of the Clean Water Act and the National Environmental Policy Act (NEPA). NEPA authorizes TTB through TTB F 5000.29 to require a license or permit application to state the location of existing or proposed activities concerned with land, air pollution, water and activities related to TTB.
Respondents: Business of other for-profit.
Estimated Number of Respondents: 8,000.
Estimated Burden Hours per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 4,000 hours.

OMB Number: 1513–0065.
Recordkeeping Requirement ID Number: TTB REC 5170/2.
Type of Review: Extension.
Title: Wholesale Dealers Records of Receipt of Alcoholic Beverages, Disposition of Distilled Spirits and Monthly Summary Report.
Description: An accounting tool, this record is used to show the person from whom a wholesale dealer purchased alcoholic beverages, and the person to whom the dealer sold alcoholic beverages. When required, the monthly report will provide a report of sales activities and on-hand inventory quantities.
Respondents: Business of other for-profit, State, Local or Tribal Government.
Estimated Number of Recordkeepers: 50.
Estimated Burden Hours per Recordkeeper: 2 hours.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 1,200 hours.

OMB Number: 1513–0073.
Recordkeeping Requirement ID Number: TTB REC 5530/2.
Type of Review: Extension.
Title: Manufacturers of Nonbeverage Products—Records to Support Claims for Drawback.
Description: Records required to be maintained by manufacturers of nonbeverage products are used to verify claims for drawback of taxes and hence, protect the revenue. Maintains accountability; allows tracing or spirits by audit.
Respondents: Business of other for-profit.
Estimated Number of Recordkeepers: 611.
Estimated Burden Hours per Recordkeeper: 21 hours.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 12,831 hours.

OMB Number: 1513–0075.
Recordkeeping Requirement ID Number: TTB REC 5330/2.
Type of Review: Extension.
Title: Proprietors or Claimants Exporting Liquors.
Description: Distilled spirits, wine and beer may be exported from bonded premises without payment of excise taxes, or, they may be exported if their taxes have been paid and the exporters may claim drawback of the taxes paid. The record is needed to allow the amounts exported to be verified and to maintain accountability over products. The records protect the revenue.
Respondents: Business of other for-profit.
Estimated Number of Recordkeepers: 120.
Estimated Burden Hours per Recordkeeper: 60 hours.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 7,200 hours.

OMB Number: 1513–0099.
Form Number: None.
Type of Review: Extension.
Title: Administrative Remedies—Closing Agreements.
Description: This is a written agreement between TTB and regulated taxpayers used to finalize and resolve certain tax certain tax related issues. Once an agreement is approved, it will not be reopened unless fraud or misrepresentation of material facts is proven.
Respondents: Business of other for-profit.
Estimated Number of Respondents: 1.
Estimated Burden Hours per Respondent: 1.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.

OMB Number: 1513–0101.
Recordkeeping Requirement ID Number: TTB REC 5210/13.

Type of Review: Extension.

Title: Marks and Notices on Packages of Tobacco Products.

Description: TTB requires that tobacco products be identified by statements of information on packages, cases and containers of tobacco products. TTB uses this information to validate the receipt of excise tax revenue, the determination of tax liability and the verification of claims.

Respondents: Business of other for-profit.

Estimated Number of Recordkeepers: 120.

Estimated Burden Hours per Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1513–0102.

Recordkeeping Requirement ID Number: TTB REC 5210/2.

Type of Review: Extension.

Title: Drawback of Tax on Tobacco Products and Cigarette Papers and Tubes-Export Shipment.

Description: Exporters may file claim for drawback of tax on tobacco products and cigarette papers and tubes which have been taxpaid and are to be exported. Appropriate records are needed to ensure drawback of tax is properly documented and justified.

Respondents: Business of other for-profit.

Estimated Number of Recordkeepers: 1.

Estimated Burden Hours per Recordkeeper: 5 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 5 hours.

Clearance Officer: William H. Foster, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G. Street, NW., Washington, DC 20005. (202) 927–8210.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–9890 Filed 5–17–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 101177–05

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 Revenue Procedure 2005–XX, Revenue Procedure Regarding Extended Period of Limitation for Listed Transaction Situations.

DATES: Written comments should be received on or before July 18, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 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 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure Regarding Extended Period of Limitations for Listed Transaction Situations.

OMB Number: 1545–1940.

Revenue Procedure Number: Revenue Procedure 2005–XX.

Abstract: This revenue procedure provides procedures that taxpayers and material advisors may use to disclose a listed transaction that the taxpayer previously failed to disclose.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and Business or other for-profit institutions.

Estimated Number of Respondents: 859

Estimated Time Per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 430.

The following paragraph applies to all 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: May 10, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–2482 Filed 5–17–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

[REG–108524–00]

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 existing final regulation, REG–108524–00, Section 1446 Regulations.

DATES: Written comments should be received on or before July 18, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6510, 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 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Section 1446 Regulations.

OMB Number: 1545–1934.

Regulation Project Number: REG–108524–00.

Abstract: This regulation implements withholding regime on partnerships conducting business in the United States that have foreign partners. Such partners are required to pay withholding tax in installments on each foreign partner's allocable share of the partnership's U.S. Business taxable income. Special rules for publicly traded partnerships such that these partnerships pay withholding tax on distributions to foreign partners.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Individual or households, Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 17,775.

Estimated Time Per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 7,805.

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: May 10, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–2483 Filed 5–17–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2005–XX

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 Revenue Procedure 2005–XX, Limit of Retroactive Application.

DATES: Written comments should be received on or before July 18, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 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 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Limit of retroactive Application.

OMB Number: 1545–1738.

Revenue Procedure Number: Revenue Procedure 2005–XX.

Abstract: Revenue Procedure 2005–XX provides a mechanism to require prospective correction and to allow limited relief of affected multiemployer pension plans even though the original plan amendment that was adopted before June 7, 2004, violated the anti-cutback rule of section 411(d)(6) of the Internal Revenue Code. This relief is granted pursuant to the discretionary authority of the Commissioner of Internal Revenue under section 7805(b)(8) of the Code.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 142,500.

Estimated Time Per Respondent/Recordkeeper: 1 hour.

Estimated Total Annual Reporting/Recordkeeping

Hours: 142,500.

The following paragraph applies to all 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: May 10, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–2484 Filed 5–17–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–A

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–A, Acquisition or Abandonment of Secured Property.

DATES: Written comments should be received on or before July 18, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 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 R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Acquisition or Abandonment of Secured Property.

OMB Number: 1545–0877.

Form Number: 1099–A.

Abstract: Form 1099–A is used by persons who lend money in connection with a trade or business, and who acquire an interest in the property that is security for the loan or who have reason to know that the property has been abandoned, to report the acquisition or abandonment.

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: Businesses or other for-profit organizations.

Estimated Number of Responses: 386,356.

Estimated Time Per Response: 10 min.

Estimated Total Annual Burden Hours: 61,817.

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: May 9, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–2485 Filed 5–17–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8801

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 8801, Credit For Prior Year Minimum Tax—Individuals, Estates and Trusts.

DATES: Written comments should be received on or before July 18, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 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 R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Credit For Prior Year Minimum Tax—Individuals, Estates and Trusts.

OMB Number: 1545–1073.

Form Number: 8801.

Abstract: Form 8801 is used by individuals, estates, and trusts to compute the minimum tax credit, if any, available from a tax year beginning after 1986 to be used in the current year or to be carried forward for use in a future year.

Current Actions: There are no changes being made to Form 8801 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 38,744.

Estimated Time Per Respondent: 5 hr., 40 min.

Estimated Total Annual Burden Hours: 258,036.

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: May 10, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–2486 Filed 5–17–05; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
May 18, 2005

Part II

Environmental Protection Agency

40 CFR Parts 60, 72, and 75

Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 72, and 75

[OAR–2002–0056; FRL–7888–1]

RIN 2060–AJ65

Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this document, EPA is finalizing the Clean Air Mercury Rule (CAMR) and establishing standards of performance for mercury (Hg) for new and existing coal-fired electric utility steam generating units (Utility Units), as defined in Clean Air Act (CAA) section 111. The amendments to CAA section 111 rules would establish a mechanism by which Hg emissions from new and existing coal-fired Utility Units are capped at specified, nation-wide levels. A first phase cap of 38 tons per year (tpy) becomes effective in 2010, and a second phase cap of 15 tpy becomes effective in 2018. Facilities must demonstrate compliance with the standard by holding one ''allowance'' for each ounce of Hg emitted in any given year. Allowances are readily transferrable among all regulated facilities. Such a ''cap-and-trade'' approach to limiting Hg emissions is the most cost-effective way to achieve the reductions in Hg emissions from the power sector.

The added benefit of the cap-and-trade approach is that it dovetails well with the sulfur dioxide (SO_2) and nitrogen oxides (NO_X) emission caps under the final Clean Air Interstate Rule (CAIR) that was signed on March 10, 2005. CAIR establishes a broadly-applicable cap-and-trade program that significantly limit SO_2 and NO_X emissions from the power sector. The advantage of regulating Hg at the same time and using the same regulatory mechanism as for SO_2 and NO_X is that significant Hg emissions reductions, especially reductions of oxidized Hg, can and will be achieved by the air pollution controls designed and installed to reduce SO_2 and NO_X. Significant Hg emissions reductions can be obtained as a ''co-benefit'' of controlling emissions of SO_2 and NO_X; thus, the coordinated regulation of Hg, SO_2, and NO_X allows Hg reductions to be achieved in a cost-effective manner.

The final rule also finalizes a performance specification (PS) (Performance Specification 12A, ''Specification and Test Methods for Total Vapor Phase Mercury Continuous Emission Monitoring Systems in Stationary Sources'') and a test method (''Quality Assurance and Operating Procedures for Sorbent Trap Monitoring Systems'').

The EPA is also taking final action to amend the definition of ''designated pollutant.'' The existing definition predates the Clean Air Act Amendments of 1990 (the CAAA) and, as a result, refers to section 112(b)(1)(A) which no longer exists. The EPA is also amending the definition of ''designated pollutant'' so that it conforms to EPA's interpretation of the provisions of CAA section 111(d)(1)(A), as amended by the CAAA. That interpretation is explained in detail in a separate **Federal Register** notice (70 FR 15994; March 29, 2005) announcing EPA's revision of its December 2000 regulatory determination and removing Utility Units from the 112(c) list of categories. For these reasons, EPA has determined that it is appropriate to promulgate the revised definition of ''designated pollutant'' without prior notice and opportunity for comment.

DATES: The final rule is effective on July 18, 2005. The Incorporation by Reference of certain publications listed in the final rule are approved by the Director of the Office of the Federal Register as of July 18, 2005.

ADDRESSES: *Docket.* EPA has established a docket for this action under Docket ID No. OAR–2002–0056 and legacy Docket ID No. A–92–55. All documents in the legacy docket are listed in the legacy docket index available through the Air and Radiation Docket; all documents in the EDOCKET are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the indices, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the EDOCKET Internet site and will be publicly available only in hard-copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For information concerning analyses performed in developing the final rule, contact Mr. William Maxwell, Combustion Group, Emission Standards Division (C439–01), EPA, Research Triangle Park, North Carolina, 27711; telephone number (919) 541–5430; fax number (919) 541–5450; electronic mail address: *maxwell.bill@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by the final rule include the following:

Category	NAICS code [1]	Examples of potentially regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal government	[2] 221122	Fossil fuel-fired electric utility steam generating units owned by the Federal government.
State/local/Tribal government	[2] 221122	Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150	Fossil fuel-fired electric utility steam generating units in Indian country.

[1] North American Industry Classification System.
[2] Federal, State, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the final rule. This table lists examples of the types of entities EPA is now aware could potentially be regulated by the final rule. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is regulated by the final rule, you should examine the applicability criteria in 40 CFR 60.45a of the final new source performance standards (NSPS) amendments. If you have questions regarding the applicability of the final rule to a particular entity, consult your State or

local agency (or EPA Regional Office) described in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's document will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following signature by the Acting Administrator, a copy of the final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under CAA section 307(b), judicial review of the final NSPS is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before July 18, 2005. Under CAA section 307(D)(7)(B), only those objections to the final rule which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Moreover, under CAA section 307(b)(2), the requirements established by the final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

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I. Background

A. What is the source of authority for development of the final rule?

CAA section 111 creates a program for the establishment of ''standards of performance.'' A ''standard of performance'' is ''a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction, which (taking into account the cost of achieving such reduction, any non-air quality health and environmental impacts and energy requirements), the Administrator determines has been adequately demonstrated.'' (See CAA section 111(a)(1).)

For new sources, EPA must first establish a list of stationary source categories, which, the Administrator has determined ''causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.'' (See CAA section 110(b)(1)(A).) EPA must then set Federal standards of performance for new sources within each listed source category. (See CAA section 111(b)(1)(B).) Like section 112(d) standards, the standards for new sources under section 111(b) apply nationally and are effective upon promulgation. (See CAA section 111(b)(1)(B).)

Existing sources are addressed under CAA section 111(d). EPA can issue standards of performance for existing sources in a source category only if it has established standards of performance for new sources in that same category under section 111(b), and only for certain pollutants. (See CAA section 111(d)(1).) Section 111(d) authorizes EPA to promulgate standards of performance that States must adopt through a State Implementation Plans (SIP)-like process, which requires State rulemaking action followed by review and approval of State plans by EPA. If a State fails to submit a satisfactory plan, EPA has the authority to prescribe a plan for the State. (See CAA section 111(d)(2)(A).) Below in this document, we discuss in more detail (i) the applicable standards of performance for the regulatory requirements, (ii) the legal authority under CAA section 111(d) to regulate Hg from coal-fired Utility Units, and (iii) the legal authority to implement a cap-and-trade program for existing Utility Units.

B. What is the regulatory background for the final rule?

1. What are the relevant **Federal Register** actions?

On December 20, 2000, EPA issued a finding pursuant to CAA section 112(n)(1)(A) that it was appropriate and necessary to regulate coal- and oil-fired Utility Units under section 112. In making this finding, EPA considered the Utility Study, which was completed and submitted to Congress in February 1998.

In December 2000, EPA concluded that the positive appropriate and necessary determination under section 112(n)(1)(A) constituted a decision to list coal- and oil-fired Utility Units on the section 112(c) source category list. Relying on CAA section 112(e)(4), EPA explained in its December 2000 finding that neither the appropriate and necessary finding under section 112(n)(1)(A), nor the associated listing were subject to judicial review at that time. EPA did not add natural-gas fired units to the section 112(c) list in December 2000 because it did not make a positive appropriate and necessary finding for such units.

On January 30, 2004, EPA published in the **Federal Register** a notice of proposed rulemaking (NPR) entitled ''Proposed National Emissions Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units.'' In that

rule, EPA proposed three alternative regulatory approaches. First, EPA proposed to retain the December 2000 Finding and associated listing of coal- and oil-fired Utility Units and to issue maximum achievable control technology-based (MACT) national emission standards for hazardous air pollutants (NESHAP) for such units. Second, EPA alternatively proposed revising the Agency's December 2000 Finding, removing coal- and oil-fired Utility Units from the section 112(c) list,[1] and issuing final standards of performance under CAA section 111 for new and existing coal-fired units that emit Hg and new and existing oil-fired units that emit nickel (Ni). Finally, as a third alternative, EPA proposed retaining the December 2000 finding and regulating Hg emissions from Utility Units under CAA section 112(n)(1)(A).

Shortly thereafter, on March 16, 2004, EPA published in the **Federal Register** a supplemental notice of proposed rulemaking (SNPR) entitled ''Supplemental Notice of Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units.'' In that notice, EPA proposed certain additional regulatory text, which largely governed the proposed section 111 standards of performance for Hg, which included a cap-and-trade program. The supplemental notice also proposed State plan approvability criteria and a model cap-and-trade rule for Hg emissions from coal-fired Utility Units. The Agency received thousands of comments on the proposed rule and supplemental notice. Some of the more significant comments relating to today's action are addressed in this preamble. We respond to the other significant comments in the response to comments document entitled Response to ''Significant Public Comments on the Proposed Clean Air Mercury Rule,'' which is in the docket.

On December 1, 2004, EPA published in the **Federal Register** a notice of data availability (NODA) entitled ''Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources, Electric Utility Steam Generating Units: Notice of Data Availability.'' EPA issued this notice: (1) To seek additional input on certain new data and information concerning Hg that the Agency received in response to the January 30, 2004 NPR and March 16, 2004 SNPR; and (2) to seek input on a revised proposed benefits methodology for assessing the benefits of Hg regulation. EPA conducts benefits analysis for rulemakings consistent with the provisions of Executive Order (EO) 12866.

2. How did the public participate in developing the final rule?

Upon signature on December 15, 2003, the proposed rule was posted on the Agency's Internet Web site for public review. Following publication of the NPR in the **Federal Register** (69 FR 4652; January 30, 2004), a 60-day public comment period ensued. Concurrent public hearings were held in Research Triangle Park, NC, Philadelphia, PA, and Chicago, IL, on February 25 and 26, 2004, at which time any member of the public could provide oral comment on the NPR. On March 16, 2004, a SNPR was published in the **Federal Register** (69 FR 12398). On March 17, 2004, EPA announced that the public comment period on the NPR and SNPR had been extended to April 30, 2004. A public hearing on the SNPR was held in Denver, CO, on March 31, 2004, during which time members of the public could provide oral comment on any aspect of the NPR or SNPR. On May 5, 2004, EPA announced (69 FR 25052) that the public comment period for the NPR and SNPR had been reopened and extended until June 29, 2004. On December 1, 2004, EPA published a NODA with a public comment period until January 3, 2005 (69 FR 69864). In addition to the public comment process, EPA met with a number of stakeholder groups and has placed in the docket records of these meetings. Comments received after the close of the public comment period on the NODA (January 3, 2005), were not considered in the analyses. Approximately 500,000 public comments were received during this period, indicating wide public interest and access.

C. What is the relationship between the final rule and the section 112 delisting action?

In a separate **Federal Register** notice (70 FR 15994; March 29, 2005), EPA published a final Agency action which delists Utility Units under section 112(n)(1)(A). In that action, EPA revised the regulatory finding that it issued in December 2000 pursuant to CAA section 112(n)(1)(A), and based on that revision, removed coal- and oil-fired electric utility steam generating units (coal- and oil-fired Utility Units) from the CAA section 112(c) list. Section 112(n)(1)(A) of the CAA is the threshold statutory provision underlying this action. Congress enacted this special provision for Utility Units which gives EPA considerable discretion in determining whether Utility Units should be regulated under section 112. The provision requires EPA to conduct a study to examine the hazards to public health that are reasonably anticipated to occur as the result of hazardous air pollutant (HAP) emissions from Utility Units after imposition of the requirements of the CAA. The provision also provides that EPA shall regulate Utility Units under section 112, but only if the Administrator determines that such regulation is both ''appropriate'' and ''necessary'' considering, among other things, the results of the study. EPA completed the study in 1998 (Utility Study), and in December 2000 found that it was ''appropriate and necessary'' to regulate coal- and oil-fired Utility Units under CAA section 112. That December 2000 finding focused primarily on Hg emissions from coal-fired Utility Units. In January 2004, EPA proposed revising the December 2000 appropriate and necessary finding and, based on that revision, removing coal- and oil-fired Utility Units from the section 112(c) list.

In a separate **Federal Register** notice (70 FR 15994; March 29, 2005), we revised the December 2000 appropriate and necessary finding and concluding that it is not appropriate and necessary to regulate coal- and oil-fired Utility Units under section 112. We took this action because we now believe that the December 2000 finding lacked foundation and because recent information demonstrates that it is not appropriate or necessary to regulate coal- and oil-fired Utility Units under section 112. Based solely on the revised finding, we are removing coal- and oil-fired Utility Units from the section 112(c) list and instead establishing standards of performance for Hg for new and existing coal-fired Utility Units, as defined in CAA section 111.

The reasons supporting today's action are described in detail in a separate final Agency action published in the **Federal Register** (70 FR 15994; March 29, 2005).

D. What is the relationship between the final rule and other combustion rules?

Revised NSPS for SO_2, NO_X, and particulate matter (PM) were proposed under CAA section 111 for Utility Units (40 CFR part 60, subpart Da) and industrial boilers (IB) (40 CFR part 60, subpart Db) on February 28, 2005 (70 FR

[1] We did not propose revising the December 2000 finding for gas-fired Utility Units because EPA continues to believe that regualtion of such units under section 112 is not appropriate and necessary. We therefore take no action today with regard to gas-fired Utility Units.

9706). EPA earlier promulgated NSPS for Utility Units (1979) and for IB (1987). In addition, the EPA promulgated another combustion-related standard under CAA section 112: Industrial, commercial, and institutional boilers and process heaters (40 CFR part 63, subpart DDDDD) on September 13, 2004 (69 FR 55218).

All of the rules pertain to sources that combust fossil fuels for electrical power, process operations, or heating. The applicability of these rules differ with respect to the size of the unit (megawatts electric (MWe) or British thermal unit per hour (Btu/hr)) they regulate, the boiler/furnace technology they employ, or the portion of their electrical output (if any) for sale to any utility power distribution systems.

Any combustion unit that produces steam to serve a generator that produces electricity exclusively for industrial, commercial, or institutional purposes is considered an IB unit. A fossil fuel-fired combustion unit that serves a generator that produces electricity for sale is not considered to be a Utility Unit under the final rule if its size is less than or equal to 25 MWe. Also, a cogeneration facility that sells electricity to any utility power distribution system equal to more than one-third of their potential electric output capacity and more than 25 MWe during any portion of a year is considered to be an electric utility steam generating unit.

Because of the similarities in the design and operational characteristics of the units that would be regulated by the different combustion rules, there are situations where coal-fired units potentially could be subject to multiple rules. An example of this situation would be cogeneration units that are covered under the proposed IB rule, potentially meeting the definition of a Utility Unit, and vice versa. This might occur where a decision is made to increase/decrease the proportion of production output being supplied to the electric utility grid, thus causing the unit to exceed the IB/electric utility cogeneration criteria (*i.e.* greater than one-third of its potential output capacity and greater than 25 MWe). As discussed below, EPA has clarified the definitions and applicability provisions to lessen any confusion as to which rule a unit may be subject to.

II. Revision of Regulatory Finding on the Emissions of Hazardous Air Pollutants from Utility Units

In a separately published **Federal Register** action (70 FR 15994; March 29, 2005), EPA revised the regulatory finding that it issued in December 2000 pursuant to CAA section 112(n)(1)(A), and based on that revision, removed coal- and oil-fired electric utility steam generating units (coal- and oil-fired Utility Units) from the CAA section 112(c) source category list. Section 112(n)(1)(A) of the CAA is the threshold statutory provision underlying the action. That provision requires EPA to conduct a study to examine the hazards to public health that are reasonably anticipated to occur as the result of HAP emissions from Utility Units after imposition of the requirements of the CAA. The provision also provides that EPA shall regulate Utility Units under CAA section 112, but only if the Administrator determines that such regulation is both appropriate and necessary considering, among other things, the results of the study. EPA completed the Utility Study in 1998, and in December 2000 found that it was appropriate and necessary to regulate coal- and oil-fired Utility Units under CAA section 112. That December 2000 finding focused primarily on Hg emissions from coal-fired Utility Units. In light of the finding, EPA in December 2000 announced its decision to list coal- and oil-fired Utility Units on the CAA section 112(c) list of regulated source categories. In January 2004, EPA proposed revising the December 2000 appropriate and necessary finding and, based on that revision, removing coal- and oil-fired Utility Units from the CAA section 112(c) list.

By a separately published **Federal Register** action (70 FR 15994; March 29, 2005), we revised the December 2000 appropriate and necessary finding and concluded that it is neither appropriate nor necessary to regulate coal- and oil-fired Utility Units under CAA section 112. We took this action because we now believe that the December 2000 finding lacked foundation and because recent information demonstrates that it is not appropriate or necessary to regulate coal- and oil-fired Utility Units under CAA section 112. Based solely on the revised finding, we are removing coal- and oil-fired Utility Units from the CAA section 112(c) list. The reasons supporting today's action are described in detail in the separately published **Federal Register** notice (70 FR 15994; March 29, 2005).

EPA revised its December 2000 determination and removed coal- and oil-fired Utility Units from the CAA section 112(c) source category list because we have concluded that utility HAP emissions remaining after implementation of other requirements of the CAA, including in particular the CAIR, do not cause hazards to public health that would warrant regulation under CAA section 112.

The HAP of greatest concern from coal-fired utilities is Hg. Although we believe that after implementation of CAIR, remaining utility emissions will not pose hazards to public health, we do believe that it is appropriate to establish national, uniform Hg emission standards for new and modified coal-fired utilities, as defined elsewhere in this preamble. Effective controls have been adequately demonstrated to reduce utility emissions; such reductions will further the goal of reducing the domestic and global Hg pool.

Under the structure of the CAA, once we establish NSPS for new sources under section 111(b), we must, with respect to designated pollutants, establish 111(d) standards for existing sources. Specifically, section 111(d) provides that the Administrator ''shall prescribe regulations which establish a procedure under which each State shall submit * * * a plan which establishes standards of performance for any existing source for any air pollutant * * * to which a standard of performance under this section would apply if such existing source were a new source.'' Thus, because we deem it appropriate to establish NSPS for Hg emissions from new sources, we are obligated to establish NSPS Hg standards for existing sources as well.

III. Summary of the Final Rule Amendments

A. Who is subject to the final rule?

EPA is finalizing applicability provisions for 40 CFR part 60, subparts Da and HHHH that are consistent with historical applicability and definition determinations under the CAA section 111 and Acid Rain programs. EPA realizes that these definitions are somewhat different because of differences in the underlying statutory authority. EPA believes that it is appropriate to finalize the applicability and definitions of the revised subpart Da NSPS consistent with the historical interpretations. Similarly, EPA believes that it is appropriate to finalize the applicability and definitions of subpart HHHH consistent with those of the Acid Rain and CAIR programs because of the similarities in their trading regimes.

The 40 CFR part 60, subpart Da NSPS apply to Utility Units capable of firing more than 73 megawatts (MW) (250 million Btu/hr; MMBtu/hr) heat input of fossil fuel. The current NSPS also apply to industrial cogeneration facilities that sell more than 25 MW of electrical output and more than one-third of their potential output capacity to any utility power distribution system. Utility Units subject to revised subpart Da are also

subject to 40 CFR part 60, subpart HHHH.

The following units in a State shall be Hg Budget units (*i.e.,* units that are subject to the Hg Budget Trading Program), and any source that includes one or more such units shall be a Hg Budget source, subject to the requirements of subpart HHHH:

(a) Except as provided in paragraph (b), a stationary, fossil fuel-fired boiler or stationary, fossil fuel-fired combustion turbine serving at any time, since the start-up of a unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(b) For a unit that qualifies as a cogeneration unit starting on the date the unit first produces electricity, a cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit qualifies as a cogeneration unit starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to paragraph (a) of this section starting on the day on which the unit first no longer qualifies as a cogeneration unit.

The Hg provisions of 40 CFR part 60, subparts Da and HHHH apply only to coal-fired Utility Units (*i.e.,* units where any amount of coal or coal-derived fuel is used at any time). This is similar to the definition that is used in the Acid Rain Program to identify coal-fired units.

B. What are the primary sources of emissions, and what are the emissions?

The final rule amendments add Hg to the list of pollutants covered under 40 CFR part 60, subpart Da, by establishing emission limits for new sources and guidelines for existing sources. New sources (and existing subpart Da facilities), however, remain subject to the applicable existing subpart Da emission limits for NO_X, SO_2, and PM.

C. What is the affected source?

Only those coal-fired Utility Units for which construction, modification, or reconstruction is commenced after January 30, 2004, will be affected by the new-source provisions of the final rule amendments under CAA section 111(b). Coal-fired Utility Units existing on January 30, 2004, will be affected facilities for purposes of the CAA section 111(d) guidelines finalized in the final rule.

D. What are the emission limitations and work practice standards?

The following standards of performance for Hg are being finalized in the final rule for new coal-fired 40 CFR part 60, subpart Da units:

Bituminous units: 0.0026 nanograms per joule (ng/J) (21×10^{-6} pounds per megawatt-hour (lb/MWh));

Subbituminous units:

Wet FGD—0.0053 ng/J (42×10^{-6} lb/MWh);

Dry FGD—0.0098 ng/J (78×10^{-6} lb/MWh);

Lignite units: 0.0183 ng/J (145×10^{-6} lb/MWh);

Coal refuse units: 0.00018 ng/J (1.4 x 10^{-6} lb/MWh);

Integrated gasification combined cycle (IGCC) units: 0.0025 ng/J (20×10^{-6} lb/MWh).

All of these standards are based on gross energy output.

In addition, to complying with these standards, new units, along with existing coal-fired Utility Units will be subject to the cap-and-trade provisions being finalized in the final rule. The specifics of the cap are described below.

Compliance with the final standards of performance for Hg will be on a 12-month rolling average basis, as explained below. This compliance period is appropriate given the nature of the health hazard presented by Hg.

E. What are the performance testing, initial compliance, and continuous compliance requirements?

Under 40 CFR part 60, subpart Da, new or reconstructed units must commence their initial performance test by the applicable date in 40 CFR 60.8(a). Because compliance with the Hg emission limits in 40 CFR 60.45a is on a 12-month rolling average basis, the initial performance test consists of 12 months of data collection with certified continuous monitoring systems, to determine the average Hg emission rate. New and existing units under 40 CFR part 60, subpart HHHH must certify the required continuous monitoring systems and begin reporting Hg mass emissions data by the applicable compliance date in 40 CFR 60.4170(b).

Under 40 CFR 60.49a(s), the owner/operator is required to prepare a unit-specific monitoring plan and submit the plan to the Administrator for approval, no less than 45 days before commencing the certification tests of the continuous monitoring systems. The final rule amendments require that the plan address certain aspects with regard to the monitoring system; installation, performance and equipment specifications; performance evaluations; operation and maintenance procedures; quality assurance (QA) techniques; and recordkeeping and reporting procedures. The final amendments require all continuous monitoring systems to be certified prior to the commencement of the initial performance test.

Mercury Emission Limits. Compliance with the final standard of performance for Hg will be determined based on a rolling 12-month average calculation. The rolling average is weighted according to the number of hours of valid Hg emissions data collected each month, unless insufficient valid data are collected in the month, as explained below. The Hg emissions are determined by continuously collecting Hg emission data from each affected unit by installing and operating a continuous emission monitoring system (CEMS) or an appropriate long-term method (*e.g.,* sorbent trap) that can collect an uninterrupted, continuous sample of the Hg in the flue gases emitted from the unit. The final rule amendments will allow the owner/operator to use any CEMS that meets the requirements in Performance Specification 12A (PS–12A), ''Specifications and Test Procedures for Total Vapor-phase Mercury Continuous Monitoring Systems in Stationary Sources.'' Alternatively, a Hg concentration CEMS that meets the requirements of 40 CFR part 75, or a sorbent trap monitoring system that meets the requirements of 40 CFR 75.15 and 40 CFR part 75, appendix K, may be used. Note that EPA has revised and renamed proposed Method 324, ''Determination of Vapor Phase Flue Gas Mercury Emissions from Stationary Sources Using Dry Sorbent Trap Sampling'' as 40 CFR part 75, appendix K).

For on-going quality control (QC) of the Hg CEMS, the final rule requires the calibration drift and quarterly accuracy assessment procedures in 40 CFR part 60, appendix F, to be implemented. The quarterly accuracy tests consist of a relative accuracy test audit (RATA) and three measurement error tests (as described in PS 12A), using mercuric chloride ($HgCl_2$) standards. In lieu of implementing the 40 CFR part 60, appendix F procedures, the owner or operator may QA the data from the Hg CEMS according to 40 CFR part 75, appendix B. For sorbent trap monitoring systems, and annual RATA is required, and the on-going QA procedures of 40 CFR part 75, appendix K, must be met.

The final rule requires valid Hg mass emissions data to be obtained for a minimum of 75 percent of the unit operating hours in each month. If this

requirement is not met, the Hg data for the month are discarded. In each 12-month cycle, if there are any months in which the data capture requirement is not met, data substitution is required. For the first such occurrence, the mean Hg emission rate for the last 12 months is reported, and for any subsequent occurrences, the maximum emission rate from the past 12 months is reported. For any month in which a substitute Hg emission rate is reported, the substitute emission rate is weighted according to the number of unit operating hours in that month when the 12-month rolling average is calculated.

For new cogeneration units, steam is also generated for process use. The energy content of this process steam must also be considered in determining compliance with the output-based standard. Therefore, the owner/operator of a new cogeneration unit will be required to calculate emission rates based on electrical output to the grid plus half the equivalent electrical output energy in the unit's process steam. The procedure for determining these Hg emission rates is described in 40 CFR 60.50a(g), and is consistent with those currently used in 40 CFR part 60, subpart Da.

The owner/operator of a new coal-fired unit that burns a blend of fuels will develop a unit-specific Hg emission limitation; the unit-specific Hg emission rate will be used for the portion of the compliance period in which the unit burned the blend of fuels. The procedure for determining the emission limitations is outlined in 40 CFR 60.45a(a)(5)(i). The owner/operator of an existing coal-fired unit that burns a blend of fuels will have to meet the limitations applicable under its unit-specific Hg allocation as outlined elsewhere in the final rule.

F. What are the notification, recordkeeping, and reporting requirements?

The final rule requires the owner or operator to maintain records of all information needed to demonstrate compliance with the applicable Hg emission limit, including the results of performance tests, data from the continuous monitoring systems, fuel analyses, calculations used to assess compliance, and any other information specified in 40 CFR 60.7 (General Provisions).

Mercury compliance reports are required semiannually, under 40 CFR 60.51. Each compliance report must include the following information for each month of the reporting period: (1) The number of unit operating hours; (2) the number of unit operating hours with valid Hg emissions data; (3) the calculated monthly Hg emission rate; (4) the number of hours (if any) excluded from the emission calculations due to startup, shutdown and malfunction; (5) the 12-month rolling average Hg emission rate; and (6) the 40 CFR part 60, appendix F data assessment report (DAR), or equivalent summary of QA test results if 40 CFR part 75 QA procedures are implemented.

IV. Significant Comments and Changes Since Proposal

A. Why is EPA not taking final action to regulate Ni emissions from oil-fired units?

In the January 30, 2004 NPR, EPA proposed to regulate Ni emissions from oil-fired units based on information collected and reported in the Utility Study. During the ensuing public comment period on the January 30, 2004 NPR, the March 2004 SNPR, and the December 2004 NODA, EPA received new information indicating that there were fewer oil-fired units in operation and that Ni emissions had diminished since the Utility Study. Accordingly, in the final rule, EPA is not taking final action on the proposal to regulate Ni emissions from oil-fired units.

B. How did EPA select the regulatory approach for coal-fired units for the final rule?

1. Applicability

EPA is maintaining the discrete applicability definitions of ''electric utility steam generating unit'' that have historically been used under the CAA section 111 NSPS and the CAA section 401 Acid Rain programs.

As defined in 40 CFR 60.41a, an ''electric utility steam generating unit'' means

> any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

In the NPR, EPA proposed to modify the definition of an ''electric utility steam generating unit'' to mean

> any fossil fuel-fired combustion unit of more than 25 megawatts electric (MWe) that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 MWe output to any utility power distribution system for sale is also considered an electric utility steam generating unit.

This proposed change in the definition was made as a part of the proposed CAA section 112 rulemaking alternative; however, it was EPA's intent that this change also apply to the CAA section 111 rulemaking alternative and, therefore, EPA is finalizing it as part of the section 111 rule today.

Only Utility Units that are fired by coal in any amount, or combinations of fuels that include coal, are subject to the final rule. Integrated gasification combined cycle units are also subject to the final rule.

An affected source under NSPS is the equipment or collection of equipment to which the NSPS rule limitations or control technology is applicable. For the final rule, the affected source will be the group of coal-fired units at a facility (a contiguous plant site where one or more Utility Units are located). Each unit will consist of the combination of a furnace firing a boiler used to produce steam, which is in turn used for a steam-electric generator that produces electrical energy for sale. This definition of affected source will include a wide range of regulated units with varying process configurations and emission profile characteristics.

EPA received comment requesting clarification of the applicability definition relating to whether a unit would be classified as a Utility Unit or an IB. For the purposes of 40 CFR part 60, subpart Da, EPA believes that the definition being finalized today in 40 CFR part 60, subpart Da clearly defines two categories of new sources—Utility Units and non-Utility Units (which could include IB units, etc.). That is, all three conditions must be met in order for a unit to be classified as a Utility Unit: (1) Must sell more than 25 MWe to any utility power distribution system; (2) any individual boiler must be capable of combusting more than 73 MW (250 MMBtu/hr) heat input (which equates to 25 MWe on an output basis); and (3) if the unit is a cogeneration unit, it must sell more than one-third of its potential electric output capacity. The Agency's historical interpretation of the 40 CFR part 60, subpart Da definition has been that a boiler meeting the capacity definition (*i.e.*, greater than 250 MMBtu/hr) but connected to an electrical generator with a generation capacity of 25 MWe or less would still be classified as an ''electric utility steam generating unit'' under 40 CFR part 60, subpart Da. However, one or more new boilers with heat input capacities less than 250 MMBtu/hr each but connected to an electrical generator with a

generation capacity of greater than 25 MWe would not be considered Utility Units under 40 CFR part 60, subpart Da because they individually do not meet the definition (they would be considered IB).

Under the final 40 CFR part 60, subpart HHHH rule, EPA is continuing the definition of an Utility Unit used in the Acid Rain and CAIR trading programs. A coal-fired Utility Unit is a unit serving at any time, since the start-up of a unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale. For a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to paragraph (a) of this definition starting on the day on which the unit first no longer qualifies as a cogeneration unit. These criteria are similar to the definition in the NPR and SNPR with the clarification that the criteria be determined on an annual basis. These criteria are the same used in the CAIR and are similar to those used in the Acid Rain Program to determine whether a cogeneration unit is a Utility Unit and the NO_X SIP Call to determine whether a cogeneration unit is an Utility Unit or a non-Utility Unit.

2. Subcategorization

Under CAA section 111(b)(2), the Administrator has the discretion to ''* * * distinguish among classes, types, and sizes within categories of new sources * * *'' in establishing standards when differences between given types of sources within a category lead to corresponding differences in the nature of emissions and the technical feasibility of applying emission control techniques. At proposal, EPA examined a number of options for subcategorizing coal-fired Utility Units, including by coal rank and by process type. Based on the information available, EPA proposed to use five subcategories for establishing Hg limits based on a combination of coal rank and process type in the final rule (bituminous coal, subbituminous coal, lignite coal, coal refuse, and IGCC). EPA is today finalizing these five subcategories.

EPA received numerous comments both in support of and in opposition to the proposed subcategorization approach for both new and existing Utility Units. Those commenters opposed to the proposed approach suggested several alternative approaches, including no subcategorization, combining bituminous and subbituminous coal ranks in one subcategory, a separate subcategory for Gulf Coast lignite, and a separate subcategory for fluidized bed combustion (FBC) units, among others. Other commenters indicated that any subcategorization approach should be ''fuel neutral,'' *i.e.*, not disadvantage any rank of coal or lead to fuel switching, and/or should not result in the loss of viability of any coal rank.

Those commenters opposed to subcategorization generally argued that subcategorization can only be done on three criteria: Class, type, and size of sources and contended that the fact that coal rank is one of the characteristics of a coal-fired boiler does not mean it can be used for subcategorization. The commenters stated that EPA's reliance on coal rank is misplaced because many coal-fired units blend or fire two or more ranks of coal in the same boiler, and EPA itself states that coal blending is possible and not uncommon. The commenters stated that EPA had also provided unsupported claims that fuel switching would require significant modification or retooling of a unit. The commenters cited case law to support their contention that EPA's proposed subcategorization is not permitted and stated that EPA's justification for rejecting a no subcategorization option is factually and legally indefensible.

A similar argument was presented by those commenters suggesting a single subcategory for bituminous and subbituminous coals. That is, given the extent of coal blending, particularly with respect to these two coal ranks, a single subcategory was appropriate. Further, the commenters argued that the proposed emission limits for the two subcategories disadvantaged bituminous coal.

Commenters representing producers and users of Gulf Coast lignite suggested that a separate subcategory should be established for this coal because of its significantly higher Hg content, even when compared to Fort Union lignite. Gulf Coast lignite, therefore, is more difficult to control.

Several commenters suggested that the American Society of Testing and Materials (ASTM) classification methodology for ranking coals is an inappropriate basis upon which to base subcategorization. This claim was made primarily because of the overlaps in the ASTM classification methodology and the fact that some Western coal seams are alleged to provide both bituminous and subbituminous coal ranks. Reliance on the ASTM methodology would create problems for the users of this coal in determining which subcategory they were in.

Several commenters indicated that a separate subcategory for FBC units, is appropriate because FBC units use a fundamentally different combustion process than pulverized-coal (PC) units, making them a different type of source.

Commenters concerned that the nation's fuel supply not be jeopardized stated that the final rule must be consistent with the need for reliable and affordable electric power, including affordable use of all coal ranks and options for efficient on-site power generation such as combined heat and power (CHP). The commenters stated that the final rule must facilitate—not discourage—the availability of an adequate and diverse fuel supply for the future, including all coal ranks, natural gas, nuclear energy, hydroelectric, and renewable sources. According to several commenters, the final rule must not aggravate the already precarious natural gas supply which is currently inadequate.

EPA continues to believe that it has the statutory authority to subcategorize based on coal rank and process type, as appropriate for a given standard. As initially structured, 40 CFR part 60, subpart Da subcategorized based on the sulfur content of the coal (essentially based on coal rank) for SO_2 emission limits and based on coal rank for NO_X emission limits. This approach was selected because of the differences in the relative ability of the respective control technologies to effect emissions reductions on the various coal ranks. Although EPA has recently proposed (February 28, 2005; 70 FR 9706) to change the format of the NO_X emission limits and to establish common SO_2 emission limits regardless of coal rank, we believe that the conditions existing when we proposed 40 CFR 60, subpart Da in 1978 (*e.g.*, the inability of the technologies to control SO_2 and NO_X equally from all coal ranks) still exist for Hg and justify the use of subcategorization by coal rank for the Hg emission limits. At some point in the future, the performance of control technologies on Hg emissions could advance to the point that the rank of coal being fired is irrelevant to the level of Hg control that can be achieved (similar to the point reached by controls

for SO_2 and NO_X emissions). If that occurs, EPA may consider adjusting the approach to Hg controls appropriately.

EPA believes that there are sufficient differences in the design and operation of utility boilers utilizing the different coal ranks to justify subcategorization by major coal rank. As documented in the record, utility boilers vary in size depending on the rank of coal burned (*i.e.,* boilers designed to fire lignite coal are larger than those designed to fire subbituminous coal which, in turn, are larger than those designed to fire bituminous coal). Boilers designed to burn one fuel (*e.g.*, lignite) cannot randomly or arbitrarily change fuels without extensive testing and tuning of both the boiler and the control device. Further, if a different rank of coal is burned in a boiler designed for another rank, either in total or through blending, the practice is only done with ranks that have similar characteristics to those for which the boiler was originally designed. To do otherwise entails a loss of efficiency and/or significant increases in maintenance costs. That is, the ASTM classification system is structured on a continuum based on a number of characteristics (*e.g.*, heat content or Btu value, fixed carbon, volatile matter, agglomerating vs. non-agglomerating) and provides basic information regarding combustion characteristics. Because more than one characteristic is used, the possibility exists for numerous situations where a coal could be ''classified'' in one rank based on one characteristic but in another rank based on another characteristic. Ranking is based on an evaluation of all characteristics. Therefore, it is possible that (for example) a non-agglomerating subbituminous coal with a heating value of 8,300 Btu/lb (ASTM classification III.3—''Subbituminous C coal'') could be co-fired with, or substituted for, a non-agglomerating lignite coal with heating value of 8,300 Btu/lb (ASTM classification IV.1—''Lignite A coal''). This does not, however, mean that it is possible for a boiler designed to burn the Lignite A coal to burn an agglomerating coal with a heating value of 13,000 Btu/lb (*e.g.*, ASTM classification II.5—''High volatile C bituminous coal''). Further, it does not mean that the substituted coal would exhibit the same ''controllability'' with respect to emissions reductions as the original coal, regardless of its compatibility with the boiler. The fact that a number of Utility Units co-fire different ranks of coal does not negate the overall differences in the ranks that preclude universal coal rank switching, particularly when the design coal ranks are not adjacent on the ASTM classification continuum.

Although other classification approaches have been suggested, the ASTM classification system remains the one most recognized and utilized by the industry and the one which the EPA believes is most suitable for use as a basis for subcategorization. Further, EPA is perplexed by the comments indicating that Utility Units do not know the coal rank that they are firing and would incur additional costs to determine this for the purpose of establishing their subcategory. Electric utilities are currently required by law to report to the U.S. Department of Energy, Energy Information Administration (DOE/EIA) on one or more of six different forms, the rank of coal burned in each Utility Unit. EPA is not suggesting that these utilities do anything different in establishing their subcategory and respective emission limit. Utility Units that blend coals from different ranks would need to follow the specified procedures for establishing the appropriate emission limit for blended coals. EPA, therefore, believes that, at this time, coal rank is an appropriate and justifiable basis on which to subcategorize for the purposes of the final rule.

EPA continues to believe that there is insufficient evidence available to justify separate subcategories for Gulf Coast and Fort Union lignites. The reanalysis of the data in support of the revised NSPS Hg emission limits, discussed later in this preamble, incorporated data from units firing both types of lignite, further lessening the necessity of additional subcategorization. EPA will continue to evaluate the Hg emission data that become available, including that generated through the studies on emerging Hg control technologies by the DOE, and reassess issues of further subcategorizing lignites during the normal 8-year NSPS review cycle.

With regard to FBC units, EPA agrees that such units operate and are designed differently than conventional PC boilers. However, with the exception of FBC units firing coal refuse, there was no clear indication from the available data that such units influenced the ultimate Hg control. That is, in some cases, FBC units were better than most with respect to their Hg emissions; in other cases, FBC units were worse than most. Therefore, EPA concluded that it was the coal rank, rather than the process type (*e.g.*, FBC, PC) that should govern in any determination relating to subcategorization.

EPA's modeling has shown minimal coal switching as a result of the final CAMR and CAIR actions. We believe that this rebuts the commenters' suggestions that the final rule will cause one or another coal rank to be ''advantaged'' or ''disadvantaged'' with respect to other coal ranks. Further, we do not believe that the final rule will have a negative impact on the nation's energy security, employment rates, or energy reliability.

New units designed to burn bituminous coals will still not be able to burn lignite coals (for example) and, thus, EPA believes that the need for subcategorization remains, even for new units.

C. How did EPA determine the NSPS under CAA section 111(b) for the final rule?

1. Criteria Under CAA Section 111

CAA section 111 creates a program for the establishment of ''standards of performance.'' A ''standard of performance'' is ''a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction, which (taking into the cost of achieving such reduction, any non-air quality health and environmental impacts and energy requirements), the Administrator determines has been adequately demonstrated.'' (See CAA section 111(a)(1).)

For new sources, EPA must first establish a list of stationary source categories which the Administrator has determined ''causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.'' (See CAA section 111(b)(1)(A).) EPA must then set Federal standards of performance for new sources within each listed source category. (See CAA section 111(b)(1)(B).) Like CAA section 112(d) standards, the standards for new sources under section 111(b) apply nationally and are effective upon promulgation. (See CAA section 111(b)(1)(B).)

Section 111(b) covers any category of sources that causes or contributes to air pollution that may reasonably be anticipated to endanger public health or welfare and provides EPA authority to regulate new sources of such air pollution. EPA included Utility Units on the section 111(b) list of stationary sources in 1979 and has issued final standards of performance for new Utility Units for pollutants, such as NO_X, PM, and SO_2. (See 44 FR 33580; June 11, 1979; 40 CFR part 60, subpart Da.) Nothing in the language of section 111(b) precludes EPA from issuing additional standards of performance for

other pollutants, including HAP, emitted from new Utility Units. Moreover, nothing in CAA section 112(n)(1)(A) suggests that Congress sought to preclude EPA from regulating Utility Units under CAA section 111(b). Indeed, section 112(n)(1)(A) provides to the contrary, in that it calls for an analysis of utility HAP emissions ''after imposition of the requirements'' of the CAA, which we have reasonably interpreted to mean those authorities that EPA reasonably anticipates will be implemented and will reduce utility HAP emissions.

2. Mercury Control Technologies

At proposal, EPA stated that available information indicates that Hg emissions from coal-fired Utility Units are minimized in some cases through the use of PM controls (*e.g.*, fabric filter or electrostatic precipitator (ESP)) coupled with a flue gas desulfurization (FGD) system. For bituminous-fired units, use of a selective catalytic reduction (SCR) or selective non-catalytic reduction (SNCR) system in conjunction with one of these systems may further enhance Hg removal. This SCR-induced enhanced Hg removal appears to be absent for subbituminous- and lignite-fired units.

The EPA believes the best potential way of reducing Hg emissions from IGCC units, on the other hand, is to remove Hg from the synthetic gas (syngas) before combustion. An existing industrial IGCC unit has demonstrated a process, using sulfur-impregnated activated carbon (AC) beds, that has proven to yield 90 to 95 percent Hg removal from the coal syngas. Available information indicates that this technology could be adapted to the electric utility IGCC units, and EPA believes this to be a viable option for new IGCC units.

In selecting a regulatory approach for formulating emission standards to limit Hg emissions from new coal-fired Utility Units, the performance of the control technologies discussed on Hg above were considered. After considering the available information, EPA has determined that the technical basis (*i.e.*, the best system of emission reduction which the Administrator determines has been adequately demonstrated, or best demonstrated technology, BDT) selected for establishing Hg emission limits for new sources is the use of effective PM controls (*e.g.*, fabric filter or ESP) and wet or dry FGD systems on subbituminous-, lignite-, and coal refuse-fired units; effective PM controls, wet or dry FGD systems, and SCR or SNCR on bituminous-fired units; and AC beds for IGCC units.

EPA received several public comments that disagreed with the EPA's conclusion at proposal that Hg-specific controls for Utility Units, including activated carbon injection (ACI), will not be commercially available on a wide scale until 2010 or later. Arguments stated by these commenters included the following assertions: (a) Mercury control technologies are available now and EPA disregarded studies on emerging Hg control technologies by the DOE, the industry, and others. (b) The EPA's own numbers and other studies indicate that coal-fired plants can achieve 90 percent reduction regardless of the type of plant or coal. (c) Field testing of ACI has shown 90 percent capture of Hg. Units equipped with FGD units and fabric filters can obtain near 90 percent removal of Hg. (d) Studies indicate that the cost of Hg controls would be comparable to the cost of controls for other pollutants and EPA disregarded these studies and the emerging state-of-the-art Hg control technologies. (e) Permits have been issued that will rely on sorbent injection technologies such as ACI (*e.g.*, MidAmerican Energy, Council Bluffs Unit 4, issued by IA; and Wisconsin Public Service Corporation, Weston Unit 4, issued by WI). These permits show that Hg removal technologies capable of achieving more than 80 percent control are available.

EPA agrees, based on the limited test data available, that some coal-fired units have exhibited greater than 90 percent Hg reductions during short-term sorbent injection studies. However, not all units have been able to achieve this level of control, even with similar control technologies installed and no units have been able to achieve this level of control for an extended period of time. EPA disagrees with the commenters' assessment, however, regarding the extent to which Hg-specific control technologies, including ACI, are currently available and on the time necessary for them to become commercially available. Although we do believe that these technologies have been currently demonstrated to be capable of achieving significant reductions in Hg emissions, we do not believe that they are available now for wide-spread or long-term usage. We have been following the studies of such technologies closely and have discussed their degree of development with vendors, the industry, and the DOE. With the exception of one test that has lasted approximately 1 year, no Utility Unit has operated a Hg-specific control technology full-scale for longer than approximately a month. Further, the technologies have not been fully evaluated on any coal ranks for an extended period of time and have not even been evaluated under short-term conditions for some coal ranks (*e.g.*, Gulf Coast lignite). In addition, other aspects of the use of Hg-specific control technologies (*e.g.*, balance of plant, waste issues, atmospheric concerns) have not been fully addressed. Studies continue to (1) evaluate the impact of using both ACI and enhanced ACI (*e.g.*, corrosion) on the coal-fired facility as a whole; (2) assess the impact of the ACI or enhanced ACI on the reuse and disposal of fly ash; and (3) evaluate the other atmospheric emissions and the impacts that may result from use of ACI or enhanced ACI (*e.g.*, brominated dioxins emitted either directly or formed following emission to the atmosphere).

As discussed in the EPA Office of Research and Development's (ORD) revised White Paper ''Control of Mercury Emissions from Coal Fired Electric Utility Boilers: An Update'' (OAR–2002–0056), since the release of the earlier White Paper ''Control of Mercury Emissions from Coal-fired Electric Utility Boilers'' (OAR–2002–0056), additional data, mostly from short-term tests, have become available on Hg control approaches for Utility Units. Also, as noted above, the DOE and EPA have underway broad and aggressive research program, which will yield experience and data in the next few years. Accordingly, EPA continues to believe that ACI and enhanced multipollutant controls have been demonstrated to effectively remove Hg and will be available after 2010 for commercial application on most or all key combinations of coal rank and control technology to provide Hg removal levels between 60 and 90 percent on individual Utility Units. Considering the progress made with halogenated AC sorbents and other chemical injection approaches to date, we now believe that optimized multipollutant controls may be available in the 2010 to 2015 timeframe for commercial application on most, if not all, key combinations of coal rank and control technology to provide Hg removal levels between 90 and 95 percent. Such optimized controls could include use of sorbent (ACI or halogenated ACI) with enhanced SCR and/or enhanced FGD systems. These controls provide justification for a 2018 cap at a level below what is projected to be achieved from SO_2 and NO_X reduction levels alone. Although EPA is optimistic that such controls may be

available for use on some scale prior to 2018, it does not believe that such controls can be installed and operated on a national scale before that date.

Based on these tests, on-going studies, and discussions, we do not believe that the Hg-specific technologies have demonstrated an ability to consistently reduce Hg emissions by 90 percent (or any other level) at the present time. We believe that the cap-and-trade approach selected for the final regulation is the best method for encouraging the continued development of these technologies. Further, although not ready for use in establishing a nationwide emission regulation at this time, EPA believes that installation of Hg-specific control technologies, including ACI, on a limited number of units is possible well in advance of the Phase II cap. The economic incentives inherent in the two-phase cap-and-trade program finalized today will serve to advance the technologies such that they are widely available for use in complying with the Phase II cap.

3. Emissions Limitations

EPA established the proposed emission limits by direct transfer from the proposed new-source CAA section 112 emission limits. During the public comment period, it was pointed out by a number of commenters that under CAA section 111, NSPS should ''reflect the degree of emission limitation and the percentage reduction achievable through application of the best technological system of continuous emission reduction * * * (taking into consideration the cost of achieving such emission reduction, any non-air quality health and environmental impact and energy requirements)'' rather than ''not be less stringent than the emission control that is achieved in practice by the best controlled similar source'' under CAA section 112. The commenters pointed out that emission limits under both CAA sections begin with an assessment of what limit is achievable in practice with the best available controls, but the NSPS goes on to consider cost, energy use, and non-air impacts. Accordingly, it is inappropriate and inconsistent with the CAA for the EPA to establish an NSPS requirement based on an analysis undertaken pursuant to the requirements of CAA section 112 which ignores costs at what is referred to the floor level of control. Commenters further noted that the proposed emission limits would preclude new coal-fired units from being built and offered approved permit levels as evidence that the proposed limits were unachievable.

EPA agrees with the commenters who indicated that the NSPS limits were not established in a manner consistent with the requirements of CAA section 111. Therefore, we re-analyzed the information collection request (ICR) data collected in 1999 and examined the Hg limits in recently issued permits. Based on this refined analysis, we arrived at the following NSPS Hg emission limits for the five subcategories:

Bituminous units: 0.0026 ng/J (21×10^{-6} lb/MWh);

Subbituminous units:

—Wet FGD units: 0.0053 ng/J (42×10^{-6} lb/MWh);

—Dry FGD units: 0.0098 ng/J (78×10^{-6} lb/MWh);

Lignite units: 0.0183 ng/J (145×10^{-6} lb/MWh);

Coal refuse units: 0.00018 ng/J (1.4×10^{-6} lb/MWh);

IGCC units: 0.0025 ng/J (20×10^{-6} lb/MWh).

Documentation for this re-analysis may be found in the e-docket (OAR–2002–0056).

To establish the revised new-source limits, EPA re-examined the 1999 ICR data which includes an estimate of the Hg removal efficiency for the suite of emission controls in use on each unit tested. The EPA focused primarily on the 1999 ICR data because it is the only test data for a large number of Utility Units employing a variety of control technologies currently available to the Agency and because there is very limited permit data for new or projected facilities from which to determine existing Hg emission limits. (The EPA has historically relied on permit data in establishing NSPS limits because it believes that such limits reasonably reflect the actual performance of the unit.) We analyzed the performance of currently installed control technologies in the respective subcategories in an effort to identify a best adequately demonstrated system of emission reduction, also referred to as BDT, for each subcategory. To do this, we determined the combination of control technologies that a new unit would install under the current NSPS to comply with the emissions standards for PM, SO_2, and NO_X. Based on the available data, units using these combinations of controls had the highest reported control efficiency for Hg emissions. Thus, we determined that BDT for each subcategory of units is a combination of controls that would generally be installed to control PM and SO_2 under the NSPS. For bituminous units, BDT was determined to be the combination of a fabric filter and a FGD (wet or dry) system. However, recent test data reports show that a bituminous coal based system including a SCR, ESP and wet FGD may also be capable of meeting the performance limit set for bituminous coal-fired Utility Units, and this information was considered in setting the new source limits. For subbituminous units, BDT was determined to be dependent on water availability. For subbituminous units located in the western U.S. that may face potential water restriction and, thus, do not have the option of using a wet FGD system for SO_2 control, BDT is a combination of either a fabric filter with a spray dryer absorber (SDA) system or an ESP with a SDA system. For subbituminous units that do not face such potential water restrictions, BDT is a fabric filter in combination with a wet FGD system. For lignite units, BDT is either a fabric filter and SDA system or an ESP with a wet FGD system.

To determine the appropriate achievable Hg emission level for each coal type, a statistical analysis was conducted. Specifically, the Hg emissions limitation achievable for each coal type was determined based on the highest reported annual average Hg fuel content for the coal rank being controlled by the statistically-calculated control efficiency for the BDT determined for that fuel type. The control efficiency for BDT was calculated by determining the 90th percentile confidence level using the one-sided z-statistics test (*i.e.*, the Hg removal efficiency, using BDT, estimated to be achieved 90 percent of the time). The data used consisted of stack emission measurements (pounds Hg per trillion Btu (lb Hg/TBtu)) for each unit, the average fuel Hg content for the fuel being burned by that unit during the test (parts per million (ppm)), and the highest average annual fuel Hg content reported for any unit in the coal rank. Because the Hg emissions from any control system is a linear function of the inlet Hg (*i.e.*, Hg fuel content), assuming a constant control efficiency, the reported highest annual average inlet Hg was adjusted to determine the potential maximum Hg emissions that would be emitted if BDT was employed. The calculated 90th percentile confidence limit control reduction for each subcategory, based on the calculated highest annual average uncontrolled Hg emissions, in lb Hg/TBtu, for the subcategory was determined to be the new source emission limit. Finally, the new source limit for IGCC units and its justification

remains unchanged from the limit proposed in January 2004 (69 FR 4652).

EPA also evaluated recent available permit Hg levels for comparison with the limits presented above. EPA does not believe that the use of permit Hg limits is appropriate for independently establishing NSPS emission limits because of the limited number of permits issued with Hg emission levels and the limited experience of both State permitting authorities and the industry itself with establishing appropriate permit conditions. However, comparison of the available permit limits with those developed by EPA is a valid ''reality check'' on the appropriateness of EPA's limits. Available permits on bituminous-fired units have Hg emission limits ranging from approximately 20×10^{-6} lb/MWh to 39×10^{-6} lb/MWh; those for subbituminous-fired units range from 11×10^{-6} lb/MWh to 126×10^{-6} lb/MWh. Considering the limited number of permits and the limited experience in developing appropriate Hg limits for those permits, EPA believes that its final NSPS Hg emission limits are in reasonable agreement with these permits. Insufficient permit information is available to do a similar comparison for lignite- and coal refuse-fired units, but we have used the same analytic procedure for these subcategories.

Further, EPA concurs with those commenters who indicated that we had overstated the variability in the context of the proposed CAA section 111 NSPS limits by using both a rigorous statistical analysis and a 12-month rolling average for compliance. Therefore, for the final rule, while we have retained the 12-month rolling average for compliance, we have used the annual average fuel Hg content in the ICR data to establish the NSPS limits. Given the favorable comparison with the available permit data, we believe that variability has been adequately addressed.

Although EPA has re-analyzed the available data and revised its NSPS Hg emission limits, we continue to believe that these limits are of short-term value only. That is, the Hg cap being finalized today will be a greater long-term factor in constraining Hg emissions from new coal-fired Utility Units than will the new-source emission limits being issued today. In addition, the new source review (NSR) provisions provide an additional constraint on new-source emissions, further diminishing the importance of the revised new-source Hg emission limits. Essentially, the new source limits become a ''backstop'' for the trading program and other NSR requirements. Further, it is not our intention to exclude any type of domestic coal from the market. If information becomes available in the future that we feel adversely impacts the coals or the fuel market, we will review and reconsider these limits.

As required by CAA section 111(a)(1), EPA has considered the cost of achieving the reductions in Hg emissions required by the new-source standards, the non-air quality health and environmental impacts arising from the implementation of the new-source standards and the energy requirements associated with the new-source standards and determined that they are all reasonable. (The costs of complying with CAMR as a whole are discussed briefly below, and in more detail in the two air dockets for the CAMR rule: Docket ID No. OAR–2002–0056 and Docket ID No. A–92–55. The non-air quality health and environmental impacts arising from the implementation of CAMR, as well as the energy requirements associated with CAMR, are discussed briefly below, and in more detail in Docket ID No. OAR–2002–0056 and Docket ID No. A–92–55.)

D. How did EPA determine the Hg cap-and-trade program under CAA section 111(d) for the final rule?

1. Criteria Under CAA Section 111 for Standards of Performance for Existing Sources and Authority for Cap-and-Trade Under CAA Section 111(d)

CAA section 111(d)(1) authorizes EPA to promulgate regulations that establish a SIP-like procedure under which each State submits to EPA a plan that, under subparagraph (A), ''establishes standards of performance for any existing source'' for certain air pollutants, and which, under subparagraph (B), ''provides for the implementation and enforcement of such standards of performance.'' Paragraph (1) continues, ''Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.'' CAA section 111(a) defines, ''(f)or purposes of * * * section (111),'' the term ''standard of performance'' to mean

> a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

Taken together, these provisions authorize EPA to promulgate a ''standard of performance'' that States must, through a SIP-like system, apply to existing sources. A ''standard of performance'' is defined as a rule that reflects emission limits to the degree achievable through ''the best system of emission reduction'' that EPA ''determines has been adequately demonstrated,'' considering costs and other factors.

A cap-and-trade program reduces the overall amount of emissions by requiring sources to hold allowances to cover their emissions on a one-for-one basis; by limiting overall allowances so that they cannot exceed specified levels (the ''cap''); and by reducing the cap to less than the amount of emissions actually emitted, or allowed to be emitted, at the start of the program. In addition, the cap may be reduced further over time. Authorizing the allowances to be traded maximizes the cost-effectiveness of the emissions reductions in accordance with market forces. Sources have an incentive to endeavor to reduce their emissions cost-effectively; if they can reduce emissions below the number of allowances they receive, they may then sell their excess allowances on the open market. On the other hand, sources have an incentive to not put on controls that cost more than the allowances they may buy on the open market.

The term ''standard of performance'' is not explicitly defined to include or exclude an emissions cap and allowance trading program. In the final rule, EPA interprets the term ''standard of performance,'' as applied to existing sources, to include a cap-and-trade program. This interpretation is supported by a careful reading of the section 111(a) definition of the term, quoted above: A requirement for a cap-and-trade program (i) constitutes a ''standard for emissions of air pollutants'' (*i.e.*, a rule for air emissions), (ii) ''which reflects the degree of emission limitation achievable'' (*i.e.*, which requires an amount of emissions reductions that can be achieved), (iii) ''through application of (a) * * * system of emission reduction'' (*i.e.*, in this case, a cap-and-trade program that caps allowances at a level lower than current emissions).[2]

[2] The legislative history of the term, ''standard of performance,'' does not address an allowance/trading system, but does indicate that Congress intended that existing sources be accorded flexibility in meeting the standards. *See* ''Clean Air Act Amendments of 1977,'' *Committee on Interstate and Foreign Commerce,* H.R. Rep. No. 95–294 at 195, *reprinted in* 4 ''A Legislative History of the Clean Air Act Amendments of 1977,'' *Congressional*

Nor do any other provisions of section 111(d) indicate that the term ''standard of performance'' may not be defined to include a cap-and-trade program. Section 111(d)(1)(B) refers to the ''implementation and enforcement of such standards of performance,'' and section 111(d)(1) refers to the State ''in applying a standard of performance to any particular source,'' but all of these references readily accommodate a cap-and-trade program.

Although section 111(a) defines ''standard of performance'' for purposes of section 111, section 302(l) defines the same term, ''(w)hen used in this Act,'' to mean ''a requirement of continuous emission reduction, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction.'' The term ''continuous'' is not defined in the CAA.

Even if the 302(l) definition applied to the term ''standard of performance'' as used in section 111(d)(1), EPA believes that a cap-and-trade program meets the definition. A cap-and-trade program with an overall cap set below current emissions is a ''requirement of * * * emission reduction.'' Moreover, it is a requirement of ''continuous'' emissions reductions because all of a source's emissions must be covered by allowances sufficient to cover those emissions. That is, there is never a time when sources may emit without needing allowances to cover those emissions.[3]

We note that EPA has on one prior occasion authorized emissions trading under section 111(d). (The Emission Guidelines and Compliance Times for Large Municipal Waste Combustors that are Constructed on or Before September 20, 1994; 40 CFR part 60, subpart Cb.) This provision allows for a NO_X trading program implemented by individual States. Section 60.33b(C)(2) states,

> A State plan may establish a program to allow owners or operators of municipal waste combustor plants to engage in trading of nitrogen oxides emission credits. A trading program must be approved by the Administrator before implementation.

The final rule is wholly consistent with this prior CAA section 111(d) trading provision.

Having interpreted the term ''standard of performance'' to include a cap-and-trade program, EPA must next ''determine'' that such a system is ''the best system of emissions reductions which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) * * * has been adequately demonstrated.'' (See CAA section 111(a)(1).) EPA has determined that a cap-and-trade program based on control technology available in the relevant timeframe is the best system for reducing Hg emissions from existing coal-fired Utility Units.

Since the passage of the 1990 CAAA, EPA has had significant experience with the cap-and-trade program for utilities. The 1990 CAAA provided, in title IV, for the Acid Rain program, a national cap-and-trade program that covers SO_2 emissions from utilities. Title IV requires sources to hold allowances for each ton of SO_2 emissions, on a one-for-one basis. EPA allocates the allowances for annual periods, in amounts initially determined by the statute, that decrease further at a statutorily specified time. This program has resulted in an annual reduction in SO_2 emissions from utilities from 15.9 million tons in 1990 (the year the CAAA were enacted) to 10.2 million tons in 2002 (the most recent year for which data is available). Emissions in 2002 were 9 percent lower than 2000 levels and 41 percent lower than 1980, despite a significant increase in electrical generation. As discussed elsewhere, at full implementation after 2010, emissions will be limited to 8.95 million tons, a 50 percent reduction from 1980 levels. The Acid Rain program allowed sources to trade allowances, thereby maximizing overall cost-effectiveness.

In addition, in the 1998 NO_X SIP Call rulemaking, EPA promulgated a NO_X reduction requirement that affects 21 States and the District of Columbia (''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; Rule,'' 63 FR 57,356 (October 27, 1998)). All of the affected jurisdictions are implementing the requirements through a cap-and-trade program for NO_X emissions primarily from utilities.[4] These programs are contained in SIP that EPA has approved, and EPA is administering the trading programs. However, for most States, the requirements did not need to be implemented until May 2004.

The success of the Acid Rain cap-and-trade program for utility SO_2 emissions, which EPA duplicated in large measure with the NO_X SIP Call cap-and-trade program for, primarily, utility NO_X emissiofrom utilities qualifies as the ''best system of emission reductions'' that ''has been adequately demonstrated.'' A market system that employs a fixed tonnage limitation (or cap) for Hg sources from the power sector provides the greatest certainty that a specific level of emissions will be attained and maintained because a predetermined level of reductions is ensured. The EPA will administer a Hg trading program and will require the use of monitoring to allow both EPA and sources to track progress, ensure compliance, and provide credibility to the trading component of the program.

2. What Is Justification for the National Hg Budget?

The EPA believes that a carefully designed ''multi-pollutant'' approach, a program designed to control NO_X, SO_2, and Hg at the same time (*i.e.*, CAIR implemented with CAMR), is the most effective way to reduce emissions from the power sector. One key feature of such an approach is the interrelationship of the timing and cap levels for NO_X, SO_2, and Hg. Our analyses show that the use of FGD (to reduce SO_2 emissions) and SCR (to reduce NO_X) also has the effect of controlling Hg emissions at the same time. We have designed the CAIR and CAMR approach to take advantage of this so-called Hg ''co-benefit.'' We believe, based on the results of sophisticated economic and environmental modeling analyses, that the Phase I Hg cap should be set at a level that reflects these co-benefits, and that additional controls designed specifically for Hg should not be required until after 2010. Furthermore, a multipollutant approach that focuses first on SO_2 and NO_X reductions will also achieve significant reductions in oxidized Hg. As explained elsewhere in this document, reductions in this Hg species are the most beneficial to reductions in U.S. Hg deposition.

A Phase I cap based on ''co-benefits'' fulfills EPA's obligation to set a standard of performance based on the best system of emissions reduction that has been adequately demonstrated. Both DOE and ORD research currently indicate that Hg-specific air pollution control technology, most notably sorbent injection, may one day allow facilities to reliably reduce Hg emissions to levels significantly below the ''co-benefits'' levels achieved through application of SO_2 and NO_X control technologies. However, Hg-specific technologies such as ACI have not been

Research Service, 2662. The EPA interprets this legislative history as generally supportive of interpreting ''standard of performance'' to include an allowance/trading program because such a program accords flexibility to sources.

[3] This interpretation of the term ''continuous'' is consistent with the legislative history of that term. See H.R. Rep. No. 95–294 at 92, *reprinted in* 4 ''A Legislative History of the Clean Air Act Amendments of 1977,'' *Congressional Research Service,* 2559.

[4] Non-electricity generating units are also included in the States' programs.

demonstrated in practice on full-scale power plants for extended periods of time, nor are they considered commercially available at this time. Current information on these technologies, as outlined in the revised ORD White Paper, ''Control of Mercury Emissions from Coal Fired Electric Utility Boilers: An Update,'' (OAR–2002–0056) is only adequate for us to conclude that such technologies are adequately demonstrated for use in the 2010 to 2018 time-frame to allow for compliance with the CAMR Phase II Hg cap. Therefore, for purposes of setting the 2010 Hg cap, we conclude that Hg reductions achieved as a ''co-benefit'' of controlling SO_2 and NO_X under CAIR should dictate the appropriate cap level. We find that requiring SO_2 and NO_X controls beyond those needed to meet the requirements of CAIR solely for purposes of further reducing Hg emissions by 2010 is not reasonable because the incremental cost effectiveness of such a requirement would be extraordinarily high. Furthermore, our analysis of engineering, financial, and other factors lead us to conclude under CAIR that a two-phased schedule was needed to allow the implementation of as much of the controls as feasible by an early date, with a later time for the remaining controls (see further discussion of this point below).

a. CAIR Phase I Requirements. The CAIR-CAMR approach, which does not impose any Phase I Hg reduction requirements beyond those required to control SO_2 and NO_X emissions under Phase I of CAIR, sets the Phase I Hg emissions cap at 38 tpy. Thus, a cap of 38 tons reflects the co-benefits level and is established as a fixed cap in the final rule.

In the final CAIR, EPA evaluated the amounts of SO_2 and NO_X emissions in upwind States that contribute significantly to downwind fine particle ($PM_{2.5}$) nonattainment, and the amounts of NO_X emissions in upwind States that contribute significantly to downwind ozone nonattainment. That is, EPA determined the amounts of emissions that must be eliminated to help downwind States achieve attainment, by applying highly cost-effective control measures to Utility Units and determining the emissions reductions that would result.

From past experience in examining multi-pollutant emissions trading programs for SO_2 and NO_X, EPA recognized that the air pollution control retrofits that result from a program to achieve highly cost-effective reductions are quite significant and can not be immediately installed. Such retrofits require a large pool of specialized labor resources, in particular, boilermakers, the availability of which will be a major limiting factor in the amount and timing of reductions.

EPA also recognized that the regulated industry will need to secure large amounts of capital to meet the control requirements while managing an already large debt load, and is facing other large capital requirements to improve the transmission system. Furthermore, allowing pollution control retrofits to be installed over time enables the industry to take advantage of planned outages at power plants (unplanned outages can lead to lost revenue and adversely impact consumers) and to enable project management to learn from early installations how to deal with some of the engineering challenges that some plants/facilities/units pose, especially for the smaller units that often present space limitations. In addition, such phased installation of controls also minimizes any potential impact on the power grid and its stability and reliability.

In the final CAIR, EPA finalized a two-phased schedule for implementing the CAIR annual emission reduction requirements. The first phase includes two separate compliance deadlines: Implementation of NO_X reductions are required by January 1, 2009 (covering 2009–2014) and that for SO_2 reductions by January 1, 2010 (covering 2010–2014). The EPA based its final rule, among other things, on its analysis of engineering, financial, and other factors that affect the timing for installing the emission controls that would be most cost-effective—and are, therefore, the most likely to be adopted—for States to meet the CAIR requirements. Those air pollution controls are primarily expected to be retrofitted FGD systems (scrubbers) for SO_2 and SCR systems for NO_X on coal-fired power plants.

The EPA's projections showed a significant number of affected sources installing these controls. The final two-phased schedule under CAIR allows the implementation of as much of the controls as feasible by an early date, with a later time for the remaining controls. The EPA has performed several analyses to verify the adequacy of the available boilermaker labor for the installation of CAIR's Phase I controls. These analyses were not based just on using EPA's assumptions for the key factors affecting the boilermaker availability, but also on the assumptions suggested by commenters for these factors to determine the robustness of our key conclusions. See final CAIR preamble for further discussion of this analysis and see CAMR docket for documents supporting this analysis.

b. Utility Mercury Emission Reductions Expected as Co-Benefits From CAIR. The final CAIR requires annual SO_2 and NO_X reductions in 23 States and the District of Columbia, and also requires ozone season NO_X reductions in 25 States and the District of Columbia. Many of the CAIR States are affected by both the annual SO_2 and NO_X reduction requirements and the ozone season NO_X requirements. CAIR was designed to achieve significant emissions reductions of SO_2 and NO_X in a highly cost-effective manner to reduce the transport of fine particles that have been found to contribute to nonattainment. EPA analysis has found that the most efficient method to achieve the emissions reduction targets is through a cap-and-trade system on the power sector that States have the option of adopting. In fact, States may choose not to participate in the optional cap-and-trade program and may choose to obtain equivalent emissions reductions from other sectors. However, EPA believes that a region-wide cap-and-trade system for the power sector is the best approach for reducing emissions. The power sector accounted for 67 percent of nationwide SO_2 emissions and 22 percent of nationwide NO_X emissions in 2002.

EPA expects that States will choose to implement the final CAIR program in much the same way they chose to implement their requirements under the NO_X SIP Call. As noted above, under the NO_X SIP Call, EPA gave States ozone season NO_X reduction requirements and the option of participating in cap-and-trade program. In the final rulemaking, EPA analysis indicated that the most cost-efficient method to achieve reductions targets would be through a cap-and-trade program. Each affected State, in its approved SIP, chose to control emissions from Utility Units and to participate in the cap-and-trade program.

Therefore, EPA anticipates that States will comply with CAIR by controlling Utility Unit SO_2 and NO_X emissions. Further, EPA anticipates that States will implement those reductions through the cap-and-trade approach, because the power sector represents the majority of national SO_2 emissions and the majority of stationary NO_X emissions, and represents highly cost-effective sources of reductions of SO_2 and NO_X (for further discussion of cost-effectiveness, see final CAIR preamble). EPA modeled a region-wide cap-and-trade system for the power sector in the States covered by CAIR, and this modeling projected that most reductions in NO_X and SO_2

would come through the installation of scrubbers, for SO_2 control, and SCR, for NO_X control (see Regulatory Impact Analysis (RIA) for CAIR and CAMR in docket). Scrubbers and SCR are proven technologies for controlling SO_2 and NO_X emissions and sources have installed them to comply with the Acid Rain trading program and the NO_X SIP Call trading program. EPA's modeling also projected that the installation of these controls would also achieve Hg emissions reductions as a co-benefit.

EPA projections of Hg co-benefits are based on 1999 Hg ICR emission test data and other more recent testing conducted by EPA, DOE, and industry participants (for further discussion see Control of Emissions from Coal-Fired Electric Utility Boilers: An Update, EPA/Office of Research and Development, March 2005, in the docket). That emissions testing has provided a better understanding of Hg emissions from Utility Units and their capture in pollution control devices. Mercury speciates into three basic forms, ionic, elemental, and particulate (particulate represents a small portion of total emissions). Ionic, or non-elemental, Hg compounds are the most important from a near-field deposition stand-point. In general, ionic Hg compounds are more readily controlled (because they tend to be water soluble) than is elemental Hg and the presence of chlorine compounds (which tend to be higher for bituminous coals) results in increased ionic Hg. Overall the 1999 Hg ICR data revealed higher levels of Hg capture for bituminous coal-fired plants as compared to subbituminous and lignite coal-fired plants and a significant capture of ionic Hg in wet-FGD scrubbers. Additional Hg testing indicates that for bituminous coals SCR has the ability to convert elemental Hg to ionic Hg and, thus allow easier capture in a wet-FGD scrubber. This understanding of Hg capture was incorporated into EPA modeling assumptions and is the basis for our projections of Hg co-benefits from installation of scrubbers and SCR under CAIR.

Given the history of the Acid Rain and NO_X SIP Call trading programs, EPA anticipates that reductions in SO_2 emissions will begin to occur before 2010 (limited to a degree by the time and resources needed to install control technologies) because of the ability to bank SO_2 emission allowances. Companies have an incentive to achieve greater and faster SO_2 reductions than needed to meet the current Acid Rain cap because the excess allowances they generate can be ''banked'' and either later sold on the market or used to demonstrate compliance in 2010 and beyond at the facility that generated the excess allowances. Based on the analysis of CAIR, EPA's modeling projects that Hg emissions would be 38.0 tons (12 tons of non-elemental Hg) in 2010, 34.4 tons in 2015 (10 tons of non-elemental Hg), and 34.0 tons in 2020 (9 tons of non-elemental Hg), about a 20 and 30 percent reduction (in 2010 and 2015, respectively) from a 1999 baseline of 48 tons. With respect to oxidized Hg, emissions in 2020 are 7.9 tons compared to 20.6 tons in 2001. This 62 percent drop in oxidized Hg emissions is particularly important because this species of Hg deposits more readily. For further discussion of EPA modeling results and projected emissions see chapter 8 of the RIA.

c. Availability of Hg Technology. Additionally, EPA is setting a Hg emissions cap of 15 tpy in 2018 from coal-fired Utility Units. This cap reflects a level of Hg emissions reductions that exceeds the level that would be achieved solely as a co-benefit of controlling SO_2 and NO_X under CAIR. We conclude that this approach is warranted because we find Hg-specific air pollution control technologies such as ACI are adequately demonstrated for use sufficiently before 2018 to allow for their deployment across the field of units to comply with the Phase II cap in 2018. This conclusion relies on the fact that the current-day pilot scale ACI projects at power plants should yield information that ought to be usable in implementing similar pilot scale projects at other facilities. Data from all of these pilot studies ultimately should allow companies to design full scale applications that should provide reasonable assurance that emissions limitations can be reliably achieved over extended compliance periods. We do not believe that such full scale technologies can be developed and widely implemented within the next 5 years; however, it is reasonable to assume that this can be accomplished over the next 13 years.

d. CAMR Reductions Requirements in 2018. As discussed above, EPA is setting a cap of 15 tons in 2018 for coal-fired Utility Units. EPA projected future Hg emissions from the power generation sector using the Integrated Planning Model (IPM). The EPA uses IPM to analyze the projected impact of environmental policies on the electric power sector in the 48 contiguous States and the District of Columbia. IPM is a multi-regional, dynamic, deterministic linear programming model of the U.S. electric power sector. The EPA used IPM to project both the national level and the unit level of utility unit Hg emissions under different control scenarios. The EPA also used IPM to project the costs of those controls.

In these IPM runs, EPA assumed that States would implement the Hg requirements through the Hg cap-and-trade program that EPA is establishing in the final rule. The cap-and-trade program is implemented in two phases, with a hard cap of 38 tons in 2010 (set at the co-benefits reduction under CAIR) and 15 tons in 2018. EPA modeling of CAA section 111 projects banking of allowances due to excess Hg reductions in the 2010 to 2017 timeframe for compliance with the cap in 2018 and beyond timeframe. A cap-and-trade program assures that those reductions will be achieved with the least cost. For that reason, EPA believes it reasonable to assume that States will adopt the program even though they are not required to do so. See 69 FR 4652, 4700–4703 for a detailed discussion of the benefits of the cap-and-trade approach.

As discussed above, under the CAIR scenario modeled by EPA, SO_2 and NO_X emission reductions (and Hg co-benefit reductions) are projected to result from the installation of additional FGD and additional SCR units on existing coal-fired generation capacity. Under the CAMR scenario modeled by EPA, units are projected to install SCR and scrubbers to meet their SO_2 and NO_X requirements and take additional steps to address the remaining Hg reduction requirements under CAA section 111, including adding Hg-specific control technologies (model applies ACI), additional scrubbers and SCR, dispatch changes, and coal switching. Many of these reductions are projected to result from large units installing controls and selling excess allowances. Under the cap-and-trade approach we are projecting that Hg reductions result from units that are most cost effective to control, which enables those units that are not cost effective to install controls to use other approaches for compliance including buying allowances, switching fuels, or making dispatch changes.

Based on the analysis of CAMR, EPA's modeling projects that Hg emissions would be 31.3 tons in 2010, 27.9 tons in 2015, and 24.3 tons in 2020, about a 35 percent reduction in 2010, about 42 percent reduction in 2015, and about 50 percent reduction in 2020 from a 1999 baseline of 48 tons. For further discussion of EPA modeling results and projected emissions see chapter 8 of the RIA. EPA is not requiring further reductions by 2015, beyond the CAIR Phase I cap co-benefits, and, therefore, we are not adjusting Hg allowances downward beginning in 2015, rather

adjusting allowances in 2018. EPA maintains that it is not necessary for the 2015 Hg cap to mirror the Hg co-benefits achieved in CAIR Phase II cap because: (1) These co-benefits would result automatically from the need to meet SO_2 and NO_X caps; the market will assure that the Hg reductions will occur; and (2) in 2018, the lower cap takes into account the reduced Hg emissions resulting from CAIR Phase II implementation. As we can see from the CAMR analysis, 2015 Hg emissions are projected to be substantially below the co-benefits projections under CAIR (34 tons in 2015). Thus, EPA maintains that it is not necessary to have the 2015 Hg cap mirror the Hg co-benefits achieved in CAIR Phase II cap because the 2018 cap ensures those reductions.

As discussed in detail in the separate **Federal Register** notice (70 FR 15994; March 29, 2005) announcing EPA's revision of its December 2000 regulatory determination and removing coal- and oil-fired Utility Units from the CAA section 112(c) list, EPA believes that the term ''standard of performance'' as used in CAA section 111 can include market-based programs such a cap-and-trade program. The EPA also believes that in the context of a cap-and-trade program, the phrase ''best system of emission reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impacts and energy requirements) the Administrator determines has been adequately demonstrated'' refers to the combination of the cap-and-trade mechanism and the technology needed to achieve the chosen cap level. The EPA further believes that a particular technology can be adequately demonstrated to achieve a specified level of emissions reduction at one point in time, but, for a number of possible reasons, not be capable of achieving that level of reductions on a broad scale until a later point in time. For example, EPA might conclude that a particular technology is capable of achieving reductions in the emission of specified pollutants in the range of 90 to 95 percent, while at the same time concluding that the technology is not currently commercially available and, therefore, not susceptible to widespread use. As a result, it would be inappropriate for EPA to establish a cap based on the use of such controls and require compliance with that cap in the near term, but reasonable to establish a cap on that basis and require compliance with that cap at a later point in time when the necessary technology becomes widely available.

CAA section 111 authorizes EPA to promulgate standards of performance based on systems of emission reduction that have been ''adequately demonstrated.'' Traditionally EPA has set its section 111 standards based on a determination that particular control technologies are ''adequately demonstrated.'' In the final rule, EPA has determined that the technologies necessary to achieve the emission cap limits for 2010 have been adequately demonstrated, and that the technologies necessary to achieve the 2018 caps have been adequately demonstrated to be available to achieve compliance with those limits by 2018.[5]

In Portland Cement Association v. EPA (486 F.2d 375) (DC Cir. 1973), the Court rejected the argument that the words ''adequately demonstrated'' in CAA section 111 meant that the relevant technology already must be in existence and that plants now in existence be able to presently meet the proposed standards. Rather, the CAA's requirement that the degree of emission limitation be ''adequately demonstrated'' means that a plant now in existence must be able to meet the presently-effective standards for existing units, but that insofar as new plants and future requirements are concerned, section 111 authorizes EPA to ''look toward what may fairly be projected for the regulated future, rather than the state-of-the-art at present.'' The court said:

> The Administrator may make a projection based on existing technology, though that projection is subject to the restraints of reasonableness and cannot be based on ''crystal ball'' inquiry. 478 F.2d at 629. As there, the question of availability is partially dependent on ''lead time,'' the time in which the technology will have to be available. Since the standards here put into effect will control new plants immediately, as opposed to one or two years in the future, the latitude of projection is correspondingly narrowed. If actual tests are not relied on, but instead a prediction is made, ''its validity as applied to this case rests on the reliability of [the] prediction and the nature of [the] assumptions.'' (citation omitted)

See also Lignite Energy Council v. EPA, 198 F.3d 930 (DC Cir. 1999) (section 111 ''looks toward what may fairly be projected for the regulated future, rather than the state of the art at present'') (quoting Portland Cement). These cases address CAA section 111(b) standards for new sources, where achievement of the standards is mandated on a short-term basis. We believe that EPA standards set under the authority of CAA section 111(d), where the compliance deadlines are not so immediate, afford EPA significant flexibility, commensurate with the amount of lead-time being given to affected sources. The cases make clear that while a determination about a technology or performance standard's achievability may not be based on ''mere speculation or conjecture,'' a technology or standard that may not necessarily be considered ''adequately demonstrated'' at present nonetheless can be considered ''adequately demonstrated'' for a compliance date in the future. We have explained in today's action why we believe both the 2010 and 2018 emissions caps can be met. Since we believe that Hg-specific technologies capable of meeting the requirements of the 2018 emission limits will be available for broad commercial deployment by 2018, we believe those technologies are ''adequately demonstrated'' for the 2018 emission caps.

Here, EPA has concluded that Hg-specific controls, such as ACI, have been adequately demonstrated as being effective in substantially reducing Hg emissions, but are not currently available for commercial application on a broad scale. As a result, EPA cannot establish a Hg emission cap based on the widespread use of Hg-specific controls and require compliance with that cap in the near term. The EPA has, therefore, set the level of the 2010 cap on Hg emissions on the basis of the reductions in Hg emissions achievable as co-benefits of efforts to reduce emissions of SO_2 and NO_X in accordance with CAIR. The EPA believes that establishing the Phase I cap on the basis of these co-benefits fulfills its obligation to set a standard of performance which is both based on the best system of emissions reductions that has been adequately demonstrated and achievable in the designated timeframe.

As stated above, EPA has determined that Hg-specific controls have been adequately demonstrated as being effective in substantially reducing Hg emissions, but that such controls are not currently available for commercial application on a broad scale and, therefore, cannot serve as the basis for the 2010 Hg emissions cap. EPA believes, however, based on currently available information (ORD revised white paper ''Control of Mercury Emissions from Coal Fired Electric Utility Boilers: An Update,'' and DOE white paper ''Mercury Control Technologies,'' both of which may be found in the OAR–2002–0056), that such controls will be commercially

[5] Even assuming, arguendo, that the term ''standard of performance'' prohibited an emissions cap and allowance trading program, the regulatory approach being employed in the final rule and the technologies on which EPA has based its cap calculations are consistent with and permitted by CAA section 111.

available sometime after 2010 and can be installed and operational on a nationwide basis by 2018. The EPA has, therefore, established a Phase II Hg emissions cap based on the reductions in Hg emissions founded in the CAIR program and reductions that can be reasonably obtained through the use of Hg-specific controls. This cap is effective in 2018. That is, the 2018 cap is based on the level of Hg emissions reductions that will be achievable by the combined use of co-benefit (CAIR) and Hg-specific controls. The Phase II cap is timed such that these technologies can be installed and operational on a nationwide basis, *i.e.*, until the technology becomes generally available.

The need to achieve Hg reductions beyond those secured through the CAIR co-benefits program are wholly consistent with the Agency's mission to leverage the monies spent domestically on global reductions of anthropogenic Hg emissions. As explained elsewhere in this preamble and the supporting docket, in order to significantly impact nationwide Hg deposition and, thus, human exposure to methylmercury (MeHg), the U.S. must be a leader in incentivizing global Hg emissions reductions. To that end, the Phase II cap serves as a driver for continued research and development of Hg-specific control technologies, while providing a global market for the application of such equipment, which ultimately may serve to significantly reduce the global pool of Hg emissions. The timing of the Phase II cap is such that new technologies can be developed, installed, demonstrated and commercially deployed with little impact to the stability of the power grid.

EPA is today finalizing a NSPS for Hg for coal-fired Utility Units under CAA section 111 in lieu of a MACT standard for Hg. As set forth in greater detail below and in the related final rule, the Agency has determined that it is not ''necessary and appropriate'' to establish a MACT standard under CAA section 112 for electric utility steam generating units since utility HAP emissions remaining after implementation of other requirements of the CAA do not pose hazards to public health. For this reason, it is not necessary for the Agency to undertake any further analysis of Hg emissions from existing units in order to establish a MACT floor, as this information is irrelevant to the development of the NSPS. Nor is it necessary to conduct an additional cost-benefit analysis of potential MACT standards since the Agency has concluded, as a matter of law and policy, that a MACT standard is not appropriate or necessary.

e. Cost-effectiveness of the Hg Cap in 2018. As discussed above under CAMR, EPA projected future Hg emissions and the cost of those controls from the power generation sector using the IPM. In these IPM runs, EPA assumed that States would implement the Hg requirements through the Hg cap-and-trade program that EPA is establishing in the final rule.

The 15-ton cap in 2018 is supported by cost considerations and the sophisticated economic modeling completed in support of the CAIR and CAMR regulations. These cost considerations include establishing a cap level that does not have significant impacts on energy supply and the cost of energy to the consumer. This modeling shows that the 15-ton Phase II cap will, in fact, require Hg-specific controls to be installed on certain Utility Units; however, such controls should not have any significant impact on power availability, reliability, or pricing to consumers. Moreover, our models predict that a 15-ton cap would not cause any significant shift in the fuels currently utilized by power plants or in the source of these fuels. For further discussion of EPA modeling results and projected costs see Chapter 8 of the RIA.

3. State and Indian Country Emissions Reductions Requirements

The EPA below also outlines a method for apportioning the nationwide budget to individual States and to coal-fired Utility Units located in Indian country. The EPA maintains that the emission budget provides an efficient method for achieving necessary reductions in Hg emissions (as described in earlier sections of this preamble), while providing substantial flexibility in implementing the program.

a. Geographic Scope of Trading Program. The final rule will apply to all coal-fired Utility Units located in all 50 States of the U.S., as well as those located in Indian country. (As used herein, the term ''Indian country'' generally refers to all areas within Indian reservations, dependent Indian communities, and Indian allotments. The EPA or, in appropriate circumstances, an individual Tribe generally will be responsible for implementing a trading program in Indian country.) As discussed further below, each State has been assigned a Statewide emissions budget for Hg. Each of these States must submit a State Plan revision detailing the controls that will be implemented to meet its specified budget for reductions from coal-fired Utility Units. States are not required to adopt and implement the proposed emission trading rule, but they are required to be in compliance with their statewide Hg emission budget. Should some States choose to achieve the mandated reductions by using an approach other than the proposed emissions trading rule, the geographic scope of the trading program would not be nationwide. Mercury emission budgets have also been assigned to coal-fired Utility Units that will be affected by the final rule which are located in Indian country. The EPA generally will implement the emission trading rule for coal-fired Utility Units located in Indian country unless a Tribe seeks and obtains Treatment-as-a-State (TAS) status and submits a Tribal implementation plan (TIP) to implement the allocated Hg emissions budget. Eligible Tribes which choose to do so will be responsible for submitting a TIP analogous to the State plans discussed throughout this preamble, and, like States, can chose to adopt the Model Cap-and-Trade Rule described elsewhere in this action.

b. State and Indian Country Emission Budgets. Each of the States and the District of Columbia covered by the final rule has been assigned a State emissions budget for Hg. A Hg emissions budget has also been assigned to each coal-fired Utility Unit located in Indian country. As discussed in detail below, these budgets were developed by totaling unit-level emissions reductions requirements for coal-fired electricity generating devices. States have the flexibility to meet these State budgets by participating in a trading program or establishing another methodology for Hg emissions reductions from coal-fired electric generating units, as discussed elsewhere in this action. States have the ability to require reductions beyond those required by the State budget. Tribes which choose to seek and obtain TAS status for that purpose, have the same flexibility in developing an appropriate TIP. The State Hg emission budgets are a permanent cap regardless of growth in the electric sector and, therefore, States have the responsibility of incorporating new units in their Hg emission budgets. Similarly, the Hg emission budgets allocated to coal-fired Utility Units located in Indian country act as a permanent cap and EPA or a Tribe which has obtained TAS status and is implementing an approved TIP has responsibility for incorporating new units into the allocated Hg emission budget.

As proposed in the NPR and SNPR, EPA is finalizing a formula for determining the total amount of emissions for the Budget Trading Program for each specific State or coal-fired Utility Unit located in Indian country using that same mechanism,

finalizing the amount of emissions for the Program within each State for 2010 and 2018. That formula is the sum of the weighted shares for each affected Utility Unit in the State or Indian country, based on the proportionate share of their baseline heat input, adjusted to reflect the ranks of coal combusted by the unit during the baseline period, to total heat input of all affected units. As discussed further below, EPA is finalizing adjustment factors of 1 for bituminous, 1.25 for subbituminous, and 3 for lignite coals.

As discussed elsewhere in this preamble, new sources will comply with NSPS for Hg. In addition, as proposed in the NPR and SNPR, new sources will be covered under the Hg cap of the trading program, and will be required to hold allowances equal to their emissions. As discussed under the model cap-and-trade program, EPA is also finalizing the allocation methodology in the model cap-and-trade program a mechanism whereby these new sources do not receive an adjustment to their allocated share of the allowances (that reflects the rank of coal combusted).

c. Rationale for Unit-level Allowances. Different ranks of coal may achieve different Hg reductions depending on the control equipment installed at the unit. In order to develop State and Indian country emissions budgets from unit allocations, EPA proposed that allowances would be distributed to States based on their share of total heat input. These allocations were then adjusted to reflect the concern that the installation of PM, NO_X, and SO_2 control equipment on different coal ranks results in different Hg removal.

In the NPR and SNPR, for purposes of this hypothetical allocation of allowances, EPA proposed that each unit's baseline heat input is adjusted to reflect the ranks of coal combusted by the unit during the baseline period. Adjustment factors of 1 for bituminous, 1.25 for subbituminous, and 3 for lignite coals were proposed in the NPR. Alternatively, for purposes of this hypothetical calculation of State budgets, EPA took comment on using adjustment factors based on the MACT emission rates proposed in the NPR and the proportionate share of their baseline heat input to total heat input of all affected units.

Several commenters supported the proposed adjustment factors of 1 for bituminous, 1.25 for subbituminous, and 3 for lignite coals. Many commenters supported revisions to the adjustment factors, including a factor of 1.5 for subbituminous. Several other commenters supported the use of no adjustment factors. Although supporting the use of multipliers for the coal ranks, some commenters argued that EPA should provide more scientific basis for the adjustment factors and recommended at minimum using adjustment factors based on the MACT approach.

For the final rule, EPA is finalizing adjustment factors of 1 for bituminous, 1.25 for subbituminous, and 3 for lignite coals based on the expectation that Hg in the coal ranks reacts differently to NO_X and SO_2 control equipment and that the heat input of the different coal ranks varies. The conclusion that Hg in each of the coals reacts differently to NO_X and SO_2 control equipment was based on information collected in the ICR as well as more recent data collected by EPA, DOE, and industry sources. This information, which was collected from units of various coal ranks and control equipment configuration, indicated differing levels of Hg removal. The test data indicated that installation of PM, NO_X, and SO_2 controls on plants burning bituminous coals resulted in greater Hg reduction on average than plants burning subbituminous coals or lignite coals. Likewise, the test data indicated that installation of PM, NO_X, and SO_2 controls on plants burning subbituminous coals resulted in somewhat greater Hg removal than plants burning lignite coals. On average, units burning lignite coal showed the least Hg removal of the three coal ranks. Further discussion of these adjustment factors can be found in the docket (see ''Technical Support Document for the Clean Air Mercury Rule Notice of Final Rulemaking, State, and Indian Country Emissions Budgets,'' EPA, March 2005).

These adjustment factors are considered to be reasonable based on the test data currently available. Although, we realize that these factors do not in all cases accurately predict relative rates of Hg emissions from Utility Units with NO_X and SO_2 controls, the values we have assigned to the factors will succeed in equitably distributing allowances to the States and Tribes on the basis of the affected industry within their borders. As discussed in the model cap-and-trade program, EPA is finalizing under the example allocation methodology that allocations by States to new sources will not be adjusted by coal type.

d. Distribution of State and Indian Country Budgets. The trading program establishes a cap on Hg emissions for affected electric generating units of 38 tpy starting in 2010 and 15 tpy in 2018. The unit-level emission allocations are the basis for establishing State and Indian country emission budgets with the State budgets equaling the total of the individual unit emission limits in a given State (see Table 1 of this preamble). Similarly, sufficient allowances have been allocated to coal-fired Utility Units located in Indian country to cover the individual unit emission limits for those units. States also have the flexibility to not participate in the trading program or require more stringent Hg emissions reductions. States that do not participate in the trading program can establish their own methodology for meeting State Hg budgets by obtaining reductions from affected Utility Units. As proposed in the NPR and SNPR, EPA is finalizing the requirement that new coal-fired Utility Units will be subject to the State Hg emission cap. State budgets remain the same after the inclusion of new units and States have the responsibility of addressing new units in their respective emission budgets. Similarly, the budgets for coal-fired Utility Units located in Indian country will remain the same after the inclusion of new units and EPA or a Tribe with an approved TIP, as appropriate, has responsibility for addressing new units in the respective emission budget.

EPA received comments from Tribes noting that only States currently receive allowances under the proposal, despite unit allocations being made to sources located in Indian country, and requesting that Tribes be accommodated into the cap-and-trade program. Because under CAA authority eligible Tribes may be treated in the same manner as States for CAA programs for reservations and for other areas within their jurisdiction, EPA agrees with the commenters that these Tribal sources need to be included in the cap-and-trade program, and the final CAMR establishes budgets for existing coal-fired sources located in Indian country.

In the final rule, EPA is establishing a Tribal budget for three existing coal-fired Utility Units in Indian country. These are Navajo Generating Station (Salt River Project; Page, AZ), Bonanza Power Plant (Deseret Generation and Transmission Cooperative; Vernal, UT), and Four Corners Power Plant (Salt River Project/Arizona Public Service; Fruitland, NM). Navajo Generating Station and Four Corners Power Plant are on lands belonging to Navajo Nation, and Bonanza Power Plant is located on the Uintah and Ouray Reservation of the Ute Indian Tribe. Therefore, in addition to the 50 State budgets, the final rule also contains a budget for these Utility Units. The budget for units located in Indian country was calculated using the

same methodology as State budgets. In the proposed rule, these three units in Indian country were erroneously included in the State budgets for Arizona, Utah, and New Mexico. The emissions budgets for the final rule for Arizona, Utah, and New Mexico are adjusted to reflect the movement of these sources to the Indian country emission budget.

For areas of Indian country that do not currently have any coal-fired electricity generation, EPA intends to address any future planned construction of coal-fired Utility Units in those areas on a case-by-case basis, by working with the relevant Tribal government to regulate the Utility Units through either a TIP, if an eligible Tribe chooses to submit one, or Federal implementation plan (FIP). This is the same approach that is taken in the CAIR. EPA does not believe there is sufficient information to design allocation provisions for new generation which locates in Indian country at this time. Therefore, rather than create a Federal allowance set-aside for Tribes, the EPA will work with Tribes and potentially affected States to address concerns regarding the equity of allowance allocations on a case-by-case basis as the need arises. The EPA may choose to revisit this issue through a separate rulemaking in the future.

In the SNPR, because three States and the District of Columbia have no coal-fired Utility Units, EPA proposed Hg emission budgets of zero tons for three States (Idaho, Rhode Island, and Vermont) and the District of Columbia. EPA did not receive adverse comments from these States on their proposed budgets and is finalizing Hg emission budgets of zero tons for three States (Idaho, Rhode Island, and Vermont) and the District of Columbia. If these States or the District of Columbia participate in the CAMR trading program, new coal-fired Utility Units will be required to hold allowances equal to their emissions. As participants in the cap-and-trade program, these sources could buy allowances and meet their requirements. This is similar to situation that new units face under the existing Acid Rain Program. The final State and Indian country Hg emission budgets are presented in Table 1 of this preamble.

TABLE 1.—STATE HG EMISSION BUDGETS

State	Budget (tons)	
	2010–2017	2018 and thereafter
Alaska	0.005	0.002
Alabama	1.289	0.509
Arkansas	0.516	0.204
Arizona	0.454	0.179
California	0.041	0.016
Colorado	0.706	0.279
Connecticut	0.053	0.021
Delaware	0.072	0.028
District of Columbia	0	0
Florida	1.233	0.487
Georgia	1.227	0.484
Hawaii	0.024	0.009
Idaho	0	0
Iowa	0.727	0.287
Illinois	1.594	0.629
Indiana	2.098	0.828
Kansas	0.723	0.285
Kentucky	1.525	0.602
Louisiana	0.601	0.237
Massachusetts	0.172	0.068
Maryland	0.49	0.193
Maine	0.001	0.001
Michigan	1.303	0.514
Minnesota	0.695	0.274
Missouri	1.393	0.55
Mississippi	0.291	0.115
Montana	0.378	0.149
Navajo Nation Indian Country	0.601	0.237
North Carolina	1.133	0.447
North Dakota	1.564	0.617
Nebraska	0.421	0.166
New Hampshire	0.063	0.025
New Jersey	0.153	0.06
New Mexico	0.299	0.118
Nevada	0.285	0.112
New York	0.393	0.155
Ohio	2.057	0.812
Oklahoma	0.721	0.285
Oregon	0.076	0.03
Pennsylvania	1.78	0.702
Rhode Island	0	0
South Carolina	0.58	0.229
South Dakota	0.072	0.029
Tennessee	0.944	0.373
Texas	4.657	1.838
Utah	0.506	0.2

TABLE 1.—STATE HG EMISSION BUDGETS—Continued

State	Budget (tons)	
	2010–2017	2018 and thereafter
Ute Indian Tribe Reservation Indian Country	0.06	0.024
Virginia	0.592	0.234
Vermont	0	0
Washington	0.198	0.078
Wisconsin	0.89	0.351
West Virginia	1.394	0.55
Wyoming	0.952	0.376

As required by CAA section 111(a)(1), EPA has considered the cost of achieving the reductions in Hg emissions mandated by the section 111(d) requirements for existing Utility Units, the non-air quality health and environmental impacts arising from the implementation of those requirements and the energy requirements associated with those requirements and determined that they are all reasonable. (The costs of complying with CAMR as a whole are discussed briefly below, and in more detail in the two air dockets for the CAMR rule: Docket ID No. OAR–2002–0056 and Docket ID No. A–92–55. The non-air quality health and environmental impacts arising from the implementation of CAMR, as well as the energy requirements associated with CAMR, are discussed briefly below, and in more detail in Docket ID No. OAR–2002–0056 and Docket ID No. A–92–55.)

E. CAMR Model Cap-and-Trade Program

1. What Is the Overall Structure of the Model Hg Cap-and-Trade Program?

EPA is finalizing model rules for the CAMR Hg trading program that States can use to meet the emission reduction requirements in the CAMR. These rules are designed to be referenced by States in State rulemaking. State use of the model cap-and-trade rules helps to ensure consistency between the State programs, which is necessary for the market aspects of the trading program to function properly. Although not as effective as a legislated program such as the President's Clear Skies legislation, this does allow the CAMR program to build on the successful Acid Rain Program. Consistency in the CAMR requirements from State-to-State benefits the affected sources, as well as EPA which administers the program on behalf of States.

This section focuses on the structure which adds a model rule for the CAMR in 40 CFR part 60, subpart HHHH. Commenters (who supported the cap-an-trade approach) generally supported the proposed structure of the model rule. The final rule adopts the basic structure of this model rule. Later sections of the rule discuss specific aspects of the model rule that have been modified or maintained in response to comment.

The model rules rely on the detailed unit-level emissions monitoring and reporting procedures of 40 CFR part 75 and consistent allowance management practices. (Note that full CAMR-related State Plan requirements, *i.e.,* 40 CFR part 60, are discussed elsewhere in this action.) Additionally, a discussion of the final revisions to parts 72 through 77 in order to, among other things, facilitate the interaction of the title IV Acid Rain Program's SO_2 cap-and-trade provisions and those of the CAMR Hg trading program is provided elsewhere in this action.

a. Road Map of Model Cap-and-trade Rule. The following is a brief ''road map'' to the final CAMR cap-and-trade program and is provided as a convenience to the reader. Please refer to the detailed discussions of the CAMR programmatic elements throughout the final rule for further information on each aspect.

State Participation:

- States may elect to participate in an EPA-managed cap-and-trade program for coal-fired Utility Units greater than 25 MW. To participate, a State must adopt the model cap-and-trade rules finalized in this section of the final rule with flexibility to modify sections regarding source Hg allocations.
- For States that elect not to participate in an EPA-managed cap-and-trade program, their respective State Hg budgets will serve as a firm cap.

Emission Allowances:

- The CAMR cap-and-trade program will rely upon CAMR annual Hg allowances allocated by the States.

Allocation of Allowances to Sources:

- Hg allowances will be allocated based upon the States chosen allocation methodology. EPA's model Hg rule has provided an example allocation, complete with regulatory text, that may be used by States or replaced by text that implements a States alternative allocation methodology.

Emission Monitoring and Reporting by Sources:

- Sources monitor and report their emissions using 40 CFR part 75.
- Source information management, emissions data reporting, and allowance trading is done through on-line systems similar to those currently used for the Acid Rain SO_2 and NO_X SIP Call programs.

Compliance and Penalties:

- For the Hg cap-and-trade program, any source found to have excess emissions must: (1) Surrender allowances sufficient to offset the excess emissions; and, (2) surrender allowances from the next control period equal to three times the excess emissions.

b. Comments Regarding the Use of a Cap-and-Trade Approach and the Proposed Structure. As discussed elsewhere in this action, many commenters did not support the cap-and-trade approach. For the many commenters, however, that did support the cap-and-trade approach, they also supported EPA's overall framework of the model rule to achieve the mandated emissions reductions. Many commenters supported States having the flexibility to achieve emissions reductions however they chose, including developing their own cap-and-trade program or choosing not to participate. Other commenters did not support giving the States flexibility to participate in the program and supported requiring their participation, including imposing a uniform national allocation scheme. (Note that comments on specific mechanisms within the cap-and-trade program are discussed in the topic-specific sections that follow.)

2. What is the Process for States to Adopt the Model Cap-and-Trade Program, and How Will it Interact With Existing Programs?

a. Adopting the Hg Model Cap-and-Trade Program. States may choose to participate in the EPA-administered cap-and-trade program, which is a fully approvable control strategy for achieving all of the emissions reductions required under the final rule in a more cost-effective manner than other control strategies. States may simply reference the model rules in their State rules and, thereby, comply with the requirements for Statewide budget demonstrations detailed elsewhere in this action. Specifically, States can adopt the Hg cap-and-trade program whether by incorporating by reference the CAMR cap-and-trade rule (40 CFR part 60, subpart HHHH) or codifying the provisions of the CAMR cap-and-trade rule, in order to participate in the EPA-administered Hg cap-and-trade program.

As proposed, EPA is requiring States that wish to participate in the EPA-managed cap-and-trade program to use the model rule to ensure that all participating sources, regardless of which State they are located, are subject to the same trading and allowance holding requirements. Further, requiring States to use the complete model rule provides for accurate, certain, and consistent quantification of emissions. Because emissions quantification is the basis for applying the emissions authorization provided by each allowance and emissions authorizations (in the form of allowances) are the valuable commodity traded in the market, the emissions quantification requirements of the model rule are necessary to maintain the integrity of the cap-and-trade approach of the program and therefore to ensure that the environmental goals of the program are met.

b. Flexibility in Adopting Hg Model Cap-and-trade Rule. It is important to have consistency on a State-to-State basis with the basic requirements of the cap-and-trade approach when implementing a multi-State cap-and-trade program. Such consistency ensures the: Preservation of the integrity of the cap-and-trade approach so that the required emissions reductions are achieved; smooth and efficient operation of the trading market and infrastructure across all States so that compliance and administrative costs are minimized; and equitable treatment of owners and operators of regulated sources. However, EPA believes that some differences are possible without jeopardizing the environmental and other goals of the program. Therefore, the final rule allows States to modify the model rule language to best suit their unique circumstances with regard to allocation methodologies.

States may develop their own Hg allocations methodologies, provided allocation information is submitted to EPA in the required timeframe. (Unit-level allocations and the related comments are discussed in greater detail elsewhere in this action. This includes a discussion of the provisions establishing the advance notice States must provide for unit-by-unit allocations.)

3. What Sources Are Affected Under the Model Cap-and-Trade Rule?

In the January 2004 NPR, EPA proposed a method for developing budgets that assumed reductions only from coal-fired Utility Units. Utility Units were defined as: Coal-fired, non-cogeneration electric utility steam generating units serving a generator with a nameplate capacity of greater than 25 MWe; and coal-fired cogeneration electric utility steam generating units meeting certain criteria (referred to as the ''one-third potential electric output capacity criteria''). In the SNPR, EPA proposed a model cap-and-trade rule that applied to the same categories of sources. We are finalizing the nameplate capacity cut-off that we proposed in the NPR for developing budgets and that we proposed in the SNPR for the applicability of the model trading rules. We are also finalizing the ''fossil fuel-fired'' definition and the one-third electric output capacity criteria that were proposed. The actual rule language in the SNPR describing the sources to which the model rules apply is being slightly revised to be clearer in response to some comments that the proposed language was not clear.

a. 25 MW Cut-off. EPA is retaining the 25 MW cut-off for Utility Units for budget and model rule purposes. EPA believes it is reasonable to assume no further control of air emissions from smaller Utility Units. Available air emissions data indicate that the collective emissions from small Utility Units are relatively small and that further regulating their emissions would be burdensome, to both the regulated community and regulators, given the relatively large number of such units. For example, Hg emissions from Utility Units of 25 MWe or less in the U.S. represent about 1 percent of Hg emissions from Utility Units, respectively. Consequently, EPA believes that administrative actions to control this large group with small emissions would be inordinate and, thus does not believe these small units should be included. This approach of using a 25 MWe cut-off for Utility Units is consistent with existing SO_2 and NO_X cap-and-trade programs such as the NO_X SIP Call (where existing and new Utility Units at or under this cut-off are, for similar reasons, not required to be included) and the Acid Rain Program (where this cut-off is applied to existing units and to new units combusting clean fuel).

b. Definition of Coal-fired. EPA is finalizing the proposed definition of coal-fired, *i.e.,* where any amount of coal or coal-derived fuel is used at any time. This is similar to the definition that is used in the Acid Rain Program to identify coal-fired units. EPA did not receive comments on this definition except that one commenter stated that coal refuse-fired plants should not be subject to CAMR. EPA points out that coal refuse is already subject to other Utility Unit programs, such as the Acid Rain program, the NSPS program (40 CFR part 60, subpart Da), and the CAIR program. Consequently, EPA rejects the commenter's request to not be included in the CAMR program.

c. Exemption for Cogeneration Units. As proposed, EPA is finalizing an exemption from the model cap-and-trade program for cogeneration units, *i.e.,* units having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through sequential use of energy and meeting certain operating standards (discussed below). EPA is adopting, with some clarifications, the proposed definition of cogeneration unit and the proposed criteria for determining which cogeneration units qualify for the exemption from the model cap-and-trade programs.

(1) One-third Potential Electric Output Capacity. EPA is finalizing the one-third potential electric output capacity criteria in the NPR and SNPR with some clarifications. Under the final rule, the following cogeneration units are Utility Units: Any cogeneration unit serving a generator with a nameplate capacity of greater than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWH, which ever is greater, to any utility power distribution system for sale. These criteria are similar to the definition in the proposals with the clarification that the criteria be applied on an annual basis. These criteria are the same used in the CAIR and are similar to those used in the Acid Rain

Program to determine whether a cogeneration unit is a Utility Unit and the NO_X SIP Call to determine whether a cogeneration unit is an Utility Unit or a non-Utility Unit. The primary difference between the proposed criteria and the one-third potential electric criteria for the Acid Rain and NO_X SIP Call programs is that these programs applied the criteria to the initial operation of the unit and then to 3-year rolling average periods while the final CAMR criteria are applied to each individual year starting with the commencement of operation. EPA believes that using an individual year approach will streamline the application and administration of this exemption.

Some commenters supported that the one-third criteria be applied on annual basis and supported that the criteria be consistent with CAIR and the Acid Rain program. Several commenters suggested exempting all cogeneration units instead of using the proposed criteria and cite the high efficiency of cogeneration as a reason for a complete exemption. EPA believes it is important to include in the CAMR program all units, including cogeneration units, that are substantially in the business of selling electricity. The proposed one-third potential electric output criteria described above are intended to do that.

Inclusion of all units substantially in the electricity sales business minimizes the potential for shifting utilization, and emissions, from regulated to unregulated units in that business and thereby freeing up allowances, with the result that total emissions from generation of electricity for sale exceed the CAMR emission cap. The fact that units in the electricity sales business are generally interconnected through their access to the grid significantly increases the potential for utilization shifting.

(2) Clarifying ''For Sale.'' Several commenters requested EPA confirm that, for purposes of applying the one-third potential electric output criteria, simultaneous purchases and sales of electricity are to be measured on a ''net'' basis, as is done in the Acid Rain Program. EPA confirms that, for purposes of applying the one-third potential electric output criteria in the CAMR program and the model cap-and-trade rules, the only electricity that counts as a sale is electricity produced by a unit that actually flows to a utility power distribution system from the unit. Electricity that is produced by the unit and used on-site by the electricity-consuming component of the facility will not count, including cogenerated electricity that is simultaneously purchased by the utility and sold back to such facility under purchase and sale agreements under the Public Utilities Regulatory Policy Act of 1978 (PURPA). However, electric purchases and sales that are not simultaneous will not be netted; the one-third potential electric output criteria will be applied on a gross basis, except for simultaneous purchase and sales. This is consistent with the approach taken in the Acid Rain Program.

(3) Multiple Cogeneration Units. Some commenters suggested aggregating multiple cogeneration units that are connected to a utility distribution system through a single point when applying the one-third potential electric output capacity criteria. According to the commenters, facilities may have some cogeneration units over the size threshold for inclusion in the rule, while others may be below it. These commenters suggested that it is not feasible to determine which unit is producing the electricity exported to the outside grid. EPA proposed to determine whether a unit is affected by the CAMR on an individual-unit basis. This unit-based approach is consistent with both the Acid Rain Program and the NO_X SIP Call. EPA considers this approach to be feasible based on experience from these existing programs, including for sources with multiple cogeneration units. EPA is unaware of any instances of cogeneration unit owners being unable to determine how to apply the one-third potential electric output capacity criteria where there are multiple cogeneration units at a source.

In a case where there are multiple cogeneration units with only one connection to a utility power distribution system, the electricity supplied to the utility distribution system can be apportioned among the units in order to apply the one-third potential electric output capacity criteria. A reasonable basis for such apportionment must be developed based on the particular circumstances. The most accurate way of apportioning the electricity supplied to the utility power distribution system seems to be apportionment based on the amount of electricity produced by each unit during the relevant period of time.

(4) Proposed Low-emitter Exclusion. In the January 30, 2004 NPR, EPA took comment on the possibility of excluding from the Phase II cap units with low Hg emissions rates (*e.g.,* emitting less than 25 pounds per year (lb/yr)). In the final rule, EPA is not finalizing a low-emitter exclusion. In proposing the possible low-emitter exclusion, EPA was concerned about the final rule's impact on small business entities. EPA also indicated concern about units with low Hg emissions rate because the new, Hg-specific control technologies that we expect to be developed prior to the Phase II cap deadline may not practicably apply to such units. The 1999 ICR data indicated that the 396 smallest emitting coal-fired units account for less than 5 percent of total Hg emissions. EPA also indicated in the proposal that there is reason to believe that the 15 ton Phase II cap can be achieved in a cost-effective manner, even if the lowest emitting 396 units are excluded from coverage under this cap.

Several commenters supported the provision excluding low-emitting units from the cap-and-trade program, while other commenters expressed opposition to the provision. Several commenters further suggested that, if the Agency excludes these units in a cap-and-trade program, the overall Hg emissions cap should not be reduced by the amounts that these sources emit (*i.e.,* the 2018 cap should remain 15 tons even if these sources are excluded from the program). Some commenters supported other options for the exclusion, including an exclusion that started in Phase I, an exclusion based on 50 lb/yr, and an exclusion based on 100 to 140 MWe size cut-off.

As stated earlier, the low-emitter exclusion was proposed to address small business entities. Small business entities, however, are not necessarily small emission emitters. Of the 396 units with estimated Hg emissions under 25 lb in 1999, most (about 95 percent) are not owned by small entities and a significant amount (about 10 percent) are large-capacity units (*i.e.*, greater than 250 MWe). In addition, removing low-emitters from the trading program could increase costs, because a significant amount of the 396 units are large-capacity units that might be expected to be net sellers of allowances because they are already achieving emissions reductions. Therefore, EPA maintains that the low-emitter exclusion may not be the best way to address small entity burden. For the final rule, EPA is not finalizing a low-emitter exclusion and EPA recommends States address small entities through the allocation process. For example, States could provide a minimum Phase II allocation for small entities (*e.g.*, allocation based on projected 2010 unit emissions). EPA also maintains that the cap-and-trade program and the 25 MWe size cut-off minimizes the burden for small business entities by ensuring that compliance is met in a least-cost fashion.

4. How Are Emission Allowances Allocated to Sources?

It is important to ensure that: The integrity of the cap-and-trade approach is preserved so that the required emissions reductions are achieved; the compliance and administrative costs are minimized; and source owners and operators are equitably treated. Accordingly, EPA believes that some limited differences, such as allowance allocation methodologies are possible without jeopardizing the environmental and other goals of the cap-and-trade program.

a. Allocation of Hg Allowances. Each State participating in the EPA-administered cap-and-trade programs must develop a method for allocating (*i.e.*, distributing) an amount of allowances authorizing the emissions tonnage of the State's CAMR budget. Each State has the flexibility to allocate its allowances however they choose, so long as certain timing requirements are met.

b. Required Aspects of a State Hg Allocation Approach. Although it is EPA's intent to provide States with as much flexibility as possible in developing allocation approach, there are some aspects of State allocations that must be consistent for all States. All State allocation systems are required to include specific provisions that establish when States notify EPA and sources of the unit-by-unit allocations. These provisions establish a deadline for each State to submit to EPA its unit-by-unit allocations for processing into the electronic allowance tracking system. Because the Administrator will then expeditiously record the submitted allowance allocations, sources will thereby be notified of, and have access to, allocations with a minimum lead time (about 3 years) before the allowances can be used to meet the Hg emission limit.

The final rule finalizes the proposal to require States to submit unit-by-unit allocations of allowances for existing units for a given year no less than 3 years prior to the allowance vintage year; this approach was supported by commenters. Requiring States to submit allocations and thereby provide a minimum lead time before the allowances can be used to meet the Hg emission limit ensures that an affected source, regardless of the State in which the unit is located, will have sufficient time to plan for compliance and implement their compliance planning. Allocating allowances less than 3 years in advance of the compliance year may reduce a CAMR unit's ability to plan for and implement compliance and, consequently, increase compliance costs. For example, shorter lead time will reduce the period for buying or selling allowances and could prevent sources from participating in allowance futures markets, a mechanism for hedging risk and lowering costs.

Further, requiring a uniform, minimum lead-time for submission of allocations allows EPA to perform its allocation-recordation activities in a coordinated and efficient manner in order to complete expeditiously the recordation and thereby promote a fair and competitive allowance market across the region.

c. Flexibility and Options for a State Hg Allowance Allocations Approach. Allowance allocation decisions in a cap-and-trade program raise essentially distributional issues, as economic forces are expected to result in economically least-cost and environmentally similar outcomes regardless of the manner in which allowances are initially distributed. Consequently, States are given latitude in developing their Hg allocation approach. Hg allocation methodology elements for which States will have flexibility include:

- The cost of the allowance distribution (*e.g.*, free distribution or auction);
- The frequency of allocations (*e.g.*, permanent or periodically updated);
- The basis for distributing the allowances (*e.g.*, heat-input or power output); and,
- The use of allowance set-asides and their size, if used (*e.g.*, new unit set-asides or set asides for energy efficiency, for development of IGCC generation, for renewables, or for small units).

Some commenters have argued against giving States flexibility in determining allocations, citing concerns about complexity of operating in different markets and about the robustness of the trading system. EPA maintains that offering such flexibility, as it did in the NO_X SIP call, does not compromise the effectiveness of the trading program while maintaining the principle of federalism.

A number of commenters have argued against allowing (or requiring) the use of allowance auctions, while others did not believe that EPA should recommend auctions. For the final rule, although there are some clear potential benefits to using auctions for allocating allowances (as noted in the SNPR), EPA believes that the decision regarding utilizing auctions rightly belongs to the States and Tribes. EPA is not requiring, restricting, or barring State use of auctions for allocating allowances.

A number of commenters supported allowing the use of allowance set-asides for various purposes. In the final rule, EPA is leaving the decision on using set-asides up to the States, so that States may craft their allocation approach to meet their State-specific policy goals.

d. Example Allowance Hg Allocation Methodology. In the SNPR, EPA included an example (offered for informational guidance) of an allocation methodology that includes allowances for new generation and is administratively straightforward. EPA is including in today's preamble, this ''modified output'' example allocations approach, as was outlined in the SNPR.

EPA maintains that the choice of allocation methodology does not affect the achievement of the specific environmental goals of the CAMR program. This methodology is offered simply as an example, and individual States retain full latitude to make their own choices regarding what type of allocation method to adopt for Hg allowances and are not bound in any way to adopt the EPA's example.

This example method involves input-based allocations for existing coal units (with different ratios based on coal type), with updating to take into account new generation on a modified-output basis. It also utilizes a new source set-aside for new units that have not yet established baseline data to be used for updating. Providing allowances for new sources would address a number of commenter concerns about the negative effect of new units not having access to allowances.

As discussed in the methodology for determining State budgets, many comments were received on the use of coal adjustment factors for the allocation process. In the NPR and SNPR, EPA proposed that if States want to have allocations reflect the difficulty of controlling Hg, they might consider multiplying the baseline heat input data by ratios based on coal type, similar to the methodology used to establish the State Hg budgets in the final rule. In the final rule for the purposes of establishing State budgets, EPA is using the coal adjustment factors of 1.0 for bituminous coals, 1.25 for subbituminous coals and 3.0 for lignite coals. In this example allocation methodology for States, EPA is also using these adjustment factors.

Under the example method, allocations are made from the State's Hg budget for the first five control periods (2010 through 2014) of the model cap-and-trade program for existing sources on the basis of historic baseline heat input. EPA proposed January 1, 2001 as the cut-off on-line date for considering units as existing units. The cut-off on-line date was selected so that any unit

meeting the cut-off date would have at least 5 years of operating data, *i.e.*, data for 2000 through 2004. EPA is concerned with ensuring that particular units are not disadvantaged in their allocations by having insufficient operating data on which to base the allocations. EPA believes that a 5-year window, starting from commencement of operation, gives units adequate time to collect sufficient data to provide a fair assessment of their operations. Annual operating data is now available for 2003. EPA is finalizing January 1, 2001 as the cut-off on-line date for considering units as existing units because units meeting the cut-off date will have at least 5 years of operating data (*i.e.*, data for 2000 through 2004).

The allowances for 2015 and later will be allocated from the State's Hg budget annually, 6 years in advance, taking into account output data from new units with established baselines (modified by the heat input conversion factor to yield heat input numbers). As new units enter into service and establish a baseline, they are allocated allowances in proportion to their share of the total calculated heat input (which is existing unit heat input plus new units' modified output). Allowances allocated to existing units slowly decline as their share of total calculated heat input decreases with the entry of new units. After 5 years of operation, a new unit will have an adequate operating baseline of output data to be incorporated into the calculations for allocations to all affected units. The average of the highest 3 years from these 5 years will be multiplied by the heat-input conversion factor to calculate the heat input value that will be used to determine the new unit's allocation from the pool of allowances for all sources.

Under the EPA example method, existing units as a group will not update their heat input. This will eliminate the potential for a generation subsidy (and efficiency loss) as well as any potential incentive for less efficient existing units to generate more. This methodology will also be easier to implement because it will not require the updating of existing units' baseline data. Retired units will continue to receive allowances indefinitely, thereby creating an incentive to retire less efficient units instead of continuing to operate them in order to maintain the allowance allocations.

Moreover, new units as a group will only update their heat input numbers once—for the initial 5-year baseline period after they start operating. This will reduce any potential generation subsidy and be easier to implement, because it will not require the collection and processing of data needed for regular updating.

The EPA believes that allocating to existing units based on a baseline of historic heat input data (rather than output data) is desirable, because accurate protocols currently exist for monitoring this data and reporting it to EPA, and several years of certified data are available for most of the affected sources. EPA expects that any problems with standardizing and collecting output data, to the extent that they exist, can be resolved in time for their use for new unit calculations. Given that units keep track of electricity output for commercial purposes, this is not likely to be a significant problem.

In its example, EPA is allocating to existing units by heat input and including adjustments by coal type (1.0 for bituminous coals, 1.25 for subbituminous coals, and 3.0 for lignite coals). However, EPA is not finalizing adjustments by coal type with the modified output approach, because we do not want to favor any particular new coal generation. Allocating to new (not existing) sources on the basis of input would serve to subsidize less-efficient new generation. For a given amount of generation, more efficient units will have the lower fuel input or heat input. Allocating to new units based on heat input could encourage the building of less efficient units because they would get more allowances than an equivalent efficient, lower heat-input unit. The modified output approach, as described below, will encourage new, clean generation and will not reward less efficient new units.

Under the example method, allowances will be allocated to new units with an appropriate baseline on a ''modified output'' basis. The new unit's modified output will be calculated by multiplying its gross output by a heat rate conversion factor of 7,900 Btu per kilowatt-hour (Btu/kWh). The 7,900 Btu/kWh value for the conversion factor is an average of heat-rates for new pulverized coal plants and new IGCC coal plants (based upon assumptions in EIA's Annual Energy Outlook (AEO) 2004. See Energy Information Administration, ''Annual Energy Outlook 2004, with Projections to 2025,'' January 2004. Assumptions for DOE's National Energy Modeling System (NEMS) model can be found at *http://www.eia.doe.gov/oiaf/archive/aeo04/assumption/tbl38.html*). A single conversion rate will create consistent and level incentives for efficient generation, rather than favoring new units with higher heat rates.

For new cogeneration units, their share of the allowances will be calculated by converting the available thermal output (Btu) of useable steam from a boiler or useable heat from a heat exchanger to an equivalent heat input by dividing the total thermal output (Btu) by a general boiler/heat exchanger efficiency of 80 percent.

Steam and heat output, like electrical output, is a useable form of energy that can be utilized to power other processes. Because it would be nearly impossible to adequately define the efficiency in converting steam energy into the final product for all of the various processes, this approach focuses on the efficiency of a cogeneration unit in capturing energy in the form of steam or heat from the fuel input.

Commenters expressed concern about a single conversion factor, arguing for different factors for different coals and technologies. EPA maintains that providing each new source an equal amount of allowances per MWh of output is an equitable approach. Because electricity output is the ultimate product being produced by electric generating unit, a single conversion factor based on output ensures that all sources will be treated equally. Higher conversion factors for less efficient technologies will effectively provide greater amounts of allowances (and thus a greater subsidy) to such less efficient units for each MWh they generate. This will serve to provide greater relative incentives to build new less efficient technologies rather than efficient technology. It should also be noted that, because all allocations are proportionally reduced after a new source is integrated into the market, higher conversion factors also lower allocations to existing sources.

Today's example method includes a new source set-aside equal to 5 percent of the State's emission budget for the years 2010 to 2014 and 3 percent of the State's emission budget for the subsequent years. In the SNPR, EPA proposed a level 2 percent set-aside for all years.

Commenters supported a new source set-aside and one commenter pointed to EIA forecasts for coal to grow by 112 gigawatts (GW) by 2025. EPA economic modeling projects growth in coal by 2020. In order to estimate the need for allocations for new units, EPA considered projected growth in coal generation and the resulting Hg emissions portion of the Hg national cap. EPA believes the example new source set-aside would provide for that growth.

Individual States using a version of the example method may want to adjust

this initial 5-year set-aside amount to a number higher or lower than 5 percent to the extent that they expect to have more or less new generation going on-line during the 2001 to 2013 period. They may also want to adjust the subsequent set-aside amount to a number higher or lower than 2 percent to the extent that they expect more or less new generation going on-line after 2004. States may also want to set this percentage a little higher than the expected need, because, in the event that the amount of the set-aside exceeds the need for new unit allowances, the State may want to provide that any unused set-aside allowances will be redistributed to existing units in proportion to their existing allocations.

For the example method, EPA is assuming that new units will begin receiving allowances from the State- or Indian country-established set-aside for the control period immediately following the control period in which the new unit commences commercial operation, based on the unit's emissions for the preceding control period. For instance, a source might be required to hold allowances during its start-up year, but will not receive an allocation for that year.

States will allocate allowances from the set-aside to all new units in any given year as a group. If there are more allowances requested than in the set-aside, allowances will be distributed on a pro-rata basis. Allowance allocations for a given new unit in following years will continue to be based on the prior year's emissions until the new unit establishes a baseline, is treated as an existing unit, and is allocated allowances through the State's updating process. This will enable new units to have a good sense of the amount of allowances they will likely receive—in proportion to their emissions for the previous year. This methodology will not provide allowances to a unit in its first year of operation; however it is a methodology that is straightforward, reasonable to implement, and predictable.

Although EPA is offering an example allocation method with accompanying regulatory language, EPA reiterates that it recognizes States' flexibility in choosing their NO_X allocations method. Several commenters, for instance, have noted their desire for full output-based allocations (in contrast to the hybrid approach in the example above). In the past, the EPA had sponsored a work-group to assist States wishing to adopt output-based NO_X allocations for the NO_X SIP Call. Documents from meetings of this group and the resulting guidance report (found at *http://www.epa.gov/airmarkets/fednox/workgrp.html)* together with additional resources such as the EPA-sponsored report ''Output-Based Regulations: A Handbook for Air Regulators'' (found at *http://www.epa.gov/cleanenergy/pdf/output_rpt.pdf)* can help States, should they choose to adopt any output-based elements in their allocation plans.

As an another alternative example, States could decide to include elements of auctions into their allowance allocation programs.[6] An example of an approach where CAMR allowances could be distributed to sources through a combination of an auction and a free allocation is provided below.

During the first year of the trading program, 94 percent of the Hg allowances could, for example, be allocated to affected units with an auction held for the remaining 1 percent of the Hg allowances.[7] Each subsequent year, an additional 1 percent of the allowances (for the first 20 years of the program), and then an additional 2.5 percent thereafter, could be auctioned until eventually all the allowances are auctioned. With such a system, for the first 20 years of the trading programs, the majority of allowances could be distributed for free via the allocation. Allowances allocated for these earlier years are generally more valuable than allowances allocated for later years because of the time value of money. Thus, most emitting units could receive relatively more allowances in the early years of the program, when they would be facing the higher expenses of taking action to control their emissions.

Auctions could be designed by the State to promote an efficient distribution of allowances and a competitive market. Allowances could be offered for sale before or during the year for which such allowances may be used to meet the requirement to hold allowances. States will decide on the frequency and timing of auctions. Each auction could be open to any person, who could submit bids according to auction procedures, a bidding schedule, a bidding means, and by fulfilling requirements for financial guarantees as specified by the State. Winning bids, and required payments, for allowances could be determined in accordance with the State program and ownership of allowances will be recorded in the EPA Allowance Tracking System after the required payment is received.

The auction could be a multiple-round auction. Interested bidders could submit before the auction, one or more initial bids to purchase a specified quantity of Hg allowances at a reserve price specified by the State, specifying the appropriate account in the Allowance Tracking System in which such allowances will be recorded. Each bid could be guaranteed by a certified check, a funds transfer, or, in a form acceptable to the State, a letter of credit for such quantity multiplied by the reserve price. For each round of the auction, the State would announce current round reserve prices for Hg and determine whether the sum of the acceptable bids exceeds the quantity of such allowances available for auction. If the sum of the acceptable bids for Hg allowances exceeds the quantity of such allowances the State would increase the reserve price for the next round. After the auction, the State will publish the names of winning and losing bidders, their quantities awarded, and the final prices. The State will return payment to unsuccessful bidders and add any unsold allowances to the next relevant auction.

In summary, the final rule provides, for States participating in the EPA-administered CAMR cap-and-trade program, the flexibility to determine their own methods for allocating Hg allowances to their sources. Specifically, such States will have flexibility concerning the cost of the allowance distribution, the frequency of allocations, the basis for distributing the allowances, and the use and size of allowance set-asides.

5. What Mechanisms Affect the Trading of Emission Allowances?

a. Banking. (1) The CAMR NPR and SNPR Proposal for the Model Rule and Input from Commenters. Banking is the retention of unused allowances from one calendar year for use in a later calendar year. Banking allows sources to make reductions beyond required levels and ''bank'' the unused allowances for use later. Generally, banking has several advantages: (a) Banking results in early reductions as companies over-control their emissions; it is very unlikely that significant levels of early reductions would occur without banking. (b) Banked allowances can be used at any time so, they provide flexibility for companies to respond to growth and changing marketplace conditions over time. (c) Banking can result in emissions above the cap level in the later years of the compliance period, however, because the cap is permanent banking does not result in an increase in *cumulative* emissions. This is an important trade-off for getting early reductions.

[6] Auctions could provide States with a less distortionary source of revenue.

[7] 5 percent of the allowances will go to a new source set-aside.

The January 30, 2004 NPR and March 16, 2004 SNPR proposed that the Hg cap-and-trade program allow banking after the start of the Hg trading program, and that use of banked allowances be allowed without restrictions.

Comments Regarding Unrestricted Banking After the Start of the Hg Cap-and-Trade Program. Many commenters supported EPA's proposal to allow unrestricted banking and the use of banked Hg allowances. Further, they agreed that banking with no restrictions on use will encourage early emissions reductions, stimulate the trading market, encourage efficient pollution control, and provide flexibility to affected sources in meeting environmental objectives. A few commenters opposed EPA's proposal of banking without restriction after the start of the Hg cap-and-trade program. These commmenters generally pointed out that allowing unrestricted banking delays the achievement of the Phase II cap.

(2) The Final Hg Model Rule and Banking. Banking of allowances provides flexibility to sources, encourages earlier or greater reductions than required, stimulates the market, and encourages efficiency. EPA has acknowledged that allowing unrestricted banking after the start of the program will result in the Phase II cap being achieved over a longer timeframe but it will also yield greater cumulative reductions early in the program than would be required by the program cap. Furthermore, banking does not reduce the overall reduction requirement, and will not affect cumulative Hg reductions over the full course of the program. EPA is finalizing that banking will be allowed without restriction after the start of the Hg cap-and-trade program.

b. Hg Safety Valve Mechanism. (1) The CAMR NPR and SNPR Proposal for the Safety Valve and Input from Commenters. In the January 30, 2004 NPR and March 16, 2004 SNPR, EPA proposed a safety valve provision that set the maximum cost purchasers must pay for Hg emissions allowances. This provision was intended to address some of the uncertainty associated with the cost of Hg control.

Under the safety valve mechanism, the price of allowances is effectively (although not legally) capped. Sources may purchase allowances from subsequent year budgets at the safety-valve price at any time. However, it is unlikely they would do so unless the market allowance price exceeded the safety valve price. The purpose of this provision is to minimize unanticipated market volatility and provide more market information that industry can rely upon for compliance decisions. The safety valve mechanism ensures the cost of control does not exceed a certain level, but also ensures that emissions reductions are achieved. The future year cap is reduced by the borrowed amount, ensuring the integrity of the caps.

EPA proposed a price of $2,187.50 for a Hg allowance (covering one ounce) and that this price would be annually adjusted for inflation. EPA also proposed that the permitting authority deduct corresponding allowances from future allowance budgets. EPA noted that the safety valve mechanism would need to be incorporated into a State's chosen allocations methodology to ensure the availability of un-distributed allowances from which purchasers could borrow. Making allowances available through the safety valve without taking them away from future budgets would undermine the integrity of the cap.

Comments regarding the need for safety valve. Many commenters supported the inclusion of a safety valve to reduce market uncertainty and guarantee a maximum price at which emissions allowances can be purchased. These commenters generally cited uncertainty pertaining to technology availability and cost as the reason for their support. Other commenters suggested that the safety valve provision should be eliminated. Some of these commenters noted that EPA's cost analysis of the cap-and-trade program was projecting that a safety valve price of $2,187.50/ounce would be triggered, delaying achievement of the cap. Other commenters noted that the safety valve provision could contribute to Hg ''hot spots,'' and that the provision is counter to market-based approach.

(2) The Final Hg Model Rule and the Safety Valve. EPA will not include a Hg safety valve mechanism in the final rule. EPA maintains that the safety valve mechanism is not necessary to address market volatility associated with Hg reduction requirements under CAMR.

EPA maintains that the design of the CAMR trading program, a two-phased approach of 38 tpy in 2010 and 15 tpy in 2018, reduces the likelihood of extreme market volatility that the safety valve was intended to mitigate. The program includes a cap in the first phase based on the Hg co-benefit reductions expected under the CAIR program for SO_2 and NO_X. In addition, the program provides lead time for compliance for each phase and allows banking of allowances in the first phase, which provides flexibility in achieving emissions reductions under the second phase. EPA experience with the Acid Rain program and the NO_X Budget Program indicates that market volatility has not been a significant factor in these trading programs, and that it has been greater during the early years of the programs. EPA believes that setting the Phase I Hg cap at CAIR co-benefits should limit market volatility caused by uncertainty early in the program.

EPA also maintains that the timelines and caps of the CAMR trading program achieve emissions reductions without unacceptable costs. The Phase I cap of the program is based on co-benefit reduction expected under the CAIR program, and the Phase II cap represents a level of reductions that EPA has determined can be achieved without very high marginal costs, especially given recent advancements in the area of Hg control technology. EPA's economic modeling of the CAMR program (see chapter 8 of the RIA) projects that in the first phase of the program, the marginal cost of control remains under $35,000 per lb (the proposed safety valve price). Although in the second phase of the CAMR program, economic modeling projects marginal costs above this level, the modeling assumes no improvements in the cost of Hg control technology over time. Given that this is the first time Hg from coal-fired utilities is being addressed by Federal regulation, and given the current level of research and demonstration of Hg control technologies, control cost are expected to improve over time. Because of the uncertainty around Hg control technologies like ACI, EPA has conservatively included no cost improvement in its basic modeling assumptions. Given the development in advanced sorbents for ACI, EPA examined the impact of Hg technology improvements by providing a lower cost Hg control option in future years. That modeling projected Hg marginal costs below $35,000/lb.

6. What Are the Source-Level Emissions Monitoring and Reporting Requirements?

The final rule adds subpart I to 40 CFR part 75. Subpart I specifies the basic emission monitoring requirements necessary to administer a Hg trading program for new and existing Utility Units. The final rule also revises the regulatory language at several places in 40 CFR parts 72 and 75, to include specific Hg monitoring definitions and provisions, in support of 40 CFR part 75, subpart I. Affected units will be required to comply with these Hg monitoring provisions, if and when 40 CFR part 75, subpart I is adopted by State or Tribal agencies as part of a Hg

cap-and-trade program. The changes to 40 CFR part 75 are discussed in greater detail elsewhere in this action.

Monitoring and reporting of an affected source's emissions are integral parts of any cap-and-trade program. Consistent and accurate measurement of emissions ensures that each allowance actually represents one ounce of emissions and that one ounce of reported emissions from one source is equivalent to one ounce of reported emissions from another source. This establishes the integrity of each allowance and instills confidence in the market mechanisms that are designed to provide sources with flexibility in achieving compliance. Those flexibilities result in substantial cost savings to the industry.

Given the variability in the unit type, manner of operation, and fuel mix among coal-fired Utility Units, EPA believes that emissions must be monitored continuously in order to ensure the precision, reliability, accuracy, and timeliness of emissions data that support the cap-and-trade program. The final rule allows two methodologies for continuously monitoring Hg emissions: (1) Hg CEMS; and (2) sorbent trap monitoring systems. Based on preliminary evaluations, EPA believes it is reasonable to expect that both technologies will be well-developed by the time a Hg emissions trading program is implemented.

In the SNPR, EPA solicited comment on two alternative approaches for the continuous monitoring of Hg emissions. In the first alternative, most sources would be required to use CEMS, with low-emitting sources having Hg mass emissions at or below a specified threshold value being allowed to use sorbent trap monitoring systems. In the second proposed alternative, all sources would be allowed to use either CEMS or sorbent trap monitoring systems. However, the sorbent trap systems would be subject to QA procedures comparable to those required for a CEMS, and the QA procedures would be more stringent for units with Hg mass emissions above a specified threshold value. The final rule adopts a modification of the second proposed alternative. Sorbent trap monitoring systems may be used ''across the board,'' provided that rigorous QA procedures are implemented. These QA requirements, which are found in 40 CFR 75.15 and in 40 CFR part 75, appendices B and K, are based on input from commenters and from EPA's own research. The proposed rule would have required quarterly relative accuracy audits for many of the sorbent trap systems. The final rule replaces this proposed requirement with alternative procedures that are more suitable for sorbent trap systems.

For affected sources with Hg emissions at or below a specified threshold value, 40 CFR 75.81(b) of the final rule provides additional regulatory flexibility by allowing default Hg concentrations obtained from periodic Hg emission testing to be used to quantify Hg mass emissions, instead of continuously monitoring the Hg concentration. The use of this low mass emitter option is restricted to sources that emit no more than 29 lb (464 ounce) of Hg per year. The rationale for this threshold is given elsewhere in this action.

The amendments to 40 CFR part 75 set forth the specific monitoring and reporting requirements for Hg mass emissions and include the additional provisions necessary for a cap-and-trade program. The provisions of 40 CFR part 75 are used in both the Acid Rain and the NO_X Budget Trading programs, and most sources affected by the final rule are already meeting the requirements of 40 CFR part 75 for one or both of those programs.

The final rule requires the measurement of total vapor phase Hg, but does not require separate monitoring of speciated Hg emissions (*i.e.,* elemental and ionized Hg). As stated elsewhere in this action, EPA does not believe that utility-attributable hot spots will be an issue after implementation of CAIR and CAMR. Nevertheless, we are committed to monitoring closely the effects of utility emissions. We commit to, and retain authority to, address the situation appropriately. As part of this commitment, the Agency believes that it is important to understand and monitor the speciation profile of Hg emissions. However, the Agency does not believe that speciating Hg monitors are appropriate at this time. For this reason, the Agency considers separate monitoring of these emissions as a need to be addressed. However, at least two current monitoring technologies can accurately monitor speciated Hg emissions. The Agency will continue to test speciated Hg monitoring technologies. If these technologies are adequately demonstrated, the Agency may consider a proposed rulemaking to reflect changes in the monitoring requirements within 4 to 5 years after program implementation, which should provide enough lead time for development and installation of these monitoring systems.

In order to ensure program integrity, the model trading rule requires States to include year-round 40 CFR part 75 monitoring and reporting for Hg for all sources. Deadlines for monitor certification and other details are specified in the model rule. EPA believes that if these provisions are implemented, emissions will be accurately and consistently monitored and reported from unit-to-unit and from State-to-State.

As is required for the Acid Rain program and the NO_X Budget Trading program, Hg emissions data will be provided to EPA on a quarterly basis in a format specified by the Agency and submitted to EPA electronically using EPA provided software. We found this centralized reporting requirement necessary to ensure consistent review, checking, and posting of the emissions and monitoring data from all affected sources, which contributes to the integrity and efficiency of the trading program.

Finally, consistent with the current requirements in 40 CFR part 75 for the Acid Rain and the NO_X SIP Call programs, the final rule allows sources, under 40 CFR 60.4175 of 40 CFR part 60, subpart HHHH, and under 40 CFR 75.80(h) of 40 CFR part 75, subpart I, to petition for an alternative to any of the specified monitoring requirements in the final rule. This provision also provides sources with the flexibility to petition to use an alternative monitoring system under 40 CFR part 75, subpart E as long as the requirements of 40 CFR 75.66 are met.

7. Are There Additional Changes to the Proposed Model Cap-and-Trade Rule Reflected in the Regulatory Language?

The final rule includes some minor changes to the model rule's regulatory text that improve the implementability of the rules or clarify aspects of the rules identified by EPA or commenters. (Note that elsewhere in this action are highlighted the more significant modifications included in the final model rules.)

These include:

- The definition of ''nameplate capacity'' is clarified;
- The language on closing of general accounts is clarified;

Another example of where today's final model trading rules incorporate relatively minor changes from the proposed model trading rules involves the provisions in the standard requirements concerning liability under the trading programs. The proposed Hg model trading rule includes, under the standard requirements in the 40 CFR 60.4154(d)(3) provision stating that any person who knowingly violates the Hg trading programs or knowingly makes a false material statement under the trading programs will be subject to

enforcement action under applicable State or Federal law. The final Hg model trading rule excludes this provision for the following reasons. First, the proposed rule provision is unnecessary because, even in its absence, applicable State or Federal law authorizes enforcement actions and penalties in the case of knowing violations or knowing submission of false statements. Moreover, the proposed rule provision is incomplete. It does not purport to cover, and has no impact on, liability for violations that are not knowingly committed or false submissions that are not knowingly made. Applicable State and Federal law already authorizes enforcement actions and penalties, under appropriate circumstances, for non-knowing violations or false submissions. Because the proposed rule provision is unnecessary and incomplete, the final model Hg trading rule does not include this provision. However, EPA emphasizes that, on its face, the provision that was proposed, but eliminated in the final rule, in no way limits liability, or the ability of the State or EPA to take enforcement action, to only knowing violations or knowing false submissions.

F. Standard of Performance Requirements

1. Introduction

As proposed in the NPR and SNPR, and finalized today, under CAA section 111, each State is required to submit a State Plan demonstrating that each State will meet the assigned Statewide Hg emission budget. Each State Plan should include fully-adopted State rules for the Hg reduction strategy with compliance dates providing for controls by 2010 and 2018.

The purpose of this section is to identify criteria for determining approvability of a State submittal in response to the performance standard requirements. This section also describes the actions the Agency intends to take if a State fails to submit a satisfactory plan. In addition, this section sets forth the criteria for States to receive approvability of trading rule within a State Plan.

2. Performance Standard Approvability Criteria

As discussed in the NPR and SNPR, CAA sections 111(a) and (d)(1) authorize EPA to promulgate a ''standard of performance'' that States must apply to existing sources through a State plan. As also discussed in the NPR and elsewhere in the final rule, EPA is interpreting the term ''standard of performance,'' as applied to existing sources, to include a cap-and-trade program.

The State budgets are not an independently enforceable requirement. Rather, each State must impose control requirements that the State demonstrates will limit Statewide emissions from affected new and existing sources to the amount of the budget. Consistent with CAIR, EPA is finalizing that States may meet their Statewide emission budget by allowing their sources to participate in a national cap-and-trade program. That is, a State may authorize its affected sources to buy and sell allowances out of State, so that any difference between the State's budget and the total amount of Statewide emissions will be offset in another State (or States). Regardless of State participation in the national cap-and-trade program, EPA believes that the best way to assure this emission limitation is for the State to assign to each affected source, new and existing, an amount of allowances that sum to the State budget. Therefore, EPA is finalizing that all regulatory requirements be in the form of a maximum level of emissions (*i.e.*, a cap) for the sources.

As proposed in the SNPR, EPA is finalizing that each State must submit a demonstration that it will meet its assigned Statewide emission budget, but that regardless of whether the State participates in a trading program, the State may allocate its allowances by its own methodology rather than following the method used by EPA to derive the state emissions budgets. This alternative approach is consistent with the approach in the CAIR.

Moreover, States remain authorized to require emissions reductions beyond those required by the State budget, and nothing in the final rule will preclude the States from requiring such stricter controls and still being eligible to participate in the Hg Budget Trading Program.

In addition, as proposed in the SNPR, EPA finalizes today that sources will be required to comply with the 40 CFR part 75 requirements. EPA believes that compliance with these requirements are necessary to demonstrate compliance with a mass emissions limit.

If a State fails to submit a State plan as proposed to be required in the final rule, EPA will prescribe a Federal plan for that State, under CAA section 111(d)(2)(A). EPA proposes today's model rule as that Federal plan.

3. Approvability of Trading Rule Within a State Plan

a. Necessary Common Components of Trading Rule. As discussed in the SNPR and for the final rule, EPA intends to approve the portion of any State's plan submission that adopts the model rule, provided: (1) The State has the legal authority to adopt the model rule and implement its responsibilities under the model rule, and (2) the State Plan submission accurately reflects the Hg reductions to be expected from the State's adoption of the model rule. Provided a State meets these two criteria, then EPA intends to approve the model rule portion of the State's plan submission.

State adoption of the model rule will ensure consistency in certain key operational elements of the program among participating States, while allowing each State flexibility in other important program elements. Uniformity of the key operational elements is necessary to ensure a viable and efficient trading program with low transaction costs and minimum administrative costs for sources, States, and EPA. Consistency in areas such as allowance management, compliance, penalties, banking, emissions monitoring and reporting and accountability are essential.

The EPA's intent in issuing a model rule for the Hg Budget Trading Program is to provide States with a model program that serves as an approvable strategy for achieving the required reductions. States choosing to participate in the program will be responsible for adopting State regulations to support the Hg Budget Trading Program, and submitting those rules as part of the State Plan. There are two alternatives for a State to use in joining the Hg Budget Trading Program: Incorporate 40 CFR part 60, subpart HHHH by reference into the State's regulations or adopt State regulations that mirror 40 CFR part 60, subpart HHHH, but for the potential variations described below.

Some variations and omissions from the model rule are acceptable in a State rule. This approach provides States flexibility while still ensuring the environmental results and administrative feasibility of the program. EPA finalizes that in order for a State Plan to be approved for State participation in the Hg Budget Trading Program, the State rule should not deviate from the model rule except in the area of allowance allocation methodology. Allowances allocation methodology includes any updating system and any methodology for allocating to new units. Additionally, States may incorporate a mechanism for implementing more stringent controls at the State level within their allowance allocation methodology.

State plans incorporating a trading program that is not approved for inclusion in the Hg Budget Trading Program may still be acceptable for purposes of achieving some or all of a State's obligations provided the general criteria. However, only States participating in the Hg Budget Trading Program would be included in EPA's tracking systems for Hg emissions and allowances used to administer the multi-state trading program.

In terms of allocations, States must include an allocation section in their rule, conform to the timing requirements for submission of allocations to EPA that are described in this preamble, and allocate an amount of allowances that does not exceed their State trading program budget. However, States may allocate allowances to budget sources according to whatever methodology they choose. EPA has included an optional allocation methodology but States are free to allocate as they see fit within the bounds specified above, and still receive State Plan approval for purposes of the Hg Budget Trading Program.

b. Revisions to Regulations. As proposed in the SNPR, the final rule finalizes revisions to the regulatory provisions in 40 CFR 60.21 and 60.24 to make clear that a standard of performance for existing sources under CAA section 111(d) may include an allowance program of the type described today.

G. What Are the Performance Testing and Other Compliance Provisions?

1. Summary of Major Comments and Responses

a. Use of Sorbent Trap Monitoring Systems. EPA proposed two alternatives for the use of sorbent trap monitoring systems. Alternative #1 would allow the use of sorbent trap systems for a subset of the affected units. The use of sorbent traps would be limited to low-emitting units, having estimated 3-year average Hg emissions of 144 ounce (9 lb) or less, for the same 3 calendar years used to allocate the Hg allowances. The threshold value of 9 lb/yr year was based on 1999 data gathered by EPA under an ICR that appeared in the **Federal Register** on April 9, 1998. Based solely on the 1999 ICR data, 228 of the 1,120 coal-fired Utility Units in the database (*i.e.*, 20 percent of the units), representing 1 percent of the 48 tons of estimated nationwide emissions, would qualify to use sorbent trap monitoring systems. EPA also took comment on three other threshold values, *i.e.*, 29 lb/yr, 46 lb/yr, and 76 lb/yr, representing, respectively, 435, 565, and 724 of the 1,120 units in the database.

Alternative #2 would allow any source to use either CEMS or sorbent traps. For sources with annual Hg emissions below a specified threshold value (we took comment on four values, *i.e.*, 9 lb/yr, 29 lb/yr, 46 lb/yr, or 76 lb/yr), the QA requirements for sorbent trap monitoring systems would consist of the procedures in proposed Method 324 of 40 CFR part 63 plus an annual RATA. For sources with annual Hg emissions above the specified threshold, quarterly relative accuracy (RA) testing (*i.e.*, a full 9-run RATA once a year and 3-run RAs in the other three quarters of the year) would be required in addition to the proposed Method 324 procedures.

EPA also requested comment on the appropriateness of proposed QA procedures for sorbent trap monitoring systems. Numerous commenters expressed concern that EPA's proposal was unfairly and unjustifiably biased against the sorbent trap method. The commenters did not support Alternative #1, because it restricts the use of sorbent traps to low emitting units. Commenters were generally more receptive to Alternative #2, except for the proposed QA/QC procedures for sorbent trap systems (most notably the quarterly RA testing), which they found to be inappropriate, overly burdensome, costly, and time-consuming. Several commenters stated that EPA has no justification for restricting the use of the sorbent trap method because it has been shown during EPA-sponsored Hg monitoring demonstrations that the method can achieve accuracies comparable, and in some cases better than those achieved by Hg CEMS. Other commenters recommended that the type of QA/QC procedures prescribed for sorbent trap systems should be more specific to the sorbent trap technology and should be more clearly defined. Finally, a number of commenters objected to the proposal to report the higher of the two Hg concentrations from the paired sorbent traps, and recommended that the results be averaged instead.

The final rule adopts under 40 CFR 75.81(a) a modified version of Alternative #2, which allows the use of sorbent trap systems for any affected unit, provided that rigorous, application-specific QA procedures are implemented. The operational and QA/QC procedures for sorbent trap systems are found in 40 CFR 75.15 and in 40 CFR part 75, appendices B and K of the final rule. EPA also has incorporated the recommendation of the commenters to use the average of the Hg concentrations measured by the paired sorbent traps. And in cases where one of the traps is accidentally lost, damaged, or broken, the owner or operator would be permitted to report the results of the analysis of the other trap, if valid.

Recent field test data from several different test sites indicate that sorbent trap systems can be as accurate as Hg CEMS. Recent field tests have answered questions regarding which substances in the flue gas can interfere with accurate vapor phase Hg monitoring by sorbent traps. Sorbent trap technology also has evolved, with the addition of a third segment that enables the individual traps to be subject to enhanced QA procedures. And the Agency has been working with industry and equipment manufacturer representatives to develop new QA procedures that are more relevant to the operation of a sorbent trap system. These improved QA procedures are included in the final rule. In view of this, EPA believes that it is appropriate to extend the use of sorbent trap systems to all affected units.

EPA notes that although the restrictions on the use of sorbent traps have been removed, there are some inherent risks associated with the use of this monitoring approach. For instance, because sorbent traps may contain several days of accumulated Hg mass, the potential exists for long missing data periods, if the traps should be broken, compromised, or lost during transit or analysis, or if they fail to meet the QC criteria. Also, when a RATA of a sorbent trap system is performed, the results of the test cannot be known until the contents of the traps have been analyzed. If the results of the analysis are unsatisfactory, the RATA may have to be repeated. This also may result in a long missing data period. However, EPA believes that these undesirable outcomes can be minimized by following the proper handling, chain of custody, and laboratory certification procedures in the final rule. The use of redundant backup monitoring systems can also help to reduce the amount of missing data substitution.

2. Compliance Flexibility for Low Emitters

The SNPR did not contain any special monitoring provisions for units with low mass emissions (LME). All affected units would be required to continuously monitor the Hg concentration, using either CEMS or sorbent trap monitoring systems.

Numerous commenters requested that EPA provide a less rigorous, cost-effective monitoring option for low emitting units. Affected units could meet a low emitter criterion based on a

combination of unit size, operating time, and/or control device operation. Any marginal decrease in accuracy from less rigorous monitoring would have a minimal impact overall, because these units represent only a small percentage of the nationwide Hg mass emissions.

Consistent with the LME provisions in 40 CFR 75.19 for SO_2 and NO_X, 40 CFR 75.81(b) through (g) of the final rule provide a less rigorous monitoring option for low Hg emitters. These provisions allow sources with estimated annual emissions of 29 lb/yr (464 ounce/yr) or less, representing about 5 percent of the nationwide Hg mass emissions, to use periodic emission testing to quantify their Hg emissions, rather than continuously monitoring the Hg concentration. For units with Hg emissions of 9 lb/yr (144 ounce/yr) or less, annual emission testing is required. For units with Hg emissions greater than 144 ounce/yr but less than or equal to 464 ounce/yr, semiannual testing is required. For reporting purposes, the owner or operator is required to use either the highest Hg concentration from the most recent emission testing or 0.50 micrograms per standard cubic meter (µg/scm), whichever is greater. If, at the end of a particular calendar year, the reported annual Hg mass emissions for a unit exceed 464 ounce, the unit is disqualified as a low mass emitter and the owner or operator must install and certify a Hg CEMS or sorbent trap monitoring system within 180 days of the end of that year. The final rule also contains special low mass emitter provisions for common stack and multiple stack exhaust configurations.

The Agency believes that a low mass emitter provision can be beneficial to both EPA and industry. It is cost-effective for industry, in that it allows periodic stack testing to be used to estimate Hg emissions instead of requiring CEMS. In the context of a cap-and-trade program, a low emitter provision can provide environmental benefit, because it requires conservatively high default emission factors to be used for reporting, as explained in the paragraphs below. Also, allowing a subset of the affected units to use less rigorous monitoring reduces the administrative burden of program implementation, allowing EPA to focus its attention on the higher-emitting sources.

Selecting an appropriate low emitter cutoff point is of critical importance. On the one hand, if the cutoff point is too low (*i.e.*, too exclusive) this would not be cost-effective for the regulated sources and would greatly increase the burden on the regulatory agencies to implement and maintain the program. On the other hand, if the cutoff point is too high (*i.e.*, too inclusive), this would create inequities in the trading market.

Over the years, EPA has used a *de minimis* concept to either exempt low-emitting sources from monitoring or to allow these sources to use less rigorous, lower cost techniques to monitor emissions instead of installing CEMS:

- In the preamble of the 1993 Acid Rain Program final rule (see 58 FR 3593, January 11, 1993), EPA's Acid Rain Division (now the Clean Air Markets Division, CAMD) first used the *de minimis* concept to exempt certain new Utility Units from the Acid Rain Program (*i.e.*, units ≤ 25 MW that burn only fuels with a sulfur content ≤ 0.05 percent by weight);
- EPA also allows gas-fired and oil-fired peaking units to use the less costly methodology in 40 CFR part 75, appendix E to estimate NO_X emissions instead of using CEMS, because the Agency's analyses indicated that projected NO_X emissions from these units represent less than 1 percent of the total NO_X emissions from Acid Rain Program units.
- In 1998, EPA promulgated LME provisions in 40 CFR 75.19 for SO_2 and NO_X (see 63 FR 57484, October 27, 1998). These provisions require the use of conservatively high default emission rates to quantify SO_2 and NO_X emissions. EPA determined the appropriate SO_2 and NO_X mass emissions thresholds or ''cutoff points'' for unit to qualify as a low mass emissions methodology, considering inventory and regulatory changes that had taken place since the original 1993 Acid Rain rulemaking. The selected threshold values were based on a *de minimis* concept, *i.e.*, the SO_2 and NO_X emissions from the units that could potentially qualify to use the LME methodology represented less than or equal to 1 percent of the emissions from all affected units.

In 1999, EPA obtained Hg mass emissions estimates for the 1,120 utility units affected by the SNPR, as the result of an ICR that appeared in the **Federal Register** on April 9, 1998. These data show that if a low Hg mass emission threshold of 9 lb/yr were selected, 228 units, representing 1 percent of the total annual Hg emissions from coal-fired electric utility units in the U.S., could potentially qualify to use the low emitter option. However, EPA's analysis also indicated that by raising the cutoff point to 29 lb/yr, almost twice the number of units (435), representing just 5 percent of the total annual Hg emissions, could potentially qualify as low emitters. Therefore, EPA has decided to adopt the 29 lb/yr as the qualifying low mass emission threshold for Hg.

Although the 5 percent threshold represents a departure from the traditional *de minimis* value of 1 percent, the Agency believes that allowing units with Hg emissions of 29 lbs/yr or less to use the low mass emitter option is a better choice, for both economic and environmental reasons. For continuous monitoring methodologies, the annualized cost per unit will be about $89,500 for testing, maintenance, and operation. For sorbent trap methodologies, the annualized cost per unit will be about $113,000 for testing, maintenance, and operation. For a unit that emits between 9 lb/yr and 29 lb/yr of Hg, if the owner or operator elects to use the low emitter option, the final rule would require two stack tests per year (at $5,500 each), and an estimated $1,500 annual cost for technical calculation, labor, and other associated costs, for a total annual expenditure per unit of around $12,500. Therefore, for the approximately 207 units with Hg mass emissions between 9 and 29 lb/yr, the potential savings associated with the implementation of the low emitter option could be as high as: $89,500 − $12,500 = $77,000 × 207 units = $15,939,000/yr if LME is used instead of Hg CEMS. Alternatively, if LME is used instead of sorbent traps, the potential savings could be even higher: $113,000 − $12,500 = $100,500 × 207 units = $20,803,500/yr. This is achieved without losing the environmental integrity of the program or compromising the cap, because the default Hg concentration values used for reporting are conservatively high, and for units with FGD systems or add-on Hg emission controls, the rule requires the maximum potential concentration (MPC) to be reported when the controls are not operating properly.

As a further justification of the 5 percent low emitter threshold for Hg, EPA notes that there are two important differences between the Hg LME provisions in 40 CFR 75.81 and the LME provisions in 40 CFR 75.19 for SO_2 and NO_X (which are based on a 1 percent threshold). First, under 40 CFR 75.19, default emission rates are used exclusively, and there is no real-time continuous monitoring of the SO_2 or NO_X emissions. However, under 40 CFR 75.81, the stack gas volumetric flow rate, which is used in the hourly Hg mass emission calculations, is continuously monitored. Second, the LME provisions in 40 CFR 75.19 allow sources to either use generic default NO_X emission rates without performing any emission testing, or, if you test for NO_X, you are only required to determine

a new default emission rate once every 5 years. Under 40 CFR 75.81, emission testing is required initially to qualify as a low emitter, and retesting is required either semiannually or annually thereafter, depending on the annual emission level.

3. Missing Data

To address missing data from Hg CEMS, EPA proposed to add a new section to the rule, 40 CFR 75.38, which would require the same initial and standard missing data routines that are used for SO_2 monitors to be applied to Hg CEMS. That is, until 720 hours of quality-assured Hg data have been collected following initial certification, the substitute data value for any period of missing data would be the average of the Hg concentrations recorded before and after the missing data period. Thereafter, the percent monitor data availability (PMA) would be calculated hour-by-hour, and the familiar four-tiered standard missing data procedures of 40 CFR 75.33(b) would be applied. Using this approach, the substitute data values would become increasingly conservative as the PMA decreases and the length of the missing data period increases. For PMA values below 80 percent, the MPC would be reported.

For a unit equipped with an FGD system that meaningfully reduces the concentration of Hg emitted to the atmosphere, or for a unit equipped with add-on Hg emission controls, the initial and standard Hg missing data procedures would apply only when the FGD or add-on controls are documented to be operating properly, in accordance with 40 CFR 75.58(b)(3). For any hour in which the FGD or add-on controls are not operating properly, the MPC would be the required substitute data value.

Also for units equipped with FGD systems or add-on Hg emission controls, proposed 40 CFR 75.38 would allow the owner or operator to petition to use the maximum controlled Hg concentration or emission rate in the 720-hour missing data lookback (in lieu of the maximum recorded value) when the PMA is less than 90.0 percent.

EPA considered using the load-based NO_X missing data routines in 40 CFR 75.33(c) as the model for Hg, but this approach was not proposed in the absence of any data indicating that vapor phase Hg emissions are load-dependent. The Agency solicited comments on the proposed missing data approach.

EPA also proposed to add initial and standard missing data procedures for sorbent trap monitoring systems, in a new section, 40 CFR 75.39. Missing data substitution would be required whenever a gas sample is not extracted from the stack, or when the results of the Hg analyses representing a particular period of unit operation are missing or invalid.

The initial missing data procedures for sorbent trap systems would be applied from the hour of certification until 720 quality-assured hours of data have been collected. The initial missing data algorithm would require the owner or operator to average the Hg concentrations from all valid sorbent trap analyses to date, including data from the initial certification test runs, and to fill in this average concentration for each hour of the missing data period.

Once 720 quality-assured hours of Hg concentration data were collected, the owner or operator would begin reporting the PMA and would begin using the standard missing data algorithms. The standard missing data procedures for sorbent trap systems would also follow a ''tiered'' approach, based on the PMA. For example, at high PMA (greater than or equal to 95.0 percent), the substitute data value would be the average Hg concentration obtained from all valid sorbent trap analyses in the previous 12 months. At lower PMA values, the substitute data values would become increasingly conservative, until finally, if the PMA dropped below 80.0 percent, the MPC would be reported.

Similar to the proposed provision for Hg CEMS, if a unit using sorbent traps is equipped with an FGD system or add-on Hg emission controls, the initial and standard missing data procedures could only be applied for hours in which proper operation of the emission controls is documented. In the absence of such documentation, the MPC would be reported.

Several commenters stated that the proposed missing data procedures seem to be unduly harsh and appear to be unfairly biased against the use of the sorbent trap method. The commenters indicated that the missing data routines should properly consider the uncertainties associated with Hg monitoring, *i.e.*, there is a lack of evidence that high PMA is achievable with these monitoring systems. Other commenters suggested that EPA should remove the MPC provision altogether for Hg monitors and fill in all missing data periods using average concentrations until more confidence is gained in the reliability of Hg monitors.

The final rule retains the proposed missing data provisions for Hg CEMS, but slightly relaxes the PMA cut-points. In the proposed four-tiered missing data procedure the cut points separating the tiers are at 95 percent, 90 percent, and 80 percent PMA. The final rule lowers these to 90 percent, 80 percent, and 70 percent PMA, respectively for Hg concentration monitors. The final rule also retains the MPC concept, and amends the proposed missing data procedures for sorbent traps to more closely match the Hg CEMS missing data procedures.

The final rule retains the basic missing data substitution approach for Hg that was proposed. This approach has worked well in the Acid Rain and NO_X Budget Programs. The conservative nature of the missing data routines has provided a strong incentive to sources to keep their monitoring systems operating and well-maintained. However, the PMA cut points in the final rule have been loosened slightly to account for the present lack of long-term Hg monitoring experience in the U.S. The Agency will continue to collect and analyze CEMS and sorbent trap data from various field demonstration projects and will evaluate the performance of certified Hg CEMS operating on similar source categories (*e.g.*, waste combustors). If the data indicate that the PMA cut-points should be changed for Hg CEMS or sorbent traps, the Agency will initiate a rulemaking for that purpose.

The suggestion to remove the MPC provisions and to fill in all missing data periods using average concentrations until EPA develops better procedures was not incorporated in the final rule for two reasons. First, when add-on emission controls that reduce Hg emissions either malfunction and are taken off-line, uncontrolled Hg emissions will result. If the Hg CEMS or sorbent trap system is out-of-control during the control device outage, an appropriate substitute data value must be used to represent uncontrolled Hg emissions and provide an incentive to fix the Hg monitoring system. The MPC concept has successfully been used in the Acid Rain and NO_X Budget Programs.

Second, EPA does not agree with the commenters that using the MPC for certain missing data periods is always unduly harsh or punitive. For the initial Hg MPC determination, the March 16, 2004 SNPR provided three options: (1) Use a coal-specific default value; or (2) perform site-specific emission testing upstream of any control device; or (3) base the MPC on 720 hours or more of historical CEMS data on uncontrolled Hg emissions. The Agency believes that these options provide adequate opportunity for affected units to develop appropriate MPC values.

Regarding the missing data routines for sorbent trap systems, available field test data have indicated that these

systems are capable of performance that is equivalent to a CEMS. In view of this, EPA believes that sorbent traps should be treated on a more equal footing with Hg CEMS in many areas, including the missing data provisions.

Finally, EPA notes that a new missing data policy has been posted on the CAMD Web site. The policy allows the four-tiered missing data algorithms to be applied hour-by-hour, in a stepwise manner, based on the PMA. Previously, the Agency's policy had been to determine the PMA at the end of the missing data period and to apply a single substitute data value (sometimes the MPC, if the ending PMA was less than 80 percent) to each hour in the missing data block. This new, more lenient interpretation of the 40 CFR part 75 missing data requirements will result in more representative missing data substitution and minimize the use of the MPC.

4. Instrumental Reference Method for Hg

Only a wet chemistry method, the Ontario Hydro Method, was proposed to perform RATAs of Hg CEMS and sorbent trap monitoring systems.

Some commenters objected to the use of the Ontario Hydro Method for RATA testing, stating that due to the complexity of wet chemical methods and their inability to produce accurate concentrations, there will be some cases where a properly functioning Hg CEMS will fail a RATA due to inaccuracies in the reference method. Other commenters noted that unlike the instrumental reference methods routinely used to QA SO_2 and NO_X CEMS, the Ontario Hydro Method can take days to complete and weeks for the return of test results from the laboratory, which could lead to significant implementation problems with respect to missing data and requirements to calculate and report data. A number of commenters stated that for applications where Hg CEMS are used, a real time instrumental reference method for RATAs is needed, and that EPA should develop such an instrumental method.

Use of an instrumental method for RATAs of Hg monitoring systems and sorbent trap systems is allowed by 40 CFR 75.22 of the final rule, subject to approval by the Administrator. EPA will propose a Hg instrumental reference method once sufficient field test data are collected and analyzed.

At present, EPA is conducting field demonstrations of Hg monitoring technology. One of the high priority items in these studies is the development of a suitable instrumental method for Hg. When the field testing is complete, EPA intends to propose and promulgate the instrumental method. A Hg instrumental reference method for RATA testing is vastly preferable to the Ontario Hydro Method and will greatly facilitate the implementation of a Hg cap-and-trade program. The Ontario Hydro Method, which is a wet chemistry method that uses numerous glass impingers, requires at least a one week turn-around to obtain results, and (as with all wet chemistry methods) is cumbersome to use and subject to operator error.

5. QA/QC Procedures for Hg CEMS

For initial certification, EPA proposed to require the following tests for Hg CEMS:

- A 7-day calibration error test, using elemental Hg calibration gas standards. The monitor would be required to meet a performance specification of 5.0 percent of span on each day of the test or (for span values of 10 μg/scm) an alternate specification of 1.0 μg/scm absolute difference between reference gas and CEMS;
- A 3-point linearity check, using elemental Hg calibration gas standards. The monitor would be required to meet a performance specification of 10.0 percent of the reference gas concentration at each gas level or an alternate specification of 1.0 μg/scm absolute difference between reference gas and CEMS;
- A cycle time test. The maximum allowable cycle time would be 15 minutes;
- A RATA, using the Ontario Hydro Method. The monitor would be required to achieve a relative accuracy of 20.0 percent. Alternatively, if the Hg concentration during the RATA is less than 5.0 μg/scm, the results would be acceptable if the mean difference between the reference method and CEMS does not exceed 1.0 μg/scm.
- A bias test, using data from the RATA, to ensure that the CEMS is not biased low with respect to the reference method.
- A 3-point converter check, using $HgCl_2$ standards. The monitor would be required to meet a performance specification of 5.0 percent of span at each gas level.

For ongoing QA/QC, we proposed the following QA/QC tests:

- Daily 2-point calibration error checks, using elemental Hg gas standards. The monitor would be required to meet a performance specification of 7.5 percent of span or an alternate specification of 1.5 μg/scm absolute difference between reference gas and CEMS;
- Quarterly 3-point linearity checks, using elemental Hg gas standards. The performance specifications would be the same as for initial certification.
- Monthly 3-point converter checks using $HgCl_2$ standards. The performance specifications would be the same as for initial certification.
- Annual RATA and bias test. The performance specifications would be the same as for initial certification.

After reviewing the proposed rule, commenters were in general agreement on the following points. Although many vendors of Hg CEMS have recently upgraded their instrument systems and these changes should eventually improve the accuracy and reliability of Hg CEMS and reduce the labor needed for instrument maintenance, these new instrument systems have not been tested extensively in demonstration programs. Therefore, the ability of these instrument systems to achieve the proposed relative accuracy, calibration error, and calibration precision requirements has not been adequately demonstrated. Therefore, EPA does not yet have a basis or data to guide the setting of specifications for calibration error, linearity, or RA. It appears that the proposed performance specifications mirror those for SO_2 and NO_X monitoring. EPA should commit to collecting data and evaluating these specifications as soon as calibration gases are available, so that the specifications can be adjusted if necessary, prior to program implementation. EPA should require operators of Hg CEMS to conduct procedures that include but are not necessarily limited to daily zero and span audits, quarterly RA tests and 3-point elemental Hg linearity tests, and absolute calibration audits. Analytically, there is clearly a need to challenge the entire system often with a form of oxidized Hg. This Hg chloride reference gas would be highly desirable to check integrity of the sample interface. However, further research needs to be required to enable the development of an accurate oxidized Hg standard. One device, the HOVACAL, may have the potential of delivering known concentrations of $HgCl_2$. EPA should recognize and accept this type of calibration system in the proposed regulation. There are concerns with the proposed RATA process, particularly the length of time and amount of money that may be required to comply with the Hg monitoring requirements on an annual basis. The final monitoring requirements must be technically achievable and capable of measuring Hg emissions with precision, reliability, and accuracy in a cost-effective manner.

The decision to report Hg concentration on dry or wet basis needs more consideration, as well as, the evaluation of gaseous interferences. Lastly, many of the equations and calculations are incomplete or contain errors and many sections need further clarification.

After considering the comments received, the Agency decided to retain in the final rule, the same tests as were required for initial certification and on-going QA of Hg CEMS in the SNPR. However, note the following changes to some of the procedures and performance specifications:

- For the 7-day calibration error test, either elemental Hg standards or a National Institute of Standards and Technology (NIST)-traceable source of oxidized Hg (referred to as ''$HgCl_2$ standards'' in the SNPR) may be used;
- Quarterly 3-level ''system integrity checks'' (which were called ''converter checks'' in the SNPR) using a NIST-traceable source of oxidized Hg may be performed in lieu of the quarterly linearity checks with elemental Hg;
- Daily calibration error checks may be performed using either elemental Hg standards or a NIST-traceable source of oxidized Hg. The daily performance specification has been made the same as for the 7-day calibration error test;
- The monthly converter check at 3 points has been replaced with a weekly system integrity check at a single point, and the weekly test is not required if daily calibrations are performed with a NIST-traceable source of oxidized Hg.
- When the Ontario Hydro Method is used, paired trains are required, the results must agree within 10 percent of the relative deviation (RD), and the results should be averaged.

Note that EPA plans to analyze RATA data from Hg monitors and may initiate a future rulemaking to adjust the RA performance specifications and to propose a performance-based RATA incentive system similar to the reduced frequency incentive system in 40 CFR part 75 for SO_2, NO_X, CO_2, and flow monitors.

EPA disagrees with the commenters who stated that there are no data available to justify the proposed performance specifications for Hg monitors. Such data have been collected from several field test sites and for several different types of Hg concentration monitors, which show that Hg CEMS can meet the proposed calibration error and linearity standards, and can meet a 20 percent RA standard. A more detailed discussion of these studies is provided in the Response to Comments document. Therefore, except for the daily calibration error specification, which has been tightened based on the available data, the final rule promulgates the proposed calibration error, linearity check, and RATA performance specifications, as proposed.

EPA has retained the requirement to check the converter periodically with $HgCl_2$ standards, because it is essential to ensure that all of the vapor phase Hg is being measured. The frequency of the check (which is referred to as a ''system integrity check'' in the final rule) has been increased from monthly to weekly, based on supportive comments to check the entire system more often, but the requirement to perform a 3-point check has been reduced to a single-point test. And the weekly test is not required if a NIST-traceable oxidized Hg source is used for daily calibrations.

There are several different devices available that can provide oxidized Hg, including the HOVACAL and the MerCAL. The HOVACAL has been successfully applied in the laboratory and field to generate and deliver known concentrations of $HgCl_2$ to Hg CEMS to achieve the requirements of the 40 CFR part 75 system integrity check. Moreover, oxidized Hg gas standards such as are produced by the HOVACAL and MerCAL are currently scheduled to be independently tested by NIST, to verify their suitability as reference gas standards.

6. Sorbent Trap Operation and QA/QC

General guidelines for operating sorbent trap systems were proposed in 40 CFR 75.15. The use of paired traps would be required, and the stack gas would be sampled at a rate that is proportional to the stack gas volumetric flow rate. Proposed Method 324 would be used as the protocol for operating the monitoring systems and for analyzing the Hg samples collected by the sorbent traps.

Additional QA requirements for sorbent trap systems were proposed in sections 1.5, 2.3 and 2.7 of 40 CFR part 75, appendix B. Development of a QA/QC program and plan would be required. Key components of this program would be assignment of permanent identification (ID) numbers to the sorbent traps, keeping of records of the dates and times that each trap is used, establishment of a chain of custody for transporting and analyzing the traps, documentation that the laboratory analyzing the samples is certified according to International Organization for Standardization (ISO) 9000 standards, explanations of the leak check and other QA test procedures, and the rationale for the minimum acceptable data collection time for each trap. In addition, the data acceptance and QC criteria of proposed Method 324 would be included in the QA plan.

An annual RATA and bias test of each sorbent trap system would be required, using the Ontario Hydro Method as the reference method. And if proposed Alternative #2 were implemented (*i.e.*, allowing sorbent trap systems to be used by any affected unit), for units with annual Hg mass emissions above a certain threshold value (we took comment on four thresholds, *i.e.*, 9 lb/hr, 29 lb/hr, 46 lb/hr, and 76 lb/hr), additional 3-run RAs would be required in the other three quarters of the year.

The commenters were generally opposed to the proposed quarterly RAs for sorbent trap systems as being too costly and of little value. A number of commenters suggested that EPA should revise proposed Alternative #2 and specify QA procedures that are meaningful to the type of measurement system that the sorbent trap actually is. For example, the volume of stack gas sampled by the system is an important parameter in determining the Hg concentration. Therefore, procedures for quality-assuring the measurement of the sample volume could be implemented.

Some commenters favored allowing the use of proposed Method 324 for all affected units, and stated that because proposed Method 324 is itself a test method, it does not need additional QA procedures. Two commenters suggested that EPA should even take steps to make proposed Method 324 a reference method. However, numerous other commenters objected to various provisions of proposed Method 324 and offered suggestions for improving it. Some of the chief objections raised were as follows:

- The allowable analytical techniques and procedures in the method are too exclusive, and in the case of EPA Method 1631 of 40 CFR part 136, inappropriate. Other analytical methodologies should be allowed;
- The impinger and dessicant method of moisture removal is inadequate;
- The leakage rate prescribed for the leak checks may be too low to measure;
- The method allows constant-rate sampling for collection periods less than 12 hours, which may introduce bias if unit load changes during the collection period;
- The specification for flow proportional sampling (adjust sample flow rate to maintain proportional sampling within ± 25 percent of stack gas flow rate) is not stringent enough and can lead to inaccurate concentration measurement;
- The frequency for dry gas meter calibration is unspecified; and

• The method does not include chain of custody procedures.

A number of commenters suggested that EPA should not require the use of paired sorbent traps and should allow the use of single sorbent traps.

Several commenters objected to the proposal in section 1.5.4 of 40 CFR part 75, appendix B that laboratories performing proposed Method 324 be certified by the ISO to have proficiency that meets the requirements of ISO 9000. One commenter stated that having a good blank and matrix spike program in place is much more indicative of a good QA/QC program for Hg measurement than ISO 9000 certification. Another commenter favored ISO certification, but not according to ISO 9000. The commenter recommended that ISO 17025 be required instead, because it requires the laboratory to demonstrate proficiency, rather than simply having an acceptable protocol for the analyses.

One commenter stated that EPA has not explained the appropriateness of applying a bias test and adjustment factor to proposed Method 324, when it has already satisfied the same standards for bias and precision as the Ontario Hydro Method under EPA Method 301 of 40 CFR part 63. Another commenter suggested that it does not make sense to subject Hg monitors to a bias adjustment factor under 40 CFR part 75, appendix A, section 7.6 when paired reference method trains are allowed to differ by 10 percent RD, based on a flawed definition of RD. The commenter asserted that it is not reasonable to suggest that a Hg monitor is biased by comparing its readings to a pair of reference method tests that can differ by 20 percent.

In view of the many comments received regarding a large number of testing and QA provisions in proposed Method 324, EPA has decided to revise and rename proposed Method 324 as 40 CFR part 75, appendix K in the final rule. Based on comments received and experience gained from field tests since proposal, 40 CFR part 75, appendix K retains certain provisions and revises others in proposed Method 324 to include detailed, performance-based criteria, QA standards and procedures for sorbent trap monitoring systems. The final rule also revises both the definition of a sorbent trap monitoring system in section 72.2 and the general guidelines for sorbent trap monitoring system operation in 40 CFR 75.15, to be consistent with the requirements of 40 CFR part 75, appendix K.

The final rule retains the annual RATA and bias test requirements for sorbent trap monitoring systems, but the proposed quarterly RA requirement has been withdrawn. The requirements to use paired traps and flow proportional sampling have also been retained. Finally, the ISO 9000 certification requirement for the laboratory performing the Hg analyses has been replaced with a requirement for the laboratory to either comply with ISO–17025 or to comply initially, and annually thereafter, with the spike recovery study provision in section 10 of 40 CFR part 75, appendix K.

Several commenters recommended that EPA should require QA procedures for sorbent traps that are more meaningful and reasonable than the procedures in the SNPR. EPA agrees with these comments, and based on the recommendations received, the final rule specifies such procedures in 40 CFR part 75, appendix K. Many provisions of proposed Method 324 have been included in 40 CFR part 75, appendix K, without modification, but other provisions of the proposed Method have been modified to employ a more performance-based approach and some new QA procedures have been added to address concerns expressed by the commenters. Some of the more significant differences between proposed Method 324 and 40 CFR part 75, appendix K, are as follows:

• 40 CFR part 75, appendix K allows the use of any sample recovery and analytical methods that are capable of quantifying the total vapor phase Hg collected on the sorbent media. Candidate recovery techniques include leaching, digestion, and thermal desorption. Candidate analytical techniques include ultraviolet atomic fluorescence (UV AF), ultraviolet atomic absorption (UV AA), and in-situ X-ray fluorescence (XRF);

• 40 CFR part 75, appendix K, requires that each sorbent trap be comprised of three equal sections, capable of being separately analyzed. The first section is for sample collection, the second to assess ''breakthrough,'' and the third to allow spiking with elemental Hg for QA purposes;

• 40 CFR part 75, appendix K, specifies the frequency of dry gas meter calibration and the appropriate calibration procedures;

• 40 CFR part 75, appendix K, requires ASTM sample handling and chain of custody procedures to be followed;

• Spiking of the third section of each trap with elemental Hg is required before the data collection period begins;

• The laboratory performing the analyses must demonstrate the ability to recover and quantify Hg from the sorbent media; and

• The measured Hg mass in the first and second sections of each trap is adjusted, based on the percent recovery of Hg from the third (''spiked'') section.

EPA believes that if these procedures are implemented, this will ensure the quality of the data from sorbent trap systems.

The final rule retains the requirement to use paired sorbent traps. The SNPR proposed the use of paired sorbent traps for the same basic reason that paired Ontario Hydro trains are required for RATA testing, *i.e.*, it provides an important check on the quality of the data. The proposed rule would have required the higher of the two Hg concentrations obtained from the paired traps to be used for reporting. However, the final rule requires the results from the two traps to be averaged if paired concentrations agree within specified criteria, and allows the results from one trap (if those results are valid) to be reported in cases where the other trap is accidentally damaged, broken or lost during transport and analysis. Thus, using paired sorbent traps provides a relatively inexpensive means of ensuring against data loss should one of the traps become lost or damaged.

The commenters generally objected to the proposed quarterly relative accuracy testing of sorbent traps, believing it to be unnecessary and costly. After consideration of recent field data comparing the sorbent traps to Hg CEMS, EPA agrees that sorbent trap systems should be treated more similarly to Hg CEMS. Therefore, the final rule removes the quarterly RA requirement, and requires only that an annual RATA be performed on a sorbent trap monitoring system.

One commenter objected to the proposed bias test requirement for sorbent trap systems, citing the fact that proposed Method 324 had satisfied the same standards for bias and precision as the Ontario Hydro Method under EPA Method 301 of 40 CFR part 63. EPA does not agree with this comment. The fact that proposed Method 324 met the bias and precision requirements of Method 301 does not imply that Hg sorbent traps will not exhibit low bias with respect to a Hg reference method during a RATA. The bias test in section 7.6 of 40 CFR part 75, appendix A is a one-tailed t-test, which, if failed, requires a bias adjustment factor (BAF) to be applied to the subsequent emissions data.

EPA also does not agree with the commenter who stated that bias adjustment is not appropriate for

sorbent trap systems because of the allowable 10 percent RD between the paired reference method trains. The 40 CFR part 75 bias test determines systematic error, not random error, whereas RD and relative accuracy are metrics used to quantify random error in the measurement.

7. Mercury-Diluent Systems

Mercury-diluent monitoring systems (consisting of a Hg pollutant concentration monitor, an O_2 or CO_2 diluent gas monitor, and an automated data acquisition and handling system) to measure Hg emission rate in lb/10^{12} Btu were allowed in the proposed rule.

One commenter asked why the proposed Hg emissions units of measurement are the same as NO_X-diluent. The Hg concentration measurements are orders of magnitude below NO_X emissions, thus applying a diluent correction with the additional uncertainties of measurement further complicates the direct emissions reporting uncertainties. Mercury is a resident pollutant in the fuel, it can be measured, and measurement should parallel the same regulation requirements as SO_2.

The final rule removes all mention of Hg-diluent monitoring systems and requires the hourly Hg mass emissions to be calculated in the same manner as is done for SO_2 under the Acid Rain Program, *i.e.*, as the product of the Hg concentration and the stack gas flow rate. The final rule also better accommodates Hg analyzers that measure on a wet basis.

EPA believes that the rule, as proposed, can be considerably simplified and shortened without losing any flexibility by deleting the provisions related to Hg-diluent monitoring systems and allowing only Hg concentration monitoring systems and sorbent trap systems to be used. Therefore, the final rule removes all mention of Hg-diluent monitoring systems and requires the hourly Hg mass emissions to be calculated in the same manner as is done for SO_2, *i.e.*, as the product of the Hg concentration and the stack gas flow rate.

V. Summary of the Environmental, Energy, Cost, and Economic Impacts

A. What Are the Air Quality Impacts?

EPA has assessed the change in the amount of Hg deposited in the continental U.S. as a result of the final rule. The recently promulgated CAIR significantly reduced utility attributable Hg deposition. Both the selected CAMR approach and the regulatory alternative result in small additional shifts in the overall distribution of Hg deposition from utilities reactive to the CAIR result. Table 2 of this preamble presents the frequency and cumulative distributions of the reductions in deposition associated with the CAMR requirements and the CAMR alternative. We also provide the reduction in deposition from the 2020 base case with CAIR implemented relative to the 2001 base case. This change (2001 Base—2020 CAIR) shows that there are both increases and decreases in deposition. Negative reductions (increases) are due to growth in non-utility Hg emissions, and growth in utility emissions in areas unaffected by CAIR. Reductions in deposition are largely due to the implementation of CAIR controls at utilities.

TABLE 2.—DISTRIBUTIONS OF REDUCTIONS IN TOTAL MERCURY DEPOSITION

Range ($\mu g/m^2$)	2001 base—2020 base (with CAIR)		2020 base (with CAIR)—2020 CAMR requirements		2020 base (with CAIR)—2020 CAMR requirements		2020 CAMP requirements—2020 CAMR alternative	
	Percent	Cumulative percent	Percent	Cumulative percent	Percent	Cumulative percent	Percent	Cumulative percent
<=0	6.59	6.59	2.13	2.13	0.83	0.83	0.28	0.28
0–1	58.02	64.61	97.03	99.17	97.87	98.70	99.58	99.86
1–2	12.06	76.67	0.83	100.00	1.30	100.00	0.14	100.00
2–3	7.33	84.00	0.00	100.00	0.00	100.00	0.00	100.00
3–4	5.10	89.10	0.00	100.00	0.00	100.00	0.00	100.00
4–5	3.71	92.81	0.00	100.00	0.00	100.00	0.00	100.00
5–10	6.08	98.89	0.00	100.00	0.00	100.00	0.00	100.00
10–15	0.88	99.77	0.00	100.00	0.00	100.00	0.00	100.00
15–20	0.23	100.00	0.00	100.00	0.00	100.00	0.00	100.00

Source: Technical Support Document: Methodology Used to Generate Deposition, Fish Tissue Methylmercury Concentrations, and Exposure for Determining Effectiveness of Utility Emission Controls

B. What Are the Non-Air Health, Environmental, and Energy Impacts?

According to EO 13211 ''Actions that Significantly Affect Energy Supply, Distribution, or Use,'' the final rule is not significant, measured incrementally to CAIR, because it does not have a greater than a 1 percent impact on the cost of electricity production, and it does not result in the retirement of greater than 500 MW of coal-fired generation.

Several aspects of CAMR are designed to minimize the impact on energy production. First, EPA recommends a trading program rather than the use of command-and-control regulations. Second, compliance deadlines are set cognizant of the impact that those deadlines have on electricity production. Both of these aspects of CAMR reduce the impact of the final rule on the electricity sector.

C. What Are the Cost and Economic Impacts?

The projected annual costs of CAMR to the power industry are $160 million in 2010, $100 million in 2015, and $750 million in 2020. These costs represent the total cost to the electricity-generating industry of reducing Hg emissions to meet the caps set forth in the final rule and are incremental costs to the requirements to meet NO_X and SO_2 emissions caps set forth in the CAIR. Estimates are in 1999 dollars.

Retail electricity prices are projected to increase roughly 0.2 percent higher with CAMR in 2020 when compared to CAIR. Natural gas prices are projected to increase by roughly 1.6 percent with CAMR in 2020 when compared to CAIR. There will be continued reliance on coal-fired generation, which is projected to remain at roughly 50 percent of total electricity generated and no coal-fired capacity projected to be uneconomic to

maintain incremental to CAIR. As demand grows in the future, additional coal-fired generation is projected to be built. As a result, coal production for electricity generation is projected to increase from 2003 levels by about 13 percent in 2010 and 20 percent by 2020, and we expect a small shift towards greater coal production in Appalachia and the Interior coal regions of the country with CAMR compared to 2003.

Additional information on the cost and economic impacts of CAMR is provided in the discussion under EO 12866 below.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under EO 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the EO. The EO 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 EO.

In view of its important policy implications and potential effect on the economy of over $100 million, the final rule has been judged to be an economically ''significant regulatory action'' within the meaning of the EO. As a result, the final rule was submitted to OMB for review, and EPA has prepared an economic analysis of the final rule entitled ''Regulatory Impact Analysis of the Final Clean Air Mercury Rule'' (March 2005) (OAR–2002–0056).

CAMR is an example of environmental regulation that recognizes and balances the need for energy diversity, reliability, and affordability.

1. What Economic Analyses Were Conducted for the Final Rule?

The analyses conducted for the final rule provide several important analyses of impacts on public welfare. These include an analysis of the social benefits, social costs, and net benefits of the regulatory scenario. The economic analyses also address issues involving small business impacts, unfunded mandates (including impacts for Tribal governments), environmental justice, children's health, energy impacts, and requirements of the Paperwork Reduction Act (PRA).

2. What Are the Benefits and Costs of the Final Rule?

a. Control Scenario. The final CAMR requires annual Hg reductions for the power sector in 50 States, the District of Columbia, and in Indian country. EPA considered the final CAIR for SO_2 and NO_X requirements and all promulgated CAA requirements and known State actions in the baseline used to develop the estimates of benefits and costs for the final rule. A more complete description of the reduction requirements and how they were calculated is described earlier in this preamble.

CAMR was designed to achieve significant Hg emissions reductions from the power sector in a much more cost-effective manner than a facility-specific or unit-specific approach. EPA analysis has found that the most cost-effective method to achieve the emissions reductions targets is through a cap-and-trade system that States have the option of adopting. States, in fact, can choose not to participate in the optional cap-and-trade program. However, EPA believes that a cap-and-trade system for the power sector is the best approach for reducing Hg emissions and EPA's analysis assumes that States will adopt this more cost effective approach.

b. Cost Analysis and Economic Impacts. For the final rule, EPA analyzed the costs using the IPM. IPM is a dynamic linear programming model that can be used to examine the economic impacts of air pollution control policies for Hg, SO_2, and NO_X throughout the contiguous U.S. for the entire power system. Documentation for IPM can be found in the docket for the final rule or at *http://www.epa.gov/airmarkets/epa-ipm*.

CAMR calls for environmental improvement and emission reductions from the power sector while recognizing the need to maintain energy diversity and reliability.

The projected annual costs of CAMR to the power industry are $160 million in 2010, $100 million in 2015, and $750 million in 2020. These costs represent the total cost to the electricity-generating industry of reducing Hg emissions to meet the caps set forth in the final rule and are incremental costs to the requirements to meet NO_X and SO_2 emissions caps set forth in the CAIR. Estimates are in 1999 dollars.

Retail electricity prices are projected to increase roughly 0.2 percent higher with CAMR in 2020 when compared to CAIR. Natural gas prices are projected to increase by roughly 1.6 percent with CAMR in 2020 when compared to CAIR. There will be continued reliance on coal-fired generation, which is projected to remain at roughly 50 percent of total electricity generated and no coal-fired capacity projected to be uneconomic to maintain incremental to CAIR. As demand grows in the future, additional coal-fired generation is projected to be built. As a result, coal production for electricity generation is projected to increase from 2003 levels by about 13 percent in 2010 and 20 percent by 2020, and we expect a small shift towards greater coal production in Appalachia and the Interior coal regions of the country with CAMR compared to 2003.

c. Human Health and Welfare Benefit Analysis. The Hg emissions reductions associated with implementing the final CAMR will produce a variety of benefits. Mercury emitted from utilities and other natural and man-made sources is carried by winds through the air and eventually is deposited to water and land. In water, some Hg is transformed to MeHg through biological processes. Methylmercury, a highly toxic form of Hg, is the form of Hg of concern for the purpose of the final rule. Once Hg has been transformed into MeHg, it can be ingested by the lower trophic level organisms where it can bioaccumulate in fish tissue (*i.e.*, concentrations in predatory fish build up over the fish's entire lifetime, accumulating in the fish tissue as predatory fish consume other species in the food chain). Thus, fish and wildlife at the top of the food chain can have Hg concentrations that are higher than the lower species, and they can have concentrations of Hg that are higher than the concentration found in the water body itself. Therefore, the most common form of exposure to Hg for humans and wildlife is through the consumption of Hg contained in predatory fish, such as: Shark, swordfish, king mackerel, tilefish and recreationally caught bass, perch, walleye or other freshwater fish species.

When humans consume fish containing MeHg, the ingested MeHg is almost completely absorbed into the

blood and distributed to all tissues (including the brain).

In pregnant women, MeHg can be passed on to the developing fetus, and at sufficient exposure may lead to a number of neurological effects in children. Thus, children who are exposed to low concentrations of MeHg prenatally may be at increased risk of poor performance on neurobehavioral tests, such as those measuring attention, fine motor function, language skills, visual-spatial abilities (like drawing), and verbal memory. The effects from prenatal exposure can occur even at doses that do not result in effects in the mother. A full discussion of the neurological health effects of Hg is provided by the National Research Council in ''Neurological Effects of Methylmercury.'' [8] Some subpopulations in the U.S. (*e.g.*, certain Native Americans, Southeast Asian Americans, recreational and subsistence anglers) consume larger amounts of fish than the general population and may be at a greater risk to the adverse health effects from Hg due to increased exposure.

EPA held a workshop with several of the National Research Council (NRC) panel members in 2002. Participants were asked about which studies should be considered in generating dose-response functions for developmental neurotoxicity. Participants were also asked about endpoints to consider for monetization, and they suggested looking at neurological tests that might lead to changes in IQ or other neurodevelopmental impacts. EPA determined that IQ decrements due to Hg exposure is one endpoint that EPA should focus on for a benefit analysis, because it can be monetized.[9] The focus population for the benefit analysis is women of childbearing age who consume freshwater, recreationally-caught fish. Methylmercury is a developmental neurotoxicant with greatest biological sensitivity from in utero exposure.

Three large-scale epidemiological studies have examined the effects of low dose prenatal Hg exposure and neurodevelopmental outcomes through the administration of numerous tests of cognitive functioning. These studies were conducted in the Faroe Islands (Grandjean *et al.* 1997), New Zealand (Kjellstrom *et al.* 1989, Crump *et al.* 1998), and the Seychelles Islands (Davidson *et al.* 1998, Myers *et al.* 2003). Based on recommendations from participants at the Hg workshop discussed above, and the ability to monetize IQ decrements, EPA combined data and information from all three of these studies to develop a combined dose-response function for IQ decrements to apply in a benefit analysis.

CAMR may also reduce emissions of directly emitted PM, which contribute to the formation of $PM_{2.5}$. In general, exposure to high concentrations of $PM_{2.5}$ may aggravate existing respiratory and cardiovascular disease including asthma, bronchitis and emphysema, especially in children and the elderly. Exposure to $PM_{2.5}$ can lead to decreased lung function, and alterations in lung tissue and structure and in respiratory tract defense mechanisms which may then lead to, increased respiratory symptoms and disease, or in more severe cases, premature death or increased hospital admissions and emergency room visits. Children, the elderly, and people with cardiopulmonary disease, such as asthma, are most at risk from these health effects. $PM_{2.5}$ can also form a haze that reduces the visibility of scenic areas, can cause acidification of water bodies, and have other impacts on soil, plants, and materials.

Due to both technical and resource limits in available modeling, we have only been able to quantify and monetize the benefits for a few of the endpoints associated with reducing Hg, and directly emitted PM. In the ''Regulatory Impact Analysis of the Final Clean Air Mercury Rule,'' we provide an analysis of the benefits from avoided IQ decrements in potentially prenatally exposed children from the reduction of MeHg exposures and the benefits of reducing directly emitted PM.

There are several fish consumption pathways considered by the Agency for the benefit analysis, including: Consumption from commercial sources (including saltwater and freshwater fish from domestic and foreign producers), consumption of commercial fish raised at fish farms (aquaculture), and consumption of recreationally caught freshwater and saltwater fish. As explained in the RIA, we believe that the focus of the analysis on recreationally and subsistence caught freshwater fish captures the bulk of the benefits. Nevertheless, we believe that the analysis captures the bulk of the benefits.

To model recreational angling and prenatal exposure from this consumption pathway (*i.e.*, women of childbearing age consuming freshwater fish and, hence, exposing the fetus in utero), we consider two modeling approaches: One approach that estimates the distance anglers are likely to travel from their households to water bodies for fishing activities (referred to as the Population Centroid Approach), and another approach that models how often recreational anglers fish at certain locations (referred to as the Angler Destination Approach). These resulting benefits from the two exposure modeling approaches differ, however, we expected they are likely to capture the range of actual behavior (and likely exposure) of recreational anglers.

This approach forms the core analytic underpinnings for the final benefit numbers, but incorporates an assumption of no threshold, and, therefore, reflects an upper-bound on the number of people affected by Hg. A more simplified approach used to simulate exposure scenarios under the assumption of two different thresholds. This threshold analysis provides ''scaling factors,'' or benefits as a percent of the no threshold case. We consider two benchmark levels of exposure established by regulatory agencies as possible thresholds: (1) A threshold equal to EPA's reference dose (RfD) of 0.1 micrograms per kilogram per day (ug/kg-day) and (2) a threshold in the neighborhood of the World Health Organization and Health Canada benchmarks of 0.23 and 0.2 ug/kg-day respectively. Scaling factors for the no threshold benefits from the more detailed analysis range from 4 percent to 34 percent. The final estimates of IQ-related benefits are arrayed in a hierarchy from most certain to less certain benefits.

In addition, the current state of knowledge of the science indicates that there is likely a lag in the time between the reduction in Hg deposition to a water body and the change in MeHg concentrations in fish tissue. Based on a review of available literature and a series of case studies conducted by EPA, the lag period for changes in fish tissue (and hence changes in avoided IQ decrements) can range from less than 5 years to more than 50 years, with an average time span of 1 to 3 decades (10 to 30 years). In the benefit analysis presented in the RIA, we present a range of results assuming a series of potential lag scenarios (including 5, 10, 20, and 50 years) on the total benefits. The 10- and 20-year lag periods are presented as the likely outcome of results from the analysis, while the 5- and 50-year lag periods are presented to show the outcomes if the time span to steady-state

[8] National Research Council (NRC). 2000. Toxicological Effects of Methylmercury. Committee on the Toxicological Effects of Methylmercury, Board on Environmental Studies and Toxicology, Commission on Life Sciences, National Research Council. National Academy Press, Washington, DC.

[9] See footnote 3 of chapter 11 of the RIA for an explanation of the basis for the monetization.

is less than or more than the average lag periods observed in the case studies.

We also present future year benefits discounted at a 3 percent and a 7 percent rate. In addition, due to the potential for intergenerational effects, the 50 year lag is assessed using a 1 percent discount rate as well as the 3 and 7 percent discount rates (in accordance with the EPA Economic Guidelines). Benefits are evaluated after full implementation of CAMR (in 2020, 2 years after imposition of the Phase II cap) and presented in 1999 dollars. The resulting benefits presented in the RIA show a range of potential values based on all of these sources of variability in the estimate.

Giving consideration to all of the possible outcomes discussed in the RIA, the range of annual monetized benefits of CAMR under a 10- to 20-year lag period are approximately $0.4 million to $3.0 million using a 3 percent discount rate (or $0.2 million to $2.0 million using a 7 percent discount rate).

In addition to the benefits of reducing exposures to MeHg from recreational freshwater angling, there are several additional benefits that may be associated with reduced exposures to MeHg; however, the literature with regard to these effects is less developed than the literature for childhood neurodevelopmental effects.[10] Because of the uncertainty associated with these effects, and, in most cases, the lack of sufficient data to evaluate whether or not these effects are present at levels associated with U.S. exposures, we did not quantify these benefits. Most notably these effects include:

• Cardiovascular effects—Some recent epidemiological studies in men suggest that MeHg is associated with a higher risk of acute myocardial infarction, coronary heart disease and cardiovascular disease in some populations. Other recent studies have not observed this association. The studies that have observed an association suggest that the exposure to MeHg may attenuate the beneficial effects of fish consumption. The findings to date and the plausible biologic mechanisms warrant additional research in this arena (Stern 2005; Chan and Egeland 2004).

• Ecosystem effects—Plant and aquatic life, as well as fish, birds, and mammalian wildlife can be affected by Hg exposure; however overarching conclusions about ecosystem health and population effects are difficult to make at this time.

[10] It should no noted that the degree of uncertainty associated with these effects varies as does our knowledge about whether the effects are seen at levels consistent with those in the U.S.

• Other effects—There is some recent evidence that exposures of MeHg may result in genotoxic or immunotoxic effects. Other research with less corroboration suggest that reproductive, renal, and hematological impacts may be of concern. Overall, there is a relatively small body of evidence from human studies that suggests exposure to MeHg can result in immunotoxic effects and the NRC concluded that evidence that human exposure caused genetic damage is inconclusive. There are insufficient human data to evaluate whether these effects are consistent with levels in the U.S. population. See chapter 2 of the RIA.

In an analysis of the possible co-benefits associated with emission reductions of directly emitted PM, we estimated the total change in incidence of premature mortality. We conducted an illustrative analysis using a simplified air quality and exposure modeling approach (the Source-Receptor Matrix) to derive a benefit transfer value (*i.e.*, $ benefit per ton PM) that were applied to total estimate emission reductions of direct PM. The total estimated PM-related benefits are approximately $1.4 million to $40 million; however, the calculation of these benefits is highly dependent on uncertain future technology choices of the industry. Because of this significant uncertainty, therefore, these benefit estimates are not included in our primary benefit estimate.

In response to potential risks of consuming fish containing elevated concentrations of Hg, EPA and the U.S. Food and Drug Administration (FDA) have issued a joint fish consumption advisory which provides recommended limits on consumption of certain fish species (shark, swordfish, king mackerel, tilefish) for different populations. This joint EPA and FDA advisory recommends that women who may become pregnant, pregnant women, nursing mothers, and young children to avoid some types of fish and eat fish and shellfish that are lower in Hg, diversifying the types of fish they consume, and by checking any local advisories that may exist for local rivers and streams.

3. How Do the Benefits Compare to the Costs of the Final Rule?

The costs presented above are EPA's best estimate of the direct private costs of the CAMR. In estimating the net benefits of regulation (benefits minus costs), the appropriate cost measure is ''social costs.'' Social costs represent the total welfare costs of the rule to society. These costs do not consider transfer payments (such as taxes) that are simply redistributions of wealth. Using these alternate discount rates, the social costs of the final rule are estimated to be approximately $848 million in 2020 when assuming a 3 percent discount rate. These costs become $896 million in 2020 if one assumes a 7 percent discount rate. The costs of the CAMR using the adjusted discount rates differ from the private costs of the CAMR generated using IPM because the social costs do not include certain transfer payments, primarily taxes, that are considered a redistribution of wealth rather than a social cost.

As is discussed above, the total social benefits that EPA was able to monetize in the RIA total $0.4 million to $3.0 million using a 3 percent discount rate, and $0.2 million to $2.0 million using a 7 percent discount rate.

Thus, the annual monetized net benefit in 2020 (social benefits minus social costs) of the CAMR program is approximately −$846 million or −$895 million (using 3 percent and 7 percent discount rates, respectively) annually in 2020. Although the final rule is expected to result in a net cost to society, it achieves a significant reduction in Hg emissions by domestic sources. In addition, the cost of reduced earnings borne by U.S. citizens from Hg exposure falls disproportionately on prenatally exposed children of populations who consume larger amounts of recreationally caught freshwater fish than the general population.

The annualized cost of the CAMR, as quantified here, is EPA's best assessment of the cost of implementing the CAMR, assuming that States adopt the model cap-and-trade program. These costs are generated from rigorous economic modeling of changes in the power sector due to the CAMR. This type of analysis using IPM has undergone peer review and been upheld in Federal courts. The direct cost includes, but is not limited to, capital investments in pollution controls, operating expenses of the pollution controls, investments in new generating sources, and additional fuel expenditures. The EPA believes that these costs reflect, as closely as possible, the additional costs of the CAMR to industry. The relatively small cost associated with monitoring emissions, reporting, and recordkeeping for affected sources is not included in these annualized cost estimates, but EPA has done a separate analysis and estimated the cost to less than $76 million. However, there may exist certain costs that EPA has not quantified in these estimates. These costs may include costs of transitioning to the CAMR, such as

employment shifts as workers are retrained at the same company or re-employed elsewhere in the economy, and certain relatively small permitting costs associated with title IV that new program entrants face. Costs may be understated since an optimization model was employed that assumes cost minimization, and the regulated community may not react in the same manner to comply with the final rule. Although EPA has not quantified these costs, the Agency believes that they are small compared to the quantified costs of the program on the power sector. The annualized cost estimates presented are the best and most accurate based upon available information.

TABLE 3.—SUMMARY OF ANNUAL BENEFITS, COSTS, AND NET BENEFITS OF THE CAMR [a]

[billions of 1999 dollars]

Description	2020 (millions of 1999 dollars)
Social Costs: [c]	
3 percent discount rate	$848.0
7 percent discount rate	896.0
Social Benefits [b, c]	
3 percent discount rate:	
EPA RfD	0.4–1.0
No Threshold	1.7–3.0
7 percent discount rate:	
EPA RfD	0.2–0.7
No Threshold	0.8–2.0
Unquantified benefits and costs	U
Annual Net Benefits (Benefits-Costs): [c, d]	
3 percent discount rate:	
EPA RfD	−848 + U
No Threshold	−846 + U
7 percent discount rate:	
EPA RfD	−896 + U
No Threshold	−895 + U

[a] All estimates are rounded to first significant digits and represent annualized benefits and costs anticipated in 2020.
[b] Not all possible benefits are quantified and monetized in this analysis. B is the sum of all unquantified benefits. Potential benefit categories that have not been quantified and monetized are listed in section 10 of the RIA.
[c] Results reflect 3 percent and 7 percent discount rates consistent with EPA and OMB guidelines for preparing economic analyses (U.S. EPA, 2000, and OMB, 2003).[11]
[d] Net benefits are rounded to the nearest $100 million. Columnar totals may not sum due to rounding.

Every benefit-cost analysis examining the potential effects of a change in environmental protection requirements is limited to some extent by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Gaps in the scientific literature often result in the inability to estimate quantitative changes in health and environmental effects. Gaps in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes that can be quantified. Although uncertainties in the underlying scientific and economics literature (that may result in overestimation or underestimation of benefits) are discussed in detail in the economic analyses and its supporting documents and references, the key uncertainties which have a bearing on the results of the benefit-cost analysis of the final rule include the following:

- EPA's inability to quantify potentially significant benefit categories;
- Uncertainties in population growth and baseline incidence rates;
- Uncertainties in projection of emissions inventories and air quality into the future;
- Uncertainty in the estimated relationships of health and welfare effects to changes in pollutant concentrations;
- Uncertainties in exposure estimation; and
- Uncertainties associated with the effect of potential future actions to limit emissions.

Despite these uncertainties, we believe the benefit-cost analysis provides a reasonable indication of the expected economic benefits of the final rule in future years under a set of reasonable assumptions.

The benefits estimates generated for the final rule are subject to a number of assumptions and uncertainties, that are discussed throughout the ''Regulatory Impact Analysis for the Final Clean Air Mercury Rule'' (March 2005) (OAR–2002–0056).

[11] United States Environmental Protection Agency, 2000. Guidelines for Preparing Economic Analyses. *http://www.yosemite1.epa.gov/ee/epa/eed/hsf/pages/Guideline.html*. Office of Management and Budget, The Executive Office of the President, 2003. Circular A–4. *http://www.whitehouse.gov/omb/circulars*.

B. Paperwork Reduction Act

The information collection requirements in the final rule will be submitted for approval to OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping and reporting requirements in the NSPS. The recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414) and are, therefore, mandatory. All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR.

The EPA is still working on the projected cost and hour burden for information requirements mandated by the NSPS. Those estimates will be

provided to OMB and notice of their availability provided to the public when they are completed. The information requirements mandated by the NSPS requirements for existing sources will be essentially the same as those for CAIR. The ICR for CAIR has been designated as EPA ICR number 2137.01. The EPA will, nevertheless, provide a full estimate of the projected cost and hour burden for those information requirements to OMB and provide the public with notice of the availability of that information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When the ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in the final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121) (SBREFA), provides that whenever an agency is required to publish a general notice of rulemaking, it must prepare and make available an initial regulatory flexibility analysis, unless it certifies that the rule, if promulgated, will not have ''a significant economic impact on a substantial number of small entities.'' (See 5 U.S.C. section 605(b).) Small entities include small businesses, small organizations, and small governmental jurisdictions.

As was discussed in the January 30, 2004 NPR and the March 16, 2004 SNPR, EPA determined that it was not necessary to prepare a regulatory flexibility analysis in conjunction with the final rule. EPA also announced in the NPR its determination that, based on analysis conducted for the proposed rule, CAMR would not have a significant impact on a substantial number of small entities. Although not required by the RFA, the Agency has conducted an additional analysis of the effects of CAMR on small entities in order to provide additional information to States and affected sources.

For purposes of assessing the impacts of the final rule on small entities, small entity is defined as: (1) A small business that is identified by the NAICS Code, as defined by the Small Business Administration (SBA); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less that 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Categories and entities potentially regulated by the final rule with applicable NAICS codes are provided in the Supplementary Information section of this action.

According to the SBA size standards for NAICS code 221122 Utilities-Fossil Fuel Electric Power Generation, a firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million MWh.

Courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the rule. (See *Michigan* v. *EPA*, 213 F.3d 663, 668–69 (DC Cir. 2000), *cert. den.* 121 S.Ct. 225, 149 L.Ed.2d 135 (2001).)

The final rule would not establish requirements applicable to small entities, other than those that are new sources subject to NSPS. We believe that there will not by any such small entities subject to the final rule because the IPM projects no new construction of coal-fired utility units. Additionally, the CAMR rule does not establish requirements applicable to small entities because the final rule requires States to develop, adopt, and submit a State Plan that would achieve the necessary Hg emissions reductions, and would leave to the States the task of determining how to obtain those reductions, including which Utility Units to regulate.

EPA's analysis of the final rule supports the results of the earlier analysis discussed in the NPR that found that CAMR would not have a significant direct impact on a substantial number of small entities, although there could be an increase in their costs of electricity. Analysis conducted for the final rule projects that in 2020, 2 years into the start of the second phase of the cap-and-trade program, the total compliance costs to small entities under CAMR would be approximately $37 million. This is just under 1 percent of the total projected electricity generation revenues to small entities for 2020. A few of the 80 small entities identified in EPA's analysis may experience significant costs in 2020. These entities do not bank over the course of the program, and must purchase allowances in 2020 to cover their emissions. It is important to note that the marginal cost of Hg control in 2020 projected by EPA modeling is largely responsible for the presence of significant impacts. EPA's modeling assumes no improvements in the cost or effectiveness of Hg control technology over time. In reality, by 2020, costs of Hg control are expected to have declined, such that the actual impacts of the cap-and-trade program on small entities will be less than projected. Additionally, given that most of the small entities identified operate in market environments in which they can pass on compliance costs to consumers, most of these entities should be able to recover their costs of compliance with CAMR.

Two other points should be considered when evaluating the impact of CAMR, specifically, and cap-and-trade programs more generally, on small entities. First, under CAMR, the cap-and-trade program is designed such that States determine how Hg allowances are to be allocated across units. A State that wishes to mitigate the impact of the final rule on small entities might choose to allocate Hg allowances in a manner that is favorable to small entities. Finally, the use of cap-and-trade in general will limit impacts on small entities relative to a less flexible command-and-control program.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA section 202, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that ''includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more

* * * in any one year.'' A ''Federal mandate'' is defined under section 421(6), 2 U.S.C. 658(6), to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate.'' A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments,'' section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is ''a condition of Federal assistance,'' section 421(5)(A)(i)(I). A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under UMRA section 202, UMRA section 205, 2 U.S.C. 1535, generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

The EPA prepared a written statement for the final rule consistent with the requirements of UMRA section 202. Furthermore, as EPA stated in the final rule, EPA is not directly establishing any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. Thus, EPA is not obligated to develop under UMRA section 203 a small government agency plan. Furthermore, in a manner consistent with the intergovernmental consultation provisions of UMRA section 204, EPA carried out consultations with the governmental entities affected by the final rule.

For the final rule, EPA has conducted an analysis of the potential economic impacts anticipated of CAMR on government-owned entities. These results support EPA's assertion in the NPR that the proposed rule would not have a disproportionate budgetary impact on government entities. Overall, analysis conducted for the final rule projects that in 2020, 2 years into the start of the second phase of the cap-and-trade program, compliance costs to government-owned entities would be approximately $48 million. This cost is less than one-half of 1 percent of projected electricity generation revenues for these entities in 2020. A few of the 88 entities identified in EPA analysis are projected to experience significant costs in 2020. These entities do not bank over the course of the program, and must purchase allowances in 2020 to cover their emissions. As was the case in EPA's analysis of small entities, it is important to note that the marginal cost of Hg control in 2020 projected by EPA modeling is largely responsible for the presence of significant impacts in the analysis. EPA modeling assumes no improvements in the cost or effectiveness of Hg control technology over time. In reality, by 2020, costs of Hg control are expected to have declined, such that the impacts of the cap-and-trade program on small entities would be reduced. Additionally, given that most of the small entities identified operate in market environments in which they can pass on compliance costs to consumers, most of these entities should be able to recover their costs of compliance with CAMR.

Potentially adverse impacts of CAMR on State and municipality-owned entities could be limited by the fact that the cap-and-trade program is designed such that States determine how Hg allowances are to be allocated across units. A State that wishes to mitigate the impact of the final rule on State or municipality-owned entities might choose to allocate Hg allowances in a manner that is favorable to these entities. Finally, the use of cap-and-trade in general will limit impacts on entities owned by small governments relative to a less flexible command-and-control program.

EPA has determined that the final rule may result in expenditures of more than $100 million to the private sector in any single year. EPA believes that the final rule represents the least costly, most cost-effective approach to achieve the air quality goals of the final rule. The costs and benefits associated with the final rule are discussed above and in the RIA.

As noted earlier, however, EPA prepared for the final rule the statement that would be required by UMRA if its statutory provisions applied, and EPA has consulted with governmental entities as would be required by UMRA. Consequently, it is not necessary for EPA to reach a conclusion as to the applicability of the UMRA requirements.

E. Executive Order 13132: Federalism

EO 13132 (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 EO 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.''

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. The CAA establishes the relationship between the Federal government and the States, and the final rule does not impact that relationship. Thus, EO 13132 does not apply to the final rule. In the spirit of EO 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the rule, as proposed, from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

EO 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' The final rule does not have ''Tribal implications'' as specified in EO 13175 because it does not have a substantial direct effect on one or more Indian Tribes. No Tribe has implemented a federally enforceable air quality management program under the CAA at this time. Furthermore, the final rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the Tribal Authority Rule (TAR) (40 CFR 49.1 through 49.11) establish the relationship of the Federal government and Tribes in developing plans to attain the national ambient air quality standards (NAAQS), and the final rule does nothing to modify that relationship. Because the final rule does not have Tribal implications, EO 13175 does not apply.

The final rule addresses pollution composed of Hg and mercuric compounds. The final CAMR requires annual Hg reductions for the power sector in 50 States, the District of Columbia, and in Indian country, through a cap-and-trade system that States and eligible Tribes have the option of adopting. The CAA provides for States and eligible Tribes to develop plans to regulate emissions of air pollutants within their areas. The regulations clarify the statutory obligations of States and eligible Tribes that develop plans to implement the

final rule. The TAR gives eligible Tribes the opportunity to develop and implement CAA programs, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, the Tribe will adopt. As noted earlier, the EPA will implement the emission trading rule for coal-fired Utility Units located in Indian Country in accordance with the TAR unless the relevant Tribe for the land on which a particular coal-fired Utility Unit is located seeks and obtains TAS status and submits a TIP to implement the allocated Hg emissions budget. Tribes which choose to do so will be responsible for submitting a TIP analogous to the State Plans discussed throughout this preamble, and, like States, can chose to adopt the model cap-and-trade rule described elsewhere in this action.

EPA notes that in the event a Tribe does implement a TIP in the future, the final rule could have implications for that Tribe, but it would not impose substantial direct costs upon the Tribe, nor preempt Tribal law. As provided above, EPA has estimated that the total annual private costs for the final rule for Hg as implemented by State, local, and eligible Tribal governments (or EPA in the absence of any Tribe seeking TAS status) is approximately $160 million in 2010, $100 million in 2015, and $750 million in 2020 (1999$). There are currently three coal-fired Utility Units located in Indian country that will be affected by the final rule and the percentage of Indian country that will be impacted is very small. For eligible Tribes that choose to regulate sources in Indian country, the costs would be attributed to inspecting regulated facilities and enforcing adopted regulations.

EPA consulted with Tribal officials in developing the final rule. The EPA encouraged Tribal input at an early stage. A Tribal representative from the Navajo Nation was a member the official workgroup and was provided with all workgroup materials. The EPA has provided two briefings for Tribal representatives and the newly formed National Tribal Air Association (NTAA), and other national Tribal forums such as the National Tribal Environmental Council (NTEC) and the National Tribal Forum during the period prior to issuance of the NPR. Another briefing for Tribal representatives, NTAA, and NTEC was provided post-proposal to provide opportunity for additional input. Input from Tribal representatives has been taken into consideration in development of the final rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EO 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under EO 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5–501 of the EO directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The final rule is subject to the EO because it is an economically significant regulatory action as defined by EO 12866, and we believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Accordingly, we have evaluated the environmental health or safety effects of the final rule on children. The results of this evaluation are discussed elsewhere in this preamble and the RIA, and are contained in the docket.

As discussed in the RIA, EPA and the NRC of the National Academy of Science (NAS) identified neurodevelopmental effects as the most sensitive endpoints (NRC 2000) and, thus, the appropriate endpoint upon which to establish a health-based standard establishing the level of exposure to MeHg that would result in a nonappreciable risk. As such, EPA has established its health-based ingestion rate, or RfD at a level designed to protect children prenatally exposed to MeHg. The RfD is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime (EPA 2002). EPA believes that exposures at or below the RfD are unlikely to be associated with appreciable risk of deleterious effects. It is important to note, however, that the RfD does not define an exposure level corresponding to zero risk; Hg exposure near or below the RfD could pose a very low level of risk which EPA deems to be non-appreciable. It is also important to note that the RfD does not define a bright line, above which individuals are at risk of adverse effect. CAMR benefits prenatally exposed children by contributing to the reduction in the number of women of childbearing age who ingest Hg at a rate that exceeds the RfD due solely to power plants and by contributing the to the overall reduction in exposure to MeHg of women of childbearing age.

In order to protect prenatally exposed children, it is appropriate to focus on reducing MeHg exposure for women of childbearing age. In the U.S., the primary means of exposure to MeHg is through the consumption of fish containing MeHg. When emitted, Hg deposits in water bodies where bacteria in the sediment can convert that Hg in the MeHg which can then bioaccumulate in fish. By reducing the amount of Hg deposition, CAMR reduces the amount of Hg that is available for methylation, which in turn reduces the amount that can be taken up by fish and then consumed by women of childbearing age. This chain of events ultimately reduces exposure to the developing fetus. Thus, CAMR is specifically targeted at protecting children in their most vulnerable phase—during fetal development.

EPA's ability to reduce exposure by reducing Utility Unit emissions is limited by the fact that emissions from U.S. Utility Units are only one source of domestic Hg deposition. Further, the impact of U.S. Utility Unit emissions on fish tissue MeHg concentrations is not likely to be as significant for marine species, which on average accounts for about 63 percent of consumption for the U.S. general population and 60 percent of consumption for U.S. women of childbearing age. Nevertheless, EPA chose a regulatory approach that required Hg-specific reductions of Utility Unit emissions by setting a cap on total emissions in 2018. This Hg-specific cap, combined with the co-benefits associated with reductions of SO_2 and NO_X required by EPA's CAIR, will provide for reduction in MeHg exposure to U.S. women of childbearing age.

CAMR will reduce the level of exposures to children from current levels today. In section 11 of the RIA, we estimate that 529,000 to 825,000 children will be exposed to MeHg prenatally in 2020. Our RIA analyses assess how IQ decrements, which were used as a surrogate representing the neurodevelopmental effects of MeHg exposure, will be reduced as a result of CAMR. Because these analyses only quantitatively assess benefits in terms of IQ loss, the overall quantified benefit to the prenatally exposed children is likely to be understated. Compared to the other regulatory alternative considered during the final rule, the selected approach delivers about the same amount of benefits at a lower cost.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

EO 13211 (66 FR 28355, May 22, 2001) provides that agencies shall prepare and submit to the Administrator of the Office of Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as ''significant energy actions.'' Section 4(b) of EO 13211 defines ''significant energy actions'' as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of final rulemaking, and notices of final rulemaking: (1)(i) That is a significant regulatory action under EO 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a ''significant energy action.'' Although the final rule is a significant regulatory action under EO 12866, the final rule likely will not have a significant adverse effect on the supply, distribution, or use of energy.

CAMR, in conjunction with CAIR, has the potential to require installation of significant amounts of control equipment at power plants that are integral to the country's electric power supply, and, in light of this, EPA has focused on minimizing the impacts of CAMR throughout the development of the final rule. The final rule uses cost-effective, market-based mechanisms while providing regulatory certainty and sufficient time to achieve reductions of Hg emissions from the power sector in a way that will help the country maintain electric reliability and affordability while ensuring environmental goals are met. In addition, Hg reductions have been coordinated with the CAIR, with the first phase reductions set at a cap level that reflects the Hg reductions that would be achieved from the SO_2 and NO_X cap levels under CAIR. Although the Administration has sought multi-pollutant legislation, like the Clear Skies Act, EPA has acted in accordance with the CAA to ensure substantial reduction of pollution to protect human health and welfare.

EPA has conducted the analysis of the final rule assuming States participate in a cap-and-trade program to reduce emissions from Utility Units. EPA does not believe that the final rule will have any impacts incremental to CAIR that exceed the significance criteria, because it does not have a greater than a 1 percent impact on the cost of electricity production, and it does not result in the retirement of greater than 500 MW of coal-fired generation.

In addition, the EPA believes that a number of features of the final rule serve to reduce its impact on energy supply. First, the optional trading program provides considerable flexibility to the power sector and enables industry to comply with the emission reduction requirements in the most cost-effective manner, thus minimizing overall costs and the ultimate impact on energy supply. The ability to use banked allowances from the first phase of the program also provides additional flexibility. Second, the CAMR caps are set in two phases, provide adequate time for Utility Units to install pollution controls, and Hg reductions have been coordinated with the CAIR, with the first phase reductions set at a cap level that reflects the Hg reductions that would be achieved from the SO_2 and NO_X cap levels under CAIR.

For more details concerning energy impacts, see ''Regulatory Impact Analysis for the Final Clean Air Mercury Rule'' (March 2005) (OAR–2002–0056).

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; Section 12(d), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable VCS.

The final rule involves technical standards. The EPA methods cited in the final rule are: 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 2H, 3, 3A, 3B, 4, 6, 6A, 6C, 7, 7A, 7C, 7D, 7E, 19, 20, and 29 (for Hg only) of 40 CFR part 60, appendix A; PS 2 and 12A of 40 CFR part 60, appendix B; 40 CFR part 75, appendix K; and ASTM D6784–02, ''Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method).''

Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods/performance specifications. No applicable VCS were identified for EPA Method 1A, 2A, 2D, 2F, 2G, 2H, 7D, and 19, of 40 CFR part 60, appendix A; 40 CFR part 75, appendix K; and ASTM D6784–02. The search and review results have been documented and are placed in the docket for the final rule.

One VCS was identified as an acceptable alternative for the EPA methods cited in the final rule. The VCS ASME PTC 19–10–1981–Part 10, ''Flue and Exhaust Gas Analyses,'' is cited in the final rule for its manual method for measuring the oxygen, carbon dioxide (CO_2), SO_2, and NO_X content of exhaust gas. These parts of ASME PTC 19–10–1981–Part 10 are acceptable alternatives to EPA Methods 3B, 6, 6A, 7, 7C, and 20 of 40 CFR part 60 (SO_2 only).

The standard ASTM D6784–02, Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method), cited in the final rule for measuring Hg emissions is a VCS.

In addition to the VCS EPA uses in the final rule, the search for emissions measurement procedures identified 14 other VCS. The EPA determined that 12 of these 14 standards identified for measuring air emissions or surrogates subject to emission standards in the final rule were impractical alternatives to EPA test methods/performance specifications for the purposes of the rule. Therefore, the EPA does not intend to adopt these standards. The reasons for the determinations of these 12 standards are found in the docket.

Two of the 14 VCS identified in this search were not available at the time the review was conducted for the purposes of the final rule because they are under development by a voluntary consensus body: ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2, and ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1).

The EPA testing methods, performance specifications, and procedures required are discussed in 40 CFR 60.49a, 40 CFR part 75, and PS 12A. Under 40 CFR 63.7(f) and 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EO 12898 requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. According to EPA guidance,[12] agencies are to assess whether minority or low-income populations face risks or a rate of exposure to hazards that are significant and that ''appreciably exceed or is likely to appreciably exceed the risk or rate to the general population or to the appropriate comparison group.'' (EPA, 1998)

In accordance with EO 12898, the Agency has considered whether the final rule may have disproportionate negative impacts on minority or low income populations. The Agency expects the final rule to lead to beneficial reductions in air pollution and exposures generally with a small negative impact through increased utility bills. The increase in the price for electric power is estimated to be 0.2 percent of retail electricity prices and is shared among all members of society equally and, thus, is not considered to be a disproportionate impact on minority populations and low-income populations. For this reason, negative impacts to these sub-populations that appreciably exceed similar impacts to the general population are not expected.

There will be beneficial outcomes to these populations as a result of this action. In the absence of CAMR, there are health effects that are likely to affect certain populations in the U.S., including subsistence anglers, Native Americans, and Asian American. These populations may include low income and minority populations who are disproportionately impacted by Hg exposures due to their economic, cultural, and religious activities that lead to higher levels of consumption of fish than the general population. The CAMR is expected to reduce exposures to these populations.

For subsistence anglers, we conducted an analysis in section 10 of the RIA using two alternative approaches to determine potentially exposed subsistence anglers, including one analytical approach based on income (*i.e.*, the population below $10,000 annual income who may eat self-caught fish as a means of obtaining a low-cost source of protein), and another analytical approach based on total consumption levels (*i.e.*, those anglers who eat two to three fish meals per day are assumed to be subsistence). Our analysis shows that the final rule will result in total benefits (under a scenario of no threshold on effects at low doses of Hg) accrued to potentially prenatally exposed children in the homes of subsistence anglers of $454,000 to $573,000 in 2020 when using a 3 percent discount rate (or $212,000 to $391,000 when using a 7 percent discount rate).

We also conducted case studies of the potential benefits of CAMR to a Native American population and an Asian American population located in Wisconsin, Minnesota, and (for one of the case studies) Michigan. The Agency was unable to transfer the results of these case studies to the rest of the Native American and Asian American populations in the U.S. due to missing data elements for analysis in other parts of the country.

In the case study of the Chippewa in Minnesota, Wisconsin, and Michigan, we determined that this group would accrue total benefits (under an assumption of no threshold on effects at low doses of Hg) of $6,300 to $6,700 in 2020 when using a 3 percent discount rate across the group as a whole (or $3,000 to $4,600 when using a 7 percent discount rate) due to reduced Hg exposures from consuming self-caught freshwater fish. Other tribal populations were not evaluated due to lack of reliable data on yearly (annual) self-caught fish consumption by location and tribe (although they were considered in a sensitivity analysis examining the issue of distributional equity—see below).

In a case study of the Hmong (a Southeast Asian-American population) in Minnesota and Wisconsin, we determined that the population would accrue total benefits (under an assumption of no threshold on effects at low doses of Hg) of $3,300 to $3,500 when using a 3 percent discount rate (or $1,500 to $2,400 when using a 7 percent discount rate).

To further examine whether high fish-consuming (subsistence) populations might be disproportionately benefitted by the final rule (*i.e.*, whether distributional equity is a consideration) and in response to concerns received in the comments on the NODA regarding high fish consumption rates for Ojibwe in the Great Lakes area, EPA conducted a sensitivity analysis focusing specifically on the distributional equity issue. The sensitivity analysis applied high-end (near bounding) fish consumption rates for Native American subsistence populations to the maximum expected Hg fish-tissue concentration changes predicted to result from CAMR within regions of the 37-State study area with recognized Native American populations. The fish consumption rates used in this sensitivity analysis were based on comments received through the NODA characterizing high-end consumption for the Ojibwe Tribes in Wisconsin and Minnesota. These values represent very high consumption rates exceeding the high-end (95th percentile) consumption rates recommended by the EPA for Native American subsistence populations and consequently are appropriate for a sensitivity analysis. The sensitivity analysis suggested that, although Native American subsistence populations (and other high fish consuming populations) might experience relatively larger health benefits from the final rule compared with general recreational angler, the absolute degree of health benefits involved are relatively low (*i.e.*, less than a 1.0 IQ point change per fisher for any of the locations modeled). This sensitivity analysis also provided coverage for the Hmong population modeled for the RIA, and the conclusions cited above regarding relatively low IQ changes (less than 1.0) can also be applied to this high fish consuming population.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by SBREFA 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 U.S. The EPA will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. 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**. The final rule is a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Coal, Electric power plants, Incorporation by reference, Intergovernmental relations, Metals, Natural gas, Nitrogen dioxide, Particulate matter, Reporting and

[12] U.S. Environmental Protection Agency, 1998. Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance analyses. Office of Federal Activities, Washington, DC, April, 1998.

recordkeeping requirements, Sulfur oxides

40 CFR Part 72

Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 75

Acid rain, Air pollution control, Carbon dioxide, Electric utilities, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 15, 2005.

Stephen Johnson,

Acting Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, parts 60, 72, and 75 of the Code of the Federal Regulations are amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7426, and 7601.

■ 2. Section 60.17 is amended by:

■ a. In the introductory text, the phrase ''(MD–35)'' is revised to read ''(C267–01);''

■ b. In paragraph (a)(12), revising the term ''77, 90, 91, 95, 98a'' to read ''77, 90, 91, 95, 98a, 99 (Reapproved 2004)$^{\varepsilon 1}$;'' revising the word ''§§ 60.41(f),'' to read ''§§ 60.24(h)(8), 60.41(f);'' and revising the words ''and 60.251(b) and (c).'' to read ''60.251(b) and (c), and 60.4102.''

■ c. In paragraph (a)(22), revising the term ''87, 91, 97'' to read ''87, 91, 97, 03a'' and revising the word §§ 60.41b and 60.41c'' to read ''§§ 60.41a of subpart Da of this part, 60.41b of subpart Db of this part, and 60.41c of subpart Dc of this part.''

■ d. By adding paragraph (a)(76) to read as follows:

§ 60.17 Incorporations by Reference.

* * * * *

(a) * * *

(76) ASTM D6784–02, Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method), IBR approved for appendix B to part 60, Performance Specification 12A, section 8.6.2.

* * * * *

■ 3. Section 60.21 is amended by:

■ a. Revise paragraphs (a) and (f); and

■ b. Add a new paragraph (k) to read as follows:

§ 60.21 Definitions.

* * * * *

(a) *Designated pollutant* means any air pollutant, the emissions of which are subject to a standard of performance for new stationary sources, but for which air quality criteria have not been issued and that is not included on a list published under section 108(a) of the Act. Designated pollutant also means any air pollutant, the emissions of which are subject to a standard of performance for new stationary sources, that is on the section 112(b)(1) list and is emitted from a facility that is not part of a source category regulated under section 112. Designated pollutant does not include pollutants on the section 112(b)(1) list that are emitted from a facility that is part of a source category regulated under section 112.

* * * * *

(f) *Emission standard* means a legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, establishing an allowance system, or prescribing equipment specifications for control of air pollution emissions.

* * * * *

(k) *Allowance system* means a control program under which the owner or operator of each designated facility is required to hold an authorization for each specified unit of a designated pollutant emitted from that facility during a specified period and which limits the total amount of such authorizations available to be held for a designated pollutant for a specified period and allows the transfer of such authorizations not used to meet the authorization-holding requirement.

■ 4. Section 60.24 is amended by:

■ a. Revising paragraph (b)(1); and

■ b. Adding a new paragraph (h) to read as follows:

§ 60.24 Emission standards and compliance schedules.

* * * * *

(b)(1) Emission standards shall either be based on an allowance system or prescribe allowable rates of emissions except when it is clearly impracticable.

* * *

* * * * *

(h) Each of the States identified in paragraph (h)(1) of this section shall be subject to the requirements of paragraphs (h)(2) through (7) of this section.

(1) Alaska, Alabama, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the District of Columbia shall each, and, if approved for treatment as a State under part 49 of this chapter, the Navajo Nation and the Ute Indian Tribe may each, submit a State plan meeting the requirements of paragraphs (h)(2) through (7) of this section and the other applicable requirements for a State plan under this subpart.

(2) The State's State plan under paragraph (h)(1) of this section must be submitted to the Administrator by no later than November 17, 2006. The State shall deliver five copies of the State plan to the appropriate Regional Office, with a letter giving notice of such action.

(3) The State's State plan under paragraph (h)(1) of this section shall contain emission standards and compliance schedules and demonstrate that they will result in compliance with the State's annual electrical generating unit (EGU) mercury (Hg) budget for the appropriate periods. The amount of the annual EGU Hg budget, in tons of Hg per year, shall be as follows, for the indicated State for the indicated period:

State	Annual EGU Hg budget (tons)	
	2010–2017	2018 and thereafter
Alaska	0.005	0.002
Alabama	1.289	0.509
Arkansas	0.516	0.204
Arizona	0.454	0.179
California	0.041	0.016
Colorado	0.706	0.279
Connecticut	0.053	0.021
Delaware	0.072	0.028
District of Columbia	0	0
Florida	1.233	0.487
Georgia	1.227	0.484
Hawaii	0.024	0.009
Idaho	0	0
Iowa	0.727	0.287
Illinois	1.594	0.629
Indiana	2.098	0.828
Kansas	0.723	0.285
Kentucky	1.525	0.602
Louisiana	0.601	0.237
Massachusetts	0.172	0.068
Maryland	0.49	0.193
Maine	0.001	0.001
Michigan	1.303	0.514

State	Annual EGU Hg budget (tons)	
	2010–2017	2018 and thereafter
Minnesota	0.695	0.274
Missouri	1.393	0.55
Mississippi	0.291	0.115
Montana	0.378	0.149
North Carolina	1.133	0.447
North Dakota	1.564	0.617
Nebraska	0.421	0.166
New Hampshire	0.063	0.025
New Jersey	0.153	0.06
New Mexico	0.299	0.118
Nevada	0.285	0.112
New York	0.393	0.155
Ohio	2.056	0.812
Oklahoma	0.721	0.285
Oregon	0.076	0.03
Pennsylvania	1.78	0.702
Rhode Island	0	0
South Carolina	0.58	0.229
South Dakota	0.072	0.029
Tennessee	0.944	0.373
Texas	4.657	1.838
Utah	0.506	0.2
Virginia	0.592	0.234
Vermont	0	0
Washington	0.198	0.078
Wisconsin	0.89	0.351
West Virginia	1.394	0.55
Wyoming	0.952	0.376
Navajo Nation Indian country	0.601	0.237
Ute Indian Tribe Indian country	0.06	0.024

(4) Each State plan under paragraph (h)(1) of this section shall require EGUs to comply with the monitoring, record keeping, and reporting provisions of part 75 of this chapter with regard to Hg mass emissions.

(5) In addition to meeting the requirements of § 60.26, each State plan under paragraph (h)(1) of this section must show that the State has legal authority to:

(i) Adopt emissions standards and compliance schedules necessary for attainment and maintenance of the State's relevant annual EGU Hg budget under paragraph (h)(3) of this section; and

(ii) Require owners or operators of EGUs in the State to meet the monitoring, record keeping, and reporting requirements described in paragraph (h)(4) of this section.

(6)(i) Notwithstanding the provisions of paragraphs (h)(3) and (5)(i) of this section, if a State adopts regulations substantively identical to subpart HHHH of this part (Hg Budget Trading Program), incorporates such subpart by reference into its regulations, or adopts regulations that differ substantively from such subpart only as set forth in paragraph (h)(6)(ii) of this section, then such allowance system in the State's State plan is automatically approved as meeting the requirements of paragraph (h)(3) of this section, provided that the State demonstrates that it has the legal authority to take such action and to implement its responsibilities under such regulations.

(ii) If a State adopts an allowance system that differs substantively from subpart HHHH of this part only as follows, then the emissions trading program is approved as set forth in paragraph (h)(6)(i) of this section.

(A) The State may decline to adopt the allocation provisions set forth in §§ 60.4141 and 60.4142 and may instead adopt any methodology for allocating Hg allowances.

(B) The State's methodology under paragraph (h)(6)(ii)(A) of this section must not allow the State to allocate Hg allowances for a year in excess of the amount in the State's annual EGU Hg budget for such year under paragraph (h)(3) of this section;

(C) The State's methodology under paragraph (h)(6)(ii)(A) of this section must require that, for EGUs commencing operation before January 1, 2001, the State will determine, and notify the Administrator of, each unit's allocation of Hg allowances by October 31, 2006 for 2010, 2011, and 2012 and by October 31, 2009 and October 31 of each year thereafter for the fourth year after the year of the notification deadline; and

(D) The State's methodology under paragraph (h)(6)(ii)(A) of this section must require that, for EGUs commencing operation on or after January 1, 2001, the State will determine, and notify the Administrator of, each unit's allocation of Hg allowances by October 31 of the year for which the Hg allowances are allocated.

(7) If a State adopts an allowance system that differs substantively from subpart HHHH of this part, other than as set forth in paragraph (h)(6)(ii) of this section, then such allowance system is not automatically approved as set forth in paragraph (h)(6)(i) or (ii) of this section and will be reviewed by the Administrator for approvability in accordance with the other provisions of paragraphs (h)(2) through (5) of this section and the other applicable requirements for a State plan under this subpart, provided that the Hg allowances issued under such allowance system shall not, and the State plan under paragraph (h)(1) of this section shall state that such Hg allowances shall not, qualify as Hg allowances under any allowance system approved under paragraph (h)(6)(i) or (ii) of this section.

(8) The terms used in this paragraph (h) shall have the following meanings:

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or allocation means, with regard to Hg allowances, the determination of the amount of Hg allowances to be initially credited to a source.

Boiler means an enclosed fossil-or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388–77, 90, 91, 95, 98a, or 99 (Reapproved 2004)$^{\varepsilon 1}$ (incorporated by reference, see § 60.17).

Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

Coal-fired means combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year.

Cogeneration unit means a stationary, coal-fired boiler or stationary, coal-fired combustion turbine:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity:

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means:

(1) An enclosed device comprising a compressor, a combustion, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustion passes through the turbine, rotating the turbine; and

(2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated heat recovery steam generator and steam turbine.

Commence operation means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber.

Electric generating unit or *EGU* means:

(1) Except as provided in paragraph (2) of this definition, a stationary, coal-fired boiler or stationary, coal-fired combustion turbine in the State serving at any time, since the start-up of a unit's combustion chamber, a generator with nameplate capacity of more than 25 megawatts electric (MW) producing electricity for sale.

(2) For a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit in the State serving at any time a generator with nameplate capacity of more than 25 MW and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to paragraph (1) of this definition starting on the day on which the unit first no longer qualifies as a cogeneration unit.

Generator means a device that produces electricity.

Gross electrical output means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Gross thermal energy means, with regard to a cogeneration unit, useful thermal energy output plus, where such output is made available for an industrial or commercial process, any heat contained in condensate return or makeup water.

Heat input means, with regard to a specified period of time, the product (in million British thermal units per unit time, MMBTU/time) of the gross calorific value of the fuel (in Btu per pound, Btu/lb) divided by 1,000,000 Btu/MMBTU and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the Hg designated representative and determined by the Administrator in accordance with §§ 60.4170 through 60.4176 and excluding the heat derived from preheated combustion air, reticulated flue gases, or exhaust from other sources.

Hg allowance means a limited authorization issued by the permitting authority to emit one ounce of Hg during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means, starting from the initial installation of a unit, the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady-state basis as specified by the manufacturer of the unit, or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour (in Btu per hour, Btu/hr) that a unit is capable of combusting on a steady-state basis, such decreased maximum amount as specified by the person conducting the physical change.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MW) that the generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other derates) as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MW) that the generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other derates), such increased maximum amount as specified by the person conducting the physical change.

Operator means any person who operates, controls, or supervises an EGU or a source that includes an EGU and shall include, but not be limited to, any holding company, utility system, or plant manager of such EGU or source.

Ounce means 2.84×10^7 micrograms.

Owner means any of the following persons:

(1) With regard to a Hg Budget source or a Hg Budget unit at a source, respectively:

(i) Any holder of any portion of the legal or equitable title in a Hg Budget unit at the source or the Hg Budget unit;

(ii) Any holder of a leasehold interest in a Hg Budget unit at the source or the Hg Budget unit; or

(iii) Any purchaser of power from a Hg Budget unit at the source or the Hg Budget unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such Hg Budget unit; or

(2) With regard to any general account, any person who has an ownership interest with respect to the Hg allowances held in the general account and who is subject to the binding agreement for the Hg authorized account representative to represent the person's ownership interest with respect to Hg allowances.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu per kilowatt-hour (Btu/kWh), divided by 1,000 kWh per megawatt-hour (kWh/MWh), and multiplied by 8,760 hr/yr.

Sequential use of energy means:

(1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

(2) For a bottoming-cycle cogeneration unit, the use of reject heat from seful

thermal energy application or process in electricity production.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons.

State means:

(1) For purposes of referring to a governing entity, one of the States in the United States, the District of Columbia, or, if approved for treatment as a State under part 49 of this chapter, the Navajo Nation or Ute Indian Tribe that adopts the Hg Budget Trading Program pursuant to § 60.24(h)(6); or

(2) For purposes of referring to a geographic area, one of the States in the United States, the District of Columbia, the Navajo Nation Indian country, or the Ute Tribe Indian country.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Unit means a stationary coal-fired boiler or a stationary coal-fired combustion turbine.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

(1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(2) Used in a heat application (*e.g.*, space heating or domestic hot water heating); or

(3) Used in a space cooling application (*i.e.*, thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

Subpart Da—[Amended]

■ 5. Section 60.41a is amended by revising the definition of "Electric utility steam generating unit,'' and by adding in alphabetical order the definitions of "Bituminous coal,'' "Coal,'' "Coal-fired electric utility steam generating unit,'' "Cogeneration,'' "Dry flue gas desulfurization technology or dry FGD,'' "Electrostatic precipitator,'' "Emission limitation,'' "Emission rate period,'' "Federally enforceable,'' "Gaseous fuel,'' "Integrated gasification combined cycle electric utility steam generating unit,'' "Natural gas,'' and "Responsible official'' and "Wet flue gas desulfurization technology or wet FGD'' to read as follows:

§ 60.41a Definitions.

* * * * *

Bituminous coal means coal that is classified as bituminous according to the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388–77, 90, 91, 95, 98a, or 99 (Reapproved 2004)$^{\varepsilon 1}$ (incorporated by reference, see § 60.17).

* * * * *

Coal means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388–77, 90, 91, 95, 98a, or 99 (Reapproved 2004)$^{\varepsilon 1}$ (incorporated by reference, see § 60.17), coal refuse, and petroleum coke. Synthetic fuels derived from coal for the purpose of creating useful heat, including but not limited to solvent-refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures are included in this definition for the purposes of this subpart.

Coal-fired electric utility steam generating unit means an electric utility steam generating unit that burns coal, coal refuse, or a synthetic gas derived from coal either exclusively, in any combination together, or in any combination with other supplemental fuels in any amount. Examples of supplemental fuels include, but are not limited to, petroleum coke and tire-derived fuels.

* * * * *

Cogeneration means a facility that simultaneously produces both electrical (or mechanical) and useful thermal energy from the same primary energy source.

* * * * *

Dry flue gas desulfurization technology or *dry FGD* means a sulfur dioxide control system that is located downstream of the steam generating unit and removes sulfur oxides from the combustion gases of the steam generating unit by contacting the combustion gases with an alkaline slurry or solution and forming a dry powder material. This definition includes devices where the dry powder material is subsequently converted to another form. Alkaline slurries or solutions used in dry FGD technology include, but are not limited to, lime and sodium.

* * * * *

Electric utility steam generating unit means any fossil fuel-fired combustion unit of more than 25 megawatts electric (MW) that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 MW output to any utility power distribution system for sale is also considered an electric utility steam generating unit.

Electrostatic precipitator or *ESP* means an add-on air pollution control device used to capture particulate matter by charging the particles using an electrostatic field, collecting the particles using a grounded collecting surface, and transporting the particles into a hopper.

* * * * *

Emission limitation means any emissions limit or operating limit.

Emission rate period means any calendar month included in a 12-month rolling average period.

Federally enforceable means all limitations and conditions that are enforceable by the Administrator, including the requirements of 40 CFR parts 60 and 61, requirements within any applicable State implementation plan, and any permit requirements established under 40 CFR 52.21 or 40 CFR 51.18 and 40 CFR 51.24.

* * * * *

Gaseous fuel means any fuel derived from coal or petroleum that is present as a gas at standard conditions and includes, but is not limited to, refinery fuel gas, process gas, and coke-oven gas.

* * * * *

Integrated gasification combined cycle electric utility steam generating unit or *IGCC* means a coal-fired electric utility steam generating unit that burns a synthetic gas derived from coal in a combined-cycle gas turbine. No coal is directly burned in the unit during operation.

* * * * *

Natural gas means:

(1) A naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane; or

(2) Liquid petroleum gas, as defined by the American Society of Testing and Materials (ASTM) Standard Specification for Liquid Petroleum Gases D1835–87, 91, 97, or 03a (incorporated by reference, see § 60.17).

* * * * *

Responsible official means responsible official as defined in 40 CFR 70.2.

* * * * *

Wet flue gas desulfurization technology or *wet FGD* means a sulfur dioxide control system that is located downstream of the steam generating unit and removes sulfur oxides from the combustion gases of the steam generating unit by contacting the combustion gases with an alkaline slurry or solution and forming a liquid material. This definition applies to devices where the aqueous liquid material product of this contact is subsequently converted to other forms. Alkaline reagents used in wet FGD technology include, but are not limited to, lime, limestone, and sodium.

* * * * *

■ 6. Subpart Da is amended by:
■ a. Redesignating § 60.49a as § 60.51a;
■ b. Redesignating § 60.48a as § 60.50a;
■ c. Redesignating § 60.47a as § 60.49a;
■ d. Redesignating § 60.46a as § 60.48a;
■ e. Redesignating § 60.45a as § 60.47a;
■ f. Adding new §§ 60.45a; and
■ g. Adding and reserving new § 60.46a to read as follows:

§ 60.45a Standard for mercury.

(a) For each coal-fired electric utility steam generating unit other than an integrated gasification combined cycle (IGCC) electric utility steam generating unit, on and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction or reconstruction commenced after January 30, 2004, any gases which contain mercury (Hg) emissions in excess of each Hg emissions limit in paragraphs (a)(1) through (5) of this section that applies to you. The Hg emissions limits in paragraphs (a)(1) through (5) of this section are based on a 12-month rolling average using the procedures in § 60.50a(h).

(1) For each coal-fired electric utility steam generating unit that burns only bituminous coal, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of 21×10^{-6} pound per megawatt hour (lb/MWh) or 0.021 lb/gigawatt-hour (GWh) on an output basis. The International System of Units (SI) equivalent is 0.0026 nanograms per joule (ng/J).

(2) For each coal-fired electric utility steam generating unit that burns only subbituminous coal:

(i) If you utilize wet FGD technology to limit SO_2 emissions from your steam generating unit, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of 42×10^{-6} lb/MWh or 0.042 lb/GWh on an output basis. The SI equivalent is 0.0053 ng/J.

(ii) If you utilize dry FGD technology to limit SO_2 emissions from your steam generating unit, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of 78×10^{-6} lb/MWh or 0.078 lb/GWh on an output basis. The SI equivalent is 0.0098 ng/J.

(3) For each coal-fired electric utility steam generating unit that burns only lignite, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of 145×10^{-6} lb/MWh or 0.145 lb/GWh on an output basis. The SI equivalent is 0.0183 ng/J.

(4) For each coal-burning electric utility steam generating unit that burns only coal refuse, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of 1.4×10^{-6} lb/MWh or 0.0014 lb/GWh on an output basis. The SI equivalent is 0.00018 ng/J.

(5) For each coal-fired electric utility steam generating unit that burns a blend of coals from different coal ranks (*i.e.*, bituminous coal, subbituminous coal, lignite) or a blend of coal and coal refuse, you must not discharge into the atmosphere any gases from a new affected source that contain Hg in excess of the monthly unit-specific Hg emissions limit established according to paragraph (a)(5)(i) or (ii) of this section, as applicable to the affected unit.

(i) If you operate a coal-fired electric utility steam generating unit that burns a blend of coals from different coal ranks or a blend of coal and coal refuse, you must not discharge into the atmosphere any gases from a new affected source that contain Hg in excess of the computed weighted Hg emissions limit based on the proportion of energy output (in British thermal units, Btu) contributed by each coal rank burned during the compliance period and its applicable Hg emissions limit in paragraphs (a)(1) through (4) of this section as determined using Equation 1 of this section. You must meet the weighted Hg emissions limit calculated using Equation 1 of this section by calculating the unit emission rate based on the total Hg loading of the unit and the total Btu or megawatt hours contributed by all fuels burned during the compliance period.

$$EL_b = \frac{\sum_{i=1}^{n} EL_i(HH_i)}{\sum_{i=1}^{n} HH_i} \qquad \text{(Eq. 1)}$$

Where:

EL_b = Total allowable Hg in lb/MWh that can be emitted to the atmosphere from any affected source being averaged under the blending provision.

EL_i = Hg emissions limit for the subcategory i (coal rank) that applies to affected source, lb/MWh.

HH_i = Electricity output from affected source during the production period related to use of the corresponding subcategory i (coal rank) that falls within the compliance period, gross MWh generated by the electric utility steam generating unit.

n = Number of subcategories (coal ranks) being averaged for an affected source.

(ii) If you operate a coal-fired electric utility steam generating unit that burns a blend of coals from different coal ranks or a blend of coal and coal refuse together with one or more non-regulated, supplementary fuels, you must not discharge into the atmosphere any gases from the unit that contain Hg in excess of the computed weighted Hg emission limit based on the proportion of electricity output (in MWh) contributed by each coal rank burned during the compliance period and its applicable Hg emissions limit in paragraphs (a)(1) through (4) of this section as determined using Equation 1 of this section. You must meet the weighted Hg emissions limit calculated using Equation 1 of this section by calculating the unit emission rate based on the total Hg loading of the unit and the total megawatt hours contributed by both regulated and nonregulated fuels burned during the compliance period.

(b) For each IGCC electric utility steam generating unit, on and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into

the atmosphere from any affected facility for which construction or reconstruction commenced after January 30, 2004, any gases which contain Hg emissions in excess of 20×10^{-6} lb/MWh or 0.020 lb/GWh on an output basis. The SI equivalent is 0.0025 ng/J. This Hg emissions limit is based on a 12-month rolling average using the procedures in § 60.50a(g).

§ 60.46a [Reserved]

■ 7. Newly redesignated § 60.48a is amended by:
■ a. Revising paragraph (c);
■ b. In paragraph (h) by revising the existing references from ''§ 60.47a'' to ''§ 60.49a'';
■ c. In paragraph (i) by revising the existing references for ''§§ 60.47a(c),'' ''60.47a(l),'' and ''60.47a(k)'' to ''§§ 60.49a(c),'' ''60.49a(l),'' and ''60.49a(k),'' respectively;
■ d. In paragraph (j)(2) by revising the existing references from ''§ 60.47a'' to ''§ 60.49a'' twice;
■ e. In paragraph (k)(2)(ii) by revising the existing references from ''§ 60.47a'' and ''60.47a(l)'' to ''§ 60.49a'' and ''60.49a(l),'' respectively;
■ f. In paragraph (k)(2)(iii) by revising the existing references from ''§ 60.47a(k)'' to ''§ 60.49a(k)'';
■ g. In paragraph (k)(2)(iv) by revising the existing references from ''§ 60.47a(l)'' to ''§ 60.49a(l)''; and
■ h. Adding new paragraph (l).

The revision and additions read as follows:

§ 60.48a Compliance provisions.

* * * * *

(c) The particulate matter emission standards under § 60.42a, the nitrogen oxides emission standards under § 60.44a, and the Hg emission standards under § 60.45a apply at all times except during periods of startup, shutdown, or malfunction.

* * * * *

(l) Compliance provisions for sources subject to § 60.45a. The owner or operator of an affected facility subject to § 60.45a (new sources constructed or reconstructed after January 30, 2004) shall calculate the Hg emission rate (lb/MWh) for each calendar month of the year, using hourly Hg concentrations measured according to the provisions of § 60.49a(p) in conjunction with hourly stack gas volumetric flow rates measured according to the provisions of § 60.49a(l) or (m), and hourly gross electrical outputs, determined according to the provisions in § 60.49a(k). Compliance with the applicable standard under § 60.45a is determined on a 12-month rolling average basis.

■ 8. Newly redesignated § 60.49a is amended by:
■ a. In paragraph (c)(2) by revising the existing references from ''§ 60.49a'' to ''§ 60.51a'' twice;
■ b. In paragraph (g) by revising the existing reference from ''§ 60.46a'' to ''§ 60.48a'' and
■ c. Adding new paragraphs (p) through (s).

The revision and additions read as follows:

§ 60.49a Emission monitoring.

* * * * *

(p) The owner or operator of an affected facility demonstrating compliance with an Hg limit in § 60.45a shall install and operate a continuous emissions monitoring system (CEMS) to measure and record the concentration of Hg in the exhaust gases from each stack according to the requirements in paragraphs (p)(1) through (p)(3) of this section. Alternatively, for an affected facility that is also subject to the requirements of subpart I of part 75 of this chapter, the owner or operator may install, certify, maintain, operate and quality-assure the data from a Hg CEMS according to § 75.10 of this chapter and appendices A and B to part 75 of this chapter, in lieu of following the procedures in paragraphs (p)(1) through (p)(3) of this section.

(1) The owner or operator must install, operate, and maintain each CEMS according to Performance Specification 12A in appendix B to this part.

(2) The owner or operator must conduct a performance evaluation of each CEMS according to the requirements of § 60.13 and Performance Specification 12A in appendix B to this part.

(3) The owner or operator must operate each CEMS according to the requirements in paragraphs (p)(3)(i) through (iv) of this section.

(i) As specified in § 60.13(e)(2), each CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(ii) The owner or operator must reduce CEMS data as specified in § 60.13(h).

(iii) The owner or operator shall use all valid data points collected during the hour to calculate the hourly average Hg concentration.

(iv) The owner or operator must record the results of each required certification and quality assurance test of the CEMS.

(4) Mercury CEMS data collection must conform to paragraphs (p)(4)(i) through (iv) of this section.

(i) For each calendar month in which the affected unit operates, valid hourly Hg concentration data, stack gas volumetric flow rate data, moisture data (if required), and electrical output data (*i.e.*, valid data for all of these parameters) shall be obtained for at least 75 percent of the unit operating hours in the month.

(ii) Data reported to meet the requirements of this subpart shall not include hours of unit startup, shutdown, or malfunction. In addition, for an affected facility that is also subject to subpart I of part 75 of this chapter, data reported to meet the requirements of this subpart shall not include data substituted using the missing data procedures in subpart D of part 75 of this chapter, nor shall the data have been bias adjusted according to the procedures of part 75 of this chapter.

(iii) If valid data are obtained for less than 75 percent of the unit operating hours in a month, you must discard the data collected in that month and replace the data with the mean of the individual monthly emission rate values determined in the last 12 months. In the 12-month rolling average calculation, this substitute Hg emission rate shall be weighted according to the number of unit operating hours in the month for which the data capture requirement of § 60.49a(p)(4)(i) was not met.

(iv) Notwithstanding the requirements of paragraph (p)(4)(iii) of this section, if valid data are obtained for less than 75 percent of the unit operating hours in another month in that same 12-month rolling average cycle, discard the data collected in that month and replace the data with the highest individual monthly emission rate determined in the last 12 months. In the 12-month rolling average calculation, this substitute Hg emission rate shall be weighted according to the number of unit operating hours in the month for which the data capture requirement of § 60.49a(p)(4)(i) was not met.

(q) As an alternative to the CEMS required in paragraph (p) of this section, the owner or operator may use a sorbent trap monitoring system (as defined in § 72.2 of this chapter) to monitor Hg concentration, according to the procedures described in § 75.15 of this chapter and appendix K to part 75 of this chapter.

(r) For Hg CEMS that measure Hg concentration on a dry basis or for sorbent trap monitoring systems, the emissions data must be corrected for the stack gas moisture content. A certified continuous moisture monitoring system that meets the requirements of § 75.11(b) of this chapter is acceptable for this purpose. Alternatively, the appropriate

default moisture value, as specified in § 75.11(b) or § 75.12(b) of this chapter, may be used.

(s) The owner or operator shall prepare and submit to the Administrator for approval a unit-specific monitoring plan for each monitoring system, at least 45 days before commencing certification testing of the monitoring systems. The owner or operator shall comply with the requirements in your plan. The plan must address the requirements in paragraphs (s)(1) through (6) of this section.

(1) Installation of the CEMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of the exhaust emissions (*e.g.*, on or downstream of the last control device);

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction systems;

(3) Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations, relative accuracy test audits (RATA), etc.);

(4) Ongoing operation and maintenance procedures in accordance with the general requirements of § 60.13(d) or part 75 of this chapter (as applicable);

(5) Ongoing data quality assurance procedures in accordance with the general requirements of § 60.13 or part 75 of this chapter (as applicable); and

(6) Ongoing record keeping and reporting procedures in accordance with the requirements of this subpart.

■ 9. Newly redesignated § 60.50a is amended by:

■ a. In paragraph (c)(5) by revising the existing references from ''§ 60.47a(b) and (d)'' to ''§ 60.49a(b) and (d)'';

■ b. In paragraph (d)(2) by revising the existing references from ''§ 60.47a(c) and (d)'' to ''§ 60.49a(c) and (d)'';

■ c. In paragraph (e)(2) by revising the existing reference from ''§ 60.46a(d)(1)'' to ''§ 60.48a(d)(1)''; and

■ d. Adding new paragraphs (g) through (i).

The additions read as follows:

§ 60.50a Compliance determination procedures and methods.

* * * * *

(g) For the purposes of determining compliance with the emission limits in §§ 60.45a and 60.46a, the owner or operator of an electric utility steam generating unit which is also a cogeneration unit shall use the procedures in paragraphs (g)(1) and (2) of this section to calculate emission rates based on electrical output to the grid plus half of the equivalent electrical energy in the unit's process stream.

(1) All conversions from Btu/hr unit input to MW unit output must use equivalents found in 40 CFR 60.40(a)(1) for electric utilities (*i.e.*, 250 million Btu/hr input to a electric utility steam generating unit is equivalent to 73 MW input to the electric utility steam generating unit); 73 MW input to the electric utility steam generating unit is equivalent to 25 MW output from the boiler electric utility steam generating unit; therefore, 250 million Btu input to the electric utility steam generating unit is equivalent to 25 MW output from the electric utility steam generating unit).

(2) Use Equation 1 below in lieu of Equation 5 in paragraph (h) of this section, to determine the monthly average Hg emission rates for a cogeneration unit.

$$ER_{cogen} = \frac{M}{\left(\left(V_{grid}\right) + \left(\frac{V_{process}}{2}\right)\right)} \quad \text{(Eq. 1)}$$

Where:

ER_{COGEN} = Cogeneration Hg emission rate for a particular month (lb/MWh;

M = Mass of Hg emitted from the stack over the same month, from Equation 2 or Equation 3 in paragraph h of this section (lb);

V_{grid} = Amount of energy sent to the grid over the same month (MWh); and

$V_{process}$ = Amount of energy converted to steam for process use over the same month (MWh).

(h) The owner or operator shall determine compliance with the Hg limit in § 60.45a according to the procedures in paragraphs (h)(1) through (3) of this section.

(1) The initial performance test shall be commenced by the applicable date specified in § 60.8(a). The required continuous monitoring systems must be certified prior to commencing the test. The performance test consists of collecting hourly Hg emission data (lb/MWh) with the continuous monitoring systems for 12 successive months of unit operation (excluding hours of unit startup, shutdown and malfunction). The average Hg emission rate is calculated for each month, and then the weighted, 12-month average Hg emission rate is calculated according to paragraph (h)(2) or (h)(3) of this section, as applicable. If, for any month in the initial performance test, the minimum data capture requirement in § 60.49a(p)(4)(i) is not met, the owner or operator shall report a substitute Hg emission rate for that month, as follows. For the first such month, the substitute monthly Hg emission rate shall be the arithmetic average of all valid hourly Hg emission rates recorded to date. For any subsequent month(s) with insufficient data capture, the substitute monthly Hg emission rate shall be the highest valid hourly Hg emission rate recorded to date. When the 12-month average Hg emission rate for the initial performance test is calculated, for each month in which there was insufficient data capture, the substitute monthly Hg emission rate shall be weighted according to the number of unit operating hours in that month. Following the initial performance test, the owner or operator shall demonstrate compliance by calculating the weighted average of all monthly Hg emission rates (in lb/MWh) for each 12 successive calendar months, excluding data obtained during startup, shutdown, or malfunction.

(2) If a CEMS is used to demonstrate compliance, follow the procedures in paragraphs (h)(2)(i) through (iii) of this section to determine the 12-month rolling average.

(i) Calculate the total mass of Hg emissions over a month (M), in pounds (lb), using either Equation 2 in paragraph (h)(2)(i)(A) of this section or Equation 3 in paragraph (h)(2)(i)(B) of this section, in conjunction with Equation 4 in paragraph (h)(2)(i)(C) of this section.

(A) If the Hg CEMS measures Hg concentration on a wet basis, use Equation 2 below to calculate the Hg mass emissions for each valid hour:

$$E_h = K\,C_h Q_h t_h \quad \text{(Eq. 2)}$$

Where:

E_h = Hg mass emissions for the hour, (lb)

K = Units conversion constant, 6.24×10^{-11} lb-scm/μg-scf

C_h = Hourly Hg concentration, wet basis, (μg/scm)

Q_h = Hourly stack gas volumetric flow rate, (scfh)

t_h = Unit operating time, *i.e.*, the fraction of the hour for which the unit operated. For example, t_h = 0.50 for a half-hour of unit operation and 1.00 for a full hour of operation.

(B) If the Hg CEMS measures Hg concentration on a dry basis, use Equation 3 below to calculate the Hg mass emissions for each valid hour:

$$E_h = K\,C_h Q_h t_h \left(1 - B_{ws}\right) \quad \text{(Eq. 3)}$$

Where:

E_h = Hg mass emissions for the hour, (lb)

K = Units conversion constant, 6.24×10^{-11} lb-scm/μg-scf

C_h = Hourly Hg concentration, dry basis, (μg/dscm)

Q_h = Hourly stack gas volumetric flow rate, (scfh)
t_h = Unit operating time, *i.e.*, the fraction of the hour for which the unit operated
B_{ws} = Stack gas moisture content, expressed as a decimal fraction (*e.g.*, for 8 percent H_2O, B_{ws} = 0.08)

(C) Use Equation 4, below, to calculate M, the total mass of Hg emitted for the month, by summing the hourly masses derived from Equation 2 or 3 (as applicable):

$$M = \sum_{h=1}^{n} E_h \qquad \text{(Eq. 4)}$$

Where:
M = Total Hg mass emissions for the month, (lb)
E_h = Hg mass emissions for hour ''h'', from Equation 2 or 3 of this section, (lb)
n = The number of unit operating hours in the month with valid CEM and electrical output data, excluding hours of unit startup, shutdown and malfunction

(ii) Calculate the monthly Hg emission rate on an output basis (lb/MWh) using Equation 5, below. For a cogeneration unit, use Equation 1 in paragraph (g) of this section instead.

$$ER = \frac{M}{P} \qquad \text{(Eq. 5)}$$

Where:
ER = Monthly Hg emission rate, (lb/MWh)
M = Total mass of Hg emissions for the month, from Equation 4, above, (lb)
P = Total electrical output for the month, for the hours used to calculate M, (MWh)

(iii) Until 12 monthly Hg emission rates have been accumulated, calculate and report only the monthly averages. Then, for each subsequent calendar month, use Equation 6 below to calculate the 12-month rolling average as a weighted average of the Hg emission rate for the current month and the Hg emission rates for the previous 11 months, with one exception. Calendar months in which the unit does not operate (zero unit operating hours) shall not be included in the 12-month rolling average.

$$E_{avg} = \frac{\sum_{i=i}^{12} (ER)_i n_i}{\sum_{i=i}^{12} n_i} \qquad \text{(Eq. 6)}$$

Where:
E_{avg} = Weighted 12-month rolling average Hg emission rate, (lb/MWh)
$(ER)_i$ = Monthly Hg emission rate, for month ''i'', (lb/MWh)
n = The number of unit operating hours in month ''i'' with valid CEM and electrical output data, excluding hours of unit startup, shutdown, and malfunction

(3) If a sorbent trap monitoring system is used in lieu of a Hg CEMS, as described in § 75.15 of this chapter and in appendix K to part 75 of this chapter, calculate the monthly Hg emission rates using Equations 3 through 5 of this section, except that for a particular pair of sorbent traps, C_h in Equation 3 shall be the flow-proportional average Hg concentration measured over the data collection period.

(i) Daily calibration drift (CD) tests and quarterly accuracy determinations shall be performed for Hg CEMS in accordance with Procedure 1 of appendix F to this part. For the CD assessments, you may use either elemental mercury or mercuric chloride (Hg° or $HgCl_2$) standards. The four quarterly accuracy determinations shall consist of one RATA and three measurement error (ME) tests using $HgCl_2$ standards, as described in section 8.3 of Performance Specification 12–A in appendix B to this part (note: Hg° standards may be used if the Hg monitor does not have a converter). Alternatively, the owner or operator may implement the applicable daily, weekly, quarterly, and annual quality assurance (QA) requirements for Hg CEMS in appendix B to part 75 of this chapter, in lieu of the QA procedures in appendices B and F to this part. Annual RATA of sorbent trap monitoring systems shall be performed in accordance with appendices A and B to part 75 of this chapter, and all other quality assurance requirements specified in appendix K to part 75 of this chapter shall be met for sorbent trap monitoring systems.

■ 10. Newly redesignated § 60.51a is amended by:
■ a. Revising paragraph (a);
■ b. In paragraph (c) introductory text by revising the existing references from ''§ 60.47a'' and ''§ 60.46a(h)'' to ''§ 60.49a'' and ''§ 60.48a(h),'' respectively;
■ c. In paragraph (d)(1) by revising the existing reference from ''§ 60.46a(d)'' to ''§ 60.48a(d)''; and
■ d. In paragraph (e)(1) by revising the existing reference from ''§ 60.48a'' to ''§ 60.50a.''
■ e. Redesignating paragraphs (g),(h), (i), and (j) as paragraphs (h), (i), (j), and (k), respectively, and adding a new paragraph (g); and
■ f. Revising the first sentence of newly redesignated paragraph (k).

The revisions and additions read as follows:

§ 60.51a Reporting requirements.

(a) For sulfur dioxide, nitrogen oxides, particulate matter, and Hg emissions, the performance test data from the initial and subsequent performance test and from the performance evaluation of the continuous monitors (including the transmissometer) are submitted to the Administrator.

* * * * *

(g) For Hg, the following information shall be reported to the Administrator:

(1) Company name and address;

(2) Date of report and beginning and ending dates of the reporting period;

(3) The applicable Hg emission limit (lb/MWh); and

(4) For each month in the reporting period:

(i) The number of unit operating hours;

(ii) The number of unit operating hours with valid data for Hg concentration, stack gas flow rate, moisture (if required), and electrical output;

(iii) The monthly Hg emission rate (lb/MWh);

(iv) The number of hours of valid data excluded from the calculation of the monthly Hg emission rate, due to unit startup, shutdown and malfunction; and

(v) The 12-month rolling average Hg emission rate (lb/MWh); and

(5) The data assessment report (DAR) required by appendix F to this part, or an equivalent summary of QA test results if the QA of part 75 of this chapter are implemented.

* * * * *

(k) The owner or operator of an affected facility may submit electronic quarterly reports for SO_2 and/or NO_X and/or opacity and/or Hg in lieu of submitting the written reports required under paragraphs (b), (g), and (i) of this section. * * *

■ 11. Section 60.52a is added to subpart Da to read as follows;

§ 60.52a Recordkeeping requirements.

The owner or operator of an affected facility subject to the emissions limitations in § 60.45a or § 60.46a shall provide notifications in accordance with § 60.7(a) and shall maintain records of all information needed to demonstrate compliance including performance tests, monitoring data, fuel analyses, and calculations, consistent with the requirements of § 60.7(f).

Subpart GGGG—[Added]

■ 12. Part 60 is amended by adding and reserving subpart GGGG to read as follows:

Subpart GGGG—[Reserved]

■ 13. Part 60 is amended by adding subpart HHHH to read as follows:

Subpart HHHH—Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units

Hg Budget Trading Program General Provisions

Sec.

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Hg Allowance Allocations

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60.4160 Submission of Hg allowance transfers.
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60.4170 General requirements.
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Hg Budget Trading Program General Provisions

§ 60.4101 Purpose.

This subpart establishes the model rule comprising general provisions and the designated representative, permitting, allowance, and monitoring provisions for the State mercury (Hg) Budget Trading Program, under section 111 of the Clean Air Act (CAA) and § 60.24(h)(6), as a means of reducing national Hg emissions. The owner or operator of a unit or a source shall comply with the requirements of this subpart as a matter of Federal law only if the State with jurisdiction over the unit and the source incorporates by reference this subpart or otherwise adopts the requirements of this subpart in accordance with § 60.24(h)(6), the State submits to the Administrator one or more revisions of the State plan that include such adoption, and the Administrator approves such revisions. If the State adopts the requirements of this subpart in accordance with § 60.24(h)(6), then the State authorizes the Administrator to assist the State in implementing the Hg Budget Trading Program by carrying out the functions set forth for the Administrator in this subpart.

§ 60.4102 Definitions.

The terms used in this subpart shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each Hg Allowance Tracking System account.

Acid rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or *allocation* means the determination by the permitting authority or the Administrator of the amount of Hg allowances to be initially credited to a Hg Budget unit or a new unit set-aside under §§ 60.4140 through 60.4142.

Allowance transfer deadline means, for a control period, midnight of March 1, if it is a business day, or, if March 1 is not a business day, midnight of the first business day thereafter immediately following the control period and is the deadline by which a Hg allowance transfer must be submitted for recordation in a Hg Budget source's compliance account in order to be used to meet the source's Hg Budget emissions limitation for such control period in accordance with § 60.4154.

Alternate Hg designated representative means, for a Hg Budget source and each Hg Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with §§ 60.4110 through 60.4114, to act on behalf of the Hg designated representative in matters pertaining to the Hg Budget Trading Program.

Automated data acquisition and handling system or *DAHS* means that component of the continuous emission monitoring system (CEMS), or other emissions monitoring system approved for use under §§ 60.4170 though 60.4176, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required §§ 60.4170 through 60.4176.

Boiler means an enclosed fossil-or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

CAIR NO_X Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AA through II of part 96 of this chapter and § 51.123 of this chapter, as a means of mitigating

interstate transport of fine particulates and nitrogen oxides.

CAIR NO_X Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAAA through IIII of part 96 of this chapter and § 51.123 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR SO_2 Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAA through III of part 96 of this chapter and § 51.124 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

Clean Air Act or *CAA* means the Clean Air Act, 42 U.S.C. 7401, *et seq.*

Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388–77, 90, 91, 95, 98a, or 99 (Reapproved 2004)$^{\varepsilon 1}$ (incorporated by reference, see § 60.17).

Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

Coal-fired means combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year.

Cogeneration unit means a stationary, coal-fired boiler or stationary, coal-fired combustion turbine:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity:

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means:

(1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated heat recovery steam generator and steam turbine.

Commence commercial operation means, with regard to a unit serving a generator:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 60.4105.

(i) For a unit that is a Hg Budget unit under § 60.4104 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit that is a Hg Budget unit under § 60.4104 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 60.4105, for a unit that is not a Hg Budget unit under § 60.4104 on the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a Hg Budget unit under § 60.4104.

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

Commence operation means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 60.4105.

(i) For a unit that is a Hg Budget unit under § 60.4104 on the date the unit commences operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(ii) For a unit that is a Hg Budget unit under § 60.4104 on the date the unit commences operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1) or (2) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 60.4105, for a unit that is not a Hg Budget unit under § 60.4104 on the date the unit commences operation as defined in paragraph (1) of this definition, the unit's date for commencement of operation shall be the date on which the unit becomes a Hg Budget unit under § 60.4104.

(i) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(ii) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1) or (2) of this definition as appropriate.

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means a Hg Allowance Tracking System account, established by the Administrator for a Hg Budget source under §§ 60.4150 through 60.4157, in which any Hg

allowance allocations for the Hg Budget units at the source are initially recorded and in which are held any Hg allowances available for use for a control period in order to meet the source's Hg Budget emissions limitation in accordance with § 60.4154.

Continuous emission monitoring system or *CEMS* means the equipment required under §§ 60.4170 through 60.4176 to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of Hg emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of CEMS required under §§ 60.4170 through 60.4176:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in units of standard cubic feet per hour (scfh);

(2) A Hg concentration monitoring system, consisting of a Hg pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of Hg emissions in units of micrograms per dry standard cubic meter (μg/dscm);

(3) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O.

(4) A carbon dioxide monitoring system, consisting of a CO_2 concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

(5) An oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2, in percent O_2.

Control period means the period beginning January 1 of a calendar year and ending on December 31 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the Hg designated representative and as determined by the Administrator in accordance with §§ 60.4170 through 60.4176.

Excess emissions means any ounce of mercury emitted by the Hg Budget units at a Hg Budget source during a control period that exceeds the Hg Budget emissions limitation for the source.

General account means a Hg Allowance Tracking System account, established under § 60.4151, that is not a compliance account.

Generator means a device that produces electricity.

Gross electrical output means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Heat input means, with regard to a specified period of time, the product (in MMBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/MMBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the Hg designated representative and determined by the Administrator in accordance with §§ 60.4170 through 60.4176 and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in MMBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in MMBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Hg allowance means a limited authorization issued by the permitting authority or the Administrator under §§ 60.4140 through 60.4142 to emit one ounce of mercury during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the Hg Budget Trading Program. An authorization to emit mercury that is not issued under the provisions of a State plan that adopt the requirements of this subpart and are approved by the Administrator in accordance with § 60.24(h)(6) shall not be a ''Hg allowance.''

Hg allowance deduction or *deduct Hg allowances* means the permanent withdrawal of Hg allowances by the Administrator from a compliance account in order to account for a specified number of ounces of total mercury emissions from all Hg Budget units at a Hg Budget source for a control period, determined in accordance with §§ 60.4150 though 60.4157 and §§ 60.4170 through 60.4176, or to account for excess emissions.

Hg allowances held or *hold Hg allowances* means the Hg allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with §§ 60.4150 through 60.4162, in a Hg Allowance Tracking System account.

Hg Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of Hg allowances under the Hg Budget Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

Hg Allowance Tracking System account means an account in the Hg Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of Hg allowances.

Hg authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with § 60.4152, to transfer and otherwise dispose of Hg allowances held in the general account and, with regard to a compliance account, the Hg designated representative of the source.

Hg Budget emissions limitation means, for a Hg Budget source, the equivalent in ounces of the Hg allowances available for deduction for the source under § 60.4154(a) and (b) for a control period.

Hg Budget permit means the legally binding and Federally enforceable written document, or portion of such document, issued by the permitting authority under §§ 60.4120 through 60.4124, including any permit revisions, specifying the Hg Budget Trading Program requirements applicable to a Hg Budget source, to each Hg Budget unit at the source, and to the owners and operators and the Hg designated representative of the source and each such unit.

Hg Budget source means a source that includes one or more Hg Budget units.

Hg Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance with this subpart and § 60.24(h)(6), as a means of reducing national Hg emissions.

Hg Budget unit means a unit that is subject to the Hg Budget Trading Program under § 60.4104.

Hg designated representative means, for a Hg Budget source and each Hg

Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with §§ 60.4110 through 60.4114, to represent and legally bind each owner and operator in matters pertaining to the Hg Budget Trading Program.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Lignite means coal that is classified as lignite A or B according to the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388–77, 90, 91, 95, 98a, or 99 (Reapproved 2004)$^{\varepsilon 1}$ (incorporated by reference, see § 60.17).

Maximum design heat input means, starting from the initial installation of a unit, the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady-state basis as specified by the manufacturer of the unit, or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady-state basis, such decreased maximum amount as specified by the person conducting the physical change.

Monitoring system means any monitoring system that meets the requirements of §§ 60.4170 through 60.4176, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other deratings) as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as specified by the person conducting the physical change.

Operator means any person who operates, controls, or supervises a Hg Budget unit or a Hg Budget source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Ounce means 2.84×10^7 micrograms. For the purpose of determining compliance with the Hg Budget emissions limitation, total ounces of mercury emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with §§ 60.4170 through 60.4176, but with any remaining fraction of an ounce equal to or greater than 0.50 ounces deemed to equal one ounce and any remaining fraction of an ounce less than 0.50 ounces deemed to equal zero ounces.

Owner means any of the following persons:

(1) With regard to a Hg Budget source or a Hg Budget unit at a source, respectively:

(i) Any holder of any portion of the legal or equitable title in a Hg Budget unit at the source or the Hg Budget unit;

(ii) Any holder of a leasehold interest in a Hg Budget unit at the source or the Hg Budget unit; or

(iii) Any purchaser of power from a Hg Budget unit at the source or the Hg Budget unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such Hg Budget unit; or

(2) With regard to any general account, any person who has an ownership interest with respect to the Hg allowances held in the general account and who is subject to the binding agreement for the Hg authorized account representative to represent the person's ownership interest with respect to Hg allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the Hg Budget Trading Program in accordance with §§ 60.4120 through 60.4124 or, if no such agency has been so authorized, the Administrator.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, record, or *recorded* means, with regard to Hg allowances, the movement of Hg allowances by the Administrator into or between Hg Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

(1) Atmospheric or pressurized fluidized bed combustion;

(2) Integrated gasification combined cycle;

(3) Magnetohydrodynamics;

(4) Direct and indirect coal-fired turbines;

(5) Integrated gasification fuel cells; or

(6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

Serial number means, for a Hg allowance, the unique identification number assigned to each Hg allowance by the Administrator.

Sequential use of energy means:

(1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the CAA, a ''source,'' including a ''source'' with multiple units, shall be considered a single ''facility.''

State means:

(1) For purposes of referring to a governing entity, one of the States in the United States, the District of Columbia, or, if approved for treatment as a State under part 49 of this chapter, the Navajo Nation or Ute Indian Tribe that adopts the Hg Budget Trading Program pursuant to § 60.24(h)(6); or

(2) For purposes of referring to geographic areas, one of the States in the United States, the District of Columbia, the Navajo Nation Indian country, or the Ute Tribe Indian country.

Subbituminous means coal that is classified as subbituminous A, B, or C, according to the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388–77, 90, 91, 95, 98a, or 99 (Reapproved 2004)$^{\varepsilon 1}$ (incorporated by reference, see § 60.17).

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery. Compliance with any ''submission'' or ''service'' deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the CAA and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the CAA and part 70 or 71 of this chapter.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Unit means a stationary coal-fired boiler or a stationary coal-fired combustion turbine.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or *hour of unit operation* means an hour in which a unit combusts any fuel.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

(1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(2) Used in a heat application (*e.g.*, space heating or domestic hot water heating); or

(3) Used in a space cooling application (*i.e.*, thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

§ 60.4103 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu—British thermal unit.
CO_2—carbon dioxide.
H_2O—water.
Hg—mercury.
hr—hour.
kW—kilowatt electrical.
kWh—kilowatt hour.
lb—pound.
MMBtu—million Btu.
MWe—megawatt electrical.
MWh—megawatt hour.
NO_X—nitrogen oxides.
O_2—oxygen.
ppm—parts per million.
scfh—standard cubic feet per hour.
SO_2—sulfur dioxide.
yr—year.

§ 60.4104 Applicability.

The following units in a State shall be Hg Budget units, and any source that includes one or more such units shall be a Hg Budget source, subject to the requirements of this subpart:

(a) Except as provided in paragraph (b) of this section, a unit serving at any time, since the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(b) For a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to paragraph (a) of this section starting on the day on which the unit first no longer qualifies as a cogeneration unit.

§ 60.4105 Retired unit exemption.

(a)(1) Any Hg Budget unit that is permanently retired shall be exempt from the Hg Budget Trading Program, except for the provisions of this section, § 60.4102, § 60.4103, § 60.4104, § 60.4106(c)(4) through (8), § 60.4107, and §§ 60.4150 through 60.4162.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the Hg Budget unit is permanently retired. Within 30 days of the unit's permanent retirement, the Hg designated representative shall submit a statement to the permitting authority otherwise responsible for administering any Hg Budget permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.

(3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under §§ 60.4120 through 60.4124 covering the source at which the unit is located to add the provisions and requirements of the exemption

under paragraphs (a)(1) and (b) of this section.

(b) *Special provisions.* (1) A unit exempt under paragraph (a) of this section shall not emit any mercury, starting on the date that the exemption takes effect.

(2) The permitting authority will allocate Hg allowances under §§ 60.4140 through 60.4142 to a unit exempt under paragraph (a) of this section.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(4) The owners and operators and, to the extent applicable, the Hg designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the Hg Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(5) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the Hg designated representative of the source submits a complete Hg Budget permit application under § 60.4122 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the unit resumes operation.

(6) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

(i) The date on which the Hg designated representative submits a Hg Budget permit application for the unit under paragraph (b)(5) of this section;

(ii) The date on which the Hg designated representative is required under paragraph (b)(5) of this section to submit a Hg Budget permit application for the unit; or

(iii) The date on which the unit resumes operation, if the Hg designated representative is not required to submit a Hg Budget permit application for the unit.

(7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under §§ 60.4170 through 60.4176, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences operation and commercial operation on the first date on which the unit resumes operation.

§ 60.4106 Standard requirements.

(a) *Permit Requirements.* (1) The Hg designated representative of each Hg Budget source required to have a title V operating permit and each Hg Budget unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete Hg Budget permit application under § 60.4122 in accordance with the deadlines specified in § 60.4121(a) and (b); and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a Hg Budget permit application and issue or deny a Hg Budget permit.

(2) The owners and operators of each Hg Budget source required to have a title V operating permit and each Hg Budget unit required to have a title V operating permit at the source shall have a Hg Budget permit issued by the permitting authority under §§ 60.4120 through 60.4124 for the source and operate the source and the unit in compliance with such Hg Budget permit.

(3) The owners and operators of a Hg Budget source that is not required to have a title V operating permit and each Hg Budget unit that is not required to have a title V operating permit are not required to submit a Hg Budget permit application, and to have a Hg Budget permit, under §§ 60.4120 through 60.4124 for such Hg Budget source and such Hg Budget unit.

(b) *Monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the Hg designated representative, of each Hg Budget source and each Hg Budget unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of §§ 60.4170 through 60.4176.

(2) The emissions measurements recorded and reported in accordance with §§ 60.4170 through 60.4176 shall be used to determine compliance by each Hg Budget source with the Hg Budget emissions limitation under paragraph (c) of this section.

(c) *Mercury emission requirements.* (1) As of the allowance transfer deadline for a control period, the owners and operators of each Hg Budget source and each Hg Budget unit at the source shall hold, in the source's compliance account, Hg allowances available for compliance deductions for the control period under § 60.4154(a) in an amount not less than the ounces of total mercury emissions for the control period from all Hg Budget units at the source, as determined in accordance with §§ 60.4170 through 60.4176.

(2) A Hg Budget unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under § 60.4170(b)(1) or (2).

(3) A Hg allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the Hg allowance was allocated.

(4) Hg allowances shall be held in, deducted from, or transferred into or among Hg Allowance Tracking System accounts in accordance with §§ 60.4160 through 60.4162.

(5) A Hg allowance is a limited authorization to emit one ounce of mercury in accordance with the Hg Budget Trading Program. No provision of the Hg Budget Trading Program, the Hg Budget permit application, the Hg Budget permit, or an exemption under § 60.4105 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

(6) A Hg allowance does not constitute a property right.

(7) Upon recordation by the Administrator under §§ 60.4150 through 60.4162, every allocation, transfer, or deduction of a Hg allowance to or from a Hg Budget unit's compliance account is incorporated automatically in any Hg Budget permit of the source that includes the Hg Budget unit.

(d) *Excess emissions requirements.* (1) If a Hg Budget source emits mercury during any control period in excess of the Hg Budget emissions limitation, then:

(i) The owners and operators of the source and each Hg Budget unit at the source shall surrender the Hg allowances required for deduction under § 60.4154(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and

(ii) Each ounce of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(2) [Reserved]

(e) *Recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of

the Hg Budget source and each Hg Budget unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The certificate of representation under § 60.4113 for the Hg designated representative for the source and each Hg Budget unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 60.4113 changing the Hg designated representative.

(ii) All emissions monitoring information, in accordance with §§ 60.4170 through 60.4176, provided that to the extent that §§ 60.4170 through 60.4176 provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the Hg Budget Trading Program.

(iv) Copies of all documents used to complete a Hg Budget permit application and any other submission under the Hg Budget Trading Program or to demonstrate compliance with the requirements of the Hg Budget Trading Program.

(2) The Hg designated representative of a Hg Budget source and each Hg Budget unit at the source shall submit the reports required under the Hg Budget Trading Program, including those under §§ 60.4170 through 60.4176.

(f) *Liability.* (1) Each Hg Budget source and each Hg Budget unit shall meet the requirements of the Hg Budget Trading Program.

(2) Any provision of the Hg Budget Trading Program that applies to a Hg Budget source or the Hg designated representative of a Hg Budget source shall also apply to the owners and operators of such source and of the Hg Budget units at the source.

(3) Any provision of the Hg Budget Trading Program that applies to a Hg Budget unit or the Hg designated representative of a Hg Budget unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the Hg Budget Trading Program, a Hg Budget permit application, a Hg Budget permit, or an exemption under § 60.4105 shall be construed as exempting or excluding the owners and operators, and the Hg designated representative, of a Hg Budget source or Hg Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a Federally enforceable permit, or the CAA.

§ 60.4107 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the Hg Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the Hg Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the Hg Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 60.4108 Appeal procedures.

The appeal procedures for decisions of the Administrator under the Hg Budget Trading Program shall be the procedures set forth in part 78 of this chapter. The terms ''subpart HHHH of this part,'' ''§ 60.4141(b)(2) or (c)(2),'' ''§ 60.4154,'' ''§ 60.4156,'' ''§ 60.4161,'' ''§ 60.4175,'' ''Hg allowances,'' ''Hg Allowance Tracking System Account,'' ''Hg designated representative,'' ''Hg authorized account representative,'' and ''§ 60.4106'' apply instead of the terms ''subparts AA through II of part 96 of this chapter,'' ''§ 96.141(b)(2) or (c)(2),'' ''§ 96.154,'' ''§ 96.156,'' ''§ 96.161,'' ''§ 96.175,'' ''CAIR NO_X allowances,'' ''CAIR NO_X Allowance Tracking System account,'' ''CAIR designated representative,'' ''CAIR authorized account representative,'' and ''§ 96.106.''

Hg Designated Representative for Hg Budget Sources

§ 60.4110 Authorization and Responsibilities of Hg Designated Representative.

(a) Except as provided under § 60.4111, each Hg Budget source, including all Hg Budget units at the source, shall have one and only one Hg designated representative, with regard to all matters under the Hg Budget Trading Program concerning the source or any Hg Budget unit at the source.

(b) The Hg designated representative of the Hg Budget source shall be selected by an agreement binding on the owners and operators of the source and all Hg Budget units at the source and shall act in accordance with the certification statement in § 60.4113(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 60.4113, the Hg designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the Hg Budget source represented and each Hg Budget unit at the source in all matters pertaining to the Hg Budget Trading Program, notwithstanding any agreement between the Hg designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the Hg designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No Hg Budget permit will be issued, no emissions data reports will be accepted, and no Hg Allowance Tracking System account will be established for a Hg Budget unit at a source, until the Administrator has received a complete certificate of representation under § 60.4113 for a Hg designated representative of the source and the Hg Budget units at the source.

(e)(1) Each submission under the Hg Budget Trading Program shall be submitted, signed, and certified by the Hg designated representative for each Hg Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the Hg designated representative: ''I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a Hg Budget source or a Hg Budget unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 60.4111 Alternate Hg Designated Representative.

(a) A certificate of representation under § 60.4113 may designate one and only one alternate Hg designated representative, who may act on behalf of the Hg designated representative. The agreement by which the alternate Hg designated representative is selected shall include a procedure for authorizing the alternate Hg designated representative to act in lieu of the Hg designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 60.4113, any representation, action, inaction, or submission by the alternate Hg designated representative shall be deemed to be a representation, action, inaction, or submission by the Hg designated representative.

(c) Except in this section and §§ 60.4102, 60.4110(a) and (d), 60.4112, 60.4113, 60.4151, and 60.4174, whenever the term ''Hg designated representative'' is used in this subpart, the term shall be construed to include the Hg designated representative or any alternate Hg designated representative.

§ 60.4112 Changing Hg Designated Representative and Alternate Hg Designated Representative; changes in owners and operators.

(a) Changing Hg designated representative. The Hg designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 60.4113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous Hg designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new Hg designated representative and the owners and operators of the Hg Budget source and the Hg Budget units at the source.

(b) Changing alternate Hg designated representative. The alternate Hg designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 60.4113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate Hg designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate Hg designated representative and the owners and operators of the Hg Budget source and the Hg Budget units at the source.

(c) *Changes in owners and operators.* (1) In the event a new owner or operator of a Hg Budget source or a Hg Budget unit is not included in the list of owners and operators in the certificate of representation under § 60.4113, such new owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the Hg designated representative and any alternate Hg designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a court, as if the new owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a Hg Budget source or a Hg Budget unit, including the addition of a new owner or operator, the Hg designated representative or any alternate Hg designated representative shall submit a revision to the certificate of representation under § 60.4113 amending the list of owners and operators to include the change.

§ 60.4113 Certificate of Representation.

(a) A complete certificate of representation for a Hg designated representative or an alternate Hg designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the Hg Budget source, and each Hg Budget unit at the source, for which the certificate of representation is submitted.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the Hg designated representative and any alternate Hg designated representative.

(3) A list of the owners and operators of the Hg Budget source and of each Hg Budget unit at the source.

(4) The following certification statements by the Hg designated representative and any alternate Hg designated representative:

(i) ''I certify that I was selected as the Hg designated representative or alternate Hg designated representative, as applicable, by an agreement binding on the owners and operators of the source and each Hg Budget unit at the source.''

(ii) ''I certify that I have all the necessary authority to carry out my duties and responsibilities under the Hg Budget Trading Program on behalf of the owners and operators of the source and of each Hg Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions.''

(iii) ''I certify that the owners and operators of the source and of each Hg Budget unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit.''

(iv) ''Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a Hg Budget unit, or where a customer purchases power from a Hg Budget unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'Hg designated representative' or 'alternate Hg designated representative,' as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each Hg Budget unit at the source; and Hg allowances and proceeds of transactions involving Hg allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of Hg allowances by contract, Hg allowances and proceeds of transactions involving Hg allowances will be deemed to be held or distributed in accordance with the contract.''

(5) The signature of the Hg designated representative and any alternate Hg designated representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 60.4114 Objections concerning Hg Designated Representative.

(a) Once a complete certificate of representation under § 60.4113 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 60.4113 is received by the Administrator.

(b) Except as provided in § 60.4112(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation,

action, inaction, or submission, of the Hg designated representative shall affect any representation, action, inaction, or submission of the Hg designated representative or the finality of any decision or order by the permitting authority or the Administrator under the Hg Budget Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any Hg designated representative, including private legal disputes concerning the proceeds of Hg allowance transfers.

Permits

§ 60.4120 General Hg budget trading program permit requirements.

(a) For each Hg Budget source required to have a title V operating permit, such permit shall include a Hg Budget permit administered by the permitting authority for the title V operating permit. The Hg Budget portion of the title V permit shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter, except as provided otherwise by this section and §§ 60.4121 through 60.4124.

(b) Each Hg Budget permit shall contain, with regard to the Hg Budget source and the Hg Budget units at the source covered by the Hg Budget permit, all applicable Hg Budget Trading Program requirements and shall be a complete and separable portion of the title V operating permit.

§ 60.4121 Submission of Hg budget permit applications.

(a) *Duty to apply.* The Hg designated representative of any Hg Budget source required to have a title V operating permit shall submit to the permitting authority a complete Hg Budget permit application under § 60.4122 for the source covering each Hg Budget unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the Hg Budget unit commences operation.

(b) *Duty to Reapply.* For a Hg Budget source required to have a title V operating permit, the Hg designated representative shall submit a complete Hg Budget permit application under § 60.4122 for the source covering each Hg Budget unit at the source to renew the Hg Budget permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal.

§ 60.4122 Information requirements for Hg budget permit applications.

A complete Hg Budget permit application shall include the following elements concerning the Hg Budget source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the Hg Budget source;

(b) Identification of each Hg Budget unit at the Hg Budget source; and

(c) The standard requirements under § 60.4106.

§ 60.4123 Hg budget permit contents and term.

(a) Each Hg Budget permit will contain, in a format prescribed by the permitting authority, all elements required for a complete Hg Budget permit application under § 60.4122.

(b) Each Hg Budget permit is deemed to incorporate automatically the definitions of terms under § 60.4102 and, upon recordation by the Administrator under §§ 60.4150 through 60.4162, every allocation, transfer, or deduction of a Hg allowance to or from the compliance account of the Hg Budget source covered by the permit.

(c) The term of the Hg Budget permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the Hg Budget permit with issuance, revision, or renewal of the Hg Budget source's title V operating permit.

§ 60.4124 Hg budget permit revisions.

Except as provided in § 60.4123(b), the permitting authority will revise the Hg Budget permit, as necessary, in accordance with the permitting authority's title V operating permits regulations addressing permit revisions.

§ 60.4130 [Reserved]

Hg Allowance Allocations

§ 60.4140 State trading budgets.

The State trading budgets for annual allocations of Hg allowances for the control periods in 2010 through 2017 and in 2018 and thereafter are respectively as follows:

State	State trading budget (tons)	
	2010–2017	2018 and thereafter
Alaska	0.005	0.002
Alabama	1.289	0.509
Arkansas	0.516	0.204
Arizona	0.454	0.179
California	0.041	0.016
Colorado	0.706	0.279
Connecticut	0.053	0.021
Delaware	0.072	0.028
District of Columbia	0	0
Florida	1.233	0.487
Georgia	1.227	0.484
Hawaii	0.024	0.009
Idaho	0	0
Iowa	0.727	0.287
Illinois	1.594	0.629
Indiana	2.098	0.828
Kansas	0.723	0.285
Kentucky	1.525	0.602
Louisiana	0.601	0.237
Massachusetts	0.172	0.068
Maryland	0.49	0.193
Maine	0.001	0.001
Michigan	1.303	0.514
Minnesota	0.695	0.274
Missouri	1.393	0.55
Mississippi	0.291	0.115
Montana	0.378	0.149
Navajo Nation Indian country	0.601	0.237
North Carolina	1.133	0.447
North Dakota	1.564	0.617
Nebraska	0.421	0.166
New Hampshire	0.063	0.025
New Jersey	0.153	0.06
New Mexico	0.299	0.118
Nevada	0.285	0.112
New York	0.393	0.155
Ohio	2.057	0.812
Oklahoma	0.721	0.285
Oregon	0.076	0.03
Pennsylvania	1.78	0.702
Rhode Island	0	0
South Carolina	0.58	0.229
South Dakota	0.072	0.029
Tennessee	0.944	0.373
Texas	4.657	1.838
Utah	0.506	0.2
Ute Indian Tribe Indian country	0.06	0.024
Virginia	0.592	0.234
Vermont	0	0
Washington	0.198	0.078
Wisconsin	0.89	0.351
West Virginia	1.394	0.55
Wyoming	0.952	0.376

§ 60.4141 Timing requirements for Hg allowance allocations.

(a) By October 31, 2006, the permitting authority will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with § 60.4142(a) and (b), for the control periods in 2010, 2011, 2012, 2013, and 2014.

(b)(1) By October 31, 2008 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with § 60.4142(a) and (b), for the control period in the sixth year after the year of

the applicable deadline for submission under this paragraph.

(2) If the permitting authority fails to submit to the Administrator the Hg allowance allocations in accordance with paragraph (b)(1) of this section, the Administrator will assume that the allocations of Hg allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2018, the Administrator will assume that the allocations equal the allocations for the control period in 2017, multiplied by the amount of ounces (*i.e.*, tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under § 60.4140 for 2018 and thereafter and divided by such amount of ounces of Hg emissions for 2010 through 2017.

(c)(1) By October 31, 2010 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with § 60.4142(a), (c), and (d), for the control period in the year of the applicable deadline for submission under this paragraph.

(2) If the permitting authority fails to submit to the Administrator the Hg allowance allocations in accordance with paragraph (c)(1) of this section, the Administrator will assume that the allocations of Hg allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2018, the Administrator will assume that the allocations equal the allocations for the control period in 2017, multiplied by the amount of ounces (*i.e.*, tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under § 60.4140 for 2018 and thereafter and divided by such amount of ounces of Hg emissions for 2010 through 2017 and except that any Hg Budget unit that would otherwise be allocated Hg allowances under § 60.4142(a) and (b), as well as under § 60.4142(a), (c), and (d), for the applicable control period will be assumed to be allocated no Hg allowances under § 60.4142(a), (c), and (d) for the applicable control period.

§ 60.4142 Hg allowance allocations.

(a)(1) The baseline heat input (in MMBtu) used with respect to Hg allowance allocations under paragraph (b) of this section for each Hg Budget unit will be:

(i) For units commencing operation before January 1, 2001, the average of the three highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as the sum of the following:

(A) Any portion of the unit's control period heat input for the year that results from the unit's combustion of lignite, multiplied by 3.0;

(B) Any portion of the unit's control period heat input for the year that results from the unit's combustion of subbituminous coal, multiplied by 1.25; and

(C) Any portion of the unit's control period heat input for the year that is not covered by paragraph (a)(1)(i)(A) or (B) of this section, multiplied by 1.0.

(ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.

(2)(i) A unit's control period heat input for a calendar year under paragraphs (a)(1)(i) of this section, and a unit's total ounces of Hg emissions during a calendar year under paragraph (c)(3) of this section, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year. The unit's types and amounts of fuel combusted, under paragraph (a)(1)(i) of this section, will be based on the best available data reported to the permitting authority for the unit.

(ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:

(A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh and divided by 1,000,000 Btu/MMBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/MMBtu; or

(C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/MMBtu.

(b)(1) For each control period in 2010 and thereafter, the permitting authority will allocate to all Hg Budget units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of Hg allowances equal to 95 percent for a control period in 2010 through 2014, and 97 percent for a control period in 2015 and thereafter, of the amount of ounces (*i.e.*, tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under § 60.4140 (except as provided in paragraph (d) of this section).

(2) The permitting authority will allocate Hg allowances to each Hg Budget unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of Hg allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such Hg Budget unit to the total amount of baseline heat input of all such Hg Budget units in the State and rounding to the nearest whole allowance as appropriate.

(c) For each control period in 2010 and thereafter, the permitting authority will allocate Hg allowances to Hg Budget units in the State that commenced operation on or after January 1, 2001 and do not yet have a baseline heat input (as determined under paragraph (a) of this section), in accordance with the following procedures:

(1) The permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated Hg allowances equal to 5 percent for a control period in 2010 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of ounces (*i.e.*, tons multiplied by 32,000 ounces/ton) of Hg emissions in the

applicable State trading budget under § 60.4140.

(2) The Hg designated representative of such a Hg Budget unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated Hg allowances, starting with the later of the control period in 2010 or the first control period after the control period in which the Hg Budget unit commences commercial operation and until the first control period for which the unit is allocated Hg allowances under paragraph (b) of this section. The Hg allowance allocation request must be submitted on or before July 1 of the first control period for which the Hg allowances are requested and after the date on which the Hg Budget unit commences commercial operation.

(3) In a Hg allowance allocation request under paragraph (c)(2) of this section, the Hg designated representative may request for a control period Hg allowances in an amount not exceeding the Hg Budget unit's total ounces of Hg emissions during the control period immediately before such control period.

(4) The permitting authority will review each Hg allowance allocation request under paragraph (c)(2) of this section and will allocate Hg allowances for each control period pursuant to such request as follows:

(i) The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after July 1 of the control period, the permitting authority will determine the sum of the Hg allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of Hg allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate the amount of Hg allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each Hg Budget unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of Hg allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate to each Hg Budget unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the Hg allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of Hg allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The permitting authority will notify each Hg designated representative that submitted an allowance allocation request of the amount of Hg allowances (if any) allocated for the control period to the Hg Budget unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated Hg allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each Hg Budget unit that was allocated Hg allowances under paragraph (b) of this section an amount of Hg allowances equal to the total amount of such remaining unallocated Hg allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for 2010 through 2014, and 97 percent for 2014 and thereafter, of the amount of ounces (*i.e.*, tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under § 60.4140, and rounded to the nearest whole allowance as appropriate.

Hg Allowance Tracking System

§ 60.4150 [Reserved]

§ 60.4151 Establishment of accounts.

(a) *Compliance accounts.* Upon receipt of a complete certificate of representation under § 60.4113, the Administrator will establish a compliance account for the Hg Budget source for which the certificate of representation was submitted unless the source already has a compliance account.

(b) *General accounts.* (1) *Application for general account.* (i) Any person may apply to open a general account for the purpose of holding and transferring Hg allowances. An application for a general account may designate one and only one Hg authorized account representative and one and only one alternate Hg authorized account representative who may act on behalf of the Hg authorized account representative. The agreement by which the alternate Hg authorized account representative is selected shall include a procedure for authorizing the alternate Hg authorized account representative to act in lieu of the Hg authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the Hg authorized account representative and any alternate Hg authorized account representative;

(B) Organization name and type of organization, if applicable;

(C) A list of all persons subject to a binding agreement for the Hg authorized account representative and any alternate Hg authorized account representative to represent their ownership interest with respect to the Hg allowances held in the general account;

(D) The following certification statement by the Hg authorized account representative and any alternate Hg authorized account representative: ''I certify that I was selected as the Hg authorized account representative or the alternate Hg authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to Hg allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the Hg Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account.''

(E) The signature of the Hg authorized account representative and any alternate Hg authorized account representative and the dates signed.

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) *Authorization of Hg authorized account representative.* (i) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

(A) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(B) The Hg authorized account representative and any alternate Hg authorized account representative for

the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to Hg allowances held in the general account in all matters pertaining to the Hg Budget Trading Program, notwithstanding any agreement between the Hg authorized account representative or any alternate Hg authorized account representative and such person. Any such person shall be bound by any order or decision issued to the Hg authorized account representative or any alternate Hg authorized account representative by the Administrator or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate Hg authorized account representative shall be deemed to be a representation, action, inaction, or submission by the Hg authorized account representative.

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the Hg authorized account representative or any alternate Hg authorized account representative for the persons having an ownership interest with respect to Hg allowances held in the general account. Each such submission shall include the following certification statement by the Hg authorized account representative or any alternate Hg authorized account representative: ''I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the Hg allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.

(3) Changing Hg authorized account representative and alternate Hg authorized account representative; changes in persons with ownership interest.

(i) The Hg authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous Hg authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new Hg authorized account representative and the persons with an ownership interest with respect to the Hg allowances in the general account.

(ii) The alternate Hg authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate Hg authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate Hg authorized account representative and the persons with an ownership interest with respect to the Hg allowances in the general account.

(iii)(A) In the event a new person having an ownership interest with respect to Hg allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the Hg authorized account representative and any alternate Hg authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the new person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to Hg allowances in the general account, including the addition of persons, the Hg authorized account representative or any alternate Hg authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the Hg allowances in the general account to include the change.

(4) *Objections concerning Hg authorized account representative.* (i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the Hg authorized account representative or any alternative Hg authorized account representative for a general account shall affect any representation, action, inaction, or submission of the Hg authorized account representative or any alternative Hg authorized account representative or the finality of any decision or order by the Administrator under the Hg Budget Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the Hg authorized account representative or any alternative Hg authorized account representative for a general account, including private legal disputes concerning the proceeds of Hg allowance transfers.

(c) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 60.4152 Responsibilities of Hg Authorized Account Representative.

Following the establishment of a Hg Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of Hg allowances in the account, shall be made only by the Hg authorized account representative for the account.

§ 60.4153 Recordation of Hg allowance allocations.

(a) By December 1, 2006, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at a source, as submitted by the permitting authority in accordance with § 60.4141(a), for the control periods in 2010, 2011, 2012, 2013, and 2014.

(b) By December 1, 2008, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted

by the permitting authority or as determined by the Administrator in accordance with § 60.4141(b), for the control period in 2015.

(c) In 2011 and each year thereafter, after the Administrator has made all deductions (if any) from a Hg Budget source's compliance account under § 60.4154, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the permitting authority or determined by the Administrator in accordance with § 60.4141(b), for the control period in the sixth year after the year of the control period for which such deductions were or could have been made.

(d) By December 1, 2010 and December 1 of each year thereafter, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the permitting authority or determined by the Administrator in accordance with § 60.4141(c), for the control period in the year of the applicable deadline for recordation under this paragraph.

(e) *Serial numbers for allocated Hg allowances.* When recording the allocation of Hg allowances for a Hg Budget unit in a compliance account, the Administrator will assign each Hg allowance a unique identification number that will include digits identifying the year of the control period for which the Hg allowance is allocated.

§ 60.4154 Compliance with Hg budget emissions limitation.

(a) *Allowance transfer deadline.* The Hg allowances are available to be deducted for compliance with a source's Hg Budget emissions limitation for a control period in a given calendar year only if the Hg allowances:

(1) Were allocated for the control period in the year or a prior year;

(2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a Hg allowance transfer correctly submitted for recordation under §§ 60.4160 through 60.4162 by the allowance transfer deadline for the control period; and

(3) Are not necessary for deductions for excess emissions for a prior control period under paragraph (d) of this section.

(b) *Deductions for compliance.* Following the recordation, in accordance with §§ 60.4160 through 60.4162, of Hg allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account Hg allowances available under paragraph (a) of this section in order to determine whether the source meets the Hg Budget emissions limitation for the control period, as follows:

(1) Until the amount of Hg allowances deducted equals the number of ounces of total Hg emissions, determined in accordance with §§ 60.4170 through 60.4176, from all Hg Budget units at the source for the control period; or

(2) If there are insufficient Hg allowances to complete the deductions in paragraph (b)(1) of this section, until no more Hg allowances available under paragraph (a) of this section remain in the compliance account.

(c)(1) *Identification of Hg allowances by serial number.* The Hg authorized account representative for a source's compliance account may request that specific Hg allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the Hg Budget source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct Hg allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of Hg allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Any Hg allowances that were allocated to the units at the source, in the order of recordation; and then

(ii) Any Hg allowances that were allocated to any unit and transferred and recorded in the compliance account pursuant to §§ 60.4160 through 60.4162, in the order of recordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the Hg Budget source has excess emissions, the Administrator will deduct from the source's compliance account an amount of Hg allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of ounces of the source's excess emissions.

(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the Hg Budget source or the Hg Budget units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act or applicable State law.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraph (b) or (d) of this section.

(f) *Administrator's action on submissions.* (1) The Administrator may review and conduct independent audits concerning any submission under the Hg Budget Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct Hg allowances from or transfer Hg allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section.

§ 60.4155 Banking.

(a) Hg allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any Hg allowance that is held in a compliance account or a general account will remain in such account unless and until the Hg allowance is deducted or transferred under § 60.4154, § 60.4156, or §§ 60.4160 through 60.4162.

§ 60.4156 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any Hg Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the Hg authorized account representative for the account.

§ 60.4157 Closing of general accounts.

(a) The Hg authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under § 60.4160 through 60.4162 for any Hg allowances in the account to one or more other Hg Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any Hg allowances, the Administrator may notify the Hg authorized account

representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of Hg allowances into the account under § 60.4160 through 60.4162 or a statement submitted by the Hg authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Hg Allowance Transfers

§ 60.4160 Submission of Hg allowance transfers.

An Hg authorized account representative seeking recordation of a Hg allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the Hg allowance transfer shall include the following elements, in a format specified by the Administrator:

(a) The account numbers for both the transferor and transferee accounts;

(b) The serial number of each Hg allowance that is in the transferor account and is to be transferred; and

(c) The name and signature of the Hg authorized account representative of the transferor account and the date signed.

§ 60.4161 EPA recordation.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a Hg allowance transfer, the Administrator will record a Hg allowance transfer by moving each Hg allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 60.4160; and

(2) The transferor account includes each Hg allowance identified by serial number in the transfer.

(b) A Hg allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any Hg allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 60.4154 for the control period immediately before such allowance transfer deadline.

(c) Where a Hg allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 60.4162 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a Hg allowance transfer under § 60.4161, the Administrator will notify the Hg authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a Hg allowance transfer that fails to meet the requirements of § 60.4161(a), the Administrator will notify the Hg authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a Hg allowance transfer for recordation following notification of non-recordation.

Monitoring and Reporting

§ 60.4170 General requirements.

The owners and operators, and to the extent applicable, the Hg designated representative, of a Hg Budget unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this section, §§ 60.4171 through 60.4176, and subpart I of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 60.4102 and in § 72.2 of this chapter shall apply, and the terms ''affected unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') in part 75 of this chapter shall be deemed to refer to the terms ''Hg Budget unit,'' ''Hg designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively, as defined in § 60.4102. The owner or operator of a unit that is not a Hg Budget unit but that is monitored under § 75.82(b)(2)(i) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a Hg Budget unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each Hg Budget unit shall:

(1) Install all monitoring systems required under this section and §§ 60.4171 through 60.4176 for monitoring Hg mass emissions and individual unit heat input (including all systems required to monitor Hg concentration, stack gas moisture content, stack gas flow rate, and CO_2 or O_2 concentration, as applicable, in accordance with §§ 75.81 and 75.82 of this chapter);

(2) Successfully complete all certification tests required under § 60.4171 and meet all other requirements of this section, §§ 60.4171 through 60.4176, and subpart I of part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* The owner or operator shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.

(1) For the owner or operator of a Hg Budget unit that commences commercial operation before July 1, 2008, by January 1, 2009.

(2) For the owner or operator of a Hg Budget unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:

(i) January 1, 2009; or

(ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

(3) For the owner or operator of a Hg Budget unit for which construction of a new stack or flue or installation of add-on Hg emission controls, a flue gas desulfurization system, a selective catalytic reduction system, or a compact hybrid particulate collector system is completed after the applicable deadline under paragraph (b)(1) or (2) of this section, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue, add-on Hg emissions controls, flue gas desulfurization system, selective catalytic reduction system, or compact hybrid particulate collector system.

(c) *Reporting data.* (1) Except as provided in paragraph (c)(2) of this section, the owner or operator of a Hg Budget unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for Hg concentration, stack gas flow rate, stack gas moisture content, and any other parameters required to determine Hg mass emissions and heat input in accordance with § 75.80(g) of this chapter.

(2) The owner or operator of a Hg Budget unit that does not meet the

applicable compliance date set forth in paragraph (b)(3) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in subpart D of part 75 of this chapter, in lieu of the maximum potential (or, as appropriate, minimum potential) values, for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under paragraph (b)(3) of this section.

(d) *Prohibitions.* (1) No owner or operator of a Hg Budget unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this section and §§ 60.4171 through 60.4176 without having obtained prior written approval in accordance with § 60.4175.

(2) No owner or operator of a Hg Budget unit shall operate the unit so as to discharge, or allow to be discharged, Hg emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this section, §§ 60.4171 through 60.4176, and subpart I of part 75 of this chapter.

(3) No owner or operator of a Hg Budget unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording Hg mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this section, §§ 60.4171 through 60.4176, and subpart I of part 75 of this chapter.

(4) No owner or operator of a Hg Budget unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 60.4105 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this section, §§ 60.4171 through 60.4176, and subpart I of part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The Hg designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 60.4171(c)(3)(i).

§ 60.4171 Initial certification and recertification procedures.

(a) The owner or operator of a Hg Budget unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 60.4170(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendix B to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 60.4170(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) Except as provided in paragraph (a) of this section, the owner or operator of a Hg Budget unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (*e.g.*, a continuous emission monitoring system and an excepted monitoring system (sorbent trap monitoring system) under § 75.15) under § 60.4170(a)(1). The owner or operator of a unit that qualifies to use the Hg low mass emissions excepted monitoring methodology under § 75.81(b) of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (d) or (e) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each monitoring system under § 60.4170(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 60.4170(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system, or an excepted monitoring system (sorbent trap monitoring system) under § 75.15, under § 60.4170(a)(1) that may significantly affect the ability of the system to accurately measure or record Hg mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system, and each excepted monitoring system (sorbent trap monitoring system) under § 75.15, whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site.

(3) *Approval process for initial certification and recertification.* Paragraphs (c)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 60.4170(a)(1). For recertifications, apply the word ''recertification'' instead of the words ''certification'' and ''initial certification'' and apply the word ''recertified'' instead of the word ''certified,'' and follow the procedures in § 75.20(b)(5) of this chapter in lieu of the procedures in paragraph (c)(3)(v) of this section.

(i) *Notification of certification.* The Hg designated representative shall submit to the permitting authority, the appropriate EPA Regional Office, and the Administrator written notice of the dates of certification testing, in accordance with § 60.4173.

(ii) *Certification application.* The Hg designated representative shall submit to the permitting authority a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the Hg Budget Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system under paragraph (c)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the permitting authority.

(iv) *Certification application approval process.* The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (c)(3)(ii) of this section. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the Hg Budget Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the Hg designated representative must submit the additional information required to complete the certification application. If the Hg designated representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (c)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (c)(3)(iv)(B) of this section is met, then the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (c)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) *Audit decertification.* The permitting authority may issue a notice of disapproval of the certification status of a monitor in accordance with § 60.4172(b).

(v) *Procedures for loss of certification.* If the permitting authority issues a notice of disapproval of a certification application under paragraph (c)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (c)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) of this chapter:

(*1*) For a disapproved Hg pollutant concentration monitors and disapproved flow monitor, respectively, the maximum potential concentration of Hg and the maximum potential flow rate, as defined in sections 2.1.7.1 and 2.1.4.1 of appendix A to part 75 of this chapter; and

(*2*) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(*3*) For a disapproved excepted monitoring system (sorbent trap monitoring system) under § 75.15 and disapproved flow monitor, respectively, the maximum potential concentration of Hg and maximum potential flow rate, as defined in sections 2.1.7.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(B) The Hg designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (c)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(d) *Initial certification and recertification procedures for units using the Hg low mass emission excepted methodology under § 75.81(b) of this chapter.* The owner or operator of a unit qualified to use the Hg low mass emissions (HgLME) excepted methodology under § 75.81(b) of this chapter shall meet the applicable certification and recertification requirements in § 75.81(c) through (f) of this chapter.

(e) *Certification/recertification procedures for alternative monitoring systems.* The Hg designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

§ 60.4172 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D of part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 60.4171 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit

shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 60.4171 for each disapproved monitoring system.

§ 60.4173 Notifications.

The Hg designated representative for a Hg Budget unit shall submit written notice to the permitting authority and the Administrator in accordance with § 75.61 of this chapter, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority.

§ 60.4174 Recordkeeping and reporting.

(a) *General provisions.* (1) The Hg designated representative shall comply with all recordkeeping and reporting requirements in this section and the requirements of § 60.4110(e)(1).

(2) If a Hg Budget unit is subject to an Acid Rain emission limitation or the CAIR NO_X Annual Trading Program, CAIR SO_2 Trading Program, or CAIR NO_X Ozone Season Trading Program, and the Hg designated representative who signed and certified any submission that is made under subpart F or G of part 75 of this chapter and that includes data and information required under this section, §§ 60.4170 through 60.4173, § 60.4175, § 60.4176, or subpart I of part 75 of this chapter is not the same person as the designated representative or alternative designated representative, or the CAIR designated representative or alternate CAIR designated representative, for the unit under part 72 of this chapter and the CAIR NO_X Annual Trading Program, CAIR SO_2 Trading Program, or CAIR NO_X Ozone Season Trading Program, then the submission must also be signed by the designated representative or alternative designated representative, or the CAIR designated representative or alternate CAIR designated representative, as applicable.

(b) *Monitoring plans.* The owner or operator of a Hg Budget unit shall comply with requirements of § 75.84(e) of this chapter.

(c) *Certification applications.* The Hg designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under § 60.4171, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The Hg designated representative shall submit quarterly reports, as follows:

(1) The Hg designated representative shall report the Hg mass emissions data and heat input data for the Hg Budget unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009 through March 31, 2009; or

(ii) For a unit that commences commercial operation on or after July 1, 2008, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 60.4170(b), unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009 through March 31, 2009.

(2) The Hg designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.84(f) of this chapter.

(3) For Hg Budget units that are also subject to an Acid Rain emissions limitation or the CAIR NO_X Annual Trading Program, CAIR SO_2 Trading Program, or CAIR NO_X Ozone Season Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the Hg mass emission data, heat input data, and other information required by this section, §§ 60.4170 through 60.4173, § 60.4175, and § 60.4176.

(e) *Compliance certification.* The Hg designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this section, §§ 60.4170 through 60.4173, § 60.4175, § 60.4176, and part 75 of this chapter, including the quality assurance procedures and specifications; and

(2) For a unit with add-on Hg emission controls, a flue gas desulfurization system, a selective catalytic reduction system, or a compact hybrid particulate collector system and for all hours where Hg data are substituted in accordance with § 75.34(a)(1) of this chapter, the Hg add-on emission controls, flue gas desulfurization system, selective catalytic reduction system, or compact hybrid particulate collector system were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter, or quality-assured SO_2 emission data recorded in accordance with part 75 of this chapter document that the flue gas desulfurization system, or quality-assured NO_X emission data recorded in accordance with part 75 of this chapter document that the selective catalytic reduction system, was operating properly, as applicable, and the substitute data values do not systematically underestimate Hg emissions.

§ 60.4175 Petitions.

The Hg designated representative of a Hg unit may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of §§ 60.4170 through 60.4174 and § 60.4176. Application of an alternative to any requirement of §§ 60.4170 through 60.4174 and § 60.4176 is in accordance with this section and §§ 60.4170 through 60.4174 and § 60.4176 only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

§ 60.4176 Additional requirements to provide heat input data.

The owner or operator of a Hg Budget unit that monitors and reports Hg mass emissions using a Hg concentration monitoring system and a flow monitoring system shall also monitor and report heat input rate at the unit level using the procedures set forth in part 75 of this chapter.

■ 14. Appendix B to part 60 is amended by adding in numerical order new Performance Specification 12A to read as follows:

Appendix B to Part 60—Performance Specifications

* * * * *

PERFORMANCE SPECIFICATION 12A—SPECIFICATIONS AND TEST PROCEDURES FOR TOTAL VAPOR PHASE MERCURY CONTINUOUS EMISSION MONITORING SYSTEMS IN STATIONARY SOURCES

1.0 Scope and Application

1.1 Analyte.

Analyte	CAS No.
Mercury (Hg)	7439–97–6

1.2 Applicability.

1.2.1 This specification is for evaluating the acceptability of total vapor phase Hg continuous emission monitoring systems (CEMS) installed on the exit gases from fossil fuel fired boilers at the time of or soon after installation and whenever specified in the regulations. The Hg CEMS must be capable of measuring the total concentration in $\mu g/m^3$ (regardless of speciation) of vapor phase Hg, and recording that concentration on a wet or dry basis. Particle bound Hg is not included in the measurements.

This specification is not designed to evaluate an installed CEMS's performance over an extended period of time nor does it identify specific calibration techniques and auxiliary procedures to assess the CEMS's performance. The source owner or operator, however, is responsible to calibrate, maintain, and operate the CEMS properly. The Administrator may require, under Clean Air Act (CAA) section 114, the operator to conduct CEMS performance evaluations at other times besides the initial test to evaluate the CEMS performance. See § 60.13(c).

1.2.2 For an affected facility that is also subject to the requirements of subpart I of part 75 of this chapter, the owner or operator may conduct the performance evaluation of the Hg CEMS according to § 75.20(c)(1) of this chapter and section 6 of appendix A to part 75 of this chapter, in lieu of following the procedures in this performance specification.

2.0 Summary of Performance Specification.

Procedures for measuring CEMS relative accuracy, measurement error and drift are outlined. CEMS installation and measurement location specifications, and data reduction procedures are included. Conformance of the CEMS with the Performance Specification is determined.

3.0 Definitions.

3.1 *Continuous Emission Monitoring System (CEMS)* means the total equipment required for the determination of a pollutant concentration. The system consists of the following major subsystems:

3.2 *Sample Interface* means that portion of the CEMS used for one or more of the following: sample acquisition, sample transport, sample conditioning, and protection of the monitor from the effects of the stack effluent.

3.3 *Hg Analyzer* means that portion of the Hg CEMS that measures the total vapor phase Hg mass concentration and generates a proportional output.

3.4 *Data Recorder* means that portion of the CEMS that provides a permanent electronic record of the analyzer output. The data recorder may provide automatic data reduction and CEMS control capabilities.

3.5 *Span Value* means the upper limit of the intended Hg concentration measurement range. The span value is a value equal to two times the emission standard. Alternatively, for an affected facility that is also subject to the requirements of subpart I of part 75 of this chapter, the Hg span value(s) may be determined according to section 2.1.7 of appendix A to part 75 of this chapter.

3.6 *Measurement Error (ME)* means the absolute value of the difference between the concentration indicated by the Hg analyzer and the known concentration generated by a reference gas, expressed as a percentage of the span value, when the entire CEMS, including the sampling interface, is challenged. An ME test procedure is performed to document the accuracy and linearity of the Hg CEMS at several points over the measurement range.

3.7 *Upscale Drift (UD)* means the absolute value of the difference between the CEMS output response and an upscale Hg reference gas, expressed as a percentage of the span value, when the entire CEMS, including the sampling interface, is challenged after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

3.8 *Zero Drift (ZD)* means the absolute value of the difference between the CEMS output response and a zero-level Hg reference gas, expressed as a percentage of the span value, when the entire CEMS, including the sampling interface, is challenged after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

3.9 *Relative Accuracy (RA)* means the absolute mean difference between the pollutant concentration(s) determined by the CEMS and the value determined by the reference method (RM) plus the 2.5 percent error confidence coefficient of a series of tests divided by the mean of the RM tests. Alternatively, for low concentration sources, the RA may be expressed as the absolute value of the difference between the mean CEMS and RM values.

4.0 Interferences. [Reserved]

5.0 Safety.

The procedures required under this performance specification may involve hazardous materials, operations, and equipment. This performance specification may not address all of the safety problems associated with these procedures. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performing these procedures. The CEMS user's manual and materials recommended by the RM should be consulted for specific precautions to be taken.

6.0 Equipment and Supplies.

6.1 CEMS Equipment Specifications.

6.1.1 Data Recorder Scale. The Hg CEMS data recorder output range must include zero and a high level value. The high level value must be approximately two times the Hg concentration corresponding to the emission standard level for the stack gas under the circumstances existing as the stack gas is sampled. A lower high level value may be used, provided that the measured values do not exceed 95 percent of the high level value. Alternatively, for an affected facility that is also subject to the requirements of subpart I of part 75 of this chapter, the owner or operator may set the full-scale range(s) of the Hg analyzer according to section 2.1.7 of appendix A to part 75 of this chapter.

6.1.2 The CEMS design should also provide for the determination of calibration drift at a zero value (zero to 20 percent of the span value) and at an upscale value (between 50 and 100 percent of the high-level value).

6.2 Reference Gas Delivery System. The reference gas delivery system must be designed so that the flowrate of reference gas introduced to the CEMS is the same at all three challenge levels specified in Section 7.1 and at all times exceeds the flow requirements of the CEMS.

6.3 Other equipment and supplies, as needed by the applicable reference method used. See Section 8.6.2.

7.0 Reagents and Standards.

7.1 Reference Gases. Reference gas standards are required for both elemental and oxidized Hg (Hg and mercuric chloride, $HgCl_2$). The use of National Institute of Standards and Technology (NIST)-certified or NIST-traceable standards and reagents is required. The following gas concentrations are required.

7.1.1 Zero-level. 0 to 20 percent of the span value.

7.1.2 Mid-level. 50 to 60 percent of the span value.

7.1.3 High-level. 80 to 100 percent of the span value.

7.2 Reference gas standards may also be required for the reference methods. See Section 8.6.2.

8.0 Performance Specification (PS) Test Procedure.

8.1 Installation and Measurement Location Specifications.

8.1.1 CEMS Installation. Install the CEMS at an accessible location downstream of all pollution control equipment. Since the Hg CEMS sample system normally extracts gas from a single point in the stack, use a location that has been shown to be free of stratification for SO_2 and NO_X through concentration measurement traverses for those gases. If the cause of failure to meet the RA test requirement is determined to be the measurement location and a satisfactory correction technique cannot be established, the Administrator may require the CEMS to be relocated.

Measurement locations and points or paths that are most likely to provide data that will meet the RA requirements are listed below.

8.1.2 Measurement Location. The measurement location should be (1) at least two equivalent diameters downstream of the nearest control device, point of pollutant

generation or other point at which a change of pollutant concentration may occur, and (2) at least half an equivalent diameter upstream from the effluent exhaust. The equivalent duct diameter is calculated as per 40 CFR part 60, appendix A, Method 1.

8.1.3 Hg CEMS Sample Extraction Point. Use a sample extraction point (1) no less than 1.0 meter from the stack or duct wall, or (2) within the centroidal velocity traverse area of the stack or duct cross section.

8.2 RM Measurement Location and Traverse Points. Refer to PS 2 of this appendix. The RM and CEMS locations need not be immediately adjacent.

8.3 ME Test Procedure. The Hg CEMS must be constructed to permit the introduction of known concentrations of Hg and $HgCl_2$ separately into the sampling system of the CEMS immediately preceding the sample extraction filtration system such that the entire CEMS can be challenged. Sequentially inject each of the three reference gases (zero, mid-level, and high level) for each Hg species. Record the CEMS response and subtract the reference value from the CEMS value, and express the absolute value of the difference as a percentage of the span value (see example data sheet in Figure 12A–1). For each reference gas, the absolute value of the difference between the CEMS response and the reference value shall not exceed 5 percent of the span value. If this specification is not met, identify and correct the problem before proceeding.

8.4 UD Test Procedure.

8.4.1 UD Test Period. While the affected facility is operating at more than 50 percent of normal load, or as specified in an applicable subpart, determine the magnitude of the UD once each day (at 24-hour intervals, to the extent practicable) for 7 consecutive unit operating days according to the procedure given in Sections 8.4.2 through 8.4.3. The 7 consecutive unit operating days need not be 7 consecutive calendar days. Use either Hg° or $HgCl_2$ standards for this test.

8.4.2 The purpose of the UD measurement is to verify the ability of the CEMS to conform to the established CEMS response used for determining emission concentrations or emission rates. Therefore, if periodic automatic or manual adjustments are made to the CEMS zero and response settings, conduct the UD test immediately before these adjustments, or conduct it in such a way that the UD can be determined.

8.4.3 Conduct the UD test at either the mid-level or high-level point specified in Section 7.1. Introduce the reference gas to the CEMS. Record the CEMS response and subtract the reference value from the CEMS value, and express the absolute value of the difference as a percentage of the span value (see example data sheet in Figure 12A–1). For the reference gas, the absolute value of the difference between the CEMS response and the reference value shall not exceed 5 percent of the span value. If this specification is not met, identify and correct the problem before proceeding.

8.5 ZD Test Procedure.

8.5.1 ZD Test Period. While the affected facility is operating at more than 50 percent of normal load, or as specified in an applicable subpart, determine the magnitude of the ZD once each day (at 24-hour intervals, to the extent practicable) for 7 consecutive unit operating days according to the procedure given in Sections 8.5.2 through 8.5.3. The 7 consecutive unit operating days need not be 7 consecutive calendar days. Use either nitrogen, air, Hg° , or $HgCl_2$ standards for this test.

8.5.2 The purpose of the ZD measurement is to verify the ability of the CEMS to conform to the established CEMS response used for determining emission concentrations or emission rates. Therefore, if periodic automatic or manual adjustments are made to the CEMS zero and response settings, conduct the ZD test immediately before these adjustments, or conduct it in such a way that the ZD can be determined.

8.5.3 Conduct the ZD test at the zero level specified in Section 7.1. Introduce the zero gas to the CEMS. Record the CEMS response and subtract the zero value from the CEMS value and express the absolute value of the difference as a percentage of the span value (see example data sheet in Figure 12A–1). For the zero gas, the absolute value of the difference between the CEMS response and the reference value shall not exceed 5 percent of the span value. If this specification is not met, identify and correct the problem before proceeding.

8.6 RA Test Procedure.

8.6.1 RA Test Period. Conduct the RA test according to the procedure given in Sections 8.6.2 through 8.6.6 while the affected facility is operating at normal full load, or as specified in an applicable subpart. The RA test may be conducted during the ZD and UD test period.

8.6.2 RM. Unless otherwise specified in an applicable subpart of the regulations, use either Method 29 in appendix A to this part, or American Society of Testing and Materials (ASTM) Method D 6784–02 (incorporated by reference, see § 60.17) as the RM for Hg concentration. Alternatively, an instrumental RM may be used, subject to the approval of the Administrator. Do not include the filterable portion of the sample when making comparisons to the CEMS results. When Method 29 or ASTM D6784–02 is used, conduct the RM test runs with paired or duplicate sampling systems. When an approved instrumental method is used, paired sampling systems are not required. If the RM and CEMS measure on a different moisture basis, data derived with Method 4 in appendix A to this part shall also be obtained during the RA test.

8.6.3 Sampling Strategy for RM Tests. Conduct the RM tests in such a way that they will yield results representative of the emissions from the source and can be compared to the CEMS data. It is preferable to conduct moisture measurements (if needed) and Hg measurements simultaneously, although moisture measurements that are taken within an hour of the Hg measurements may be used to adjust the Hg concentrations to a consistent moisture basis. In order to correlate the CEMS and RM data properly, note the beginning and end of each RM test period for each paired RM run (including the exact time of day) on the CEMS chart recordings or other permanent record of output.

8.6.4 Number and length of RM Tests. Conduct a minimum of nine RM test runs. When Method 29 or ASTM D6784–02 is used, only test runs for which the data from the paired RM trains meet the relative deviation (RD) criteria of this PS shall be used in the RA calculations. In addition, for Method 29 and ASTM D 6784–02, use a minimum sample run time of 2 hours.

Note: More than nine sets of RM tests may be performed. If this option is chosen, paired RM test results may be excluded so long as the total number of paired RM test results used to determine the CEMS RA is greater than or equal to nine. However, all data must be reported, including the excluded data.

8.6.5 Correlation of RM and CEMS Data. Correlate the CEMS and the RM test data as to the time and duration by first determining from the CEMS final output (the one used for reporting) the integrated average pollutant concentration for each RM test period. Consider system response time, if important, and confirm that the results are on a consistent moisture basis with the RM test. Then, compare each integrated CEMS value against the corresponding RM value. When Method 29 or ASTM D6784–02 is used, compare each CEMS value against the corresponding average of the paired RM values.

8.6.6 Paired RM Outliers.

8.6.6.1 When Method 29 or ASTM D6784–02 is used, outliers are identified through the determination of relative deviation (RD) of the paired RM tests. Data that do not meet this criteria should be flagged as a data quality problem. The primary reason for performing paired RM sampling is to ensure the quality of the RM data. The percent RD of paired data is the parameter used to quantify data quality. Determine RD for two paired data points as follows:

$$RD = 100 \times \left| \left(C_a - C_b\right) \right| / \left(C_a + C_b\right) \qquad \text{(Eq. 12A-1)}$$

where C_a and C_b are concentration values determined from each of the two samples respectively.

8.6.6.2 A minimum performance criteria for RM Hg data is that RD for any data pair must be ≤10 percent as long as the mean Hg concentration is greater than 1.0 μg/m³. If the mean Hg concentration is less than or equal to 1.0 μg/m³, the RD must be ≤20 percent. Pairs of RM data exceeding these RD criteria should be eliminated from the data set used

to develop a Hg CEMS correlation or to assess CEMS RA.

8.6.7 Calculate the mean difference between the RM and CEMS values in the units of micrograms per cubic meter (µg/m³), the standard deviation, the confidence coefficient, and the RA according to the procedures in Section 12.0.

8.7 Reporting. At a minimum (check with the appropriate EPA Regional Office, State or local Agency for additional requirements, if any), summarize in tabular form the results of the RD tests and the RA tests or alternative RA procedure, as appropriate. Include all data sheets, calculations, charts (records of CEMS responses), reference gas concentration certifications, and any other information necessary to confirm that the performance of the CEMS meets the performance criteria.

9.0 Quality Control. [Reserved]

10.0 Calibration and Standardization. [Reserved]

11.0 Analytical Procedure.

Sample collection and analysis are concurrent for this PS (see Section 8.0). Refer to the RM employed for specific analytical procedures.

12.0 Calculations and Data Analysis.

Summarize the results on a data sheet similar to that shown in Figure 2–2 for PS 2.

12.1 Consistent Basis. All data from the RM and CEMS must be compared in units of µg/m³, on a consistent and identified moisture and volumetric basis (STP = 20°C, 760 millimeters (mm) Hg).

12.1.1 Moisture Correction (as applicable). If the RM and CEMS measure Hg on a different moisture basis, use Equation 12A–2 to make the appropriate corrections to the Hg concentrations.

$$\text{Concentration}_{(\text{dry})} = \frac{\text{Concentration}_{(\text{wet})}}{\left(1 - B_{ws}\right)} \qquad \text{(Eq. 12A-2)}$$

In Equation 12–A–2, B_{ws} is the moisture content of the flue gas from Method 4, expressed as a decimal fraction (*e.g.*, for 8.0 percent H_2O, $B_{ws} = 0.08$).

12.2 Arithmetic Mean. Calculate the arithmetic mean of the difference, d, of a data set as follows:

$$\bar{d} = \frac{1}{n}\sum_{i=1}^{n} d_i \qquad \text{(Eq. 12A-3)}$$

Where:

n = Number of data points.

12.3 Standard Deviation. Calculate the standard deviation, S_d, as follows:

$$S_d = \left[\frac{\sum_{i=1}^{n} d_i^2 - \frac{\left[\sum_{i=1}^{n} d_i\right]^2}{n}}{n-1}\right]^{\frac{1}{2}} \qquad \text{(Eq. 12A-4)}$$

Where:

$\sum_{i=1}^{n} d_i$ = Algebraic summation of the individual differences d_i.

12.4 Confidence Coefficient (CC). Calculate the 2.5 percent error confidence coefficient (one-tailed), CC, as follows:

$$CC = t_{0.975}\frac{S_d}{\sqrt{n}} \qquad \text{(Eq. 12A-5)}$$

12.5 RA. Calculate the RA of a set of data as follows:

$$RA = \frac{\left[\left|\bar{d}\right| + \left|CC\right|\right]}{\overline{RM}} \times 100 \qquad \text{(Eq. 12A-6)}$$

Where:

$\left|\bar{d}\right|$ = Absolute value of the mean differences (from Equation 12A-3).

$\left|CC\right|$ = Absolute value of the confidence coefficient (from Equation 12A-5).

$\overline{RM}$ = Average RM value.

13.0 Method Performance.

13.1 ME. ME is assessed at zero-level, mid-level and high-level values as given below using standards for both Hg^0 and $HgCl_2$. The mean difference between the indicated CEMS concentration and the reference concentration value for each standard shall be no greater than 5 percent of the span value.

13.2 UD. The UD shall not exceed 5 percent of the span value on any of the 7 days of the UD test.

13.3 ZD. The ZD shall not exceed 5 percent of the span value on any of the 7 days of the ZD test.

13.4 RA. The RA of the CEMS must be no greater than 20 percent of the mean value of the RM test data in terms of units of µg/m³. Alternatively, if the mean RM is less than 5.0 µg/m³, the results are acceptable if the absolute value of the difference between the mean RM and CEMS values does not exceed 1.0 µg/m³.

14.0 Pollution Prevention. [Reserved]

15.0 Waste Management. [Reserved]

16.0 Alternative Procedures. [Reserved]

17.0 Bibliography.

17.1 40 CFR part 60, appendix B, ''Performance Specification 2—Specifications and Test Procedures for SO_2 and NO_X Continuous Emission Monitoring Systems in Stationary Sources.''

17.2 40 CFR part 60, appendix A, ''Method 29—Determination of Metals Emissions from Stationary Sources.''

17.3 ASTM Method D6784–02, ''Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method).''

18.0 Tables and Figures.

TABLE 12A–1.—T-VALUES

n^a	$t_{0.975}$	n^a	$t_{0.975}$	n^a	$t_{0.975}$
2	12.706	7	2.447	12	2.201
3	4.303	8	2.365	13	2.179
4	3.182	9	2.306	14	2.160
5	2.776	10	2.262	15	2.145
6	2.571	11	2.228	16	2.131

[a] The values in this table are already corrected for n–1 degrees of freedom. Use n equal to the number of individual values.

FIGURE 12A–1.—ME, ZD AND UD DETERMINATION

	Date	Time	Reference Gas value µg/m³	CEMS measured value µg/m³	Absolute difference	Drift or measurement error (% of span value)
Zero level						
Mid level						
High level						

* * * * *

PART 72—PERMITS REGULATION

■ 15. The authority citation for part 72 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

■ 16. Section 72.2 is amended in the definition of ''Continuous emission monitoring system or CEMS'' by revising the introductory text and adding paragraph (7); and by adding, in alphabetical order, a new definition for ''sorbent trap monitoring system,'' to read as follows:

§ 72.2 Definitions

* * * * *

Continuous emission monitoring system or *CEMS* means the equipment required by part 75 of this chapter used to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of SO_2, NO_X, Hg, or CO_2 emissions or stack gas volumetric flow rate. The following are the principal types of continuous emission monitoring systems required under part 75 of this chapter. Sections 75.10 through 75.18, § 75.71(a) and 75.81 of this chapter indicate which type(s) of CEMS is required for specific applications:

* * * * *

(7) A Hg concentration monitoring system, consisting of a Hg pollutant concentration monitor and an automated DAHS. A Hg concentration monitoring system provides a permanent, continuous record of Hg emissions in units of micrograms per standard cubic meter (µg/scm).

* * * * *

Sorbent trap monitoring system means the equipment required by part 75 of this chapter for the continuous monitoring of Hg emissions, using paired sorbent traps containing iodinized charcoal (IC) or other suitable reagent(s). This excepted monitoring system consists of a probe, the paired sorbent traps, a heated umbilical line, moisture removal components, an air-tight sample pump, a dry gas meter, and an automated data acquisition and handling system. The monitoring system samples the stack gas at a rate proportional to the stack gas volumetric flow rate. The sampling is a batch process. Using the sample volume measured by the dry gas meter and the results of the analyses of the sorbent traps, the average Hg concentration in the stack gas for the sampling period is determined, in units of micrograms per dry standard cubic meter (µg/dscm). Mercury mass emissions for each hour in the sampling period are calculated using the average Hg concentration for that period, in conjunction with contemporaneous hourly measurements

of the stack gas flow rate, corrected for the stack gas moisture content.

* * * * *

PART 75—CONTINUOUS EMISSION MONITORING

■ 17. The authority citation for Part 75 continues to read as follows:

Authority: 42 U.S.C. 7601, 7651k, and 7651k note.

■ 18. Section 75.2 is amended by adding paragraph (d), to read as follows:

§ 75.2 Applicability.

* * * * *

(d) The provisions of this part apply to sources subject to a State or Federal mercury (Hg) mass emission reduction program, to the extent that these provisions are adopted as requirements under such a program.

* * * * *

■ 19. Section 75.6 is amended as follows:

■ a. In the introductory text, by removing ''1916 Race Street, Philadelphia, Pennsylvania 19103;'' and adding ''100 Barr harbor Drive, P.O. Box C–700, West Conshohocken, Pennsylvania 19428–2959;'' in its place;

■ b. Redesignate paragraphs (a)(38) through (a)(41) as (a)(39) through (a)(42);

■ c. Add new paragraphs (a)(38), (a)(43), and (a)(44); and

■ d. Revise paragraphs (b), (c), (d), and (e) to read as follows:

§ 75.6 Incorporation by Reference.

* * * * *

(a) * * *

(38) ASTM D4840–99 (reapproved 2004), ''Standard Guide for Sample Chain-of-Custody Procedures,'' for appendix K of this part, section 7.2.9.

* * * * *

(43) ASTM D6784–02, ''Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method),'' for § 75.22(a)(7) and (b)(5).

(44) ASTM D6911–03, ''Guide for Packaging and Shipping Environmental Samples for Laboratory Analysis,'' for appendix K of this part, section 7.2.8.

* * * * *

(b) The following materials are available for purchase from the American Society of Mechanical Engineers (ASME), 22 Law Drive, P.O. Box 2900, Fairfield, New Jersey 07007–2900:

* * * * *

(c) The following materials are available for purchase from the American National Standards Institute (ANSI), 25 West 43rd Street, Fourth Floor, New York, New York 10036:

(1) ISO 8316: 1987(E) Measurement of Liquid Flow in closed Conduits-Method by Collection of the Liquid in a Volumetric Tank, for appendices D and E of this part.

(2) [Reserved]

* * * * *

(d) The following materials are available for purchase from the following address: Gas Processors Association (GPA), 6526 East 60th Street, Tulsa, Oklahoma 74143:

* * * * *

(e) The following American Gas Association materials are available for purchase from the following address: ILI Infodisk, 610 Winters Avenue, Paramus, New Jersey 07652:

* * * * *

■ 20. Section 75.10 is amended by revising the second sentence of paragraph (d)(1) and revising the first sentence of paragraph (d)(3) to read as follows:

§ 75.10 General operating requirements.

* * * * *

(d) * * *

(1) * * * The owner or operator shall reduce all SO_2 concentrations, volumetric flow, SO_2 mass emissions, CO_2 concentration, O_2 concentration, CO_2 mass emissions (if applicable), NO_X concentration, NO_X emission rate, and Hg concentration data collected by the monitors to hourly averages. * * *

* * * * *

(3) Failure of an SO_2, CO_2, or O_2 emissions concentration monitor, NO_X concentration monitor, Hg concentration monitor, flow monitor, moisture monitor, or NO_X-diluent continuous emission monitoring system to acquire the minimum number of data points for calculation of an hourly average in paragraph (d)(1) of this section shall result in the failure to obtain a valid hour of data and the loss of such component data for the entire hour. * * *

* * * * *

■ 21. Section 75.15 is added to read as follows:

§ 75.15 Special provisions for measuring Hg mass emissions using the excepted sorbent trap monitoring methodology.

For an affected coal-fired unit under a State or Federal Hg mass emission reduction program that adopts the provisions of subpart I of this part, if the owner or operator elects to use sorbent trap monitoring systems (as defined in § 72.2 of this chapter) to quantify Hg mass emissions, the guidelines in paragraphs (a) through (j) of this section shall be followed for this excepted monitoring methodology:

(a) For each sorbent trap monitoring system (whether primary or redundant backup), the use of paired sorbent traps, as described in appendix K to this part, is required;

(b) Each sorbent trap shall have both a main section, a backup section, and a third section to allow spiking with a calibration gas of known Hg concentration, as described in appendix K to this part;

(c) A certified flow monitoring system is required;

(d) Correction for stack gas moisture content is required, and in some cases, a certified O_2 or CO_2 monitoring system is required (see § 75.81(a)(4));

(e) Each sorbent trap monitoring system shall be installed and operated in accordance with appendix K to this part. The automated data acquisition and handling system shall ensure that the sampling rate is proportional to the stack gas volumetric flow rate.

(f) At the beginning and end of each sample collection period, and at least once in each unit operating hour during the collection period, the dry gas meter reading shall be recorded.

(g) After each sample collection period, the mass of Hg adsorbed in each sorbent trap (in all three sections) shall be determined according to the applicable procedures in appendix K to this part.

(h) The hourly Hg mass emissions for each collection period are determined using the results of the analyses in conjunction with contemporaneous hourly data recorded by a certified stack flow monitor, corrected for the stack gas moisture content. For each pair of sorbent traps analyzed, the average of the two Hg concentrations shall be used for reporting purposes under § 75.84(f). Notwithstanding this requirement, if, due to circumstances beyond the control of the owner or operator, one of the paired traps is accidentally lost, damaged, or broken and cannot be analyzed, the results of the analysis of the other trap, if valid, may be used for reporting purposes.

(i) All unit operating hours for which valid Hg concentration data are obtained with the primary sorbent trap monitoring system (as verified using the quality assurance procedures in appendix K to this part) shall be reported in the electronic quarterly report under § 75.84(f). For hours in which data from the primary monitoring system are invalid, the owner or operator may report valid Hg concentration data from a certified redundant backup CEMS or sorbent trap monitoring system or from an applicable reference method under § 75.22. If no quality-assured Hg concentration are

available for a particular hour, the owner or operator shall report the appropriate substitute data value in accordance with § 75.39.

(j) Initial certification requirements and additional quality-assurance requirements for the sorbent trap monitoring systems are found in § 75.20(c)(9), in section 6.5.7 of appendix A to this part, in sections 1.5 and 2.3 of appendix B to this part, and in appendix K to this part.

■ 22. Section 75.20 is amended by:
■ a. Revising paragraph (a)(5)(i);
■ b. Revising the first sentence of paragraph (b) introductory text;
■ c. Revising paragraph (c)(1);
■ d. Redesignating existing paragraphs (c)(9) and (c)(10) as paragraphs (c)(10) and (c)(11), respectively;
■ e. Adding a new paragraph (c)(9); and
■ f. Revising paragraph (d)(2)(v).

The revisions and additions read as follows:

§ 75.20 Initial certification and recertification procedures.

(a) * * *

(5) * * *

(i) Until such time, date, and hour as the continuous emission monitoring system can be adjusted, repaired, or replaced and certification tests successfully completed (or, if the conditional data validation procedures in paragraphs (b)(3)(ii) through (b)(3)(ix) of this section are used, until a probationary calibration error test is passed following corrective actions in accordance with paragraph (b)(3)(ii) of this section), the owner or operator shall substitute the following values, as applicable, for each hour of unit operation during the period of invalid data specified in paragraph (a)(4)(iii) of this section or in § 75.21: The maximum potential concentration of SO_2, as defined in section 2.1.1.1 of appendix A to this part, to report SO_2 concentration; the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter, to report NO_X emissions in lb/MMBtu; the maximum potential concentration of NO_X, as defined in section 2.1.2.1 of appendix A to this part, to report NO_X emissions in ppm (when a NO_X concentration monitoring system is used to determine NO_X mass emissions, as defined under § 75.71(a)(2)); the maximum potential concentration of Hg, as defined in section 2.1.7 of appendix A to this part, to report Hg emissions in μg/scm (when a Hg concentration monitoring system or a sorbent trap monitoring system is used to determine Hg mass emissions, as defined under § 75.81(b)); the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part, to report volumetric flow; the maximum potential concentration of CO_2, as defined in section 2.1.3.1 of appendix A to this part, to report CO_2 concentration data; and either the minimum potential moisture percentage, as defined in section 2.1.5 of appendix A to this part or, if Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used to determine NO_X emission rate, the maximum potential moisture percentage, as defined in section 2.1.6 of appendix A to this part; and

* * * * *

(b) Recertification approval process. Whenever the owner or operator makes a replacement, modification, or change in a certified continuous emission monitoring system or continuous opacity monitoring system that may significantly affect the ability of the system to accurately measure or record the SO_2 or CO_2 concentration, stack gas volumetric flow rate, NO_X emission rate, NO_X concentration, Hg concentration, percent moisture, or opacity, or to meet the requirements of § 75.21 or appendix B to this part, the owner or operator shall recertify the continuous emission monitoring system or continuous opacity monitoring system, according to the procedures in this paragraph. * * *

* * * * *

(c) * * *

(1) For each SO_2 pollutant concentration monitor, each NO_X concentration monitoring system used to determine NO_X mass emissions, as defined under § 75.71(a)(2), each Hg concentration monitoring system, and each NO_X-diluent continuous emission monitoring system:

(i) A 7-day calibration error test, where, for the NO_X -diluent continuous emission monitoring system, the test is performed separately on the NO_X pollutant concentration monitor and the diluent gas monitor;

(ii) A linearity check, where, for the NO_X-diluent continuous emission monitoring system, the test is performed separately on the NO_X pollutant concentration monitor and the diluent gas monitor. For Hg monitors, perform this check with elemental Hg standards;

(iii) A relative accuracy test audit. For the NO_X-diluent continuous emission monitoring system, the RATA shall be done on a system basis, in units of lb/MMBtu. For the NO_X concentration monitoring system, the RATA shall be done on a ppm basis. For the Hg concentration monitoring system, the RATA shall be done on a μg/scm basis;

(iv) A bias test;

(v) A cycle time test; and

(vi) For Hg monitors only, a 3-level system integrity check, using a NIST-traceable source of oxidized Hg, as described in section 6.2 of appendix A to this part. This test is not required for an Hg monitor that does not have a converter.

* * * * *

(9) For each sorbent trap monitoring system, perform a RATA, on a μg/dscm basis, and a bias test.

* * * * *

(d) * * *

(2) * * *

(v) For each parameter monitored (*i.e.*, SO_2, CO_2, O_2, NO_X, Hg or flow rate) at each unit or stack, a regular non-redundant backup CEMS may not be used to report data at that affected unit or common stack for more than 720 hours in any one calendar year (or 720 hours in any ozone season, for sources that report emission data only during the ozone season, in accordance with § 75.74(c)), unless the CEMS passes a RATA at that unit or stack. For each parameter monitored at each unit or stack, the use of a like-kind replacement non-redundant backup analyzer (or analyzers) is restricted to 720 cumulative hours per calendar year (or ozone season, as applicable), unless the owner or operator redesignates the like-kind replacement analyzer(s) as component(s) of regular non-redundant backup CEMS and each redesignated CEMS passes a RATA at that unit or stack.

* * * * *

■ 23. Section 75.21 is amended by revising paragraph (a)(3) to read as follows:

§ 75.21 Quality assurance and quality control requirements.

(a) * * *

(3) The owner or operator shall perform quality assurance upon a reference method backup monitoring system according to the requirements of method 2, 6C, 7E, or 3A in appendix A of part 60 of this chapter (supplemented, as necessary, by guidance from the Administrator), or one of the Hg reference methods in § 75.22, as applicable, instead of the procedures specified in appendix B of this part.

* * * * *

■ 24. Section 75.22 is amended by adding new paragraphs (a)(7) and (b)(5), to read as follows:

§ 75.22 Reference test methods.

(a) * * *

(7) ASTM D6784–02, ''Standard Test Method for Elemental, Oxidized, Particle-Bound, and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources'' (also known as the

Ontario Hydro Method) (incorporated by reference, see § 75.6) is the reference method for determining Hg concentration. When this method is used, paired sampling trains are required, and to validate a RATA run, the relative deviation (RD), calculated according to section 11.7 of appendix K to this part, must not exceed 10 percent. If the RD criterion is met, use the average Hg concentration measured by the two trains (vapor phase Hg, only) in the relative accuracy calculations. Alternatively, an instrumental reference method capable of measuring total vapor phase Hg may be used, subject to the approval of the Administrator.

(b) * * *

(5) ASTM D6784–02, ''Standard Test Method for Elemental, Oxidized, Particle-Bound, and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources'' (also known as the Ontario Hydro Method and incorporated by reference, see § 75.6) for determining Hg concentration. Alternatively, an instrumental reference method capable of measuring total vapor phase Hg may be used, subject to the approval of the Administrator.

* * * * *

■ 25. Section 75.24 is amended by revising paragraph (d), to read as follows:

§ 75.24 Out-of-control periods and adjustment for system bias.

* * * * *

(d) When the bias test indicates that an SO_2 monitor, a flow monitor, a NO_X-diluent continuous emission monitoring system, a NO_X concentration monitoring system used to determine NO_X mass emissions, as defined in § 75.71(a)(2), a Hg concentration monitoring system or a sorbent trap monitoring system is biased low (*i.e.*, the arithmetic mean of the differences between the reference method value and the monitor or monitoring system measurements in a relative accuracy test audit exceed the bias statistic in section 7 of appendix A to this part), the owner or operator shall adjust the monitor or continuous emission monitoring system to eliminate the cause of bias such that it passes the bias test or calculate and use the bias adjustment factor as specified in section 2.3.4 of appendix B to this part.

* * * * *

■ 26. Section 75.31 is amended by:

■ a. Revising the first sentence of paragraph (a);

■ b. Revising paragraph (b) introductory text; and

■ c. Revising paragraphs (b)(1) and (b)(2).

The revisions read as follows:

§ 75.31 Initial missing data procedures.

(a) During the first 720 quality-assured monitor operating hours following initial certification of the required SO_2, CO_2, O_2, Hg concentration, or moisture monitoring system(s) at a particular unit or stack location (*i.e.*, the date and time at which quality-assured data begins to be recorded by CEMS(s) installed at that location), and during the first 2,160 quality-assured monitor operating hours following initial certification of the required NO_X-diluent, NO_X concentration, or flow monitoring system(s) at the unit or stack location, the owner or operator shall provide substitute data required under this subpart according to the procedures in paragraphs (b) and (c) of this section. * * *

* * * * *

(b) SO_2, CO_2, or O_2 concentration data, Hg concentration data, and moisture data. For each hour of missing SO_2, Hg, or CO_2 emissions concentration data (including CO_2 data converted from O_2 data using the procedures in appendix F of this part), or missing O_2 or CO_2 diluent concentration data used to calculate heat input, or missing moisture data, the owner or operator shall calculate the substitute data as follows:

(1) Whenever prior quality-assured data exist, the owner or operator shall substitute, by means of the data acquisition and handling system, for each hour of missing data, the average of the hourly SO_2, CO_2, Hg, or O_2 concentrations, or moisture percentages recorded by a certified monitor for the unit operating hour immediately before and the unit operating hour immediately after the missing data period.

(2) Whenever no prior quality assured SO_2, CO_2, Hg, or O_2 concentration data, or moisture data exist, the owner or operator shall substitute, as applicable, for each hour of missing data, the maximum potential SO_2 concentration or the maximum potential CO_2 concentration or the minimum potential O_2 concentration or (unless Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used to determine NO_X emission rate) the minimum potential moisture percentage, or the maximum potential Hg concentration, as specified, respectively, in sections 2.1.1.1, 2.1.3.1, 2.1.3.2, 2.1.5, and 2.1.7 of appendix A to this part. If Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used to determine NO_X emission rate, substitute the maximum potential moisture percentage, as specified in section 2.1.6 of appendix A to this part.

* * * * *

■ 27. Section 75.32 is amended by revising the first sentence of paragraph (a) introductory text to read as follows:

§ 75.32 Determination of monitor data availability for standard missing data procedures.

(a) Following initial certification of the required SO_2, CO_2, O_2, or Hg concentration, or moisture monitoring system(s) at a particular unit or stack location (*i.e.*, the date and time at which quality-assured data begins to be recorded by CEMS(s) at that location), the owner or operator shall begin calculating the percent monitor data availability as described in paragraph (a)(1) of this section, and shall, upon completion of the first 720 quality-assured monitor operating hours, record, by means of the automated data acquisition and handling system, the percent monitor data availability for each monitored parameter. * * *

* * * * *

■ 28. Table 1 in § 75.33 is revised as follows:

§ 75.33 Standard missing data procedures for SO_2, NO_X, and flow rate.

* * * * *

TABLE 1.—MISSING DATA PROCEDURE FOR SO_2 CEMS, CO_2 CEMS, MOISTURE CEMS, HG CEMS, AND DILUENT (CO_2 OR O_2) MONITORS FOR HEAT INPUT DETERMINATION

Trigger conditions		Calculation routines	
Monitor data availability (percent)	Duration (N) of CEMS outage (hours) [2]	Method	Lookback period
95 or more (90 or more for Hg)	N ≤ 24	Average	HB/HA.
	N > 24	For SO_2, CO_2, Hg, and H_2O **,the greater of: Average	HB/HA.

TABLE 1.—MISSING DATA PROCEDURE FOR SO_2 CEMS, CO_2 CEMS, MOISTURE CEMS, HG CEMS, AND DILUENT (CO_2 OR O_2) MONITORS FOR HEAT INPUT DETERMINATION—Continued

Trigger conditions		Calculation routines	
Monitor data availability (percent)	Duration (N) of CEMS outage (hours) [2]	Method	Lookback period
90 or more, but below 95 (≥ 80 but < 90 for Hg)	N ≤ 8	90th percentile	720 hours*.
		For O_2 and H_2O [x], the lesser of:	
		Average	HB/HA.
		10th percentile	720 hours*.
	N > 8	Average	HB/HA.
		For SO_2, CO_2, Hg, and H_2O [**], the greater of:	
		Average	HB/HA.
		95th percentile	720 hours*.
		For O_2 and H_2O [x], the lesser of:	
		Average	HB/HA.
80 or more, but below 90 (≥70 but < 80 for Hg)	N > 0	5th percentile	720 hours*.
		For SO_2, CO_2, Hg, and H_2O [**],	
		Maximum value [1]	720 hours*.
		For O_2 and H_2O [x]:	
		Minimum value [1]	720 hours*.
Below 80 (Below 70 for Hg)	N > 0	Maximum potential concentration or % (for SO_2, CO_2, Hg, and H_2O [**]) or Minimum potential concentration or % (for O_2 and H_2O [x]).	None

HB/HA = hour before and hour after the CEMS outage.

* Quality-assured, monitor operating hours, during unit operation. May be either fuel-specific or non-fuel-specific. For units that report data only for the ozone season, include only quality assured monitor operating hours within the ozone season in the lookback period. Use data from no earlier than 3 years prior to the missing data period.

[1] Where a unit with add-on SO_2 or Hg emission controls can demonstrate that the controls are operating properly, as provided in § 75.34, the unit may, upon approval, use the maximum controlled emission rate from the previous 720 operating hours.

[2] During unit operating hours.

[x] Use this algorithm for moisture except when Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used for NO_X emission rate.

[**] Use this algorithm for moisture only when Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used for NO_X emission rate.

* * * * *

■ 29. Subpart D is further amended by adding two new sections, § 75.38 and § 75.39, to read as follows:

§ 75.38 Standard missing data procedures for Hg CEMS.

(a) Once 720 quality assured monitor operating hours of Hg concentration data have been obtained following initial certification, the owner or operator shall provide substitute data for Hg concentration in accordance with the procedures in §§ 75.33(b)(1) through (b)(4), except that the term ''Hg concentration'' shall apply rather than ''SO_2 concentration,'' the term ''Hg concentration monitoring system'' shall apply rather than ''SO_2 pollutant concentration monitor,'' and the term ''maximum potential Hg concentration, as defined in section 2.1.7 of appendix A to this part'' shall apply, rather than ''maximum potential SO_2 concentration.''

(b) For a unit equipped with a flue gas desulfurization (FGD) system that significantly reduces the concentration of Hg emitted to the atmosphere (including circulating fluidized bed units that use limestone injection), or for a unit equipped with add-on Hg emission controls (e.g., carbon injection), the standard missing data procedures in paragraph (a) of this section may only be used for hours in which the SO_2 or Hg emission controls are documented to be operating properly, as described in § 75.58(b)(3). For any hour(s) in the missing data period for which this documentation is unavailable, the owner or operator shall report, as applicable, the maximum potential Hg concentration, as defined in section 2.1.7 of appendix A to this part. In addition, under § 75.64(c), the designated representative shall submit as part of each electronic quarterly report, a certification statement, verifying the proper operation of the SO_2 or Hg emission controls for each missing data period in which the procedures in paragraph (a) of this section are applied.

(c) For units with FGD systems or add-on Hg controls, when the percent monitor data availability is less than 80.0 percent, and a missing data period occurs, the owner or operator may petition to report the maximum controlled Hg concentration in the previous 720 quality-assured monitor operating hours, consistent with § 75.34(a)(3).

§ 75.39 Missing data procedures for sorbent trap monitoring systems.

(a) If a sorbent trap monitoring system has not been certified by the applicable compliance date specified under a State or Federal Hg mass emission reduction program that adopts the requirements of subpart I of this part, the owner or operator shall report the maximum potential Hg concentration, as defined in section 2.1.7 of appendix A to this part, until the system is certified.

(b) For a certified sorbent trap system, a missing data period will occur whenever:

(1) A gas sample is not extracted from the stack (*e.g.* during a monitoring system malfunction or when the system undergoes maintenance); or

(2) The results of the Hg analysis for the paired sorbent traps are missing or invalid (as determined using the quality assurance procedures in appendix K to this part). The missing data period begins with the hour in which the paired sorbent traps for which the Hg analysis is missing or invalid were put into service. The missing data period ends at the first hour in which valid Hg concentration data are obtained with another pair of sorbent traps (i.e., the hour at which this pair of traps was placed in service).

(c) *Initial missing data procedures.* Use these missing data procedures until 720 hours of quality-assured data have been collected with the sorbent trap monitoring system(s), following initial certification. For each hour of the missing data period, the substitute data value for Hg concentration shall be the average Hg concentration from all valid sorbent trap analyses to date, including data from the initial certification test runs.

(d) *Standard missing data procedures.* Once 720 quality-assured hours of data have been obtained with the sorbent trap system(s), begin reporting the percent monitor data availability in accordance with § 75.32 and switch from the initial missing data procedures in paragraph (c) of this section to the following standard missing data procedures:

(1) If the percent monitor data availability (PMA) is ≥ 90.0 percent, report the average Hg concentration for all valid sorbent trap analyses in the previous 12 months.

(2) If the PMA is ≥ 80.0 percent, but < 90.0 percent, report the 95th percentile Hg concentration obtained from all of the valid sorbent trap analyses in the previous 12 months.

(3) If the PMA is ≥ 70.0 percent, but < 80.0 percent, report the maximum Hg concentration obtained from all of the valid sorbent trap analyses in the previous 12 months.

(4) If the PMA is < 70.0 percent, report the maximum potential Hg concentration, as defined in section 2.1.7 of appendix A to this part.

(5) For the purposes of paragraphs (d)(1), (d)(2), and (d)(3) of this section, if fewer than 12 months have elapsed since initial certification, use whatever valid sorbent trap analyses are available to determine the appropriate substitute data values.

(e) Notwithstanding the requirements of paragraphs (c) and (d) of this section, if the unit has add-on Hg emission controls or is equipped with a flue gas desulfurization system that significantly reduces Hg emissions, the owner or operator shall report the maximum potential Hg concentration, as defined in section 2.1.7 of appendix A to this part, for any hour(s) in the missing data period for which proper operation of the Hg emission controls or FGD system is not documented according to § 75.58(b)(3).

■ 30. Section 75.53 is amended by:

■ a. Revising paragraph (e)(1)(i)(E);

■ b. Revising paragraph (e)(1)(iv) introductory text; and

■ c. Revising paragraph (e)(1)(x).

The revisions read as follows:

§ 75.53 Monitoring plan.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(E) Type(s) of emission controls for SO_2, NO_X, Hg, and particulates installed or to be installed, including specifications of whether such controls are pre-combustion, post-combustion, or integral to the combustion process; control equipment code, installation date, and optimization date; control equipment retirement date (if applicable); primary/secondary controls indicator; and an indicator for whether the controls are an original installation;

* * * * *

(iv) Identification and description of each monitoring component (including each monitor and its identifiable components, such as analyzer and/or probe) in the CEMS (*e.g.,* SO_2 pollutant concentration monitor, flow monitor, moisture monitor; NO_X pollutant concentration monitor, Hg monitor, and diluent gas monitor), the sorbent trap monitoring system, the continuous opacity monitoring system, or the excepted monitoring system (*e.g.,* fuel flowmeter, data acquisition and handling system), including:

* * * * *

(x) For each parameter monitored: Scale, maximum potential concentration (and method of calculation), maximum expected concentration (if applicable) (and method of calculation), maximum potential flow rate (and method of calculation), maximum potential NO_X emission rate, span value, full-scale range, daily calibration units of measure, span effective date/hour, span inactivation date/hour, indication of whether dual spans are required, default high range value, flow rate span, and flow rate span value and full scale value (in scfh) for each unit or stack using SO_2, NO_X, CO_2, O_2, Hg, or flow component monitors.

* * * * *

■ 31. Section 75.57 is amended by adding new paragraphs (i) and (j), to read as follows:

§ 75.57 General recordkeeping provisions.

* * * * *

(i) *Hg emission record provisions (CEMS).* The owner or operator shall record for each hour the information required by this paragraph for each affected unit using Hg CEMS in combination with flow rate, and (in certain cases) moisture, and diluent gas monitors, to determine Hg mass emissions and (if applicable) unit heat input under a State or Federal Hg mass emissions reduction program that adopts the requirements of subpart I of this part.

(1) For Hg concentration during unit operation, as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination:

(i) Component-system identification code, as provided in § 75.53;

(ii) Date and hour;

(iii) Hourly Hg concentration (μg/scm, rounded to the nearest tenth). For a particular pair of sorbent traps, this will be the flow-proportional average concentration for the data collection period;

(iv) The bias-adjusted hourly average Hg concentration (μg/scm, rounded to the nearest hundredth) if a bias adjustment factor is required, as provided in § 75.24(d);

(v) Method of determination for hourly Hg concentration using Codes 1–55 in Table 4a of this section; and

(vi) The percent monitor data availability (to the nearest tenth of a percent), calculated pursuant to § 75.32.

(2) For flue gas moisture content during unit operation (if required), as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination (except where a default moisture value is used in accordance with § 75.11(b), § 75.12(b), or approved under § 75.66):

(i) Component-system identification code, as provided in § 75.53;

(ii) Date and hour;

(iii) Hourly average moisture content of flue gas (percent, rounded to the nearest tenth). If the continuous moisture monitoring system consists of wet- and dry-basis oxygen analyzers, also record both the wet- and dry-basis oxygen hourly averages (in percent O_2, rounded to the nearest tenth);

(iv) Percent monitor data availability (recorded to the nearest tenth of a percent) for the moisture monitoring system, calculated pursuant to § 75.32; and

(v) Method of determination for hourly average moisture percentage, using Codes 1–55 in Table 4a of this section.

(3) For diluent gas (O_2 or CO_2) concentration during unit operation (if required), as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination:

(i) Component-system identification code, as provided in § 75.53;

(ii) Date and hour;

(iii) Hourly average diluent gas (O_2 or CO_2) concentration (in percent, rounded to the nearest tenth);

(iv) Method of determination code for diluent gas (O_2 or CO_2) concentration data using Codes 1–55, in Table 4a of this section; and

(v) The percent monitor data availability (to the nearest tenth of a percent) for the O_2 or CO_2 monitoring system (if a separate O_2 or CO_2 monitoring system is used for heat input determination), calculated pursuant to § 75.32.

(4) For stack gas volumetric flow rate during unit operation, as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination, record the information required under paragraphs (c)(2)(i) through (c)(2)(vi) of this section.

(5) For Hg mass emissions during unit operation, as measured and reported from the certified primary monitoring system(s), certified redundant or non-redundant back-up monitoring system(s), or other approved method(s) of emissions determination:

(i) Date and hour;

(ii) Hourly Hg mass emissions (ounces, rounded to three decimal places);

(iii) Hourly Hg mass emissions (ounces, rounded to three decimal places), adjusted for bias if a bias adjustment factor is required, as provided in § 75.24(d); and

(iv) Identification code for emissions formula used to derive hourly Hg mass emissions from Hg concentration, flow rate and moisture data, as provided in § 75.53.

(j) *Hg emission record provisions (sorbent trap systems).* The owner or operator shall record for each hour the information required by this paragraph, for each affected unit using sorbent trap monitoring systems in combination with flow rate, moisture, and (in certain cases) diluent gas monitors, to determine Hg mass emissions and (if required) unit heat input under a State or Federal Hg mass emissions reduction program that adopts the requirements of subpart I of this part.

(1) For Hg concentration during unit operation, as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination:

(i) Component-system identification code, as provided in § 75.53;

(ii) Date and hour;

(iii) Hourly Hg concentration (μg/dscm, rounded to the nearest tenth). For a particular pair of sorbent traps, this will be the flow-proportional average concentration for the data collection period;

(iv) The bias-adjusted hourly average Hg concentration (μg/dscm, rounded to the nearest tenth) if a bias adjustment factor is required, as provided in § 75.24(d);

(v) Method of determination for hourly average Hg concentration using Codes 1–55 in Table 4a of this section; and

(vi) Percent monitor data availability (recorded to the nearest tenth of a percent), calculated pursuant to § 75.32;

(2) For flue gas moisture content during unit operation, as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination (except where a default moisture value is used in accordance with § 75.11(b), § 75.12(b), or approved under § 75.66), record the information required under paragraphs (i)(2)(i) through (i)(2)(v) of this section;

(3) For diluent gas (O_2 or CO_2) concentration during unit operation (if required for heat input determination), record the information required under paragraphs (i)(3)(i) through (i)(3)(v) of this section.

(4) For stack gas volumetric flow rate during unit operation, as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination, record the information required under paragraphs (c)(2)(i) through (c)(2)(vi) of this section.

(5) For Hg mass emissions during unit operation, as measured and reported from the certified primary monitoring system(s), certified redundant or non-redundant back-up monitoring system(s), or other approved method(s) of emissions determination, record the information required under paragraph (i)(5) of this section.

(6) Record the average flow rate of stack gas through each sorbent trap (in appropriate units, *e.g.*, liters/min, cc/min, dscm/min).

(7) Record the dry gas meter reading (in dscm, rounded to the nearest hundredth), at the beginning and end of the collection period and at least once in each unit operating hour during the collection period.

(8) Calculate and record the ratio of the bias-adjusted stack gas flow rate to the sample flow rate, as described in section 11.2 of appendix K to this part.

■ 32. Section 75.58 is amended by revising paragraphs (b)(3) introductory text, (b)(3)(i), and (b)(3)(ii), to read as follows:

§ 75.58 General recordkeeping provisions for specific situations.

* * * * *

(b) * * *

(3) Except as otherwise provided in § 75.34 (d), for units with add-on SO_2 or NO_X emission controls following the provisions of § 75.34(a)(1), (a)(2) or (a)(3), or for units with add-on Hg emission controls, the owner or operator shall record:

(i) Parametric data which demonstrate, for each hour of missing SO_2, Hg, or NO_X emission data, the proper operation of the add-on emission controls, as described in the quality assurance/quality control program for the unit. The parametric data shall be maintained on site and shall be submitted, upon request, to the Administrator, EPA Regional office, State, or local agency. Alternatively, for units equipped with flue gas desulfurization (FGD) systems, the owner or operator may use quality-assured data from a certified SO_2 monitor to demonstrate proper operation of the emission controls during periods of missing Hg data;

(ii) A flag indicating, for each hour of missing SO_2, Hg, or NO_X emission data, either that the add-on emission controls are operating properly, as evidenced by all parameters being within the ranges specified in the quality assurance/quality control program, or that the add-on emission controls are not operating properly;

* * * * *

■ 33. Section 75.59 is amended by:

■ a. Revising the introductory text of paragraphs (a)(1), (a)(3), (a)(5), (a)(5)(ii), (a)(6), and (a)(9);

■ b. Adding paragraphs (a)(7)(vii), (a)(7)(viii), and (a)(14);

■ c. Revising paragraph (a)(9)(vi); and

■ d. Revising the introductory text of paragraph (c).

The revisions read as follows:

§ 75.59 Certification, quality assurance, and quality control record provisions.

* * * * *

(a) * * *

(1) For each SO_2 or NO_X pollutant concentration monitor, flow monitor, CO_2 emissions concentration monitor (including O_2 monitors used to determine CO_2 emissions), Hg monitor, or diluent gas monitor (including wet- and dry-basis O_2 monitors used to determine percent moisture), the owner or operator shall record the following for all daily and 7-day calibration error tests, all daily system integrity checks (Hg monitors, only), and all off-line calibration demonstrations, including any follow-up tests after corrective action:

* * * * *

(3) For each SO_2 or NO_X pollutant concentration monitor, CO_2 emissions

concentration monitor (including O_2 monitors used to determine CO_2 emissions), Hg concentration monitor, or diluent gas monitor (including wet- and dry-basis O_2 monitors used to determine percent moisture), the owner or operator shall record the following for the initial and all subsequent linearity check(s) and 3-level system integrity checks (Hg monitors with converters, only), including any follow-up tests after corrective action:

* * * * *

(5) For each SO_2 pollutant concentration monitor, flow monitor, each CO_2 emissions concentration monitor (including any O_2 concentration monitor used to determine CO_2 mass emissions or heat input), each NO_X-diluent continuous emission monitoring system, each NO_X concentration monitoring system, each diluent gas (O_2 or CO_2) monitor used to determine heat input, each moisture monitoring system, each Hg concentration monitoring system, each sorbent trap monitoring system, and each approved alternative monitoring system, the owner or operator shall record the following information for the initial and all subsequent relative accuracy test audits:

* * * * *

(ii) Individual test run data from the relative accuracy test audit for the SO_2 concentration monitor, flow monitor, CO_2 emissions concentration monitor, NO_X-diluent continuous emission monitoring system, SO_2-diluent continuous emission monitoring system, diluent gas (O_2 or CO_2) monitor used to determine heat input, NO_X concentration monitoring system, moisture monitoring system, Hg concentration monitoring system, sorbent trap monitoring system, or approved alternative monitoring system, including:

* * * * *

(6) For each SO_2, NO_X, Hg, or CO_2 emissions concentration monitor, NO_X-diluent continuous emission monitoring system, NO_X concentration monitoring system, or diluent gas (O_2 or CO_2) monitor used to determine heat input, the owner or operator shall record the following information for the cycle time test:

* * * * *

(7) * * *

(vii) For each RATA run using the Ontario Hydro Method to determine Hg concentration:

(A) Percent CO_2 and O_2 in the stack gas, dry basis;

(B) Moisture content of the stack gas (percent H_2O);

(C) Average stack temperature (°F);

(D) Dry gas volume metered (dscm);

(E) Percent isokinetic;

(F) Particle-bound Hg collected by the filter, blank, and probe rinse (μg);

(G) Oxidized Hg collected by the KCl impingers (μg);

(H) Elemental Hg collected in the HNO_3/H_2O_2 impinger and in the $KMnO_4/H_2SO_4$ impingers (μg);

(I) Total Hg, including particle-bound Hg (μg); and

(J) Total Hg, excluding particle-bound Hg (μg)

(viii) *Data elements for instrumental Hg reference method.* [Reserved]

* * * * *

(9) When hardcopy relative accuracy test reports, certification reports, recertification reports, or semiannual or annual reports for gas or flow rate CEMS, Hg CEMS, or sorbent trap monitoring systems are required or requested under § 75.60(b)(6) or § 75.63, the reports shall include, at a minimum, the following elements (as applicable to the type(s) of test(s) performed:

* * * * *

(vi) Laboratory calibrations of the source sampling equipment. For sorbent trap monitoring systems, the laboratory analyses of all sorbent traps, and information documenting the results of all leak checks and other applicable quality control procedures.

* * * * *

(14) For the sorbent traps used in sorbent trap monitoring systems to quantify Hg concentration under subpart I of this part (including sorbent traps used for relative accuracy testing), the owner or operator shall keep records of the following:

(i) The ID number of the monitoring system in which each sorbent trap was used to collect Hg;

(ii) The unique identification number of each sorbent trap;

(iii) The beginning and ending dates and hours of the data collection period for each sorbent trap;

(iv) The average Hg concentration (in μg/dscm) for the data collection period;

(v) Information documenting the results of the required leak checks;

(vi) The analysis of the Hg collected by each sorbent trap; and

(vii) Information documenting the results of the other applicable quality control procedures in § 75.15 and in appendices B and K to this part.

* * * * *

(c) Except as otherwise provided in § 75.58(b)(3)(i), units with add-on SO_2 or NO_X emission controls following the provisions of § 75.34(a)(1) or (a)(2), and for units with add-on Hg emission controls, the owner or operator shall keep the following records on-site in the quality assurance/quality control plan required by section 1 of appendix B to this part: * * *

* * * * *

■ 34. Part 75 is amended by adding Subpart I, to read as follows:

Subpart I—Hg Mass Emission Provisions

Sec.

75.80 General provisions.
75.81 Monitoring of Hg mass emissions and heat input at the unit level.
75.82 Monitoring of Hg mass emissions and heat input at common and multiple stacks.
75.83 Calculation of Hg mass emissions and heat input rate.
75.84 Recordkeeping and reporting.

Subpart I—Hg Mass Emission Provisions

§ 75.80 General provisions.

(a) *Applicability.* The owner or operator of a unit shall comply with the requirements of this subpart to the extent that compliance is required by an applicable State or Federal Hg mass emission reduction program that incorporates by reference, or otherwise adopts the provisions of, this subpart.

(1) For purposes of this subpart, the term ''affected unit'' shall mean any coal-fired unit (as defined in § 72.2 of this chapter) that is subject to a State or Federal Hg mass emission reduction program requiring compliance with this subpart. The term ''non-affected unit'' shall mean any unit that is not subject to such a program, the term ''permitting authority'' shall mean the permitting authority under an applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart, and the term ''designated representative'' shall mean the responsible party under the applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart.

(2) In addition, the provisions of subparts A, C, D, E, F, and G and appendices A through G of this part applicable to Hg concentration, flow rate, moisture, diluent gas concentration, and heat input, as set forth and referenced in this subpart, shall apply to the owner or operator of a unit required to meet the requirements of this subpart by a State or Federal Hg mass emission reduction program. The requirements of this part for SO_2, NO_X, CO_2 and opacity monitoring, recordkeeping and reporting do not apply to units that are subject only to a State or Federal Hg mass emission reduction program that adopts the requirements of this subpart, but are not affected units under the Acid Rain Program or under a State or Federal

NO_X mass emission reduction program that adopts the requirements of subpart H of this part.

(b) *Compliance dates.* The owner or operator of an affected unit shall meet the compliance deadlines established by an applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart.

(c) *Prohibitions.* (1) No owner or operator of an affected unit or a non-affected unit under § 75.82(b)(2)(ii) shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with paragraph (h) of this section.

(2) No owner or operator of an affected unit or a non-affected unit under § 75.82(b)(2)(ii) shall operate the unit so as to discharge, or allow to be discharged emissions of Hg to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this part.

(3) No owner or operator of an affected unit or a non-affected unit under § 75.82(b)(2)(ii) shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording Hg mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the provisions of this part applicable to monitoring systems under § 75.81.

(4) No owner or operator of an affected unit or a non-affected unit under § 75.82(b)(2)(ii) shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under this part, except under any one of the following circumstances:

(i) During the period that the unit is covered by a retired unit exemption that is in effect under the State or Federal Hg mass emission reduction program that adopts the requirements of this subpart; or

(ii) The owner or operator is monitoring Hg mass emissions from the affected unit with another certified monitoring system approved, in accordance with the provisions of paragraph (d) of this section; or

(iii) The designated representative submits notification of the date of certification testing of a replacement monitoring system in accordance with § 75.61.

(d) *Initial certification and recertification procedures.* (1) The owner or operator of an affected unit that is subject to the Acid Rain Program or to a State or Federal NO_X mass emission reduction program that adopts the requirements of subpart H of this part shall comply with the applicable initial certification and recertification procedures in § 75.20 and § 75.70(d), except that the owner or operator shall meet any additional requirements for Hg concentration monitoring systems, sorbent trap monitoring systems (as defined in § 72.2 of this chapter), flow monitors, CO_2 monitors, O_2 monitors, or moisture monitors, as set forth under § 75.81, under the common stack provisions in § 75.82, or under an applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart.

(2) The owner or operator of an affected unit that is not subject to the Acid Rain Program or to a State or Federal NO_X mass emission reduction program that adopts the requirements of subpart H of this part shall comply with the initial certification and recertification procedures established by an applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart.

(e) *Quality assurance and quality control requirements.* For units that use continuous emission monitoring systems to account for Hg mass emissions, the owner or operator shall meet the applicable quality assurance and quality control requirements in § 75.21 and appendix B to this part for the flow monitoring systems, Hg concentration monitoring systems, moisture monitoring systems, and diluent monitors required under § 75.81. Units using sorbent trap monitoring systems shall meet the applicable quality assurance requirements in § 75.15, appendix K to this part, and sections 1.5 and 2.3 of appendix B to this part.

(f) *Missing data procedures.* Except as provided in § 75.38(b) and paragraph (g) of this section, the owner or operator shall provide substitute data from monitoring systems required under § 75.81 for each affected unit as follows:

(1) For an owner or operator using an Hg concentration monitoring system, substitute for missing data in accordance with the applicable missing data procedures in §§ 75.31 through 75.38 whenever the unit combusts fuel and:

(i) A valid, quality-assured hour of Hg concentration data (in μg/scm) has not been measured and recorded, either by a certified Hg concentration monitoring system, by an appropriate EPA reference method under § 75.22, or by an approved alternative monitoring method under subpart E of this part; or

(ii) A valid, quality-assured hour of flow rate data (in scfh) has not been measured and recorded for a unit either by a certified flow monitor, by an appropriate EPA reference method under § 75.22, or by an approved alternative monitoring system under subpart E of this part; or

(iii) A valid, quality-assured hour of moisture data (in percent H_2O) has not been measured or recorded for an affected unit, either by a certified moisture monitoring system, by an appropriate EPA reference method under § 75.22, or an approved alternative monitoring method under subpart E of this part. This requirement does not apply when a default percent moisture value, as provided in § 75.11(b) or § 75.12(b), is used to account for the hourly moisture content of the stack gas, or when correction of the Hg concentration for moisture is not necessary; or

(iv) A valid, quality-assured hour of heat input rate data (in MMBtu/hr) has not been measured and recorded for a unit, either by certified flow rate and diluent (CO_2 or O_2) monitors, by appropriate EPA reference methods under § 75.22, or by approved alternative monitoring systems under subpart E of this part, where heat input is required for allocating allowances under the applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart.

(2) For an owner or operator using a sorbent trap monitoring system to quantify Hg mass emissions, substitute for missing data in accordance with the missing data procedures in § 75.39.

(g) *Reporting data prior to initial certification.* If, by the applicable compliance date under the State or Federal Hg mass emission reduction program that adopts the requirements of this subpart, the owner or operator of an affected unit has not successfully completed all required certification tests for any monitoring system(s), he or she shall determine, record and report hourly data prior to initial certification using one of the following procedures, for the monitoring system(s) that are uncertified:

(1) For Hg concentration and flow monitoring systems, report the maximum potential concentration of Hg as defined in section 2.1.7 of appendix A to this part and the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part; or

(2) For any unit, report data from the reference methods under § 75.22; or

(3) For any unit that is required to report heat input for purposes of allocating allowances, report (as applicable) the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part, the maximum potential CO_2 concentration, as defined in section 2.1.3.1 of appendix A to this part, the minimum potential O_2 concentration, as defined in section 2.1.3.2 of appendix A to this part, and the minimum potential percent moisture, as defined in section 2.1.5 of appendix A to this part.

(h) *Petitions.* (1) The designated representative of an affected unit that is also subject to the Acid Rain Program may submit a petition to the Administrator requesting an alternative to any requirement of this subpart. Such a petition shall meet the requirements of § 75.66 and any additional requirements established by the applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart. Use of an alternative to any requirement of this subpart is in accordance with this subpart and with such State or Federal Hg mass emission reduction program only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

(2) Notwithstanding paragraph (h)(1) of this section, petitions requesting an alternative to a requirement concerning any additional CEMS required solely to meet the common stack provisions of § 75.82 shall be submitted to the permitting authority and the Administrator and shall be governed by paragraph (h)(3) of this section. Such a petition shall meet the requirements of § 75.66 and any additional requirements established by an applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart.

(3) The designated representative of an affected unit that is not subject to the Acid Rain Program may submit a petition to the permitting authority and the Administrator requesting an alternative to any requirement of this subpart. Such a petition shall meet the requirements of § 75.66 and any additional requirements established by the applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart. Use of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that it is approved in writing by the Administrator, in consultation with the permitting authority.

§ 75.81 Monitoring of Hg mass emissions and heat input at the unit level.

The owner or operator of the affected coal-fired unit shall either:

(a) Meet the general operating requirements in § 75.10 for the following continuous emission monitors (except as provided in accordance with subpart E of this part):

(1) A Hg concentration monitoring system (as defined in § 72.2 of this chapter) or a sorbent trap monitoring system (as defined in § 72.2 of this chapter) to measure Hg concentration; and

(2) A flow monitoring system; and

(3) A continuous moisture monitoring system (if correction of Hg concentration for moisture is required), as described in § 75.11(b) or § 75.12(b). Alternatively, the owner or operator may use the appropriate fuel-specific default moisture value provided in § 75.11 or § 75.12, or a site-specific moisture value approved by petition under § 75.66; and

(4) If heat input is required to be reported under the applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart, the owner or operator also must meet the general operating requirements for a flow monitoring system and an O_2 or CO_2 monitor to measure heat input rate; or

(b) For an affected unit that emits 464 ounces (29 lb) of Hg per year or less, use the following excepted monitoring methodology. To implement this methodology for a qualifying unit, the owner or operator shall meet the general operating requirements in § 75.10 for the continuous emission monitors described in paragraphs (a)(2) and (a)(4) of this section, and perform Hg emission testing for initial certification and on-going quality-assurance, as described in paragraphs (c) through (e) of this section.

(c) To determine whether an affected unit is eligible to use the monitoring provisions in paragraph (b) of this section:

(1) The owner or operator must perform Hg emission testing prior to the compliance date in § 75.80(b), to determine the Hg concentration (*i.e.*, total vapor phase Hg) in the effluent. The testing shall be performed using one of the Hg reference methods listed in § 75.22, and shall consist of a minimum of 3 runs at the normal unit operating load. The minimum time per run shall be 1 hour if an instrumental reference method is used. If the Ontario Hydro Method is used, the test runs must be long enough to ensure that sufficient Hg is collected to analyze. If the unit is equipped with flue gas desulfurization or add-on Hg emission controls, the controls must be operating normally during the testing, and, for the purpose of establishing proper operation of the controls, the owner or operator shall record parametric data or SO_2 concentration data in accordance with § 75.58(b)(3)(i).

(2) Based on the results of the emission testing, Equation 1 of this section shall be used to provide a conservative estimate of the annual Hg mass emissions from the unit:

Where:

E = Estimated annual Hg mass emissions from the affected unit, (ounces/year)

K = Units conversion constant, 9.978×10^{-10} oz-scm/μg-scf

8760 = Number of hours in a year

C_{Hg} = The highest Hg concentration (μg/scm) from any of the test runs or 0.50 μg/scm, whichever is greater

Q_{max} = Maximum potential flow rate, determined according to section 2.1.4.1 of appendix A to this part, (scfh)

Equation 1 of this section assumes that the unit operates year-round at its maximum potential flow rate. Also, note that if the highest Hg concentration measured in any test run is less than 0.50 μg/scm, a default value of 0.50 μg/scm must be used in the calculations.

(3) If the estimated annual Hg mass emissions from paragraph (c)(2) of this section are 464 ounces per year or less, then the unit is eligible to use the monitoring provisions in paragraph (b) of this section, and continuous monitoring of the Hg concentration is not required (except as otherwise provided in paragraphs (e) and (f) of this section).

(d) If the owner or operator of an eligible unit under paragraph (c)(3) of this section elects not to continuously monitor Hg concentration, then the following requirements must be met:

(1) The results of the Hg emission testing performed under paragraph (c) of this section shall be submitted as a certification application to the Administrator and to the permitting authority, no later than 45 days after the testing is completed. The calculations demonstrating that the unit emits 464 ounces (or less) per year of Hg shall also be provided, and the default Hg concentration that will be used for reporting under § 75.84 shall be specified in both the electronic and hard copy portions of the monitoring plan for the unit. The methodology is considered to be provisionally certified as of the date and hour of completion of the Hg emission testing.

$$E = 8760\ K\ C_{Hg}\ Q_{max} \qquad \text{(Eq. 1)}$$

(2) Following initial certification, the same default Hg concentration value that was used to estimate the unit's annual Hg mass emissions under paragraph (c) of this section shall be reported for each unit operating hour, except as otherwise provided in paragraph (d)(6) of this section. The default Hg concentration value shall be updated as appropriate, according to paragraph (d)(5) of this section.

(3) The hourly Hg mass emissions shall be calculated according to section 9.1.3 in appendix F to this part.

(4) The Hg emission testing described in paragraph (c) of this section shall be repeated periodically, for the purposes of quality-assurance, as follows:

(i) If the results of the certification testing under paragraph (c) of this section show that the unit emits 144 ounces (9 lb) of Hg per year or less, the first retest is required by the end of the fourth QA operating quarter (as defined in § 72.2 of this chapter) following the calendar quarter of the certification testing; or

(ii) If the results of the certification testing under paragraph (c) of this section show that the unit emits more than 144 ounces of Hg per year, but less than or equal to 464 ounces per year, the first retest is required by the end of the second QA operating quarter (as defined in § 72.2 of this chapter) following the calendar quarter of the certification testing; and

(iii) Thereafter, retesting shall be required either semiannually or annually (*i.e.*, by the end of the second or fourth QA operating quarter following the quarter of the previous test), depending on the results of the previous test. To determine whether the next retest is due within two or four QA operating quarters, substitute the highest Hg concentration from the current test or 0.50 µg/scm (whichever is greater) into the equation in paragraph (c)(2) of this section. If the estimated annual Hg mass emissions exceeds 144 ounces, the next test is due within two QA operating quarters. If the estimated annual Hg mass emissions is 144 ounces or less, the next test is due within four QA operating quarters.

(5) The default Hg concentration used for reporting under § 75.84 shall be updated after each required retest. The updated value shall either be the highest Hg concentration measured in any of the test runs or 0.50 µg/scm, whichever is greater. The updated default value shall be applied beginning with the first unit operating hour after completion of the retest.

(6) If the unit is equipped with a flue gas desulfurization system or add-on Hg controls, the owner or operator shall record the information required under § 75.58(b)(3) for each unit operating hour, to document proper operation of the emission controls. For any operating hour in which this documentation is unavailable, the maximum potential Hg concentration, as defined in section 2.1.7 of appendix A to this part, shall be reported.

(e) For units with common stack and multiple stack exhaust configurations, the use of the monitoring methodology described in paragraphs (b) through (d) of this section is restricted as follows:

(1) The methodology may not be used for reporting Hg mass emissions at a common stack unless all of the units using the common stack are affected units and each individual unit is demonstrated to emit 464 ounces of Hg per year, or less, in accordance with paragraphs (c) and (d) of this section. If these conditions are met, the default Hg concentration used for reporting at the common stack shall either be the highest value obtained in any test run for any of the units serving the common stack or 0.50 µg/scm, whichever is greater.

(2) For units with multiple stack or duct configurations, Hg emission testing must be performed separately on each stack or duct, and the sum of the estimated annual Hg mass emissions from the stacks or ducts must not exceed 464 ounces of Hg per year. For reporting purposes, the default Hg concentration used for each stack or duct shall either be the highest value obtained in any test run for that stack or 0.50 µg/scm, whichever is greater.

(3) For units with a main stack and bypass stack configuration, Hg emission testing shall be performed only on the main stack. For reporting purposes, the default Hg concentration used for the main stack shall either be the highest value obtained in any test run for that stack or 0.50 µg/scm, whichever is greater. Whenever the main stack is bypassed, the maximum potential Hg concentration, as defined in section 2.1.7 of appendix A to this part, shall be reported.

(f) At the end of each calendar year, if the cumulative annual Hg mass emissions from an affected unit have exceeded 464 ounces, then the owner shall install, certify, operate, and maintain a Hg concentration monitoring system or a sorbent trap monitoring system no later than 180 days after the end of the calendar year in which the annual Hg mass emissions exceeded 464 ounces. For common stack and multiple stack configurations, installation and certification of a Hg concentration or sorbent trap monitoring system on each stack (except for bypass stacks) is likewise required within 180 days after the end of the calendar year, if:

(1) The annual Hg mass emissions at the common stack have exceeded 464 ounces times the number of affected units using the common stack; or

(2) The sum of the annual Hg mass emissions from all of the multiple stacks or ducts has exceeded 464 ounces; or

(3) The sum of the annual Hg mass emissions from the main and bypass stacks has exceeded 464 ounces.

(g) For an affected unit that is using a Hg concentration CEMS or a sorbent trap system under § 75.81(a) to continuously monitor the Hg mass emissions, the owner or operator may switch to the methodology in § 75.81(b), provided that the applicable conditions in paragraphs (c) through (f) of this section are met.

§ 75.82 Monitoring of Hg mass emissions and heat input at common and multiple stacks.

(a) *Unit utilizing common stack with other affected unit(s).* When an affected unit utilizes a common stack with one or more affected units, but no non-affected units, the owner or operator shall either:

(1) Install, certify, operate, and maintain the monitoring systems described in § 75.81(a) at the common stack, record the combined Hg mass emissions for the units exhausting to the common stack. Alternatively, if, in accordance with § 75.81(e), each of the units using the common stack is demonstrated to emit less than 464 ounces of Hg per year, the owner or operator may install, certify, operate and maintain the monitoring systems and perform the Hg emission testing described under § 75.81(b). If reporting of the unit heat input rate is required, determine the hourly unit heat input rates either by:

(i) Apportioning the common stack heat input rate to the individual units according to the procedures in § 75.16(e)(3); or

(ii) Installing, certifying, operating, and maintaining a flow monitoring system and diluent monitor in the duct to the common stack from each unit; or

(2) Install, certify, operate, and maintain the monitoring systems and (if applicable) perform the Hg emission testing described in § 75.81(a) or § 75.81(b) in the duct to the common stack from each unit.

(b) *Unit utilizing common stack with nonaffected unit(s).* When one or more affected units utilizes a common stack

with one or more nonaffected units, the owner or operator shall either:

(1) Install, certify, operate, and maintain the monitoring systems and (if applicable) perform the Hg emission testing described in § 75.81(a) or § 75.81(b) in the duct to the common stack from each affected unit; or

(2) Install, certify, operate, and maintain the monitoring systems described in § 75.81(a) in the common stack; and

(i) Install, certify, operate, and maintain the monitoring systems and (if applicable) perform the Hg emission testing described in § 75.81(a) or § 75.81(b) in the duct to the common stack from each non-affected unit. The designated representative shall submit a petition to the permitting authority and the Administrator to allow a method of calculating and reporting the Hg mass emissions from the affected units as the difference between Hg mass emissions measured in the common stack and Hg mass emissions measured in the ducts of the non-affected units, not to be reported as an hourly value less than zero. The permitting authority and the Administrator may approve such a method whenever the designated representative demonstrates, to the satisfaction of the permitting authority and the Administrator, that the method ensures that the Hg mass emissions from the affected units are not underestimated; or

(ii) Count the combined emissions measured at the common stack as the Hg mass emissions for the affected units, for recordkeeping and compliance purposes, in accordance with paragraph (a) of this section; or

(iii) Submit a petition to the permitting authority and the Administrator to allow use of a method for apportioning Hg mass emissions measured in the common stack to each of the units using the common stack and for reporting the Hg mass emissions. The permitting authority and the Administrator may approve such a method whenever the designated representative demonstrates, to the satisfaction of the permitting authority and the Administrator, that the method ensures that the Hg mass emissions from the affected units are not underestimated.

(c) *Unit with a main stack and a bypass stack.* Whenever any portion of the flue gases from an affected unit can be routed through a bypass stack to avoid the Hg monitoring system(s) installed on the main stack, the owner and operator shall either:

(1) Install, certify, operate, and maintain the monitoring systems described in § 75.81(a) on both the main stack and the bypass stack and calculate Hg mass emissions for the unit as the sum of the Hg mass emissions measured at the two stacks;

(2) Install, certify, operate, and maintain the monitoring systems described in § 75.81(a) at the main stack and measure Hg mass emissions at the bypass stack using the appropriate reference methods in § 75.22(b). Calculate Hg mass emissions for the unit as the sum of the emissions recorded by the installed monitoring systems on the main stack and the emissions measured by the reference method monitoring systems; or

(3) Install, certify, operate, and maintain the monitoring systems and (if applicable) perform the Hg emission testing described in § 75.81(a) or § 75.81(b) only on the main stack. If this option is chosen, it is not necessary to designate the exhaust configuration as a multiple stack configuration in the monitoring plan required under § 75.53, since only the main stack is monitored. For each unit operating hour in which the bypass stack is used, report, as applicable, the maximum potential Hg concentration (as defined in section 2.1.7 of appendix A to this part), and the appropriate substitute data values for flow rate, CO_2 concentration, O_2 concentration, and moisture (as applicable), in accordance with the missing data procedures of §§ 75.31 through 75.37.

(d) *Unit with multiple stack or duct configuration.* When the flue gases from an affected unit discharge to the atmosphere through more than one stack, or when the flue gases from an affected unit utilize two or more ducts feeding into a single stack and the owner or operator chooses to monitor in the ducts rather than in the stack, the owner or operator shall either:

(1) Install, certify, operate, and maintain the monitoring systems and (if applicable) perform the Hg emission testing described in § 75.81(a) or § 75.81(b) in each of the multiple stacks and determine Hg mass emissions from the affected unit as the sum of the Hg mass emissions recorded for each stack. If another unit also exhausts flue gases into one of the monitored stacks, the owner or operator shall comply with the applicable requirements of paragraphs (a) and (b) of this section, in order to properly determine the Hg mass emissions from the units using that stack; or

(2) Install, certify, operate, and maintain the monitoring systems and (if applicable) perform the Hg emission testing described in § 75.81(a) or § 75.81(b) in each of the ducts that feed into the stack, and determine Hg mass emissions from the affected unit using the sum of the Hg mass emissions measured at each duct, except that where another unit also exhausts flue gases to one or more of the stacks, the owner or operator shall also comply with the applicable requirements of paragraphs (a) and (b) of this section to determine and record Hg mass emissions from the units using that stack.

§ 75.83 Calculation of Hg mass emissions and heat input rate.

The owner or operator shall calculate Hg mass emissions and heat input rate in accordance with the procedures in sections 9.1 through 9.3 of appendix F to this part.

§ 75.84 Recordkeeping and reporting.

(a) *General recordkeeping provisions.* The owner or operator of any affected unit shall maintain for each affected unit and each non-affected unit under § 75.82(b)(2)(ii) a file of all measurements, data, reports, and other information required by this part at the source in a form suitable for inspection for at least 3 years from the date of each record. Except for the certification data required in § 75.57(a)(4) and the initial submission of the monitoring plan required in § 75.57(a)(5), the data shall be collected beginning with the earlier of the date of provisional certification or the compliance deadline in § 75.80(b). The certification data required in § 75.57(a)(4) shall be collected beginning with the date of the first certification test performed. The file shall contain the following information:

(1) The information required in §§ 75.57(a)(2), (a)(4), (a)(5), (a)(6), (b), (c)(2), (g) (if applicable), (h), and (i) or (j) (as applicable). For the information in § 75.57(a)(2), replace the phrase ''the deadline in § 75.4(a), (b) or (c)'' with the phrase ''the applicable certification deadline under the State or Federal Hg mass emission reduction program'';

(2) The information required in § 75.58(b)(3), for units with flue gas desulfurization systems or add-on Hg emission controls;

(3) For affected units using Hg CEMS or sorbent trap monitoring systems, for each hour when the unit is operating, record the Hg mass emissions, calculated in accordance with section 9 of appendix F to this part.

(4) Heat input and Hg methodologies for the hour; and

(5) Formulas from monitoring plan for total Hg mass emissions and heat input rate (if applicable);

(b) *Certification, quality assurance and quality control record provisions.* The owner or operator of any affected

unit shall record the applicable information in § 75.59 for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.82(b)(2)(ii).

(c) *Monitoring plan recordkeeping provisions.* (1) *General provisions.* The owner or operator of an affected unit shall prepare and maintain a monitoring plan for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.82(b)(2)(ii). The monitoring plan shall contain sufficient information on the continuous monitoring systems and the use of data derived from these systems to demonstrate that all the unit's Hg emissions are monitored and reported.

(2) *Updates.* Whenever the owner or operator makes a replacement, modification, or change in a certified continuous monitoring system or alternative monitoring system under subpart E of this part, including a change in the automated data acquisition and handling system or in the flue gas handling system, that affects information reported in the monitoring plan (*e.g.*, a change to a serial number for a component of a monitoring system), then the owner or operator shall update the monitoring plan.

(3) *Contents of the monitoring plan.* Each monitoring plan shall contain the information in § 75.53(e)(1) in electronic format and the information in § 75.53(e)(2) in hardcopy format.

(d) *General reporting provisions.* (1) The designated representative for an affected unit shall comply with all reporting requirements in this section and with any additional requirements set forth in an applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart.

(2) The designated representative for an affected unit shall submit the following for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.82(b)(2)(ii):

(i) Initial certification and recertification applications in accordance with § 75.80(d);

(ii) Monitoring plans in accordance with paragraph (e) of this section; and

(iii) Quarterly reports in accordance with paragraph (f) of this section.

(3) *Other petitions and communications.* The designated representative for an affected unit shall submit petitions, correspondence, application forms, and petition-related test results in accordance with the provisions in § 75.80(h).

(4) *Quality assurance RATA reports.* If requested by the permitting authority, the designated representative of an affected unit shall submit the quality assurance RATA report for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.82(b)(2)(ii) by the later of 45 days after completing a quality assurance RATA according to section 2.3 of appendix B to this part or 15 days of receiving the request. The designated representative shall report the hardcopy information required by § 75.59(a)(9) to the permitting authority.

(5) *Notifications.* The designated representative for an affected unit shall submit written notice to the permitting authority according to the provisions in § 75.61 for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.82(b)(2)(ii).

(e) *Monitoring plan reporting.* (1) *Electronic submission.* The designated representative for an affected unit shall submit to the Administrator a complete, electronic, up-to-date monitoring plan file for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.82(b)(2)(ii), as follows: No later than 45 days prior to the commencement of initial certification testing; at the time of a certification or recertification application submission; and whenever an update of the electronic monitoring plan is required, either under § 75.53 or elsewhere in this part.

(2) *Hardcopy submission.* The designated representative of an affected unit shall submit all of the hardcopy information required under § 75.53, for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.82(b)(2)(ii), to the permitting authority prior to initial certification. Thereafter, the designated representative shall submit hardcopy information only if that portion of the monitoring plan is revised. The designated representative shall submit the required hardcopy information as follows: no later than 45 days prior to the commencement of initial certification testing; with any certification or recertification application, if a hardcopy monitoring plan change is associated with the recertification event; and within 30 days of any other event with which a hardcopy monitoring plan change is associated, pursuant to § 75.53(b). Electronic submittal of all monitoring plan information, including hardcopy portions, is permissible provided that a paper copy of the hardcopy portions can be furnished upon request.

(f) *Quarterly reports.* (1) *Electronic submission.* Electronic quarterly reports shall be submitted, beginning with the calendar quarter containing the compliance date in § 75.80(b), unless otherwise specified in the final rule implementing a State or Federal Hg mass emissions reduction program that adopts the requirements of this subpart. The designated representative for an affected unit shall report the data and information in this paragraph (f)(1) and the applicable compliance certification information in paragraph (f)(2) of this section to the Administrator quarterly. Each electronic report must be submitted to the Administrator within 30 days following the end of each calendar quarter. Each electronic report shall include the date of report generation and the following information for each affected unit or group of units monitored at a common stack.

(i) The facility information in § 75.64(a)(1); and

(ii) The information and hourly data required in paragraph (a) of this section, except for:

(A) Descriptions of adjustments, corrective action, and maintenance;

(B) Information which is incompatible with electronic reporting (*e.g.*, field data sheets, lab analyses, quality control plan);

(C) For units with flue gas desulfurization systems or with add-on Hg emission controls, the parametric information in § 75.58(b)(3);

(D) Information required by § 75.57(h) concerning the causes of any missing data periods and the actions taken to cure such causes;

(E) Hardcopy monitoring plan information required by § 75.53 and hardcopy test data and results required by § 75.59;

(F) Records of flow polynomial equations and numerical values required by § 75.59(a)(5)(vi);

(G) Stratification test results required as part of the RATA supplementary records under § 75.59(a)(7);

(H) Data and results of RATAs that are aborted or invalidated due to problems with the reference method or operational problems with the unit and data and results of linearity checks that are aborted or invalidated due to operational problems with the unit;

(I) Supplementary RATA information required under § 75.59(a)(7)(i) through § 75.59(a)(14), as applicable, except that: The data under § 75.59(a)(7)(ii)(A) through (T) and the data under § 75.59(a)(7)(iii)(A) through (M) shall, as applicable, be reported for flow RATAs in which angular compensation (measurement of pitch and/or yaw angles) is used and for flow RATAs in which a site-specific wall effects

adjustment factor is determined by direct measurement; and the data under § 75.59(a)(7)(ii)(T) shall be reported for all flow RATAs in which a default wall effects adjustment factor is applied;

(J) For units using sorbent trap monitoring systems, the hourly dry gas meter readings taken between the initial and final meter readings for the data collection period; and

(iii) Ounces of Hg emitted during quarter and cumulative ounces of Hg emitted in the year-to-date (rounded to the nearest thousandth); and

(iv) Unit or stack operating hours for quarter, cumulative unit or stack operating hours for year-to-date; and

(v) Reporting period heat input (if applicable) and cumulative, year-to-date heat input.

(2) *Compliance certification.* (i) The designated representative shall certify that the monitoring plan information in each quarterly electronic report (*i.e.*, component and system identification codes, formulas, etc.) represent current operating conditions for the affected unit(s)

(ii) The designated representative shall submit and sign a compliance certification in support of each quarterly emissions monitoring report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(A) The monitoring data submitted were recorded in accordance with the applicable requirements of this part, including the quality assurance procedures and specifications; and

(B) With regard to a unit with an FGD system or with add-on Hg emission controls, that for all hours where data are substituted in accordance with § 75.38(b), the add-on emission controls were operating within the range of parameters listed in the quality-assurance plan for the unit (or that quality-assured SO_2 CEMS data were available to document proper operation of the emission controls), and that the substitute values do not systematically underestimate Hg emissions.

(3) *Additional reporting requirements.* The designated representative shall also comply with all of the quarterly reporting requirements in §§ 75.64(d), (f), and (g).

■ 35. Appendix A to part 75 is amended by revising the title of section 1.1 and revising the second sentence of section 1.1 introductory text, to read as follows:

Appendix A to Part 75—Specifications and Test Procedures

1. Installation and Measurement Location.

1.1 Gas and Hg Monitors

* * * Select a representative measurement point or path for the monitor probe(s) (or for the path from the transmitter to the receiver) such that the SO_2, CO_2, O_2, and NO_X concentration monitoring system or NO_X-diluent CEMS (NO_X pollutant concentration monitor and diluent gas monitor), Hg concentration monitoring system, or sorbent trap monitoring system will pass the relative accuracy test (see section 6 of this appendix).

* * * * *

■ 36. Appendix A to part 75 is further amended by adding new sections 2.1.7 through 2.1.7.4 and 2.2.3, to read as follows:

Appendix A to Part 75—Specification and Test Procedures

2. Equipment Specifications.

* * * * *

2.1.7 Hg Monitors

Determine the appropriate span and range value(s) for each Hg pollutant concentration monitor, so that all expected Hg concentrations can be determined accurately.

2.1.7.1 Maximum Potential Concentration

(a) The maximum potential concentration depends upon the type of coal combusted in the unit. For the initial MPC determination, there are three options:

(1) Use one of the following default values: 9 μg/scm for bituminous coal; 10 μg/scm for sub-bituminous coal; 16 μg/scm for lignite, and 1 μg/scm for waste coal, *i.e.*, anthracite culm or bituminous gob. If different coals are blended, use the highest MPC for any fuel in the blend; or

(2) You may base the MPC on the results of site-specific emission testing using the one of the Hg reference methods in § 75.22, if the unit does not have add-on Hg emission controls or a flue gas desulfurization system, or if you test upstream of these control devices. A minimum of 3 test runs are required, at the normal operating load. Use the highest total Hg concentration obtained in any of the tests as the MPC; or

(3) You may base the MPC on 720 or more hours of historical CEMS data or data from a sorbent trap monitoring system, if the unit does not have add-on Hg emission controls or a flue gas desulfurization system (or if the CEMS or sorbent trap system is located upstream of these control devices) and if the Hg CEMS or sorbent trap system has been tested for relative accuracy against one of the Hg reference methods in § 75.22 and has met a relative accuracy specification of 20.0% or less.

(b) For the purposes of missing data substitution, the fuel-specific or site-specific MPC values defined in paragraph (a) of this section apply to units using sorbent trap monitoring systems.

2.1.7.2 Maximum Expected Concentration

For units with FGD systems that significantly reduce Hg emissions (including fluidized bed units that use limestone injection) and for units equipped with add-on Hg emission controls (*e.g.*, carbon injection), determine the maximum expected Hg concentration (MEC) during normal, stable operation of the unit and emission controls. To calculate the MEC, substitute the MPC value from section 2.1.7.1 of this appendix into Equation A–2 in section 2.1.1.2 of this appendix. For units with add-on Hg emission controls, base the percent removal efficiency on design engineering calculations. For units with FGD systems, use the best available estimate of the Hg removal efficiency of the FGD system.

2.1.7.3 Span and Range Value(s)

(a) For each Hg monitor, determine a high span value, by rounding the MPC value from section 2.1.7.1 of this appendix upward to the next highest multiple of 10 μg/scm.

(b) For an affected unit equipped with an FGD system or a unit with add-on Hg emission controls, if the MEC value from section 2.1.7.2 of this appendix is less than 20 percent of the high span value from paragraph (a) of this section, and if the high span value is 20 μg/scm or greater, define a second, low span value of 10 μg/scm.

(c) If only a high span value is required, set the full-scale range of the Hg analyzer to be greater than or equal to the span value.

(d) If two span values are required, you may either:

(1) Use two separate (high and low) measurement scales, setting the range of each scale to be greater than or equal to the high or low span value, as appropriate; or

(2) Quality-assure two segments of a single measurement scale.

2.1.7.4 Adjustment of Span and Range

For each affected unit or common stack, the owner or operator shall make a periodic evaluation of the MPC, MEC, span, and range values for each Hg monitor (at a minimum, an annual evaluation is required) and shall make any necessary span and range adjustments, with corresponding monitoring plan updates. Span and range adjustments may be required, for example, as a result of changes in the fuel supply, changes in the manner of operation of the unit, or installation or removal of emission controls. In implementing the provisions in paragraphs (a) and (b) of this section, data recorded during short-term, non-representative process operating conditions (*e.g.*, a trial burn of a different type of fuel) shall be excluded from consideration. The owner or operator shall keep the results of the most recent span and range evaluation on-site, in a format suitable for inspection. Make each required span or range adjustment no later than 45 days after the end of the quarter in which the need to adjust the span or range is identified, except that up to 90 days after the end of that quarter may be taken to implement a span adjustment if the calibration gas concentrations currently being used for calibration error tests, system integrity checks, and linearity checks are unsuitable for use with the new span value and new calibration materials must be ordered.

(a) The guidelines of section 2.1 of this appendix do not apply to Hg monitoring systems.

(b) Whenever a full-scale range exceedance occurs during a quarter and is not caused by a monitor out-of-control period, proceed as follows:

(1) For monitors with a single measurement scale, report 200 percent of the full-scale range as the hourly Hg concentration until the readings come back on-scale and if appropriate, make adjustments to the MPC, span, and range to prevent future full-scale exceedances; or

(2) For units with two separate measurement scales, if the low range is exceeded, no further action is required, provided that the high range is available and is not out-of-control or out-of-service for any reason. However, if the high range is not able to provide quality assured data at the time of the low range exceedance or at any time during the continuation of the exceedance, report the MPC until the readings return to the low range or until the high range is able to provide quality assured data (unless the reason that the high-scale range is not able to provide quality assured data is because the high-scale range has been exceeded; if the high-scale range is exceeded follow the procedures in paragraph (b)(1) of this section).

(c) Whenever changes are made to the MPC, MEC, full-scale range, or span value of the Hg monitor, record and report (as applicable) the new full-scale range setting, the new MPC or MEC and calculations of the adjusted span value in an updated monitoring plan. The monitoring plan update shall be made in the quarter in which the changes become effective. In addition, record and report the adjusted span as part of the records for the daily calibration error test and linearity check specified by appendix B to this part. Whenever the span value is adjusted, use calibration gas concentrations that meet the requirements of section 5.1 of this appendix, based on the adjusted span value. When a span adjustment is so significant that the calibration gas concentrations currently being used for calibration error tests, system integrity checks and linearity checks are unsuitable for use with the new span value, then a diagnostic linearity or 3-level system integrity check using the new calibration gas concentrations must be performed and passed. Use the data validation procedures in § 75.20(b)(3), beginning with the hour in which the span is changed.

2.2 Design for Quality Control Testing

* * * * *

2.2.3 Mercury Monitors.

Design and equip each mercury monitor to permit the introduction of known concentrations of elemental Hg and $HgCl_2$ separately, at a point immediately preceding the sample extraction filtration system, such that the entire measurement system can be checked. If the Hg monitor does not have a converter, the $HgCl_2$ injection capability is not required.

* * * * *

■ 37. Appendix A to part 75 is further amended by:

■ a. Adding a new paragraph (c) to section 3.1;

■ b. Adding a new paragraph (3) to section 3.2; and

■ c. Adding new sections 3.3.8 and 3.4.3.

The revisions and additions read as follows:

Appendix A to Part 75—Specifications and Test Procedures

* * * * *

3. Performance Specifications.

3.1 *Calibration Error*

* * * * *

(c) The calibration error of a Hg concentration monitor shall not deviate from the reference value of either the zero or upscale calibration gas by more than 5.0 percent of the span value, as calculated using Equation A–5 of this appendix. Alternatively, if the span value is 10 μg/scm, the calibration error test results are also acceptable if the absolute value of the difference between the monitor response value and the reference value, |R–A| in Equation A–5 of this appendix, is ≤ 1.0 μg/scm.

3.2 Linearity Check

* * * * *

(3) For Hg monitors:

(i) The error in linearity for each calibration gas concentration (low-, mid-, and high-levels) shall not exceed or deviate from the reference value by more than 10.0 percent as calculated using equation A–4 of this appendix; or

(ii) The absolute value of the difference between the average of the monitor response values and the average of the reference values, |R–A| in equation A–4 of this appendix, shall be less than or equal to 1.0 μg/scm, whichever is less restrictive.

(iii) For the 3-level system integrity check required under § 75.20(c)(1)(vi), the system measurement error shall not exceed 5.0 percent of the span value at any of the three gas levels.

3.3 Relative Accuracy

* * * * *

3.3.8 Relative Accuracy for Hg Monitoring Systems

The relative accuracy of a Hg concentration monitoring system or a sorbent trap monitoring system shall not exceed 20.0 percent. Alternatively, for affected units where the average of the reference method measurements of Hg concentration during the relative accuracy test audit is less than 5.0 μg/scm, the test results are acceptable if the difference between the mean value of the monitor measurements and the reference method mean value does not exceed 1.0 μg/scm, in cases where the relative accuracy specification of 20.0 percent is not achieved.

3.4 Bias

* * * * *

3.4.3 Hg Monitoring Systems

Mercury concentration monitoring systems and sorbent trap monitoring systems shall not be biased low as determined by the test procedure in section 7.6 of this appendix.

* * * * *

■ 38. Appendix A to part 75 is further amended by revising the second sentence in the first paragraph of the introductory text of section 4 and revising the second paragraph of the introductory text of section 4, to read as follows:

Appendix A to Part 75—Specifications and Test Procedures

4. Data Acquisition and Handling Systems.

* * * These systems also shall have the capability of interpreting and converting the individual output signals from an SO_2 pollutant concentration monitor, a flow monitor, a CO_2 monitor, an O_2 monitor, a NO_X pollutant concentration monitor, a NO_X-diluent CEMS, a moisture monitoring system, a Hg concentration monitoring system, and a sorbent trap monitoring system, to produce a continuous readout of pollutant emission rates or pollutant mass emissions (as applicable) in the appropriate units (*e.g.*, lb/hr, lb/MMBtu, ounces/hr, tons/hr).

Data acquisition and handling systems shall also compute and record monitor calibration error; any bias adjustments to SO_2, NO_X, and Hg pollutant concentration data, flow rate data, Hg emission rate data, or NO_X emission rate data; and all missing data procedure statistics specified in subpart D of this part.

* * * * *

■ 39. Appendix A to part 75 is further amended by adding new section 5.1.9, to read as follows:

Appendix A to Part 75—Specifications and Test Procedures

* * * * *

5. Calibration Gas.

* * * * *

5.1.9 Mercury Standards.

For 7-day calibration error tests of Hg concentration monitors and for daily calibration error tests of Hg monitors, either elemental Hg standards or a NIST-traceable source of oxidized Hg may be used. For linearity checks, elemental Hg standards shall be used. For 3-level and single-point system integrity checks under § 75.20(c)(1)(vi), sections 6.2(g) and 6.3.1 of this appendix, and sections 2.1.1, 2.2.1 and 2.6 of appendix B to this part, a NIST-traceable source of oxidized Hg shall be used. Alternatively, other NIST-traceable standards may be used for the required checks, subject to the approval of the Administrator.

* * * * *

■ 40. Appendix A to part 75 is further amended by:

■ a. Revising the first sentence of the introductory text to section 6.2;

■ b. Adding new paragraph (g) to section 6.2;

■ c. Revising the second sentence of section 6.3.1 and adding a new third sentence;

■ d. Revising the first sentence of section 6.5;
■ e. Revising section 6.5(a);
■ f. Revising the second sentence of section 6.5(c);
■ g. Revising section 6.5(g);
■ h. Revising section 6.5.1(a);
■ i. Revising section 6.5.1(b);
■ j. Adding new paragraph (c) to section 6.5.6;
■ k. Revising the first sentence and adding three sentences at the end of section 6.5.7(a); and
■ l. Revising sections 6.5.7(b) and 6.5.10.
The revisions read as follows:

Appendix A to Part 75—Specifications and Test Procedures

* * * * *

6. Certification Tests and Procedures.

* * * * *

6.2 Linearity Check (General Procedures)

Check the linearity of each SO_2, NO_X, CO_2, Hg, and O_2 monitor while the unit, or group of units for a common stack, is combusting fuel at conditions of typical stack temperature and pressure; it is not necessary for the unit to be generating electricity during this test. * * *

* * * * *

(g) For Hg monitors, follow the guidelines in section 2.2.3 of this appendix in addition to the applicable procedures in this section 6.2 when performing the 3-level system integrity checks described in § 75.20(c)(1)(vi) and section 2.6 of appendix B to this part.

6.3 7-Day Calibration Error Test

6.3.1 Gas Monitor 7-day Calibration Error Test

* * * In all other cases, measure the calibration error of each SO_2 monitor, each NO_X monitor, each Hg concentration monitor, and each CO_2 or O_2 monitor while the unit is combusting fuel (but not necessarily generating electricity) once each day for 7 consecutive operating days according to the following procedures. For Hg monitors, you may perform this test using either elemental Hg standards or a NIST-traceable source of oxidized Hg. * * *

* * * * *

6.5 Relative Accuracy and Bias Tests (General Procedures)

Perform the required relative accuracy test audits (RATAs) as follows for each CO_2 emissions concentration monitor (including O_2 monitors used to determine CO_2 emissions concentration), each SO_2 pollutant concentration monitor, each NO_X concentration monitoring system used to determine NO_X mass emissions, each flow monitor, each NO_X-diluent CEMS, each O_2 or CO_2 diluent monitor used to calculate heat input, each Hg concentration monitoring system, each sorbent trap monitoring system, and each moisture monitoring system. * * *

* * * * *

(a) Except as otherwise provided in this paragraph or in § 75.21(a)(5), perform each RATA while the unit (or units, if more than one unit exhausts into the flue) is combusting the fuel that is a normal primary or backup fuel for that unit (for some units, more than one type of fuel may be considered normal, *e.g.*, a unit that combusts gas or oil on a seasonal basis). For units that co-fire fuels as the predominant mode of operation, perform the RATAs while co-firing. For Hg monitoring systems, perform the RATAs while the unit is combusting coal. When relative accuracy test audits are performed on CEMS installed on bypass stacks/ducts, use the fuel normally combusted by the unit (or units, if more than one unit exhausts into the flue) when emissions exhaust through the bypass stack/ducts.

* * * * *

(c) * * * For units with add-on SO_2 or NO_X controls or add-on Hg controls that operate continuously rather than seasonally, or for units that need a dual range to record high concentration ''spikes'' during startup conditions, the low range is considered normal. * * *

* * * * *

(g) For each SO_2 or CO_2 emissions concentration monitor, each flow monitor, each CO_2 or O_2 diluent monitor used to determine heat input, each NO_X concentration monitoring system used to determine NO_X mass emissions, as defined in § 75.71(a)(2), each moisture monitoring system, each NO_X-diluent CEMS, each Hg concentration monitoring system, and each sorbent trap monitoring system, calculate the relative accuracy, in accordance with section 7.3 or 7.4 of this appendix, as applicable. In addition (except for CO_2, O_2, or moisture monitors), test for bias and determine the appropriate bias adjustment factor, in accordance with sections 7.6.4 and 7.6.5 of this appendix, using the data from the relative accuracy test audits.

6.5.1 Gas and Hg Monitoring System RATAs (Special Considerations)

(a) Perform the required relative accuracy test audits for each SO_2 or CO_2 emissions concentration monitor, each CO_2 or O_2 diluent monitor used to determine heat input, each NO_X-diluent CEMS, each NO_X concentration monitoring system used to determine NO_X mass emissions, as defined in § 75.71(a)(2), each Hg concentration monitoring system, and each sorbent trap monitoring system at the normal load level or normal operating level for the unit (or combined units, if common stack), as defined in section 6.5.2.1 of this appendix. If two load levels or operating levels have been designated as normal, the RATAs may be done at either load level.

(b) For the initial certification of a gas or Hg monitoring system and for recertifications in which, in addition to a RATA, one or more other tests are required (*i.e.*, a linearity test, cycle time test, or 7-day calibration error test), EPA recommends that the RATA not be commenced until the other required tests of the CEMS have been passed.

* * * * *

6.5.6 Reference Method Traverse Point Selection

* * * * *

(c) For Hg monitoring systems, use the same traverse points that are used for the gas monitor RATAs.

* * * * *

6.5.7 Sampling Strategy

(a) Conduct the reference method tests so they will yield results representative of the pollutant concentration, emission rate, moisture, temperature, and flue gas flow rate from the unit and can be correlated with the pollutant concentration monitor, CO_2 or O_2 monitor, flow monitor, and SO_2, Hg, or NO_X CEMS measurements. * * * For the RATA of a Hg CEMS using the Ontario Hydro Method, or for the RATA of a sorbent trap system (irrespective of the reference method used), the time per run must be long enough to collect a sufficient mass of Hg to analyze. For the RATA of a sorbent trap monitoring system, use the same-size trap that is used for daily operation of the monitoring system. Spike the third section of each sorbent trap with elemental Hg, as described in section 7.1.2 of appendix K to this part. Install a new pair of sorbent traps prior to each test run. For each run, the sorbent trap data shall be validated according to the quality assurance criteria in section 8 of appendix K to this part.

(b) To properly correlate individual SO_2, Hg, or NO_X CEMS data (in lb/MMBtu) and volumetric flow rate data with the reference method data, annotate the beginning and end of each reference method test run (including the exact time of day) on the individual chart recorder(s) or other permanent recording device(s).

* * * * *

6.5.10 Reference Methods

The following methods from appendix A to part 60 of this chapter or their approved alternatives are the reference methods for performing relative accuracy test audits: Method 1 or 1A for siting; Method 2 or its allowable alternatives in appendix A to part 60 of this chapter (except for Methods 2B and 2E) for stack gas velocity and volumetric flow rate; Methods 3, 3A, or 3B for O_2 or CO_2; Method 4 for moisture; Methods 6, 6A, or 6C for SO_2; Methods 7, 7A, 7C, 7D, or 7E for NO_X, excluding the exception in section 5.1.2 of Method 7E; and the Ontario Hydro Method or an approved instrumental method for Hg (see § 75.22). When using Method 7E for measuring NO_X concentration, total NO_X, both NO and NO_2, must be measured. Notwithstanding these requirements, Method 20 may be used as the reference method for relative accuracy test audits of NO_X monitoring systems installed on combustion turbines.

* * * * *

■ 41. Appendix A to part 75 is further amended by:
■ a. Revising the title of section 7.3 and the first sentence of the introductory text of section 7.3;
■ b. Revising the introductory text of section 7.6;
■ c. Revising the first sentence in paragraph (b) of section 7.6.5 and adding a sentence at the end of paragraph (b); and

■ d. Revising paragraph (f) in section 7.6.5.

The revisions and additions read as follows:

Appendix A to Part 75—Specifications and Test Procedures

* * * * *

7. Calculations.

* * * * *

7.3 Relative Accuracy for SO_2 and CO_2 Emissions Concentration Monitors, O_2 Monitors, NO_X Concentration Monitoring Systems, Hg Monitoring Systems, and Flow Monitors

Analyze the relative accuracy test audit data from the reference method tests for SO_2 and CO_2 emissions concentration monitors, CO_2 or O_2 monitors used only for heat input rate determination, NO_X concentration monitoring systems used to determine NO_X mass emissions under subpart H of this part, Hg monitoring systems used to determine Hg mass emissions under subpart I of this part, and flow monitors using the following procedures. * * *

* * * * *

7.6 Bias Test and Adjustment Factor

Test the following relative accuracy test audit data sets for bias: SO_2 pollutant concentration monitors; flow monitors; NO_X concentration monitoring systems used to determine NO_X mass emissions, as defined in § 75.71(a)(2); NO_X-diluent CEMS, Hg concentration monitoring systems, and sorbent trap monitoring systems, using the procedures outlined in sections 7.6.1 through 7.6.5 of this appendix. For multiple-load flow RATAs, perform a bias test at each load level designated as normal under section 6.5.2.1 of this appendix.

* * * * *

7.6.5 Bias Adjustment

* * * * *

(b) For single-load RATAs of SO_2 pollutant concentration monitors, NO_X concentration monitoring systems, NO_X-diluent monitoring systems, Hg concentration monitoring systems, and sorbent trap monitoring systems, and for the single-load flow RATAs required or allowed under section 6.5.2 of this appendix and sections 2.3.1.3(b) and 2.3.1.3(c) of appendix B to this part, the appropriate BAF is determined directly from the RATA results at normal load, using Equation A–12. * * * Similarly, for Hg concentration and sorbent trap monitoring systems, where the average Hg concentration during the RATA is < 5.0 μg/dscm, if the monitoring system meets the normal or the alternative relative accuracy specification in section 3.3.8 of this appendix but fails the bias test, the owner or operator may either use the bias adjustment factor (BAF) calculated from Equation A–12 or may use a default BAF of 1.250 for reporting purposes under this part.

* * * * *

(f) Use the bias-adjusted values in computing substitution values in the missing data procedure, as specified in subpart D of this part, and in reporting the concentration of SO_2 or Hg, the flow rate, the average NO_X emission rate, the unit heat input, and the calculated mass emissions of SO_2 and CO_2 during the quarter and calendar year, as specified in subpart G of this part. In addition, when using a NO_X concentration monitoring system and a flow monitor to calculate NO_X mass emissions under subpart H of this part, or when using a Hg concentration or sorbent trap monitoring system and a flow monitor to calculate Hg mass emissions under subpart I of this part, use bias-adjusted values for NO_X (or Hg) concentration and flow rate in the mass emission calculations and use bias-adjusted NO_X (or Hg) concentrations to compute the appropriate substitution values for NO_X (or Hg) concentration in the missing data routines under subpart D of this part.

* * * * *

■ 42. Appendix B to part 75 is amended by adding sections 1.5 through 1.5.6, to read as follows:

Appendix B to Part 75—Quality Assurance and Quality Control Procedures

* * * * *

1.5 Requirements for Sorbent Trap Monitoring Systems

1.5.1 Sorbent Trap Identification and Tracking

Include procedures for inscribing or otherwise permanently marking a unique identification number on each sorbent trap, for tracking purposes. Keep records of the ID of the monitoring system in which each sorbent trap is used, and the dates and hours of each Hg collection period.

1.5.2 Monitoring System Integrity and Data Quality

Explain the procedures used to perform the leak checks when a sorbent trap is placed in service and removed from service. Also explain the other QA procedures used to ensure system integrity and data quality, including, but not limited to, dry gas meter calibrations, verification of moisture removal, and ensuring air-tight pump operation. In addition, the QA plan must include the data acceptance and quality control criteria in section 8 of appendix K to this part.

1.5.3 Hg Analysis

Explain the chain of custody employed in packing, transporting, and analyzing the sorbent traps (see sections 7.2.8 and 7.2.9 in appendix K to this part). Keep records of all Hg analyses. The analyses shall be performed in accordance with the procedures described in section 10 of appendix K to this part.

1.5.4 Laboratory Certification

The QA Plan shall include documentation that the laboratory performing the analyses on the carbon sorbent traps is certified by the International Organization for Standardization (ISO) to have a proficiency that meets the requirements of ISO 17025. Alternatively, if the laboratory performs the spike recovery study described in section 10.3 of appendix K to this part and repeats that procedure annually, ISO certification is not required.

1.5.5 Data Collection Period

State, and provide the rationale for, the minimum acceptable data collection period (*e.g.*, one day, one week, etc.) for the size of sorbent trap selected for the monitoring. Include in the discussion such factors as the Hg concentration in the stack gas, the capacity of the sorbent trap, and the minimum mass of Hg required for the analysis.

1.5.6 Relative Accuracy Test Audit Procedures

Keep records of the procedures and details peculiar to the sorbent trap monitoring systems that are to be followed for relative accuracy test audits, such as sampling and analysis methods.

* * * * *

■ 43. Appendix B to part 75 is further amended by:

■ a. Revising the first sentence in section 2.1.1 and adding a new second sentence;

■ b. Revising paragraph (a) of section 2.1.4;

■ c. Revising section 2.2.1;

■ d. Revising the first sentence of paragraph (a) of section 2.3.1.1 and adding a new second sentence to paragraph (a);

■ e. Revising paragraph (a) of section 2.3.1.3;

■ f. Revising paragraph (i) of section 2.3.2;

■ g. Revising section 2.3.4;

■ h. Adding new section 2.6 before Figure 1;

■ i. Revising Figure 1 and the first two footnotes to Figure 1 (footnotes 1 and 2 remain unchanged);

■ j. Revising Figure 2;

The revisions and additions read as follows:

Appendix B to Part 75—Quality Assurance and Quality Control Procedures

* * * * *

2. Frequency of Testing.

* * * * *

2.1.1 Calibration Error Test

Except as provided in section 2.1.1.2 of this appendix, perform the daily calibration error test of each gas monitoring system (including moisture monitoring systems consisting of wet- and dry-basis O_2 analyzers) and each Hg monitoring system according to the procedures in section 6.3.1 of appendix A to this part, and perform the daily calibration error test of each flow monitoring system according to the procedure in section 6.3.2 of appendix A to this part. For Hg monitors, the daily assessments may be made using either elemental Hg standards or a NIST-traceable source of oxidized Hg. * * *

* * * * *

2.1.4 Data Validation

(a) An out-of-control period occurs when the calibration error of an SO_2 or NO_X pollutant concentration monitor exceeds 5.0 percent of the span value, when the

calibration error of a CO_2 or O_2 monitor (including O_2 monitors used to measure CO_2 emissions or percent moisture) exceeds 1.0 percent CO_2 or O_2, or when the calibration error of a flow monitor or a moisture sensor exceeds 6.0 percent of the span value, which is twice the applicable specification of appendix A to this part. Notwithstanding, a differential pressure-type flow monitor for which the calibration error exceeds 6.0 percent of the span value shall not be considered out-of-control if |R–A|, the absolute value of the difference between the monitor response and the reference value in Equation A–6 of appendix A to this part, is < 0.02 inches of water. In addition, an SO_2 or NO_X monitor for which the calibration error exceeds 5.0 percent of the span value shall not be considered out-of-control if |RA| in Equation A–6 does not exceed 5.0 ppm (for span values ≤ 50 ppm), or if |R–A| does not exceed 10.0 ppm (for span values > 50 ppm, but ≤ 200 ppm). For a Hg monitor, an out-of-control period occurs when the calibration error exceeds 5.0% of the span value. Notwithstanding, the Hg monitor shall not be considered out-of-control if |R–A| in Equation A–6 does not exceed 1.0 µg/scm. The out-of-control period begins upon failure of the calibration error test and ends upon completion of a successful calibration error test. Note, that if a failed calibration, corrective action, and successful calibration error test occur within the same hour, emission data for that hour recorded by the monitor after the successful calibration error test may be used for reporting purposes, provided that two or more valid readings are obtained as required by § 75.10. A NO_X-diluent CEMS is considered out-of-control if the calibration error of either component monitor exceeds twice the applicable performance specification in appendix A to this part. Emission data shall not be reported from an out-of-control monitor.

* * * * *

2.2.1 Linearity Check

Unless a particular monitor (or monitoring range) is exempted under this paragraph or under section 6.2 of appendix A to this part, perform a linearity check, in accordance with the procedures in section 6.2 of appendix A to this part, for each primary and redundant backup SO_2, Hg, and NO_X pollutant concentration monitor and each primary and redundant backup CO_2 or O_2 monitor (including O_2 monitors used to measure CO_2 emissions or to continuously monitor moisture) at least once during each QA operating quarter, as defined in § 72.2 of this chapter. For Hg monitors, perform the linearity checks using elemental Hg standards. Alternatively, you may perform 3-level system integrity checks at the same three calibration gas levels (*i.e.*, low, mid, and high), using a NIST-traceable source of oxidized Hg. If you choose this option, the performance specification in section 3.2(c)(3) of appendix A to this part must be met at each gas level. For units using both a low and high span value, a linearity check is required only on the range(s) used to record and report emission data during the QA operating quarter. Conduct the linearity checks no less than 30 days apart, to the extent practicable. The data validation procedures in section 2.2.3(e) of this appendix shall be followed.

* * * * *

2.3.1.1 Standard RATA Frequencies

(a) Except for Hg monitoring systems and as otherwise specified in § 75.21(a)(6) or (a)(7) or in section 2.3.1.2 of this appendix, perform relative accuracy test audits semiannually, *i.e.*, once every two successive QA operating quarters (as defined in § 72.2 of this chapter) for each primary and redundant backup SO_2 pollutant concentration monitor, flow monitor, CO_2 emissions concentration monitor (including O_2 monitors used to determine CO_2 emissions), CO_2 or O_2 diluent monitor used to determine heat input, moisture monitoring system, NO_X concentration monitoring system, NO_X-diluent CEMS, or SO_2-diluent CEMS. For each primary and redundant backup Hg concentration monitoring system and each sorbent trap monitoring system, RATAs shall be performed annually, *i.e.*, once every four successive QA operating quarters (as defined in § 72.2 of this chapter). * * *

* * * * *

2.3.1.3 RATA Load (or Operating) Levels and Additional RATA Requirements

(a) For SO_2 pollutant concentration monitors, CO_2 emissions concentration monitors (including O_2 monitors used to determine CO_2 emissions), CO_2 or O_2 diluent monitors used to determine heat input, NO_X concentration monitoring systems, Hg concentration monitoring systems, sorbent trap monitoring systems, moisture monitoring systems, and NO_X-diluent monitoring systems, the required semiannual or annual RATA tests shall be done at the load level (or operating level) designated as normal under section 6.5.2.1(d) of appendix A to this part. If two load levels (or operating levels) are designated as normal, the required RATA(s) may be done at either load level (or operating level).

* * * * *

2.3.2 Data Validation

* * * * *

(i) Each time that a hands-off RATA of an SO_2 pollutant concentration monitor, a NO_X-diluent monitoring system, a NO_X concentration monitoring system, a Hg concentration monitoring system, a sorbent trap monitoring system, or a flow monitor is passed, perform a bias test in accordance with section 7.6.4 of appendix A to this part. Apply the appropriate bias adjustment factor to the reported SO_2, Hg, NO_X, or flow rate data, in accordance with section 7.6.5 of appendix A to this part.

* * * * *

2.3.4 Bias Adjustment Factor

Except as otherwise specified in section 7.6.5 of appendix A to this part, if an SO_2 pollutant concentration monitor, flow monitor, NO_X CEMS, NO_X concentration monitoring system used to calculate NO_X mass emissions, Hg concentration monitoring system, or sorbent trap monitoring system fails the bias test specified in section 7.6 of appendix A to this part, use the bias adjustment factor given in Equations A–11 and A–12 of appendix A to this part, or the allowable alternative BAF specified in section 7.6.5(b) of appendix A to this part, to adjust the monitored data.

* * * * *

2.6 System Integrity Checks for Hg Monitors

For each Hg concentration monitoring system (except for a Hg monitor that does not have a converter), perform a single-point system integrity check weekly, *i.e.*, at least once every 168 unit or stack operating hours, using a NIST-traceable source of oxidized Hg. Perform this check using a mid- or high-level gas concentration, as defined in section 5.2 of appendix A to this part. The performance specification in section 3.2(c)(3) of appendix A to this part must be met, otherwise the monitoring system is considered out-of-control until a subsequent system integrity check is passed. This weekly check is not required if the daily calibration assessments in section 2.1.1 of this appendix are performed using a NIST-traceable source of oxidized Hg.

FIGURE 1 TO APPENDIX B OF PART 75—QUALITY ASSURANCE TEST REQUIREMENTS

Test	QA test frequency requirements*				
	Daily	Weekly	Quarterly	Semiannual	Annual
Calibration Error or System Integrity Check** (2 pt.)					
Interference Check (flow)					
Flow-to-Load Ratio					
Leak Check (DP flow monitors)					
Linearity Check or System Integrity Check** (3-point)					
Single-point System Integrity Check**					
RATA (SO_2, NO_X, CO_2, O_2, H_2O) [1]					
RATA (all Hg monitoring systems)					

FIGURE 1 TO APPENDIX B OF PART 75—QUALITY ASSURANCE TEST REQUIREMENTS—Continued

Test	QA test frequency requirements*				
	Daily	Weekly	Quarterly	Semiannual	Annual
RATA (flow) [1,2]					

* "Daily" means operating days, only. "Weekly" means once every 168 unit or stack operating hours. "Quarterly" means once every QA operating quarter. "Semiannual" means once every two QA operating quarters. "Annual" means once every four QA operating quarters.
** The system integrity check applies only to Hg monitors with converters. The single-point weekly check is not required if daily system integrity checks are performed using a NIST-traceable source of oxidized Hg.

* * * * *

FIGURE 2 TO APPENDIX B OF PART 75—RELATIVE ACCURACY TEST FREQUENCY INCENTIVE SYSTEM

RATA	Semiannual [W] (percent)	Annual [W]
SO_2 or NO_X [Y]	7.5% < RA ≤ 10.0% or ± 15.0 ppm[X]	RA ≤ 7.5% or ± 12.0 ppm[X].
SO_2-diluent	7.5% < RA ≤ 10.0% or ± 0.030 lb/MMBtu[X]	RA ≤ 7.5% or ±0. 025 lb/MMBtu[X].
NO_X-diluent	7.5% < RA ≤ 10.0% or ± 0.020 lb/MMBtu[X]	RA ≤ 7.5% or ±0. 015 lb/MMBtu[X].
Flow	7.5% < RA ≤ 10.0% or ± 1.5 fps[X]	RA ≤ 7.5%.
CO_2 or O_2	7.5% < RA ≤ 10.0% or ± 1.0% CO_2/O_2[X]	RA ≤ 7.5% or ± 0.7% CO_2/O_2[X]
Hg[X]		RA < 20.0% or ± 1.0 µg/dscm[X].
Moisture	7.5% < RA ≤ 10.0% or ± 1.5% H_2O[X]	RA ≤ 7.5% or ± 1.0% H_2O[X].

[W] The deadline for the next RATA is the end of the second (if semiannual) or fourth (if annual) successive QA operating quarter following the quarter in which the CEMS was last tested. Exclude calendar quarters with fewer than 168 unit operating hours (or, for common stacks and bypass stacks, exclude quarters with fewer than 168 stack operating hours) in determining the RATA deadline. For SO_2 monitors, QA operating quarters in which only very low sulfur fuel as defined in § 72.2, is combusted may also be excluded. However, the exclusion of calendar quarters is limited as follows: the deadline for the next RATA shall be no more than 8 calendar quarters after the quarter in which a RATA was last performed.
[X] The difference between monitor and reference method mean values applies to moisture monitors, CO_2, and O_2 monitors, low emitters of SO_2, NO_X, or Hg, and low flow, only. The specifications for Hg monitors also apply to sorbent trap monitoring systems.
[Y] A NO_X concentration monitoring system used to determine NO_X mass emissions under § 75.71.

■ 44. Appendix F to part 75 is amended by adding section 9, to read as follows:

Appendix F to Part 75—Conversion Procedures

* * * * *

9. Procedures for Hg Mass Emissions.

9.1 Use the procedures in this section to calculate the hourly Hg mass emissions (in ounces) at each monitored location, for the affected unit or group of units that discharge through a common stack.

9.1.1 To determine the hourly Hg mass emissions when using a Hg concentration monitoring system that measures on a wet basis and a flow monitor, use the following equation:

$$M_h = K\,C_h\,Q_h\,t_h \qquad \text{(Eq. F-28)}$$

Where:

M_h = Hg mass emissions for the hour, rounded off to three decimal places, (ounces).
K = Units conversion constant, 9.978×10^{-10} oz-scm/µg-scf
C_h = Hourly Hg concentration, wet basis, adjusted for bias if the bias-test procedures in appendix A to this part show that a bias-adjustment factor is necessary, (µg/wscm).
Q_h = Hourly stack gas volumetric flow rate, adjusted for bias, where the bias-test procedures in appendix A to this part shows a bias-adjustment factor is necessary, (scfh)
t_h = Unit or stack operating time, as defined in § 72.2, (hr)

9.1.2 To determine the hourly Hg mass emissions when using a Hg concentration monitoring system that measures on a dry basis or a sorbent trap monitoring system and a flow monitor, use the following equation:

$$M_h = K\,C_h\,Q_h\,t_h\,(1–B_{ws}) \qquad \text{(Eq. F-29)}$$

Where:

M_h = Hg mass emissions for the hour, rounded off to three decimal places, (ounces).
K = Units conversion constant, 9.978×10^{-10} oz-scm/µg-scf
C_h = Hourly Hg concentration, dry basis, adjusted for bias if the bias-test procedures in appendix A to this part show that a bias-adjustment factor is necessary, (µg/dscm). For sorbent trap systems, a single value of C_h (*i.e.*, a flow-proportional average concentration for the data collection period), is applied to each hour in the data collection period, for a particular pair of traps.
Q_h = Hourly stack gas volumetric flow rate, adjusted for bias, where the bias-test procedures in appendix A to this part shows a bias-adjustment factor is necessary, (scfh)
B_{ws} = Moisture fraction of the stack gas, expressed as a decimal (equal to % H_2O 100)
t_h = Unit or stack operating time, as defined in § 72.2, (hr)

9.1.3 For units that are demonstrated under § 75.81(d) to emit less than 464 ounces of Hg per year, and for which the owner or operator elects not to continuously monitor the Hg concentration, calculate the hourly Hg mass emissions using Equation F–28 in section 9.1.1 of this appendix, except that "C_h" shall be the applicable default Hg concentration from § 75.81(c), (d), or (e), expressed in µg/scm. Correction for the stack gas moisture content is not required when this methodology is used.

9.2 Use the following equation to calculate quarterly and year-to-date Hg mass emissions in ounces:

$$M_{\text{time period}} = \sum_{h=1}^{n} M_h \qquad \text{(Eq. F-30)}$$

Where:

$M_{\text{time period}}$ = Hg mass emissions for the given time period *i.e.*, quarter or year-to-date, rounded to the nearest thousandth, (ounces).
M_h = Hg mass emissions for the hour, rounded to three decimal places, (ounces).
n = The number of hours in the given time period (quarter or year-to-date).

9.3 If heat input rate monitoring is required, follow the applicable procedures for heat input apportionment and summation in sections 5.3, 5.6 and 5.7 of this appendix.

■ 45. Part 75 is amended by adding Appendix K, to read as follows:

Appendix K to Part 75—Quality Assurance and Operating Procedures for Sorbent Trap Monitoring Systems

1.0 Scope and Application

This appendix specifies sampling, and analytical, and quality-assurance criteria and

procedures for the performance-based monitoring of vapor-phase mercury (Hg) emissions in combustion flue gas streams, using a sorbent trap monitoring system (as defined in § 72.2 of this chapter). The principle employed is continuous sampling using in-stack sorbent media coupled with analysis of the integrated samples. The performance-based approach of this appendix allows for use of various suitable sampling and analytical technologies while maintaining a specified and documented level of data quality through performance criteria. Persons using this appendix should have a thorough working knowledge of Methods 1, 2, 3, 4 and 5 in appendices A–1 through A–3 to part 60 of this chapter, as well as the determinative technique selected for analysis.

1.1 Analytes.

The analyte measured by these procedures and specifications is total vapor-phase Hg in the flue gas, which represents the sum of elemental Hg (Hg^0, CAS Number 7439–97–6) and oxidized forms of Hg, in mass concentration units of micrograms per dry standard cubic meter (µg/dscm).

1.2 Applicability.

These performance criteria and procedures are applicable to monitoring of vapor-phase Hg emissions under relatively low-dust conditions (*i.e.*, sampling in the stack after all pollution control devices), from coal-fired electric utility steam generators which are subject to subpart I of this part. Individual sample collection times can range from 30 minutes to several days in duration, depending on the Hg concentration in the stack. The monitoring system must achieve the performance criteria specified in Section 8 of this appendix and the sorbent media capture ability must not be exceeded. The sampling rate must be maintained at a constant proportion to the total stack flowrate to ensure representativeness of the sample collected. Failure to achieve certain performance criteria will result in invalid Hg emissions monitoring data.

2.0 Principle.

Known volumes of flue gas are extracted from a stack or duct through paired, in-stack, pre-spiked sorbent media traps at an appropriate nominal flow rate. Collection of Hg on the sorbent media in the stack mitigates potential loss of Hg during transport through a probe/sample line. Paired train sampling is required to determine measurement precision and verify acceptability of the measured emissions data.

The sorbent traps are recovered from the sampling system, prepared for analysis, as needed, and analyzed by any suitable determinative technique that can meet the performance criteria. A section of each sorbent trap is spiked with Hg^0 prior to sampling. This section is analyzed separately and the recovery value is used to correct the individual Hg sample for measurement bias.

3.0 Clean Handling and Contamination.

To avoid Hg contamination of the samples, special attention should be paid to cleanliness during transport, field handling, sampling, recovery, and laboratory analysis, as well as during preparation of the sorbent cartridges. Collection and analysis of blank samples (field, trip, lab) is useful in verifying the absence of contaminant Hg.

4.0 Safety.

4.1 Site hazards.

Site hazards must be thoroughly considered in advance of applying these procedures/specifications in the field; advance coordination with the site is critical to understand the conditions and applicable safety policies. At a minimum, portions of the sampling system will be hot, requiring appropriate gloves, long sleeves, and caution in handling this equipment.

4.2 Laboratory safety policies.

Laboratory safety policies should be in place to minimize risk of chemical exposure and to properly handle waste disposal. Personnel shall wear appropriate laboratory attire according to a Chemical Hygiene Plan established by the laboratory.

4.3 Toxicity or carcinogenicity.

The toxicity or carcinogenicity of any reagents used must be considered. Depending upon the sampling and analytical technologies selected, this measurement may involve hazardous materials, operations, and equipment and this appendix does not address all of the safety problems associated with implementing this approach. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performance. Any chemical should be regarded as a potential health hazard and exposure to these compounds should be minimized. Chemists should refer to the Material Safety Data Sheet (MSDS) for each chemical used.

4.4 Wastes.

Any wastes generated by this procedure must be disposed of according to a hazardous materials management plan that details and tracks various waste streams and disposal procedures.

5.0 Equipment and Supplies.

The following list is presented as an example of key equipment and supplies likely required to perform vapor-phase Hg monitoring using a sorbent trap monitoring system. It is recognized that additional equipment and supplies may be needed. Collection of paired samples is required. Also required are a certified stack gas volumetric flow monitor that meets the requirements of § 75.10 and an acceptable means of correcting for the stack gas moisture content, *i.e.*, either by using data from a certified continuous moisture monitoring system or by using an approved default moisture value (see §§ 75.11(b) and 75.12(b)).

5.1 Sorbent Trap Monitoring System.

A typical sorbent trap monitoring system is shown in Figure K–1. The monitoring system shall include the following components:

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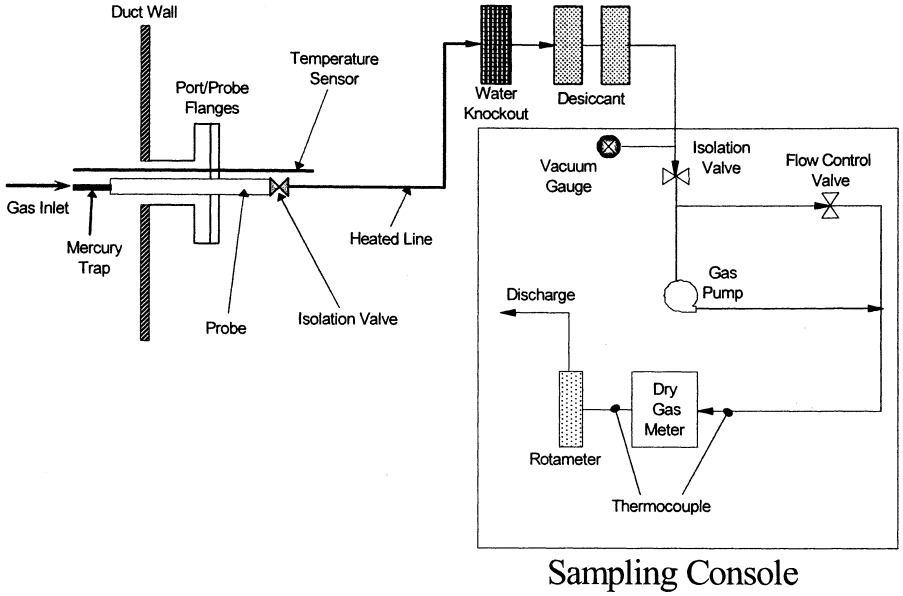
Figure K-1. Typical Sorbent Trap Monitoring System



BILLING CODE 6560–50–C

5.1.1 Sorbent Traps.

The sorbent media used to collect Hg must be configured in a trap with three distinct and identical segments or sections, connected in series, that are amenable to separate analyses. Section 1 is designated for primary capture of gaseous Hg. Section 2 is designated as a backup section for determination of vapor-phase Hg breakthrough. Section 3 is designated for QA/QC purposes where this section shall be spiked with an known amount of gaseous Hg^0 prior to sampling and later analyzed to determine recovery efficiency. The sorbent media may be any collection material (*e.g.*, carbon, chemically-treated filter, etc.) capable of quantitatively capturing and recovering for subsequent analysis, all gaseous forms of Hg for the intended application. Selection of the sorbent media shall be based on the material's ability to achieve the performance criteria contained in Section 8 of this appendix as well as the sorbent's vapor-phase Hg capture efficiency for the emissions matrix and the expected sampling duration at the test site. The sorbent media must be obtained from a source that can demonstrate the quality assurance and control necessary to ensure consistent reliability. The paired sorbent traps are supported on a probe (or probes) and inserted directly into the flue gas stream.

5.1.2 Sampling Probe Assembly.

Each probe assembly shall have a leak-free attachment to the sorbent trap(s). Each sorbent trap must be mounted at the entrance of or within the probe such that the gas sampled enters the trap directly. Each probe/sorbent trap assembly must be heated to a temperature sufficient to prevent liquid condensation in the sorbent trap(s). Auxiliary heating is required only where the stack temperature is too low to prevent condensation. Use a calibrated thermocouple to monitor the stack temperature. A single probe capable of operating the paired sorbent traps may be used. Alternatively, individual probe/sorbent trap assemblies may be used, provided that the individual sorbent traps are co-located to ensure representative Hg monitoring and are sufficiently separated to prevent aerodynamic interference.

5.1.3 Moisture Removal Device.

A robust moisture removal device or system, suitable for continuous duty (such as a Peltier cooler), shall be used to remove water vapor from the gas stream prior to entering the dry gas meter.

5.1.4 Vacuum Pump.

Use a leak-tight, vacuum pump capable of operating within the candidate system's flow range.

5.1.5 Dry Gas Meter.

A dry gas meter shall be used to determine total sample volume. The meter must be sufficiently accurate to measure the total sample volume within 2 percent, must be calibrated at the selected flow rate and conditions actually encountered during sampling, and shall be equipped with a temperature sensor capable of measuring typical meter temperatures accurately to within 3 °C for correcting final sample volume.

5.1.6 Sample Flow Rate Meter and Controller.

Use a flow rate indicator and controller for maintaining necessary sampling flow rates.

5.1.7 Temperature Sensor.

Same as Section 6.1.1.7 of Method 5 in appendix A–3 to part 60 of this chapter.

5.1.8 Barometer.

Same as Section 6.1.2 of Method 5 in appendix A–3 to part 60 of this chapter.

5.1.9 Data Logger (Optional).

Device for recording associated and necessary ancillary information (*e.g.*, temperatures, pressures, flow, time, etc.).

5.2 Gaseous Hg^0 Sorbent Trap Spiking System.

A known mass of gaseous Hg^0 must be spiked onto section 3 of each sorbent trap prior to sampling. Any approach capable of quantitatively delivering known masses of Hg^0 onto sorbent traps is acceptable. Several technologies or devices are available to meet this objective. Their practicality is a function of Hg mass spike levels. For low levels, NIST-certified or NIST-traceable gas generators or tanks may be suitable, but will likely require long preparation times. A more practical, alternative system, capable of delivering almost any mass required, makes use of NIST-certified or NIST-traceable Hg salt solutions (*e.g.*, $Hg(NO_3)_2$). With this system, an aliquot of known volume and concentration is added to a reaction vessel containing a reducing agent (*e.g.*, stannous chloride); the Hg salt solution is reduced to Hg^0 and purged onto section 3 of the sorbent trap using an impinger sparging system.

5.3 Sample Analysis Equipment.

Any analytical system capable of quantitatively recovering and quantifying total gaseous Hg from sorbent media is acceptable provided that the analysis can meet the performance criteria in Section 8 of this procedure. Candidate recovery

techniques include leaching, digestion, and thermal desorption. Candidate analytical techniques include ultraviolet atomic fluorescence (UV AF); ultraviolet atomic absorption (UV AA), with and without gold trapping; and in situ X-ray fluorescence (XRF) analysis.

6.0 Reagents and Standards.

Only NIST-certified or NIST-traceable calibration gas standards and reagents shall be used for the tests and procedures required under this appendix.

7.0 Sample Collection and Transport.

7.1 Pre-Test Procedures.

7.1.1 Selection of Sampling Site.

Sampling site information should be obtained in accordance with Method 1 in appendix A–1 to part 60 of this chapter. Identify a monitoring location representative of source Hg emissions. Locations shown to be free of stratification through measurement traverses for gases such as SO_2 and NO_X may be one such approach. An estimation of the expected stack Hg concentration is required to establish a target sample flow rate, total gas sample volume, and the mass of Hg^0 to be spiked onto section 3 of each sorbent trap.

7.1.2 Pre-sampling Spiking of Sorbent Traps.

Based on the estimated Hg concentration in the stack, the target sample rate and the target sampling duration, calculate the expected mass loading for section 1 of each sorbent trap (for an example calculation, see section 11.1 of this appendix). The pre-sampling spike to be added to section 3 of each sorbent trap shall be within ± 50 percent of the expected section 1 mass loading. Spike section 3 of each sorbent trap at this level, as described in section 5.2 of this appendix. For each sorbent trap, keep an official record of the mass of Hg^0 added to section 3. This record shall include, at a minimum, the ID number of the trap, the date and time of the spike, the name of the analyst performing the procedure, the mass of Hg^0 added to section 3 of the trap (μg), and the supporting calculations. This record shall be maintained in a format suitable for inspection and audit and shall be made available to the regulatory agencies upon request.

7.1.3 Pre-test Leak Check.

Perform a leak check with the sorbent traps in place. Draw a vacuum in each sample train. Adjust the vacuum in the sample train to ~15″ Hg. Using the dry gas meter, determine leak rate. The leakage rate must not exceed 4 percent of the target sampling rate. Once the leak check passes this criterion, carefully release the vacuum in the sample train then seal the sorbent trap inlet until the probe is ready for insertion into the stack or duct.

7.1.4 Determination of Flue Gas Characteristics.

Determine or measure the flue gas measurement environment characteristics (gas temperature, static pressure, gas velocity, stack moisture, etc.) in order to determine ancillary requirements such as probe heating requirements (if any), initial sample rate, proportional sampling conditions, moisture management, etc.

7.2 Sample Collection.

7.2.1 Remove the plug from the end of each sorbent trap and store each plug in a clean sorbent trap storage container. Remove the stack or duct port cap and insert the probe(s). Secure the probe(s) and ensure that no leakage occurs between the duct and environment.

7.2.2 Record initial data including the sorbent trap ID, start time, starting dry gas meter readings, initial temperatures, set-points, and any other appropriate information.

7.2.3 Flow Rate Control.

Set the initial sample flow rate at the target value from section 7.1.1 of this appendix. Record the initial dry gas meter reading, stack temperature, meter temperatures, etc. Then, for every operating hour during the sampling period, record the date and time, the sample flow rate, the gas meter reading, the stack temperature, the flow meter temperatures, temperatures of heated equipment such as the vacuum lines and the probes (if heated), and the sampling system vacuum readings. Also record the stack gas flow rate, as measured by the certified flow monitor, and the ratio of the stack gas flow rate to the sample flow rate. Adjust the sampling flow rate to maintain proportional sampling, *i.e.*, keep the ratio of the stack gas flow rate to sample flow rate constant, to within ±25 percent of the reference ratio from the first hour of the data collection period (see section 11 of this appendix).

7.2.4 Stack Gas Moisture Determination.

Determine stack gas moisture using a continuous moisture monitoring system, as described in § 75.11(b) or § 75.12(b). Alternatively, the owner or operator may use the appropriate fuel-specific moisture default value provided in § 75.11 or § 75.12, or a site-specific moisture default value approved by petition under § 75.66.

7.2.5 Essential Operating Data.

Obtain and record any essential operating data for the facility during the test period, *e.g.*, the barometric pressure must be obtained for correcting sample volume to standard conditions. At the end of the data collection period, record the final dry gas meter reading and the final values of all other essential parameters.

7.2.6 Post Test Leak Check.

When sampling is completed, turn off the sample pump, remove the probe/sorbent trap from the port and carefully re-plug the end of each sorbent trap. Perform a leak check with the sorbent traps in place, at the maximum vacuum reached during the sampling period. Use the same general approach described in section 7.1.3 of this appendix. Record the leakage rate and vacuum. The leakage rate must not exceed 4 percent of the average sampling rate for the data collection period. Following the leak check, carefully release the vacuum in the sample train.

7.2.7 Sample Recovery.

Recover each sampled sorbent trap by removing it from the probe, sealing both ends. Wipe any deposited material from the outside of the sorbent trap. Place the sorbent trap into an appropriate sample storage container and store/preserve in appropriate manner.

7.2.8 Sample Preservation, Storage, and Transport.

While the performance criteria of this approach provide for verification of appropriate sample handling, it is still important that the user consider, determine, and plan for suitable sample preservation, storage, transport, and holding times for these measurements. Therefore, procedures in ASTM D6911–03 ''Standard Guide for Packaging and Shipping Environmental Samples for Laboratory Analysis'' (incorporated by reference, see § 75.6) shall be followed for all samples.

7.2.9 Sample Custody.

Proper procedures and documentation for sample chain of custody are critical to ensuring data integrity. The chain of custody procedures in ASTM D4840–99 (reapproved 2004) ''Standard Guide for Sample Chain-of-Custody Procedures'' (incorporated by reference, see § 75.6) shall be followed for all samples (including field samples and blanks).

8.0 Quality Assurance and Quality Control.

Table K–1 summarizes the QA/QC performance criteria that are used to validate the Hg emissions data from sorbent trap monitoring systems, including the relative accuracy test audit (RATA) requirement (see § 75.20(c)(9), section 6.5.7 of appendix A to this part, and section 2.3 of appendix B to this part). Except as provided in § 75.15(h) and as otherwise indicated in Table K–1, failure to achieve these performance criteria will result in invalidation of Hg emissions data.

TABLE K–1.—QUALITY ASSURANCE/QUALITY CONTROL CRITERIA FOR SORBENT TRAP MONITORING SYSTEMS

QA/QC test or specification	Acceptance criteria	Frequency	Consequences if not met
Pre-test leak check	≤4% of target sampling rate	Prior to sampling	Sampling shall not commence until the leak check is passed.
Post-test leak check	≤4% of average sampling rate	After sampling	Sample invalidated.**

TABLE K–1.—QUALITY ASSURANCE/QUALITY CONTROL CRITERIA FOR SORBENT TRAP MONITORING SYSTEMS—Continued

QA/QC test or specification	Acceptance criteria	Frequency	Consequences if not met
Ratio of stack gas flow rate to sample flow rate.	Maintain within ± 25% of initial ratio from first hour of data collection period.	Every hour throughout data collection period.	Case-by-case evaluation.
Sorbent trap section 2 breakthrough.	≤ 5% of Section 1 Hg mass	Every sample	Sample invalidated.**
Paired sorbent trap agreement	≤10% Relative Deviation (RD)	Every sample	Sample invalidated.**
Spike recovery study	Average recovery between 85% and 115% for each of the 3 spike concentration levels.	Prior to analyzing field samples and prior to use of new sorbent media.	Field samples shall not be analyzed until the percent recovery criteria has been met.
Multipoint analyzer calibration	Each analyzer reading within ± 10% of true value and r^2 ≥0.99.	On the day of analysis, before analyzing any samples.	Recalibrate until successful.
Analysis of independent calibration standard.	Within ± 10% of true value	Following daily calibration, prior to analyzing field samples.	Recalibrate and repeat independent standard analysis until successful.
Spike recovery from section 3 of sorbent trap.	75–125% of spike amount	Every sample	Sample invalidated.**
RATA	RA ≤ 20.0% *or* Mean difference ≤ 1.0 μg/dscm for low emitters.	For initial certification and annually thereafter.	Data from the system are invalidated until a RATA is passed.
Dry gas meter calibration (At 3 orifice initially, and 1 setting thereafter).	Calibration factor (Y) within ± 5% of average value from the initial (3-point) calibration.	Prior to initial use and at least quarterly thereafter.	Recalibrate the meter at three orifice settings to determine a new value of Y.
Temperature sensor calibration	Absolute temperature measured by sensor within ± 1.5% of a reference sensor.	Prior to initial use and at least quarterly thereafter.	Recalibrate. Sensor may not be used until specification is met.
Barometer calibration	Absolute pressure measured by instrument within ± 10 mm Hg of reading with a mercury barometer.	Prior to initial use and at least quarterly thereafter.	Recalibrate. Instrument may not be used until specification is met.

And data from the pair of sorbent traps are also invalidated

9.0 Calibration and Standardization.

9.1 Only NIST-certified and NIST-traceable calibration standards (i.e., calibration gases, solutions, etc.) shall be used for the spiking and analytical procedures in this appendix.

9.2 Dry Gas Meter Calibration.

Prior to its initial use, perform a full calibration of the metering system at three orifice settings to determine the average dry gas meter coefficient (Y), as described in section 10.3.1 of Method 5 in appendix A–3 to part 60 of this chapter. Thereafter, recalibrate the metering system quarterly at one intermediate orifice setting, as described in section 10.3.2 of Method 5 in appendix A–3 to part 60 of this chapter. If a quarterly recalibration shows that the value of Y has changed by more than 5 percent, repeat the full calibration of the metering system to determine a new value of Y.

9.3 Thermocouples and Other Temperature Sensors.

Use the procedures and criteria in Section 10.3 of Method 2 in appendix A–1 to part 60 of this chapter to calibrate in-stack temperature sensors and thermocouples. Dial thermometers shall be calibrated against mercury-in-glass thermometers. Calibrations must be performed prior to initial use and at least quarterly thereafter. At each calibration point, the absolute temperature measured by the temperature sensor must agree to within ± 1.5 percent of the temperature measured with the reference sensor, otherwise the sensor may not continue to be used.

9.4 Barometer.

Calibrate against a mercury barometer. Calibration must be performed prior to initial use and at least quarterly thereafter. At each calibration point, the absolute pressure measured by the barometer must agree to within ± 10 mm Hg of the pressure measured by the mercury barometer, otherwise the barometer may not continue to be used.

9.5 Other Sensors and Gauges.

Calibrate all other sensors and gauges according to the procedures specified by the instrument manufacturer(s).

9.6 Analytical System Calibration.

See section 10.1 of this appendix.

10.0 Analytical Procedures.

The analysis of the Hg samples may be conducted using any instrument or technology capable of quantifying total Hg from the sorbent media and meeting the performance criteria in section 8 of this appendix.

10.1 Analyzer System Calibration.

Perform a multipoint calibration of the analyzer at three or more upscale points over the desired quantitative range (multiple calibration ranges shall be calibrated, if necessary). The field samples analyzed must fall within a calibrated, quantitative range and meet the necessary performance criteria. For samples that are suitable for aliquotting, a series of dilutions may be needed to ensure that the samples fall within a calibrated range. However, for sorbent media samples that are consumed during analysis (*e.g.,* thermal desorption techniques), extra care must be taken to ensure that the analytical system is appropriately calibrated prior to sample analysis. The calibration curve range(s) should be determined based on the anticipated level of Hg mass on the sorbent media. Knowledge of estimated stack Hg concentrations and total sample volume may be required prior to analysis. The calibration curve for use with the various analytical techniques (*e.g.,* UV AA, UV AF, and XRF) can be generated by directly introducing standard solutions into the analyzer or by spiking the standards onto the sorbent media and then introducing into the analyzer after preparing the sorbent/standard according to the particular analytical technique. For each calibration curve, the value of the square of the linear correlation coefficient, *i.e.,* r^2, must be ≥ 0.99, and the analyzer response must be within ± 10 percent of reference value at each upscale calibration point. Calibrations must be performed on the day of the analysis, before analyzing any of the samples. Following calibration, an independently prepared standard (not from same calibration stock solution) shall be analyzed. The measured value of the independently prepared standard must be within ± 10 percent of the expected value.

10.2 Sample Preparation.

Carefully separate the three sections of each sorbent trap. Combine for analysis all materials associated with each section, *i.e.,* any supporting substrate that the sample gas passes through prior to entering a media section (*e.g.,* glass wool, polyurethane foam, etc.) must be analyzed with that segment.

10.3 Spike Recovery Study.

Before analyzing any field samples, the laboratory must demonstrate the ability to recover and quantify Hg from the sorbent media by performing the following spike recovery study for sorbent media traps spiked with elemental mercury.

Using the procedures described in sections 5.2 and 11.1 of this appendix, spike the third section of nine sorbent traps with gaseous Hg^0, *i.e.,* three traps at each of three different mass loadings, representing the range of masses anticipated in the field samples. This will yield a 3 x 3 sample matrix. Prepare and analyze the third section of each spiked trap, using the techniques that will be used to prepare and analyze the field samples. The average recovery for each spike concentration must be between 85 and 115 percent. If multiple types of sorbent media are to be analyzed, a separate spike recovery study is required for each sorbent material. If multiple ranges are calibrated, a separate spike recovery study is required for each range.

10.4 Field Sample Analyses.

Analyze the sorbent trap samples following the same procedures that were used for conducting the spike recovery study. The three sections of the sorbent trap must be analyzed separately (*i.e.,* section 1, then section 2, then section 3). Quantify the mass of total Hg for each section based on analytical system response and the calibration curve from section 10.1 of this appendix. Determine the spike recovery from sorbent trap section 3. Pre-sampling spike recoveries must be between 75 and 125 percent. To report final Hg mass, normalize the data for sections 1 and 2 based on the sample-specific spike recovery, and add the normalized masses together.

11.0 Calculations and Data Analysis.

11.1 Calculation of Pre-Sampling Spiking Level.

Determine sorbent trap section 3 spiking level using estimates of the stack Hg concentration, the target sample flow rate, and the expected sample duration. First, calculate the expected Hg mass that will be collected in section 1 of the trap. The pre-sampling spike must be within ± 50 percent of this mass. Example calculation: For an estimated stack Hg concentration of 5 µg/m³, a target sample rate of 0.30 L/min, and a sample duration of 5 days:

(0.30 L/min) (1440 min/day) (5 days) (10^{-3} m³/liter) (5µg/m³) = 10.8 µg

A pre-sampling spike of 10.8 µg ± 50 percent is, therefore, appropriate.

11.2 Calculations for Flow-Proportional Sampling.

For the first hour of the data collection period, determine the reference ratio of the stack gas volumetric flow rate to the sample flow rate, as follows:

$$R_{ref} = \frac{KQ_{ref}}{F_{ref}} \qquad \text{(Eq. K-1)}$$

Where:

R_{ref} = Reference ratio of hourly stack gas flow rate to hourly sample flow rate

Q_{ref} = Average stack gas volumetric flow rate for first hour of collection period, adjusted for bias, if necessary, according to section 7.6.5 of appendix A to this part, (scfh)

F_{ref} = Average sample flow rate for first hour of the collection period, in appropriate units (*e.g.,* liters/min, cc/min, dscm/min)

K = Power of ten multiplier, to keep the value of R_{ref} between 1 and 100. The appropriate K value will depend on the selected units of measure for the sample flow rate.

Then, for each subsequent hour of the data collection period, calculate ratio of the stack gas flow rate to the sample flow rate using the equation K–2:

$$R_h = \frac{KQ_h}{F_h} \qquad \text{(Eq. K-2)}$$

Where:

R_h = Ratio of hourly stack gas flow rate to hourly sample flow rate

Q_h = Average stack gas volumetric flow rate for the hour, adjusted for bias, if necessary, according to section 7.6.5 of appendix A to this part, (scfh)

F_h = Average sample flow rate for the hour, in appropriate units (*e.g.,* liters/min, cc/min, dscm/min)

K = Power of ten multiplier, to keep the value of R_h between 1 and 100. The appropriate K value will depend on the selected units of measure for the sample flow rate and the range of expected stack gas flow rates.

Maintain the value of R_h within ± 25 percent of R_{ref} throughout the data collection period.

11.3 Calculation of Spike Recovery.

Calculate the percent recovery of each section 3 spike, as follows:

$$\%R = \frac{M_3}{M_s} \times 100 \qquad \text{(Eq. K-3)}$$

Where:

%R = Percentage recovery of the pre-sampling spike

M_3 = Mass of Hg recovered from section 3 of the sorbent trap, (µg)

M_s = Calculated Hg mass of the pre-sampling spike, from section 7.1.2 of this appendix, (µg)

11.4 Calculation of Breakthrough.

Calculate the percent breakthrough to the second section of the sorbent trap, as follows:

$$\%B = \frac{M_2}{M_1} \times 100 \qquad \text{(Eq. K-4)}$$

Where:

%B = Percent breakthrough

M_2 = Mass of Hg recovered from section 2 of the sorbent trap, (µg)

M_1 = Mass of Hg recovered from section 1 of the sorbent trap, (µg)

11.5 Normalizing Measured Hg Mass for Section 3 Spike Recoveries.

Based on the results of the spike recovery in section 12.3 of this appendix, normalize the Hg mass collected in sections 1 and 2 of the sorbent trap, as follows:

$$M^* = \frac{(M_1 + M_2)\, M_s}{M_3} \qquad \text{(Eq. K-5)}$$

Where:

M* = Normalized total mass of Hg recovered from sections 1 and of the sorbent trap, (µg)

M_1 = Mass of Hg recovered from section 1 of the sorbent trap, unadjusted, (µg)

M_2 = Mass of Hg recovered from section 2 of the sorbent trap, unadjusted, (µg)

M_s = Calculated Hg mass of the pre-sampling spike, from section 7.1.2 of this appendix, (µg)

M_3 = Mass of Hg recovered from section 3 of the sorbent trap, (µg)

11.6 Calculation of Hg Concentration.

Calculate the Hg concentration for each sorbent trap, using the following equation:

$$C = \frac{M^*}{V_t} \qquad \text{(Eq. K-6)}$$

Where:

C = Concentration of Hg for the collection period, (µg/dscm)

M* = Normalized total mass of Hg recovered from sections 1 and 2 of the sorbent trap, (µg)

V_t = Total volume of dry gas metered during the collection period, (dscm). For the purposes of this appendix, standard temperature and pressure are defined as 20° C and 760 mm Hg, respectively.

11.7 Calculation of Paired Trap Agreement.

Calculate the relative deviation (RD) between the Hg concentrations measured with the paired sorbent traps:

$$RD = \frac{|C_a - C_b|}{C_a + C_b} \times 100 \qquad \text{(Eq. K-7)}$$

Where:

RD = Relative deviation between the Hg concentrations from traps ''a'' and ''b'' (percent)

C_a = Concentration of Hg for the collection period, for sorbent trap ''a'' (µg/dscm)

C_b = Concentration of Hg for the collection period, for sorbent trap ''b'' (µg/dscm)

11.8 Calculation of Hg Mass Emissions.

To calculate Hg mass emissions, follow the procedures in section 9.1.2 of appendix F to this part. Use the average of the two Hg concentrations from the paired traps in the calculations, except as provided in § 75.15(h).

12.0 Method Performance.

These monitoring criteria and procedures have been applied to coal-fired utility boilers (including units with post-combustion emission controls), having vapor-phase Hg concentrations ranging from 0.03 µg/dscm to 100 µg/dscm.

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Part III

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1, 301, and 602

Section 1446 Regulations; Witholding on Effectively-Connected Taxable Income Allocable to Foreign Partners; Final Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 9200]

RIN 1545–AY28, 1545–BD80

Section 1446 Regulations; Withholding on Effectively-Connected Taxable Income Allocable to Foreign Partners

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations regarding a partnership's obligation to pay withholding tax under section 1446 on effectively connected taxable income allocable under section 704 to a foreign partner. The regulations interpret the rules added to the Internal Revenue Code by section 1246(a) of the Tax Reform Act of 1986 (1986 Act), as amended by section 1012(s)(1)(A) of the Technical and Miscellaneous Revenue Act of 1988 (1988 Act), and section 7811(i)(6) of the Omnibus Budget Reconciliation Act of 1989 (1989 Act). The regulations will affect partnerships engaged in a trade or business in the United States that have one or more foreign partners. The final regulations also include conforming amendments to sections 871, 1443, 1461, 1462, 1463, 6109, and 6721. This document also contains temporary regulations under section 1446 that may apply to reduce or eliminate a partnership's obligation to pay withholding tax in certain circumstances.

DATES: *Effective Date:* This rule is effective May 18, 2005.

Applicability Dates: The final and temporary regulations included in this document are applicable to partnership taxable years beginning after May 18, 2005. However, a partnership may elect to apply the provisions of the final regulations to partnership taxable years beginning after December 31, 2004. Further, a partnership may elect to apply the temporary regulations to partnership taxable years beginning after December 31, 2004, provided the partnership also elects to apply the final regulations to partnership taxable years beginning after December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Ronald M. Gootzeit at (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in the final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control numbers 1545–1852 and 1545–1934. Responses to these collections of information are required to determine the extent to which a partnership is required to pay a withholding tax with respect to a foreign partner, to provide information concerning the tax paid on such partner's behalf, and to determine the foreign person required to report the effectively connected taxable income earned by such partnership and entitled to claim credit for the withholding tax paid by the partnership. The estimated annual burden per respondent/recordkeeper for the collections in the final regulation varies from 15 minutes to 1 hour, depending on individual circumstances, with an estimated average of 30 minutes.

The collections of information contained in the temporary regulation have been reviewed, and pending public comment, approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1934. To comment on the collection of information in the temporary regulation, please refer to the cross-referenced NPRM (REG–108524–00) published elsewhere in this issue of the **Federal Register**.

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 control number assigned by the Office of Management and Budget.

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.

Background

On September 3, 2003, the IRS and Treasury Department published in the **Federal Register** a notice of proposed rulemaking [REG–108524–00; 2003–42 I.R.B. 869; 68 FR 52466], corrected at 68 FR 62553 (November 5, 2003)) under sections 871, 1443, 1446, 1461, 1462, 1463, 6109, and 6721 of the Internal Revenue Code (Code). The regulations interpret rules added to the Code by the 1986 Act, as amended by the 1988 Act and the 1989 Act. The regulations provide guidance for partnerships required to pay withholding tax under section 1446 of the Code (1446 tax). Written comments were received in response to the notice of proposed rulemaking, and a public hearing was held on December 4, 2003. After consideration of all the comments, the proposed regulations under sections 871, 1443, 1446, 1461, 1462, 1463, 6109, and 6721 are adopted, as revised by this Treasury Decision. The comments received and the revisions are discussed below.

In addition, this document contains temporary regulations that set forth rules to reduce or eliminate a partnership's 1446 tax obligation with respect to a foreign partner in certain circumstances. Specifically, the temporary regulations address when a partnership is permitted to consider partner-level deductions and losses when computing its 1446 tax (or any installment of such tax) with respect to a foreign partner's allocable share of partnership effectively connected taxable income (ECTI). The temporary regulations are also being issued as proposed regulations in another section of this bulletin. The temporary regulations apply to partnership taxable years beginning after May 18, 2005. However, a partnership may elect to apply the temporary regulations to partnership taxable years beginning after December 31, 2004, provided the partnership also elects to apply the final regulations to partnership taxable years beginning after December 31, 2004.

Explanation of Provisions

A. Determining the Status and Classification of Partners—§ 1.1446–1

Under § 1.1446–1 of the proposed regulations, a partnership generally determines the status of its partners based upon Form W–8BEN, ''Certificate of Foreign Status of Beneficial Owner,'' Form W–8IMY, ''Certificate of Foreign Intermediary, Flow Through Entity, or Certain U.S. Branches for United States Tax Withholding,'' or Form W–9, ''Request for Taxpayer Identification Number and Certification,'' submitted by its partners. A partnership may also rely on other means to determine the non-foreign status of its partners, provided that the partnership's determination is correct. As described below, several commentators suggest that the final regulations permit the submission of additional forms to more closely align the section 1446 documentation requirements with the requirements under the section 1441 withholding regime.

1. Recognition of Form W–8ECI

Under section 6.01 of Rev. Proc. 89–31 (1989–1 C.B. 895), as modified by

Rev. Proc. 92–66 (1992–2 C.B. 428), a partnership is required to include income subject to a partner's election under section 871(d) or section 882(d) (relating to the treatment of real property income as effectively connected income) in its computation of partnership ECTI when determining its 1446 tax obligation. Rev. Proc. 89–31 also provides that if a partner submits Form 4224 (predecessor form to Form W–8ECI, ''Certificate of Foreign Person's Claim for Exemption From Withholding on Income Effectively Connected With the Conduct of a Trade or Business in the United States''), the partner's allocable share of income and gain is deemed to be effectively connected income for purposes of section 1446 (deemed ECI rule). Under the section 1441 withholding regime, a payee may provide Form W–8ECI to a withholding agent and thereby be exempt from withholding under section 1441 because the income paid is effectively connected income to the payee. Accordingly, under Rev. Proc. 89–31, a foreign partner that has made an election under section 871(d) or section 882(d) can submit Form W–8ECI to a partnership to satisfy its documentation requirements under section 1441 and section 1446.

Consistent with Rev. Proc. 89–31, the proposed regulations require a partnership to include income subject to a partner's election under section 871(d) or section 882(d) in its computation of partnership ECTI for purposes of section 1446. However, the proposed regulations do not explicitly recognize Form W–8ECI as a form establishing the status of a partner. One commentator notes that the deemed ECI rule in Rev. Proc. 89–31 is useful and provides a clear mechanism for a partnership to discharge its 1446 tax obligation. Accordingly, the commentator suggests that the final regulations recognize Form W–8ECI and the deemed ECI rule for purposes of section 1446.

Treasury and the IRS agree with the commentator's suggestion. Accordingly, the final regulations allow a partner to submit Form W–8ECI to satisfy the documentation requirements of section 1446. Thus, if a partner provides Form W–8ECI to a partnership to claim exemption from withholding under sections 1441 and 1442, then the form will be accepted for purposes of section 1446, and will operate, consistent with the information on such form, to cause the partnership to consider the partner's allocable share of income as effectively connected and subject to withholding under section 1446.

2. Recognition of Form W–8EXP

The proposed regulations do not recognize Form W–8EXP, ''Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding,'' as a form that can establish the foreign status of a partner for purposes of section 1446. However, under the section 1441 withholding regime, for example, a foreign tax-exempt organization may submit Form W–8EXP to a payer of income to claim that the organization is a foreign tax-exempt organization that is exempt from withholding under sections 1441 and 1443(a) because the income being paid will not be includible in the organization's computation of its unrelated business taxable income (UBTI). One commentator notes that a foreign tax-exempt organization may be required to provide Form W–8EXP to a partnership for purposes of the section 1441 withholding regime, and Form W–8BEN for purposes of the section 1446 withholding regime. We note that the same issue exists with respect to other foreign persons (*e.g.*, foreign governments) that may provide Form W–8EXP for purposes of sections 1441 through 1443. The commentator suggests that the final regulations permit a foreign tax-exempt organization (and other applicable persons) to provide Form W–8EXP to a partnership to establish the foreign status of such partner for purposes of section 1446 to eliminate the circumstances where such person has to be ''double documented.''

The final regulations adopt this suggestion. Treasury and the IRS believe that the documentation requirements of sections 1441 and 1446 should be coordinated where feasible. As a result, a partner seeking to be relieved from withholding under sections 1441 through 1443 that provides Form W–8EXP to a partnership, will not be required to submit an additional form to establish foreign status for purposes of section 1446. Except with respect to certain tax-exempt organizations described in section 501(c) (see part A.5. of this preamble), the submission of a Form W–8EXP shall have no effect on whether there is a 1446 tax due with respect to such partner's allocable share of partnership ECTI. For example, a partnership must still pay 1446 tax with respect to a foreign government partner's allocable share of ECTI because such partner is treated as a foreign corporation under section 892(a)(3).

3. Acceptable Substitute Form for Identification of Partners

As noted above, the proposed regulations permit a partnership to use other means to ascertain the non-foreign status of its partners, provided that the partnership is correct in its determination. Further, under the proposed regulations, a partnership must generally presume that a partner that does not furnish a Form W–8BEN, Form W–8IMY, or Form W–9 is a foreign person. One commentator requests that the final regulations permit a partnership to use a substitute form to identify its partners, provided the information given to the partnership is substantially the same as that found on the above-mentioned forms.

Treasury and the IRS agree with the commentator's proposed change to the extent that the section 1441 regime would generally permit the acceptable substitute form. As a result, the final regulations adopt this comment and permit a partnership or nominee required to pay 1446 tax to develop its own form, consistent with § 1.1441–1(e)(4)(vi), to serve as its substitute form upon which partners will submit information.

4. Clarification of Miscellaneous Documentation Issues

Several commentators request that the final regulations clarify certain issues regarding a partnership's obligation to identify its foreign partners. One commentator requests that the final regulations address a partnership's duty, if any, to inquire as to whether a partner has made an election under section 871(d) or 882(d), or whether the partner is a dealer in securities. As described in part A.1. of this preamble, the proposed regulations provide that income subject to a partner's election under section 871(d) or 882(d) shall be considered in the partnership's computation of the partner's allocable share of partnership ECTI. Further, the proposed regulations require a partner that has made an election under section 871(d) or section 882(d) to notify the partnership that the election has been made so that the partnership can correctly determine the partner's allocable share of ECTI. The proposed regulations do not address when a partner is a dealer.

The final regulations retain the requirement that a partner notify the partnership of an election it has made (or will make) under section 871(d) or section 882(d). Further, to the extent that an election has been made, the partner is required to provide the partnership a copy of such election. However, the final regulations do not

explicitly require a partner to notify the partnership that it is a dealer. Further, the final regulations do not impose an affirmative duty on the partnership to inquire as to a partner's status as a dealer or whether an election under section 871(d) or section 882(d) has been made.

Another commentator requests clarification regarding the ability of a lower-tier partnership (LTP) to use other means to identify partners of an upper-tier partnership (UTP). Under proposed regulation § 1.1446–5, an LTP may be required to look through a UTP to the partners of such partnership if adequate documentation is provided to the LTP and the LTP can reliably associate (within the meaning of § 1.1441–1(b)(2)(vii)) all or a portion of the UTP's allocable share of ECTI with one or more partners of the UTP. To the extent that a UTP has not provided adequate documentation as to the status of its partners to the LTP, the LTP is to treat the UTP as an entity and withhold at the highest applicable rate under section 1446(b). In this regard, the regulations cross reference proposed regulation § 1.1446–1(c)(3), which allows a partnership to rely on other means to determine the non-foreign status of its partners, provided that the partnership is correct in its determination. The commentator requests clarification as to whether an LTP that has not received adequate documentation from a UTP regarding the status of one or more partners of the UTP may, nevertheless, rely on other means to determine that certain partners of the UTP are U.S. persons.

In response to the commentator's question, the final regulations remove the cross reference to § 1.1446–1(c)(3). The look-through rules of § 1.1446–5 are intended to be consistent with the section 1441 regulations and the concept of reliable association through documentation. Accordingly, an LTP may not rely on other means and look through a UTP to the partners of the UTP to the extent that the UTP has failed to provide adequate documentation regarding the status of its partners. Rather, to the extent the documentation submitted is insufficient to permit the LTP to look through, the LTP is to treat the UTP as a foreign entity and pay 1446 tax at the higher of the rates in section 1 or section 11.

Another commentator notes that proposed regulation § 1.1446–1 provides that a foreign partnership is treated as a foreign partner under section 1446(e). The commentator then notes that § 1.1446–5 of the proposed regulations provides that all or a portion of the allocable share of a UTP shall be treated as allocable to the partners of the UTP to the extent that the LTP can reliably associate the ECTI allocable to the UTP with the partners of such partnership. The effect of this rule is that for purposes of the LTP's 1446 tax computation, the UTP is not treated as the partner of the LTP. The commentator requests clarification regarding coordination of the above two sections of the proposed regulations. We note that the issue the commentator raises also arises under the proposed regulations with respect to trusts part or all of which are treated as owned by a grantor or other owner under subpart E of Subchapter J of the Code.

In response to this question, § 1.1446–1 of the final regulations includes a cross reference to § 1.1446–5 and language clarifying that the partners of a UTP are considered the direct partners of an LTP only to the extent the LTP is applying the look through rules of § 1.1446–5 in computing its 1446 tax obligation. This treatment is only for purposes of computing the LTP's 1446 tax liability and has no effect on LTP's reporting. Thus, whether or not an LTP computes its 1446 tax by looking through a UTP, the LTP shall furnish Form 8805 with respect to the 1446 tax it pays to and in the name of the UTP so that such UTP may then, in turn, take such amounts into account in computing its 1446 tax obligation. UTP will then claim a credit for the 1446 tax LTP paid and will allocate the credit to its partners (or claim a refund), as appropriate, and report the allocation of the tax on the Forms 8805 it furnishes to its foreign partners. Similarly, the final regulations clarify that a grantor or other owner under subpart E of subchapter J of the Code of a domestic or foreign trust is the beneficial owner of income and it (rather than the trust) is considered the partner only for purposes of computing the partnership's 1446 tax liability.

5. Coordination With Section 1443 and Foreign Tax-Exempt Organizations

Section 1443(a) provides that withholding under chapter 3 of the Code shall apply to income includible under section 512 in computing the UBTI of a foreign organization subject to the tax imposed by section 511 only to the extent and subject to such conditions as may be provided by regulations. The proposed regulations provide that if an amount is allocable from a partnership to an entity described in section 1443(a), then the partnership must withhold under section 1446. One commentator notes that section 1443(a) only applies to the extent that an item of income is includible in the computation of UBTI, and that the proposed regulations fail to recognize that some income items comprising part of the partnership's ECTI will not be includible by a partner in computing its UBTI. See §§ 1.512(b)–1 and 1.512(c)–1. Further, the commentator notes that in the context of section 1441, section 1443(a) is enforced by a presumption contained in § 1.1441–9(b)(3) that income will be includible in computing a foreign tax-exempt organization's UBTI if the documentation the payee provides is unreliable or is lacking, and that the final regulations should include a similar presumption in the case of section 1446 with respect to foreign tax-exempt partners.

In response to the commentator's suggestions, the final regulations clarify that only the portion of a tax-exempt partner's allocable share of partnership ECTI that is includible in the partner's computation of UBTI is subject to section 1446. The final regulations also provide that the procedures in § 1.1441–9 for claiming an exemption from withholding under section 1441 will apply for claiming an exemption from withholding under section 1446. Under those procedures, the organization may specify the portion of its allocable share of partnership income that will not be includible in the organization's computation of its UBTI. Thereafter, the partnership may determine that a partner's representation as to amounts not includible in the organization's UBTI is unreliable or lacking. If such a determination is made, the partnership must then presume, consistent with § 1.1441–9(b)(3) as applied for purposes of section 1446, that the partnership item will be includible in computing the partner's UBTI.

In response to another comment, the language of the final regulations has been changed to follow more closely the language of section 1443(a) and the regulations thereunder.

6. Corresponding Changes to Forms

The IRS intends to modify several forms (*e.g.*, Forms W–8, 8804, 8805, 8813) to accommodate the adoption of the final and temporary regulations set forth in this document. Until such time as the forms are modified, partners, nominees, and partnerships may use the current version of a form and attach a statement to such form, to the extent necessary, to explain the use of the form for purposes of section 1446.

B. Determining a Foreign Partner's Allocable Share of Partnership ECTI—§ 1.1446–2

1. Cancellation of Indebtedness Income and Gain From Foreclosure and Deed in Lieu of Foreclosure

The proposed regulations requested comments on the appropriate treatment under section 1446 of partnership cancellation of indebtedness income (COD). Several comments, discussed below, were received.

One commentator suggests that a partnership should be relieved of its 1446 tax obligation with respect to COD income allocable to foreign partners provided the partnership files with the IRS an explanatory statement that substantiates its financial hardship. A second commentator cites the rules set forth in § 1.1445–2(d)(3), applicable to a foreclosure that results in a disposition of a United States real property interest. Consistent with § 1.1445–2(d)(3), the commentator proposes that so long as the partnership receives no cash or other property as part of the cancellation of indebtedness or the foreclosure on property (or deed in lieu of foreclosure), income attributable to such amounts should be excluded from partnership ECTI and the partnership should not be required to withhold on such amounts. However, the commentator states that to the extent that the partnership makes a distribution within the same taxable year that the COD income or gain arising from a foreclosure (or deed in lieu of foreclosure) is realized, the partnership ECTI for the year of realization should include the COD income or gain from foreclosure up to the amount of the distribution. Finally, one commentator focuses on a partnership in a Chapter 11 bankruptcy proceeding and cites a potential conflict between the deemed distribution rule of section 1446(d) and the prohibition on preferential treatment of non-creditors found in the Bankruptcy Code. This commentator recommends that a partnership in a Chapter 11 bankruptcy proceeding that incurs COD income should be relieved from paying 1446 tax on such income.

Treasury and the IRS believe that section 1446 requires a partnership to pay 1446 tax on COD income and gain recognized by reason of a foreclosure or deed in lieu of foreclosure on property when such income or gain is allocated to foreign partners. The purpose of the statute is to collect taxes that foreign persons may not otherwise pay, regardless of the liquidity or financial situation of the withholding agent. Further, unlike section 1441, section 1446 does not require that a partnership have control, receipt, custody, disposal, or payment over the income that is subject to withholding. As a result, no exception is mandated. In addition, Treasury and the IRS do not believe that a deemed distribution under section 1446(d) would violate any provisions of the Bankruptcy Code. Accordingly, the final regulations do not adopt the commentators' suggestions regarding COD income or gain arising from the foreclosure (or deed in lieu of foreclosure) on property. However, Treasury and the IRS are issuing temporary and proposed regulations that permit a foreign partner, in certain circumstances, to certify to the partnership that it has deductions and losses it reasonably expects to be available to reduce the partner's U.S. income tax liability on the partner's allocable share of effectively connected income or gain from the partnership. This certification procedure may apply to reduce the partnership's 1446 tax obligation with respect to COD income allocable to a foreign partner in appropriate circumstances. Treasury and the IRS believe that this approach, which is consistent with the statute and legislative history, appropriately balances the interests of taxpayers and the government.

2. Consideration of a Foreign Partner's Deductions and Losses in Computing the Partner's Share of Partnership ECTI

See § 1.1446–6T and part G. of this preamble regarding when a partnership may consider partner-level deductions and losses in determining its 1446 tax due with respect to a partner.

C. Calculating, Paying Over, and Reporting the 1446 Tax—§ 1.1446–3

1. Applicable Percentage for Computing 1446 Tax

The proposed regulations require a partnership to pay withholding tax (1446 tax) using the highest rate of tax specified in section 1 (with respect to ECTI allocable to a non-corporate foreign partner) or section 11(b)(1) (with respect to ECTI allocable to a corporate foreign partner). Several commentators note that the proposed regulations effectively require a partnership to pay 1446 tax in excess of a partner's actual tax liability because the partnership is not permitted to consider preferential tax rates that apply to long-term capital gain or other special items of income or gain at the partner-level (*e.g.*, unrecaptured section 1250 gain). The commentators note that at the time that Congress enacted and amended section 1446 there was no difference between the tax rate for capital gains and ordinary income and, therefore, section 1446 should not be read to prohibit consideration of the highest rate that may apply to special items of income or gain. The commentators request that the final regulations permit a partnership to consider the character of income or gain allocable to a foreign partner and pay 1446 tax at the highest rate applicable to the type of income or gain allocable to a foreign partner.

Treasury and the IRS have carefully considered these comments and generally believe that permitting a partnership to consider the highest rate of tax associated with particular partnership items of income and gain is a reasonable approach under the statute that would reduce the instances of overwithholding without undermining the purpose or effectiveness of the statute. In response, the final regulations provide that while a partnership is generally required to use the highest rate of tax in section 1 or section 11 (currently 35 percent) applicable to a partner, it may also consider (subject to exceptions discussed below) the type of income or gain allocable to a foreign partner during the taxable year when computing its 1446 tax obligation. As a result, a partnership can generally pay 1446 tax using the highest capital gains rate (currently 15 percent) to the extent long-term capital gain is allocable to a non-corporate foreign partner. Similarly, the highest rate of tax for collectibles gain under section 1(h)(6) (currently 28 percent) may generally be considered when such gain is allocable to a non-corporate foreign partner. Further, a partnership can generally pay 1446 tax using the maximum tax rate for unrecaptured section 1250 gain (currently 25 percent) to the extent such gain is allocable to a non-corporate foreign partner. When applicable, the partnership must use the highest preferential rate for a particular type of income or gain without regard to the amount of the foreign partner's allocable share of such income or gain, or the foreign partner's other income.

As discussed above, several preferential rates depend upon the status of the person (corporate or non-corporate) allocated the income or gain (*e.g.*, long-term capital gain). Further, in some circumstances under the final regulations documentation may be lacking as to the corporate or non-corporate status of a partner. Accordingly, the final regulations include a rule that prohibits a partnership from using a preferential rate in computing its 1446 tax on income or gain allocable to a foreign partner where the preferential rate depends upon the corporate or non-

corporate status of the partner and either such status has not been established by documentation or the regulations otherwise instruct the partnership to pay 1446 tax at the higher of the applicable rates in section 1446(b).

For example, under § 1.1446–1(c)(3) a partnership that has not received documentation from a partner must presume that the partner is a foreign person, unless the partnership relies on other means to determine the non-foreign status of the partner. Further, the regulations instruct that if the partnership knows that the partner is an individual, then the partnership must pay 1446 tax using the applicable percentage appropriate for a non-corporate foreign partner (highest rate in section 1). Notwithstanding the foregoing, under the rule in the final regulations, the partnership may not consider the preferential rate applicable to any net long-term capital gain allocable to such partner because the preferential rate applicable to that type of gain depends on the status of the person reporting such gain, and the partner has failed to provide documentation in accordance with § 1.1446–1.

Similarly, under § 1.1446–5 a partnership may not be able to reliably associate 100 percent of an upper-tier partnership's allocable share of ECTI with the partners of the upper-tier partnership. In such circumstances, § 1.1446–5(c)(2) requires the lower-tier partnership to pay 1446 tax on the portion it cannot reliably associate with partners of the upper-tier partnership at the higher of the rates in section 1446(b). Even though the upper-tier partnership has provided documentation on its own behalf (*e.g.*, Form W–8IMY), and the lower-tier partnership therefore knows that the upper-tier partnership is a non-corporate entity, the lower-tier partnership may not consider any preferential rate when computing its 1446 tax due on the portion of the ECTI the lower-tier partnership cannot reliably associate with partners of the upper-tier partnership.

2. Deemed Cash Distributions Under Section 1446(d)

Section 1446(d) states that, except as provided in regulations, a partnership's payment of 1446 tax with respect to a foreign partner is treated as a distribution to the partner on the earlier of the day the partnership paid the tax or the last day of the partnership's taxable year for which such tax was paid. The legislative history provides that the above rule may be altered by regulations to account for mid-year dispositions of partnership interests. See H.R. Rep., 101–247, 101st Cong., 1st Sess. (Sept. 20, 1989). Under Rev. Proc. 89–31 (1989–1 C.B. 895), if the 1446 tax is paid in a subsequent taxable year with respect to ECTI allocable to the preceding taxable year, the deemed distribution is considered to have occurred on the last day of the preceding taxable year or the last day during such year that the person was a partner. The proposed regulations follow the rules outlined above.

Several commentators note that the deemed distribution under section 1446(d) may cause a partner to recognize gain under sections 731 and 741. Under section 731, a partner recognizes gain on a partnership distribution only to the extent the partner receives cash in excess of its basis in the partnership. To the extent a partner receives cash in excess of the partner's basis in its partnership interest, section 731 considers the partner to have engaged in a sale or exchange of the interest, the tax consequences of which are described in section 741. Under section 1446(d), if the partnership is deemed to distribute cash during the taxable year (*i.e.*, on the date the 1446 tax is paid), before the date that the partner may consider an increase in the partner's basis in the partnership under section 705 for income allocable from the partnership for the entire taxable year, then the partner may recognize gain under sections 731 and 741.

One commentator proposes that, for purposes of section 1446(d), a partnership should look to the partnership agreement to determine whether a distribution under section 1446(d) has occurred. Specifically, the commentator states that a partnership should not treat a payment of 1446 tax on behalf of a foreign partner as a deemed distribution under section 1446(d) to the extent the partnership agreement prohibits a distribution to the partner, or the partner is required to pay back to the partnership part or all of the 1446 tax paid on the partner's behalf. The commentator suggests that the regulations should consider both explicit provisions of the partnership agreement that require a foreign partner to contribute to the partnership an amount equal to the 1446 tax the partnership paid on behalf of the partner and provisions that have the effect of requiring a contribution, though not explicitly referring to section 1446.

Another commentator suggests that a deemed distribution under section 1446(d) that results from a partnership's installment payment of 1446 tax should be considered an advance or drawing against a partner's distributive share of income within the meaning of § 1.731–1(a)(1)(ii) and treated as a current distribution made on the last day of the partnership taxable year with respect to such partner. Adopting this suggestion would reduce the likelihood of a foreign partner recognizing gain because the deemed distribution would be measured against the partner's basis in its partnership interest after the partner's basis has been increased for income allocable to the partner for the partnership's taxable year under section 705.

A third commentator notes a conflict with the deemed distribution rule in the context of a partnership in bankruptcy. See discussion at Part B.1. of this preamble.

Treasury and the IRS believe that deemed distributions under section 1446(d) should not unnecessarily result in a foreign partner having to recognize gain under sections 731 and 741, and that the deemed distributions should be treated consistently with other distributions under subchapter K. Further, section 1446(d) provides Treasury and the IRS with explicit authority to alter the rules to accomplish the objectives of the section. Accordingly, the final regulations generally provide that a deemed distribution under section 1446(d) is treated as an advance or drawing within the meaning of § 1.731–1(a)(1)(ii) against the partner's distributive share of income from the partnership. See also Rev. Rul. 94–4 (1994–1 C.B. 195). As a result, the tax ramifications of a partnership's payment of 1446 tax on a foreign partner's allocable share of ECTI will be considered by the partner at the end of the partnership's taxable year, or the last day of the partnership's taxable year during which such person was a partner in the partnership. The advance or drawing treatment applies only to installment payments of 1446 tax made during the partnership's taxable year with respect to ECTI earned in the same taxable year. Any 1446 tax paid after the close of the partnership's taxable year, including amounts paid with the filing of Form 8804, ''Annual Return for Partnership Withholding Tax (Section 1446),'' that are on account of partnership ECTI allocated to partners for the prior taxable year shall be treated under section 1446(d) and the regulations as a distribution from the partnership on the earlier of the last day of the partnership's prior taxable year for which the tax is paid, or the last day in such prior taxable year on which such foreign partner held an interest in

the partnership. The rules in the final regulations apply only for purposes of determining the tax ramifications of the deemed distribution to a foreign partner under sections 705, 731, and 733, and do not affect the date that the partnership (or partner) is otherwise considered (or deemed) to have paid tax for purposes of section 6654 and section 6655.

The final regulations do not adopt the suggestion that a deemed distribution under section 1446(d) should occur only to the extent the partnership agreement permits a distribution to the foreign partner and does not require the foreign partner to contribute an amount to the partnership. Treasury and the IRS believe that the suggestion is inconsistent with section 1446(d) and the treatment of distributions under subchapter K of the Code. To the extent that 1446 tax has been paid on behalf of a partner and a Form 8805 has been issued to a partner, section 1446(d) requires that such amount be treated as a distribution. Further, such an approach would not be administrable because it would require the IRS to review each partnership agreement and interpret the provisions of the agreement for purposes of section 1446. Moreover, Treasury and the IRS are concerned that the suggested approach would inappropriately result in different treatment for similarly situated foreign partners.

3. Overlap Between Section 1445 and 1446

The proposed regulations provide that when section 1445 and section 1446 both technically apply, a partnership is required to pay withholding tax on behalf of its foreign partners in accordance with section 1446. This rule, referred to as the trumping rule, primarily relates to a domestic partnership's disposition of a United States real property interest within the meaning of section 897, which is subject to withholding under section 1445(e)(1). The proposed regulations also permit a foreign partnership to credit the amount withheld by a transferee under section 1445(a) when computing its 1446 tax obligation.

Several commentators note that the trumping rule has the effect of prohibiting a partnership and/or its partners from seeking a certificate from the IRS, where appropriate, that would reduce withholding to an amount more closely related to a partner's actual tax liability on the gain allocated. See Rev. Proc. 2000–35 (2000–2 C.B. 211 § 8.01). As a result, several commentators suggest that the final regulations remove the trumping rule and modify the section 1445 withholding certificate program so that partnerships and partners subject to section 1446 can consider anticipated current year deductions and losses and obtain withholding certificates to reduce the withholding tax otherwise required to be paid. In addition, one commentator requests clarification of the consequences for failure to comply with section 1446 under the trumping rule.

After consideration of the comments described above, the trumping rule is retained in the final regulations. Treasury and the IRS do not believe Congress intended for section 1445 to apply to the exclusion of section 1446 where the sections overlap. Treasury and the IRS believe that with the changes made in the final regulations (*e.g.*, consideration of the character of income allocable to a foreign partner, see part C.1. of this preamble) and the issuance of the temporary regulations that permit foreign partners to certify available deductions and losses to a partnership, the section 1446 withholding regime will, in most circumstances, arrive at a withholding result that approximates the result that would otherwise be reached under section 1445. The final regulations clarify that a partnership that fails to comply with section 1446 under the rule described above may be subject to all additions to the tax, interest, and penalties that otherwise apply to a failure to pay 1446 tax.

4. Notice to Foreign Partners of 1446 Tax Paid by Partnership

The proposed regulations require a partnership that pays 1446 tax on behalf of a foreign partner to notify the partner when a payment of tax has been made. Because the 1446 tax installment due dates are the 15th day of the 4th, 6th, 9th, and 12th months of the partnership's taxable year, a partnership must generally notify a foreign partner four times during the taxable year of the 1446 tax paid on the partner's behalf. The notice provided during the taxable year of the 1446 tax paid is not required to be in any particular form but must contain, among other items, information sufficient to identify the partnership, the partner, the annualized amount of ECTI estimated to be allocated to the partner, and the amount of 1446 tax paid to the IRS on behalf of the foreign partner.

After the close of the partnership taxable year, the partnership is required to file Forms 8804 and 8805 with the IRS and to provide a Form 8805 to each foreign partner. The Form 8805 furnished to a foreign partner will set forth the 1446 tax paid on the partner's behalf for the entire taxable year. Each foreign partner receiving a Form 8805 from the partnership is generally permitted to claim a tax credit under section 33 on its U.S. Federal income tax return in the amount shown on the form as paid on the partner's behalf. When completing its Form 8804 and Form 8805, the partnership will use the actual results of the partnership's operations for the previous year. When completing its Form 8804, if the partnership determines that its 1446 tax is an amount greater than previously estimated, the partnership is required to pay any shortfall when filing the form.

One commentator submits that it is administratively burdensome and costly to require a partnership to notify its foreign partners four times during the year when each installment of 1446 tax is paid on their behalf. The commentator also contends that it is burdensome on a partnership to have to explain to each foreign partner any discrepancy between the four notices provided during the taxable year, which are based on estimates, and the Form 8805 issued after the close of the taxable year, which is based on the partnership's actual operating results. Finally, the commentator contends that it is burdensome, costly, and inefficient in large non-publicly traded partnerships, where the net income to be allocated to a partner is often small, to have to provide notice to thousands of foreign partners four times during the taxable year and again after the taxable year.

A second commentator makes two points concerning the requirement that a partnership provide notice during the taxable year for each 1446 tax installment payment. First, the commentator suggests that because the section 1446 tax rate is the highest rate applicable to a foreign partner, most foreign partners do not need notice during the taxable year because they already assume the partnership's 1446 tax installment payments will exceed any estimated tax they might otherwise owe on their allocable share of ECTI. Second, the commentator submits that in practice the notices are often not received before a foreign partner's estimated tax due date for the same period and, therefore, provide little or no benefit to the foreign partner.

Both commentators propose that unless a foreign partner requests information for each installment payment of 1446 tax, a partnership should only be required to report to the foreign partner the amounts paid to the IRS on behalf of the partner after the close of the taxable year on Form 8805.

Treasury and the IRS believe that the notice requirement in the proposed regulations serves the useful function of advising a foreign partner of amounts paid on its behalf. The notice may aid a partner in computing its estimated tax liability either for the same installment period or a subsequent installment period during the taxable year. This is particularly true where the estimated tax payment dates of the foreign partner do not coincide with the 1446 tax installment dates. See section 6654(j). Based upon the foregoing, the final regulations retain the notice requirement set forth in the proposed regulations.

However, Treasury and the IRS recognize that situations may exist where the notice requirement is particularly burdensome. Accordingly, the final regulations contain two exceptions to the requirement that the partnership provide notice during its taxable year as it pays each installment of 1446 tax. First, where an agent of the partnership charged with providing notice to the foreign partners of the partnership during the taxable year for each installment of 1446 tax is the same person that also acts as an agent on behalf of a foreign partner for purposes of filing the foreign partner's U.S. income tax return, the notice requirement is deemed to be satisfied with respect to such partner. Second, a partnership with 500 or more foreign partners is not required to provide notice to a foreign partner of amounts paid on such partner's behalf during the course of the taxable year, unless requested, if the partnership estimates that the 1446 tax on such partner's allocable share of partnership ECTI is less than $1,000. If one of the exceptions applies to a foreign partner for an installment payment of 1446 tax, then the partnership is not required to provide notice of the installment payment (and the tax paid on the partner's behalf) unless requested by the partner. However, in all events, the partnership is required to provide notice of the tax paid on the partner's behalf after the close of the taxable year by issuing Form 8805 to the partner.

5. Refunds by Partnership for Amounts Withheld

Under the proposed regulations, a partnership is entitled to obtain a refund for 1446 tax paid over to the IRS only if a refund is permissible under section 1464 and the regulations thereunder. The position in the proposed regulations varies from the position in Rev. Proc. 92–66, which permits a partnership to obtain a refund of 1446 tax to the extent an amount paid to the IRS is not reflected on a Form 8805 issued to a partner for the taxable year. One commentator notes that because actual operating results can vary significantly from the estimates the partnership uses during the year to calculate its 1446 tax, withholding in excess of the partner's actual tax liability can occur. That is, where a partnership annualizes its income under one of the accepted methods but events occur that are not taken into account until the partnership files its Form 8804, and such events have the effect of reducing or eliminating the 1446 tax otherwise due, the partnership should be entitled to a refund of the overpaid amounts. The commentator proposes that the final regulations adopt the refund system set forth in Rev. Proc. 92–66.

In response to the commentator's suggestion, the final regulations adopt the position taken in Rev. Proc. 92–66 with respect to refunds to withholding agents, thereby permitting non-publicly traded partnerships subject to section 1446 to obtain refunds for 1446 tax paid to the IRS to the extent that the amounts are not reflected on a Form 8805 issued to a partner. Publicly traded partnerships (and nominees) required to pay 1446 tax based on distributions of effectively connected income will continue to be subject to section 1464 and the regulations thereunder. The standard in the regulation is intended to follow the approach set forth in Rev. Proc. 92–66 in all respects.

6. Additions to the Tax, Interest and Penalties for Noncompliance With Section 1446

i. In General

The proposed regulations provide that if a partnership fails to file and pay its 1446 tax, but a partner files a U.S. Federal income tax return for the taxable year and pays all tax required to be shown on that return, then the partnership is deemed to have filed Forms 8804 and 8805 and paid its 1446 tax with respect to such foreign partner as of the date that the partner satisfied the aforementioned conditions. Therefore, the proposed regulations contain a deemed filing and payment rule applicable to a partnership that is based upon a foreign partner completing two actions: (1) Filing its U.S. Federal income tax return, and (2) paying all tax required to be shown on such return. Treasury and the IRS have modified the deemed filing and payment rules in the final regulations to better coordinate section 1446 with section 1463, as well as with any additions to the tax, interest, and penalties that may apply.

First, the final regulations modify the rule in the proposed regulations that deems a partnership to have paid 1446 tax with respect to a partner. As modified, the final regulations make a partnership's deemed payment dependent only on the partner's payment of all the tax the partner is required to pay, and disregard the partner's actual filing of a U.S. Federal income tax return. As modified, the deemed payment rule is consistent with general principles of when a tax is considered paid.

Second, the final regulations remove the deemed filing rule in the proposed regulations because of the administrative difficulties in such cases where there are multiple foreign partners. Therefore, under the final regulations, a partnership will not be deemed to have filed Forms 8804 and 8805 at any time. As a result, once the failure to file penalty under section 6651(a)(1) begins to accrue, as discussed below, a partnership may affirmatively stop the accrual of the penalty only by filing Form 8804.

Third, the final regulations clarify the date upon which a partnership will be deemed to have paid 1446 tax under the deemed payment rule. The rule applies for purposes of sections 1446, 1461, 1463, 6601, 6651, 6655, and any other penalties or additions to the tax that may apply. The rule provides that a partnership will be deemed to have paid the 1446 tax associated with ECTI allocable to a particular partner on the later of the date that the partner is considered to have paid all its tax under section 6513(a) and (b)(2) (prescribing the date tax is considered paid for purposes of sections 6511(b)(2), (c), and 6512), or the last date for paying the 1446 tax without extensions (the unextended due date for Form 8804). In application, the rule ensures that a partner's payments of estimated tax will have no effect on the computation of the partnership's underpayment addition to the tax under section 6655 and § 1.1446–3 of the regulations.

Fourth, the final regulations change the method required for a partnership to show that a partner has paid all tax required to be shown on the partner's U.S. Federal income tax return. In response to one commentator, the final regulations adopt the method set forth in § 1.1445–1(e)(3) because such method is more familiar and easier for partnerships to apply than obtaining Form 4669, ''Statement of Payments Received,'' the method set forth in the proposed regulations. Under the final regulations, a partnership must provide sufficient information for the IRS to

determine that the partner's tax liability was satisfied or established to be zero.

More specific discussion of various additions to the tax, interest, and penalties is provided below.

ii. Current Year Safe Harbor Under Section 6655 and § 1.1446–3

Section 1446 imposes a withholding regime that applies the principles of section 6655, as modified by these regulations. Under section 6655, a corporation is not liable for an underpayment addition to the tax if the corporation pays 25 percent of either the preceding year's or the current year's tax liability in each quarterly installment. These safe harbors are often referred to as the prior year safe harbor and the current year safe harbor. The proposed regulations provide for a modification of the prior year safe harbor that is consistent with Rev. Proc. 89–31, but do not mention the potential application of the current year safe harbor. The final regulations clarify that the current year safe harbor of section 6655(d)(1)(B)(i) can apply to a partnership subject to section 1446. Further, the final regulations retain the language in the proposed regulations that sets forth the prior year safe harbor.

iii. Accrual of Addition to the Tax Under Section 6655, Interest Under Section 6601, and Penalties

One commentator requests clarification regarding the accrual of the addition to the tax under section 6655, interest under section 6601, and penalties under the proposed regulations. Specifically, the commentator requests that the final regulations clarify whether a partnership's deemed payment of 1446 tax under proposed regulation § 1.1446–3(e)(2) will stop the accrual of the addition to the tax, interest, and penalties that may be applicable under proposed regulation § 1.1446–3(e)(3) or other sections of the regulations. The commentator requests that the final regulations address the accrual of the addition to the tax, interest and penalties, and explicitly provide that such additions, penalties and interest will stop accruing on the date the partnership's liability is deemed paid.

The final regulations do not explicitly address the accrual of all of the potential penalties that may apply to a partnership required to pay 1446 tax, but do include provisions and examples that illustrate the application of sections 6655 (relating to the addition to the tax for an underpayment of an installment of 1446 tax), 6601 (relating to interest), and 6651 (relating to failure to file and failure to pay penalties).

Regarding the addition to the tax under section 6655, the final regulations provide that the addition to the tax will begin to accrue on the date that the partnership underpays an installment of 1446 tax and will stop accruing on the earlier of the date when all the 1446 tax is satisfied, or the 15th day of the 4th month following the close of the partnership's taxable year (15th day of the 6th month in the case of a partnership keeping its books and records outside the United States and Puerto Rico).

As discussed in part C.6.i. of this preamble, the final regulations provide that a partner's payment of tax that deems a partnership to have paid 1446 tax will not be credited to the partnership's account until the later of the date that the tax is considered to have been paid by the partner under section 6513(a) and (b)(2) (prescribing the date tax is considered paid for purposes of sections 6511(b)(2), (c), and 6512), or the last date for paying 1446 tax without extensions (*i.e.*, the unextended due date for Form 8804). Under this ''later of'' rule, the earliest that a partner's payments can be credited to the partnership is the last date for paying the 1446 tax without extensions (the unextended due date for Form 8804), the date that the accrual of the section 6655 addition to the tax would stop in any event. As a result, a partner's payments of estimated tax will not provide a partnership with any benefit with respect to the partnership's computation of the underpayment addition to the tax under section 6655, as applied in the regulations.

Regarding interest under section 6601, if a partnership's 1446 liability has not been satisfied, or deemed satisfied, by the last date prescribed for payment of the 1446 tax under section 1461 without extensions (see section 6601(b)(1)), then interest under section 6601 will begin to accrue on the unpaid 1446 tax liability. The final regulations provide that interest will stop accruing on the date and to the extent that the partnership actually pays the 1446 tax or is deemed to have paid the 1446 tax under the deemed payment rule in the regulations.

Section 6651(a)(1) generally applies to the failure to file any tax return by the due date (including extensions) prescribed therefore and applies in the context of section 1446 to a failure to file Form 8804. The penalty accrues at 5 percent of the amount of the tax that is required to be shown on the return for each month or fraction of a month during which the required return is not filed but not exceeding, in the aggregate, 25 percent of the amount required to be shown as tax on the return. Similarly, under section 6651(a)(2), for each month after the date prescribed for payment that a taxpayer fails to pay the amount shown as tax on any return, there is added to the amount shown as tax 0.5 percent of such tax not to exceed 25 percent in the aggregate. While section 6651(a)(1) applies upon a failure to file a return, and section 6651(a)(2) only applies if a return has been filed, there are circumstances where both penalties can apply. See 6651(c). Both penalties provide an exception if it is shown that such failure is due to reasonable cause and not due to willful neglect.

Under the deemed payment rule of the final regulations, discussed above, a partnership that fails to pay 1446 tax with respect to a foreign partner will be deemed to have paid the 1446 tax associated with the ECTI allocable to such foreign partner on the later of the date that such partner is considered to have paid its U.S. income tax under section 6513(a) and (b)(2), or the last date for payment of the 1446 tax without extensions. Section 6651(b)(1) reduces the base upon which the section 6651(a)(1) penalty is computed (the amount required to be shown as tax on the return) by the partnership's actual and deemed payment of tax, provided the actual or deemed payment occurs on or before the date prescribed for payment of the tax. To the extent the partnership has not paid (or been deemed to have paid) all 1446 tax due with respect to a partner as of the date prescribed for payment of the tax, the failure to file penalty under section 6651(a)(1) will begin to accrue on the Form 8804 filing due date and will continue to accrue until the earlier of the date that Form 8804 is actually filed, or the date that the maximum monthly accrual has occurred under the section; *i.e.*, five months. Stated differently, if a partnership fails to file Form 8804 and the 1446 tax has not been paid or deemed paid by the date prescribed for payment of the tax, the failure to file penalty will begin to accrue and may only be stopped by the partnership filing such form or the statutory limit of the penalty being reached; payment of the 1446 tax (actual or deemed) after the date prescribed for payment of the tax, without actually filing Form 8804, will not stop the accrual of the penalty.

A similar analysis applies to the accrual of the failure to pay penalty under section 6651(a)(2). However, the failure to pay penalty cannot be imposed unless Form 8804 is filed and the accrual of the penalty can be stopped by paying the 1446 tax. Once Form 8804 is filed, the penalty accrues at a rate of 0.5 percent of the amount of the unpaid 1446 tax beginning on the

due date for payment of such tax (with regard to extensions), regardless of when the form was filed, and continues to accrue each month on the unpaid 1446 tax until the earlier of the date the 1446 tax is completely paid, deemed paid, or the maximum monthly accrual of 25 percent in the aggregate is reached. The time at which a partnership is deemed to have paid 1446 tax for purposes of sections 1446, 1461, 1463, 6601, 6651, and 6655 is discussed above.

7. Application of De-Minimis Rule of Section 6655(f)

The proposed regulations state that the principles of section 6655 shall apply to a partnership computing its 1446 tax. Section 6655(f) provides that a corporation is not required to pay estimated tax when the amount of such tax is less than $500. However, the proposed regulations under section 1446 do not address the application of the principles of section 6655(f) in the context of section 1446.

One commentator proposes that a partnership with more than 100 nonresident alien partners should not be required to pay 1446 tax (or any installment of such tax) on behalf of a nonresident alien partner if the estimated ECTI allocable to the nonresident alien partner does not exceed the annual personal exemption provided to such partner under section 151 of the Internal Revenue Code. The commentator states that the administrative costs associated with the payment of 1446 tax for such partners is burdensome when considered in light of the fact that these foreign partners are often entitled to refunds of such amounts. Further, the commentator suggests that these nonresident alien partners, who otherwise have no presence in the United States, often have difficulty in securing refunds and, as a result, are discouraged from seeking such refunds because of the small dollar amounts involved.

The final regulations describe the application of the principles of section 6655(f) for purposes of section 1446. The final regulations provide that a partnership shall apply the principles of section 6655(f) by taking into account all foreign partners. That is, the partnership must compare its total 1446 tax liability for all foreign partners to the $500 threshold in section 6655(f). However, Treasury and the IRS believe that the section 1446 regime should operate so that it does not discourage investment in the United States by imposing administrative costs on partnerships that are unrelated to insuring that the appropriate amount of tax is collected. Consequently, the temporary regulations contain an exception to this rule that applies in certain circumstances. See part G.9. of this preamble, below.

8. Application of Section 6655(i)

The proposed regulations under section 1446 state that the principles of section 6655 shall apply to a partnership required to pay 1446 tax. Section 6655(i)(2) provides that section 6655 shall apply to taxable years of less than 12 months in accordance with regulations prescribed by the Secretary. However, the proposed regulations under section 1446 do not address the application of the principles of section 6655(i)(2).

The final regulations provide that even if a partnership has a taxable year of less than 12 months, the partnership is required to pay 1446 tax (including installments of such tax) if the partnership has ECTI allocable to foreign partners. In such a case, the partnership shall adjust its installment payments of 1446 tax in a reasonable manner (*e.g.*, the annualized amounts of ECTI estimated to be allocable to a foreign partner, and the percentage of tax to be paid with each installment) to account for the short taxable year. However, if the partnership's taxable year is a period of less than four months, the partnership shall only be required to file Form 8804 in accordance with the regulations and report and pay the appropriate 1446 tax for the short taxable year.

D. Special Rule for Tiered Trust or Estate Structures—§ 1.1446–3(d)(2)(iii)

1. Background

The proposed regulations contain several rules applicable to domestic and foreign trusts and estates. First, the proposed regulations require that a domestic grantor trust provide a statement to the partnership that it is a grantor trust and also provide documentation (*e.g.*, Form W–8BEN, Form W–9) of the grantor or other owner of the trust. A foreign grantor trust must provide Form W–8IMY to the partnership along with documentation of the grantor or other owner of the trust. In both of these situations, the partnership computes its 1446 tax based on the status of the grantor or other owner, rather than the trust, to the extent of such grantor or other owner's interest. All other trusts are required to provide Form W–8BEN or Form W–9, as appropriate, to the partnership on their own behalf.

Second, the proposed regulations require a foreign non-grantor trust (including an estate) to allocate the 1446 tax paid by the partnership with respect to the trust or estate's allocable share of ECTI between the trust or estate and its beneficiaries. This allocation is based upon the taxpayer (trust/estate or beneficiary) that will ultimately report and pay tax on the ECTI allocable from the partnership. The rule is designed to match the tax credit under section 33 for the 1446 tax the partnership paid with the taxpayer that is ultimately responsible for bearing the income tax liability on the net income allocated from the partnership.

Third, the proposed regulations contain a rule to backstop the rule described in the previous paragraph. This so-called domestic trust rule provides that if a partnership knows or has reason to know that a foreign person that is the ultimate beneficial owner of the ECTI holds its interest in the partnership through a domestic non-grantor trust, or possibly other entities, and such trust was formed or availed of with a principal purpose of avoiding the 1446 tax, then such domestic trust will be treated as a foreign trust and the rule described in the previous paragraph with respect to the allocation of the credit for 1446 tax paid will apply. When applicable, this rule permits the IRS to impose the 1446 tax obligation on a partnership as if each domestic trust in the chain is a foreign trust. Several comments, discussed below, were received regarding the trust rules in the proposed regulations.

2. Documentation Requirement for Domestic Grantor Trusts

One commentator notes a difference in the documentation requirements for domestic grantor trusts under sections 1441 and 1446. The commentator states that under section 1441, a domestic grantor trust can provide Form W–9 to the withholding agent in its own right, but under section 1446, the domestic grantor trust must provide the partnership a statement that it is a grantor trust and include the documentation of the grantor or other owner (*e.g.*, Form W–8BEN). The commentator suggests that the final regulations eliminate this difference and allow a domestic grantor trust to provide Form W–9 in its own right for purposes of section 1446, just as the trust is entitled to do under section 1441.

The final regulations do not adopt this suggestion. Treasury and the IRS believe that it is appropriate for a partnership to compute its 1446 tax liability with respect to a grantor or other owner of a trust rather than the trust itself because it is the grantor or other owner that is

responsible for reporting the ECTI on its U.S. income tax return and paying tax with respect to the income. Further, unlike section 1441, the withholding obligation under section 1446 applies only to partnerships rather than to the last U.S. person in a chain leading to the foreign beneficial owner of income. As a result, if a partnership does not pay the 1446 tax there is no assurance that the foreign person will file an income tax return and pay the underlying tax liability.

3. Documentation Requirement for Foreign Simple Trusts

One commentator notes a difference in the documentation requirements for foreign simple trusts under sections 1441 and 1446. The commentator states that under section 1441, a payer of income is required to look through a foreign simple trust and consider the documentation of the beneficiary of such trust, but under section 1446, the foreign simple trust is permitted to provide a Form W–8 (*e.g.*, Form W–8BEN) on its own behalf to the partnership to establish its foreign status. The commentator suggests that the final regulations eliminate this difference and require a partnership to look through a foreign simple trust to the beneficiary of such trust; *i.e.*, require the beneficiary of such trust to provide a Form W–8 or Form W–9 to establish its non-foreign or foreign status for purposes of section 1446, just as the beneficiary is required to do under section 1441.

The final regulations do not adopt this comment. Unlike most situations under section 1441 where the withholding tax arises by reason of a payment of income, the income subject to withholding under section 1446 is generally based upon an amount that may or may not be distributed. As a result, partnership income that is allocable to a foreign simple trust may not enter into a simple trust's computation of income it is required to distribute. The final regulations provide an example of this circumstance where a foreign simple trust does not act as a mere conduit between the partnership and the beneficiary with respect to the trust's allocable share of partnership ECTI. Consequently, Treasury and the IRS believe that it is appropriate for a partnership to compute its 1446 tax liability with respect to a foreign simple trust rather than the trust's beneficiary, and place the obligation on the trust to allocate the tax credit for 1446 tax paid on the trust's share of partnership ECTI between the trust and its beneficiary.

4. Domestic Trust Rule

One commentator requests several modifications to the so-called domestic trust rule. The commentator suggests that the final regulations limit the application of the ''reason to know'' standard in the rule to situations where the partnership and the partner are related under section 707(b) or where the IRS has formally notified the partnership in writing that the claim of a named partner to be a domestic person exempt from section 1446 withholding is unreliable and must be disregarded. The commentator also suggests that the final regulations specifically provide that the rule does not apply to publicly traded partnerships, nominees, or paying agents that are financial institutions that are otherwise unrelated to the partnership.

Treasury and the IRS believe that the domestic trust rule serves as an important backstop to the foreign trust rules in the regulation and should not be as narrowly limited as the commentator suggests. As a result, the final regulations do not limit the ''reason to know'' standard to situations where a minimum threshold of ownership can be shown. However, the final regulations provide that a publicly traded partnership within the meaning of § 1.1446–4 (or a nominee required to pay 1446 tax under § 1.1446–4) will not be considered to know or have reason to know that a domestic trust is formed or availed of to avoid the 1446 tax, provided the interest held in such entity by the domestic trust is publicly traded.

Finally, the commentator suggests that the final regulations clarify the term *other entities* found in the domestic trust rule. In response to this comment, the final regulations have removed the reference to *other entities* to avoid confusion.

E. Publicly Traded Partnerships—§ 1.1446–4

1. Background

The proposed regulations contain special rules for publicly traded partnerships to pay withholding tax under section 1446. The rules generally require a publicly traded partnership to pay 1446 tax on distributions of effectively connected income (ECI) to its foreign partners, rather than based upon a foreign partner's allocable share of partnership ECTI. The rules also permit the withholding obligation to be assumed by a domestic nominee holding an interest in the partnership on behalf of one or more foreign partners. The procedural aspects for having the nominee assume this liability were the subject of several comments.

2. Receipt of a Qualified Notice and Assumption of the 1446 Tax Liability by a Nominee Holding an Interest in a Publicly Traded Partnership

Under § 1.1446–4(b)(4) of the proposed regulations, a nominee assumes the 1446 tax obligation for a foreign partner on whose behalf it holds an interest in the partnership if the nominee receives a qualified notice from a publicly traded partnership regarding a distribution that is attributable to effectively connected income, gain or loss of the partnership, and that is provided in accordance with the notice requirements with respect to dividends described in 17 CFR 240.10b–17(b)(1) or (3) issued pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a). The proposed regulations provide that a nominee shall be treated as a withholding agent only to the extent of the amount specified in the qualified notice. Further, the proposed regulations require a nominee to provide Form W–9, ''Request for Taxpayer Identification Number and Certification,'' to the partnership, along with a statement containing certain information regarding the foreign persons on whose behalf the nominee holds the interest. The proposed regulations provide that if a nominee furnishes Form W–9 and the statement to the partnership, but a qualified notice is not received by the nominee from the partnership, the nominee shall not be a withholding agent subject to the rules of section 1446. Further, in such case the partnership shall presume that such nominee is a nonresident alien or foreign corporation, whichever classification results in a higher 1446 tax being due, and pay 1446 tax consistent with such presumption.

One commentator states that a literal reading of proposed regulation § 1.1446–4 requires that a publicly traded partnership provide notice directly to a nominee before the notice is considered a qualified notice under the regulations. The commentator states that if this interpretation of the regulations was intended, then the qualified notice requirement conflicts with standard practice under which a nominee would not receive the qualified notice directly from the partnership when the notice requirements of 17 CFR 240.10b–17(b)(1) or (3) are followed. Instead, under § 1.1445–8 and standard practice, notice is deemed to have been received by the nominee when notice is given to the National Association of Securities Dealers (NASD) or the Securities Exchange on which the publicly traded partnership is registered, and such notice is published

following certain procedures. Accordingly, the commentator requests clarification as to whether a publicly traded partnership must directly notify a nominee to provide a qualified notice under the regulations, or whether the partnership can follow the general notice procedures of 17 CFR 240.10b–17(b)(1) or (3).

In response, the final regulations clarify when a qualified notice is received by a nominee. The final regulations do not require a publicly traded partnership to directly notify a nominee to provide a qualified notice under § 1.1446–4. Rather, the regulations provide, consistent with § 1.1445–8 and standard practice, that a publicly traded partnership can provide the qualified notice in accordance with the notice requirements with respect to dividends described in 17 CFR 240.10b–17(1) or (3) issued pursuant to the Securities Exchange Act of 1934, 15 U.S.C. § 78a et. seq., and such notice will be sufficient notice to all nominees to designate them as withholding agents under § 1.1446–4 when such notice is published in accordance with 17. CFR 240.10b–17(b)(1) or (3).

3. Identification of Nominees Under § 1.1446–4

Under § 1.1446–4(d) and (e) of the proposed regulations, a nominee is required to provide Form W–9 to the partnership to establish its status as a nominee and include a statement regarding the foreign persons on whose behalf it holds an interest in the partnership. In response to comments, the final regulations remove this requirement. Publicly traded partnerships are provided information concerning nominees in preparation of completing the Schedule K–1s issued for a taxable year. See § 1.6031(c)–1T. Further, publicly traded partnerships are able to determine the nominees holding interests in the partnership by other means. Accordingly, Treasury and the IRS have determined that the notification requirement is not necessary to further the purposes of the statute and shift the withholding responsibility to a nominee.

4. Extension of Publicly Traded Partnership Regime to Other Partnerships

The proposed regulations requested comments as to whether the special rules applicable to publicly traded partnerships should be extended to other partnerships. No comments were received in response to the request. Accordingly, no change has been made in the final regulations to extend these rules.

5. Election to Pay 1446 Tax Based Upon Partners' Allocable Share of ECTI

The proposed regulations provide that a publicly traded partnership may elect to pay 1446 tax based upon its foreign partners' allocable share of ECTI, rather than based upon distributions. In response to comments, Treasury and the IRS agree that this election provision is not administrable as a practical matter. Accordingly, the final regulations remove this election so that all publicly traded partnerships will pay tax based upon distributions of effectively connected income under § 1.1446–4 of the regulations.

In addition to the change discussed above, the final regulations update the ordering rule with respect to distributions by removing two provisions that are no longer relevant.

F. Tiered Partnership Structures—§ 1.1446–5

1. Application of the Look Through Rules

Under the proposed regulations, a lower-tier partnership (LTP) that has received documentation and information from a partner that is a foreign partnership (UTP) may look through the UTP to the partners of the UTP when computing its 1446 tax obligation. The touchstone of proposed regulation § 1.1446–5 is that the LTP must be able to reliably associate (within the meaning of § 1.1441–1(b)(2)(vii)) the UTP's allocable share of ECTI from the LTP with the partners of the UTP. Several commentators request clarification as to whether an LTP can look through a UTP if the LTP cannot reliably associate 100 percent of the UTP's allocable share with the partners of the UTP.

In response to this comment, the final regulations modify the language found in proposed regulation § 1.1446–5(c)(2) to clarify that the look through regime is not an all or nothing proposition. Rather, to the extent that an LTP can reliably associate a portion of a UTP's allocable share of ECTI with a partner of the UTP, the LTP will look through when computing its 1446 tax (or an installment of such tax). This result is consistent with the regime under section 1441. See § 1.1441–1(b)(2)(vii)(B)(*2*), *Example 3* and *Example 4*.

2. Upper-Tier Domestic Partnership Permitted To Elect To Have Look Through by LTP

The proposed regulations requested comments on whether the final regulations should permit a domestic UTP to elect to have an LTP look through the UTP in accordance with the rules of § 1.1446–5. Several commentators note that this alternative would be desirable and should be permitted in the final regulations. In addition, one commentator requests that, for administrative reasons, an LTP should be required to consent to the election and agree to undertake the look through.

In response to the above comments, the final regulations permit a domestic UTP to elect to have the look through rules of § 1.1446–5 apply. Further, the final regulations require that the LTP consent in writing to the election and thereby agree to apply the rules. The UTP must provide a Form W–9 to the LTP to establish its non-foreign status. In addition, the UTP must attach to the Form W–9 its election to have the look through provisions apply. UTP's election must be in writing to the LTP and received by the LTP at least 15 days prior to any installment due date or Form 8804 filing due date for which it will be considered. The LTP must also consent to undertake the look through in writing. To make an election to which the LTP can consent, the domestic UTP must provide information, consistent with § 1.1446–5, to the LTP to enable such partnership to reliably associate (within the meaning of § 1.1441–1(b)(2)(vii)) at least a portion of the UTP's allocable share with a foreign partner of the UTP. If the LTP does not consent to the election then the LTP is to treat the domestic UTP as a U.S. person for purposes of section 1446. Whether the UTP is a domestic or foreign partnership, and regardless of whether the LTP looks through the UTP in computing its withholding tax, the UTP is still obligated to report and pay tax under section 1446.

3. Clarify the Application of the Look Through Rules to Publicly Traded Partnerships in Tiered Structures

Section 1.1446–5 of the proposed regulations sets forth the look-through regime applicable to UTPs. The last sentence of proposed regulation § 1.1446–5(c)(2) states ''[t]he approach set forth in this paragraph (c) shall not apply to partnerships whose interests are publicly traded, See § 1.1446–4.'' However, since the focus of § 1.1446–5(c)(2) is on the UTP, one commentator requests clarification as to whether the look-through regime can apply if the LTP is publicly traded but the UTP is not publicly traded.

In response to the request, the final regulations provide two new paragraphs to describe the application of the look through rules to publicly traded partnerships in tiered structures. The

rules are based upon whether the publicly traded partnership is an LTP or UTP. Under the final regulations, the look through rules of § 1.1446–5 apply to a publicly traded partnership (or its nominees required to pay 1446 tax) that is an LTP if all the requirements of § 1.1446–5 are met. However, the final regulations also provide that the look through regime of § 1.1446–5 will not apply to look through a publicly traded partnership where such partnership is a UTP.

G. § 1.1446–6T and Withholding in Excess of a Partner's Actual Tax Liability

1. Background Regarding Withholding in Excess of a Foreign Partner's Tax Liability

The preamble to the proposed regulations notes that a partnership may be required to pay 1446 tax in excess of a foreign partner's actual tax liability because section 1446 does not take into account a foreign partner's deductions and losses from outside the partnership during the year, or a foreign partner's loss carryovers and, as discussed above, section 1446 requires withholding at the highest statutory rates generally applicable to a foreign partner with effectively connected income. The preamble requested comments on approaches to adjust the amount of a partnership's 1446 tax obligation that would be consistent with the statute and legislative history and administrable by partnerships, partners, and the IRS. One such approach was discussed in part C.1. of this preamble, above.

2. Overview of Comments Received

Treasury and the IRS received numerous comments requesting that a partnership be permitted to take into account a foreign partner's available deductions and losses that are connected with gross income that is effectively connected (effectively connected deductions and losses) when computing the partnership's 1446 tax liability. Most commentators propose that a partnership be permitted to rely on a certificate by a foreign partner regarding the partner's available effectively connected deductions and losses for the taxable year. However, each commentator proposes qualifications and limitations on a foreign partner's ability to certify such deductions and losses. The proposals are discussed below.

Several commentators propose that a foreign partner with a substantial presence in the United States be permitted to certify deductions and losses to the partnership. The commentators differ on what constitutes substantial presence in the United States. For example, one commentator suggests that only foreign partners with a 10 percent or greater interest in the capital or profits of the partnership be permitted to certify deductions and losses. Another commentator suggests that the final regulations permit a foreign partner to certify deductions and losses to the partnership only if the partner has substantial assets in the United States, defined as a multiple of the 1446 tax that the partnership otherwise would be required to pay. A third commentator proposes an exemption from paying 1446 tax where ECTI is allocable to a publicly traded foreign corporation, a foreign corporation owned by a publicly traded corporation, or any other foreign partners with substantial assets, employees, or business activities in the United States to the extent such entity informs the partnership that overwithholding will occur. Finally, one commentator proposes that a U.S. branch of a foreign bank or insurance company be entitled to certify deductions and losses to the partnership, post a security, or otherwise reduce withholding because such banks and insurance companies typically have substantial investments in the United States.

Most of the proposals also suggest some additional measure designed to provide security to the government that the appropriate partner-level U.S. income tax due will be paid. One commentator's proposal conditions a foreign partner's certificate of deductions and losses on the tax book value of the partnership's assets being at least equal to the decrease in 1446 tax that results from considering all foreign partners' certified deductions and losses. This same commentator also suggests that a partnership remain liable for the 1446 tax if it is later determined that a foreign partner's deductions and losses were overstated. A second commentator proposes that at least a portion of a foreign partner's certified deductions and losses should have to be reviewed and approved by a certified tax professional, and considered by a partnership only if at least one U.S. person is involved in the partnership's activities (*e.g.*, the Tax Matters Partner under section 6231).

With respect to which deductions and losses may be certified, most of the commentators propose that the final regulations permit a foreign partner to certify deductions and losses from preceding years, as reflected on a partner's prior U.S. income tax return. One commentator proposes that a partnership should be able to consider anticipated current year deductions and losses of a foreign partner, such as state and local taxes the partnership will pay on behalf of a foreign partner. Another commentator suggests that the prior year safe harbor in the proposed regulations should be broadened to permit a partnership to consider a foreign partner's actual partner-level deductions and tax liability for the prior year when the partner's only U.S. business activity is the partner's investment in the partnership. Further, one commentator proposes a tiered system where deductions related to the partnership could be certified to the partnership without IRS involvement, but deductions that arise from activities that are unrelated to the partnership would be subject to a more stringent procedure.

With respect to other requirements, most of the commentators premise their proposals on a foreign partner having filed tax returns in previous years. There was no consensus regarding the appropriate filing history that should be required of a foreign partner. However, one commentator proposes a special category, so-called ''good driver'' partners; that is, foreign partners that have established that they have timely filed Federal income tax returns in the United States for the preceding three taxable years, who would be permitted to certify deductions and losses to the partnership without IRS involvement.

Several commentators propose that partner certificates under section 1446 should be processed similar to the regime in Rev. Proc. 2000–35 (2000–2 C.B. 211) (which permits taxpayers to receive a certificate from the IRS to reduce or eliminate withholding under section 1445). Other commentators suggest that Rev. Proc. 2000–35 should be modified to accommodate a new section 1446 certificate regime.

In response to the comments received, Treasury and the IRS are issuing temporary and proposed regulations on this matter with the final regulations. The temporary and proposed regulations address many of the concerns regarding the potential for section 1446 to require a partnership to pay 1446 tax in excess of a foreign partner's actual tax liability. The effective date of the temporary regulations coincides with the effective date of the final regulations issued in this publication. The temporary regulations contain rules that permit a partnership, in some circumstances, to consider a foreign partner's deductions and losses that are reasonably expected to be available to reduce the partner's U.S. income tax liability on the partner's allocable share of effectively connected

income or gain from the partnership in the taxable year. The temporary regulations contain elements of several of the suggested approaches. Treasury and the IRS believe that the regulations set forth a procedure that will be administrable by partnerships, partners, and the IRS. The provisions of the temporary regulations are outlined below.

3. General Overview of Temporary Regulations

In general, under the temporary regulations, certain foreign partners may certify deductions and losses to a partnership to reduce the 1446 tax required to be paid by the partnership with respect to ECTI allocable to such partners. A foreign partner's certificate may only be considered for the partnership taxable year for which it is submitted. Therefore, a foreign partner that wants to certify its deductions and losses in consecutive years must submit a new certificate each partnership taxable year in accordance with the time requirements in the regulations (discussed in part G.7. of this preamble) for the certification provisions to apply. Before each installment date or Form 8804 filing date (without regard to extensions), the partnership will determine, on a partner-by-partner basis, whether the procedures of the temporary regulations may apply. A partnership receiving a valid certificate under the temporary regulations is not obligated to consider a partner's certified available deductions and losses (or may consider only a portion of such deductions and losses) in computing its withholding tax liability. Further, in some cases, the temporary regulations may prohibit a partnership from considering all of a partner's certified losses. For example, the temporary regulations provide that a partnership may only consider a foreign partner's certified net operating loss (NOL) to offset 90 percent of the partner's allocable share of ECTI.

Under the temporary regulations, a partnership permitted to consider a foreign partner's certificate is generally not relieved from liability for the 1446 tax under section 1461, or for penalties or interest, if the partnership or the IRS, in its sole discretion, determines that the partner's certificate is defective, or the partner's certificate is updated and the 1446 tax due with respect to such partner increases. However, a partnership that reasonably relies on a foreign partner's certificate will not be subject to the addition to the tax under section 6655 (as applied through § 1.1446–3) for failing to make installment payments with respect to the foreign partner during any period that the partnership reasonably relied on the partner's certificate. A partnership that does not have actual knowledge or reason to know that a foreign partner's certificate is defective may reasonably rely on such certificate. A partnership is not considered to have actual knowledge or reason to know that a foreign partner's certificate (first certificate) is defective if the partner submits an updated certificate that indicates that the reasonably expected deductions and losses are less than the amount set forth on the first certificate, provided such updated certificate cannot be considered for the installment period or unextended Form 8804 filing date because such updated certificate was received less than 10 days before such date. The temporary regulations set forth those circumstances under which a certificate will be considered defective, including, but not limited to, where the foreign partner is not eligible to submit the certificate, or the partnership or the IRS determines that the partner's actual available deductions and losses are less than the deductions and losses last certified to the partnership for the partnership taxable year.

The regulations also contain rules and examples regarding the extent of the partnership's 1446 tax liability when a certificate is determined to be defective. The regulations provide that if a certificate is determined to be defective for a reason other than the amount or character of the deductions and losses set forth on such certificate (*e.g.*, partner failed to timely file a U.S. income tax return), then the partnership shall be liable for the full 1446 tax (or any installment of such tax) due with respect to such partner, without regard to the certificate. However, this liability may be eliminated if the partnership can demonstrate that it is deemed to have paid 1446 tax with respect to the partner under the regulations. See part C.6. of this preamble. If it is determined that a certificate is defective because the actual deductions and losses available to the foreign partner are less than the amount certified to the partnership (other than when it is determined that the partner certified the same deduction or loss to more than one partnership), or that the character of the certified deductions and losses is erroneous, then the partnership shall be liable for 1446 tax (or any installment of such tax) with respect to such partner only to the extent the partnership considered the certified deductions and losses in an amount greater than the amount determined to be actually available to the partner and permitted to be used under § 1.1446–1 through § 1.1446–6T or to the extent the erroneous characterization of the certified deductions and losses affects the calculation of the partnership's 1446 tax liability.

If the IRS notifies the partnership that a foreign partner's certificate is defective, even if such notice pertains to a certificate submitted for a prior partnership taxable year, the partnership will not be permitted to rely on any current certificate from the foreign partner then in its possession, or any certificate the foreign partner submits thereafter, until the IRS again notifies the partnership in writing and revokes or modifies the original notice.

The procedures available under the temporary regulations are only available to a foreign partner that has provided adequate documentation to a partnership under § 1.1446–1. Further, the procedures do not apply to a publicly traded partnership subject to § 1.1446–4.

4. Partners Permitted To Certify Deductions and Losses Under Temporary Regulations

Under the temporary regulations, only certain foreign partners may submit a certificate to a partnership for purposes of section 1446. In general, a foreign partner may submit a certificate only if the partner has submitted documentation to the partnership in compliance with § 1.1446–1 and, among other requirements, can represent that it timely filed, or will timely file, a U.S. Federal income tax return for each of the preceding four taxable years and the partner's taxable year during which the certificate is considered. The partner must also represent that it timely paid all tax shown on such returns (or will timely pay all tax shown on such returns). The filing and payment requirements ensure that the foreign partner is in the United States income tax system, has filed returns for a reasonable period of time, and provide some assurance that the partner will file its U.S. income tax return (and pay all tax shown on such return) for the year the certificate is considered. Although the temporary regulations are generally effective for partnership taxable years beginning after the date that the regulations are issued, a foreign partner's prior filing of U.S. Federal income tax returns may contribute to meet the filing requirement set forth in the temporary regulations.

Because trusts and estates are not always pure conduits for tax purposes it is difficult for a partnership to determine the taxpayer (*i.e.*, trust/estate

or beneficiary) that will pay tax on the ECTI allocated to the trust or estate. As a result, the temporary regulations generally do not permit foreign trusts or estates to submit a certificate to the partnership. However, the regulations provide an exception for a grantor trust under sections 671 through 679 of the Code where the grantor or other owner of such trust meets the documentation requirements set forth in § 1.1446–1 and the requirements for submitting a certificate under the temporary regulations.

With respect to tiered partnership structures, the temporary regulations permit a lower-tier partnership to consider the certificate of a foreign partner of an upper-tier partnership only when the look through provisions of the regulations (section 1.1446–5) otherwise apply and the lower-tier partnership is treating the foreign partner of the upper-tier partnership as if the partner were a direct partner in the lower-tier partnership for purposes of computing its section 1446 tax obligation. See § 1.1446–5(c)(2). In that situation, the foreign partner's certificate would first be provided to the upper-tier partnership and then provided by the upper-tier partnership to the lower-tier partnership.

5. Deductions and Losses Permitted To Be Certified Under Temporary Regulations

If a foreign partner meets the requirements of the temporary regulations, the foreign partner may submit a certificate to the partnership for the partnership taxable year that sets forth the deductions and losses (other than charitable deductions) the partner reasonably expects to be available to reduce the partner's U.S. income tax liability on the partner's allocable share of effectively connected income or gain from the partnership for such partnership taxable year. Except as otherwise provided in the regulations, all deductions and losses set forth in the certificate must generally be reflected on the partner's timely filed (or to be timely filed) U.S. income tax return for the partner's immediately preceding taxable year. That is, a foreign partner can only certify deductions and losses that are or will be reflected on the partner's U.S. income tax return filed for a taxable year ending prior to the installment due date or Form 8804 filing date (without regard to extensions) for the partnership taxable year for which the certificate is considered (and no anticipated deduction or loss with respect to current operations may be considered). However, a partner that has a loss that is set forth on a Schedule K–1 issued by the partnership for a prior year, but is not reflected on a prior year return because the loss was suspended under section 704(d) and, therefore, not deductible, may certify such loss to the partnership that issued the Schedule K–1.

Treasury and the IRS believe that limiting a partnership's consideration of deductions and losses to those reflected or to be reflected on a prior year return of the partner provides a bright line rule that facilitates administration, furthers the purposes of the statute, and avoids the uncertainty associated with fluctuations in estimates of current year activities. The approach is consistent with section 1445, another chapter 3 withholding regime. See Rev. Proc. 2000–35, 2000–2 C.B. 211, § 4.06. The temporary regulations contain additional limitations on the deductions and losses that may be certified.

6. Requirement Under Temporary Regulations That Partnerships Turn Over Certificates to IRS

A partnership that considers a foreign partner's certificate to any extent when computing its 1446 tax (or any installment of such tax) must file Form 8813, ''Partnership Withholding Tax Payment Voucher (Section 1446),'' or Forms 8804 and 8805, whichever is applicable, for the period the partnership considers such certificate, even if there is no 1446 tax due with respect to such partner. The partnership must attach such partner's certificate to Form 8813 or Form 8805 filed for the period. The partnership must also attach its 1446 tax calculation for such foreign partner and such calculation must clearly demonstrate the use of the certified deductions and losses, and the effect on the 1446 tax owed (or installment of such tax) with respect to such partner. A Form 8805 must be issued to each foreign partner whose certificate is considered by the partnership in computing the partnership's 1446 tax on Form 8804, regardless of whether the partnership must pay any 1446 tax.

7. Timing Requirements for Submitting Certificates, Updated Certificates, and Status Updates Under Temporary Regulations

A foreign partner that desires to certify deductions and losses to a partnership under the temporary regulations must submit its first certificate for the partnership taxable year so that it is received by the partnership at least 30 days prior to the partnership installment due date or the Form 8804 filing date (without regard to extensions) for the partnership taxable year for which the partner would like the certificate to be considered in the partnership's computation of the 1446 tax (or any installment of such tax) due with respect to the partner. A partner that has not yet filed a U.S. income tax return required to be timely filed under the regulations may generally represent that such return will be timely filed. However, the certificate submitted to the partnership must specify any taxable year for which no return has been filed and the partner must update the certificate no later than 10 days after the date that it files a U.S. Federal income tax return for any year specified. If the partner has not filed a prior year return when submitting its first certificate, and does not file such return and trigger the requirement to provide an updated certificate, then the foreign partner must provide a status update to the partnership so that it is received by such partnership at least ten days prior to the partnership's final installment payment date, setting forth such information regarding the filing due date of any U.S. income tax returns that have not been filed. If no status update is received, the partnership must disregard the certificate the partner submitted for the fourth installment due date and when completing its Form 8804 for the taxable year. In that case, provided the other requirements of the regulations were met, the partnership will still be considered to have reasonably relied on the certificate for the first three installment periods of the taxable year.

A foreign partner that submits a certificate and later determines that the deductions and losses reasonably expected to be available are less than the corresponding amounts previously certified for the taxable year, or otherwise determines that the certificate is incorrect (*e.g.*, a certified ordinary loss is actually capital in character), is required to provide an updated certificate to the partnership within 10 days of the date that the foreign partner makes such determination. A partner submitting an updated certificate must attach a copy of the certificate that is being updated (superseded certificate).

Consistent with the voluntary nature of the temporary regulations, a partnership may consider an updated certificate in its computation of 1446 tax (or any installment of such tax) due with respect to a foreign partner for any period for which tax is otherwise due if the partnership receives the updated certificate at least 10 days prior to the installment payment or Form 8804 filing date (without regard to extensions) for the partnership taxable year for which the certificate and updated certificate are submitted. An updated certificate

that may be considered under the previous sentence supersedes all prior certificates submitted by the foreign partner for the same partnership taxable year, beginning with the installment period or Form 8804 filing date (without regard to extensions) for which the partnership may consider the updated certificate.

8. Additional Requirements for Certificates Under Temporary Regulations

The temporary regulations require a foreign partner that submits a certificate to a partnership to provide certain information and make representations on the certificate provided. For example, a foreign partner must provide the partnership a certificate that includes the partnership's name, address, and Taxpayer Identification Number (TIN), the partner's name, address, and TIN, and the partnership taxable year for which the certificate is submitted. Further, a foreign partner must represent that any certified deductions and losses set forth on the certificate have been reflected on a timely filed U.S. income tax return, consistent with sections 874 and 882 and the regulations thereunder, and that the certified deductions and losses have not been certified to another partnership for the purpose of reducing the 1446 tax of such other partnership for the same taxable year. Moreover, a foreign partner must set forth the character of any certified deductions and losses (*e.g.*, long-term capital or ordinary) and identify any particular deductions and losses that have special characteristics (*e.g.*, passive activity losses under section 469, suspended losses under section 704(d)) or that are subject to limitations that need to be considered by the partnership. Finally, a foreign partner must represent that the certified deductions and losses have not been disallowed by the IRS as part of a proposed adjustment described in § 601.103(b) (relating to examination and determination of tax liability) or § 601.105(b) (relating to examination of returns). A foreign partner's certificate, and any updated certificate, must be signed by the foreign partner, or its authorized representative, under penalties of perjury.

9. Exemption From Withholding Under the Temporary Regulations

In addition to the provisions discussed above, the temporary regulations permit a nonresident alien partner to certify to the partnership that the partnership investment is (and will be) the only activity of the partner for the partner's taxable year that gives rise to effectively connected income, gain, deduction, or loss. In such a case, the partnership is not required to pay 1446 tax (or any installment of such tax) with respect to such partner if the partnership estimates that the annualized (or, in the case of a partnership completing its Form 8804, the actual) 1446 tax due with respect to such nonresident alien partner is less than $1,000. In determining whether the annualized (or actual) 1446 tax due with respect to the partner is less than $1,000, the partnership shall not take into account any of the partner's certified deductions or losses under the provisions of the temporary regulations. The submission of a certificate under this exception is subject to all the general rules in the temporary regulations (*e.g.*, partner has (or will) timely file its U.S. income tax return for the preceding four years (and pay all tax shown on such returns), the timing rules for submission of the certificate are met) with respect to submitting a certificate. Further, a nonresident alien partner that submits such a certificate to the partnership must submit a statement in writing to the partnership revoking the certificate if the partner invests or otherwise engages in another activity during the partner's taxable year that may give rise to effectively connected items. A partnership receiving a statement that the partner's investment in the partnership is (and will be) the partner's only activity giving rise to effectively connected items may reasonably rely on such certificate provided it has no actual knowledge or reason to know that the certificate is defective. Further, the partnership remains liable for the 1446 tax, and all additions to the tax (other than the addition to the tax under section 6655 as applied through § 1.1446–3 for such periods during which the partnership reasonably relied on the certificate), interest, and penalties if the IRS, in its sole discretion, determines that such partner's certificate is defective.

10. Effective Date of Temporary Regulations

The temporary regulations are effective for partnership taxable years beginning after the date the final regulations are published in the **Federal Register**. However, Treasury and the IRS believe that the temporary regulations should be immediately available for qualifying partners. Therefore, a partnership may elect to apply the temporary regulations to partnership taxable years beginning after December 31, 2004, provided such partnership also elects to apply the final regulations under §§ 1.1446–1 through 1.1446–5, which otherwise would be effective for taxable years beginning after May 18, 2005, to partnership taxable years beginning after December 31, 2004.

Effective Dates

These regulations are effective for partnership taxable years beginning after May 18, 2005. However, a partnership may elect to apply the provisions of the final regulations to partnership taxable years beginning after December 31, 2004. A partnership may also elect to apply the temporary regulations included in this document to partnership taxable years beginning after December 31, 2004, provided that the partnership also elects to apply the final regulations to partnership taxable years beginning after December 31, 2004.

Effect on Other Documents

The following publications will be obsolete for partnership taxable years beginning after May 18, 2005, or for partnership taxable years beginning after December 31, 2004, if the partnership makes an election under § 1.1446–7:

Rev. Proc. 89–31 (1989–1 C.B. 895)
Rev. Proc. 92–66 (1992–2 C.B. 428)

Special Analyses

It has been determined that the final and temporary regulations are not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations. With respect to the final regulations it is hereby certified that the collections of information contained in § 1.871–10, § 1.1446–1 (pertaining to domestic grantor trusts), and § 1.1446–3 (pertaining to foreign trusts), will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that only limited small entities are impacted by these collections and the burden associated with such collections is 0.5 hours. With respect to the collections of information in §§ 1.1446–3 (pertaining to a partnership required to notify its foreign partners of an installment payment of 1446 tax paid on behalf of such partner) and 1.1446–4, it is hereby certified that these sections will not impose a significant economic impact on a substantial number of small entities. This certification is based upon the fact that while approximately 15,000 small entities will be impacted by these sections, the estimated annual burden associated with these sections is only 0.5 hours per respondent. Moreover, the information collection in § 1.1446–4 is

voluntary. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. For applicability of the RFA to the temporary regulation, please refer to the cross-referenced NPRM published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, the Notice of Proposed Rulemaking preceding the final regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. Further, pursuant to section 7805(f) of the Code, the temporary regulation included in this document has been 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 the final and temporary regulations is David J. Sotos, formerly of the Office of the Associate Chief Counsel (International). However, other personnel from the Treasury Department and IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.1446–3 also issued under 26 U.S.C. 1446(f).

Section 1.1446–4 also issued under 26 U.S.C. 1446(f).* * *

■ **Par. 2.** In § 1.871–10, paragraph (d)(3) is amended by adding four sentences at the end of the paragraph, and paragraph (e) is amended by revising the first sentence to read as follows:

§ 1.871–10 Election to treat real property income as effectively connected with U.S. business.

* * * * *

(d) * * *

(3) *Election by partnership.* * * * A nonresident alien or foreign corporation that makes an election generally must provide the partnership a Form W–8ECI, ''Certificate of Foreign Person's Claim for Exemption from Withholding on Income Effectively Connected with the Conduct of a Trade or Business in the United States,'' and attach to such form a copy of the election (or a statement that indicates that the nonresident alien or foreign corporation will make the election). However, if the nonresident alien or foreign corporation has already submitted a valid form to the partnership that establishes such partner's foreign status, the partner shall furnish the partnership a copy of the election (or a statement that indicates that the nonresident alien or foreign corporation will make the election). To the extent the partnership has income to which the election pertains, the partnership shall treat such income as effectively connected income subject to withholding under section 1446. See also § 1.1446–2.

(e) *Effective dates.* This section shall apply for taxable years beginning after December 31, 1966, except the last four sentences of paragraph (d)(3) of this section shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 apply by reason of an election under § 1.1446–7. * * *

■ **Par. 3.** Section 1.1443–1 is amended by revising paragraphs (a) and (c)(1) to read as follows:

§ 1.1443–1 Foreign tax-exempt organizations.

(a) *Income includible in computing unrelated business taxable income.* In the case of a foreign organization that is described in section 501(c), amounts paid or effectively connected taxable income allocable to the organization that are includible under section 512 and section 513 in computing the organization's unrelated business taxable income are subject to withholding under §§ 1.1441–1, 1.1441–4, 1.1441–6, and 1.1446–1 through 1.1446–6T, in the same manner as payments or allocations of effectively connected taxable income of the same amounts made to any foreign person that is not a tax-exempt organization. Therefore, a foreign organization receiving amounts includible under section 512 and section 513 in computing the organization's unrelated business taxable income may claim an exemption from withholding or a reduced rate of withholding with respect to that income in the same manner as a foreign person that is not a tax-exempt organization. See § 1.1441–9(b)(3) for a presumption that amounts are includible under section 512 and section 513 in computing the organization's unrelated business taxable income in the absence of reliable certification. See also § 1.1446–3(c)(3), applying this presumption in the context of section 1446.

* * * * *

(c) * * * (1) *In general.* This section applies to payments made after December 31, 2000, except that the references in paragraph (a) of this section to effectively connected taxable income and withholding under section 1446 shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 apply by reason of an election under § 1.1446–7.

* * * * *

■ **Par. 4.** Sections 1.1446–0 through 1.1446.5, 1.1446–6T and 1.1446–7 are added to read as follows.

§ 1.1446–0 Table of contents.

This section lists the captions contained in §§ 1.1446–1 through 1.1446–7.

§ 1.1446–1 Withholding tax on foreign partners' share of effectively connected taxable income.

(a) In general.
(b) Steps in determining 1446 tax obligation.
(c) Determining whether a partnership has a foreign partner.
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(D) Disregarded entities.
(E) Domestic and foreign grantor trusts.
(F) Nominees.
(G) Foreign governments, foreign tax-exempt organizations and other foreign persons.
(H) Foreign corporations, certain foreign trusts, and foreign estates.
(iii) Effect of Forms W–8BEN, W–8IMY, W–8ECI, W–8EXP, W–9, and statement.
(A) Partnership reliance on withholding certificate.
(B) Reason to know.
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(iv) Requirements for certificates to be valid.
(A) When period of validity expires.
(B) Required information for Forms W–8BEN, W–8IMY, W–8ECI, and W–8EXP.

(v) Partner must provide new withholding certificate when there is a change in circumstances.
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§ 1.1446–2 Determining a partnership's effectively connected taxable income allocable to foreign partners under section 704.

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§ 1.1446–7 Effective dates.

§ 1.1446–1 Withholding tax on foreign partners' share of effectively connected taxable income.

(a) *In general.* If a domestic or foreign partnership has effectively connected taxable income (ECTI) as computed under § 1.1446–2 for any partnership tax year, and any portion of such taxable income is allocable under section 704 to a foreign partner, then the partnership must pay a withholding tax under section 1446 (1446 tax) at the time and in the manner prescribed in this section, and §§ 1.1446–2 through 1.1446–6T.

(b) *Steps in determining 1446 tax obligation.* In general, a partnership determines its 1446 tax as follows. The partnership determines whether it has any foreign partners in accordance with paragraph (c) of this section. If the partnership does not have any foreign partners (including any person presumed to be foreign under paragraph (c) of this section and any domestic trust treated as foreign under § 1.1446–3(d)) during its taxable year, it generally will not have a 1446 tax obligation. If the partnership has one or more foreign partners, it then determines under § 1.1446–2 whether it has ECTI any portion of which is allocable under section 704 to one or more of the foreign partners. If the partnership has ECTI allocable under section 704 to one or more of its foreign partners, the partnership computes its 1446 tax, pays over 1446 tax, and reports the amount paid in accordance with the rules in § 1.1446–3. For special rules applicable to publicly traded partnerships, see § 1.1446–4. For special rules applicable to tiered partnership structures, see § 1.1446–5. For special rules that may apply in determining the amount of 1446 tax due with respect to a partner, see § 1.1446–6T.

(c) *Determining whether a partnership has a foreign partner*—(1) *In general.* Except as otherwise provided in this section, § 1.1446–3, and § 1.1446–5, only a partnership that has at least one foreign partner during the partnership's taxable year can have a 1446 tax liability. Generally, the term foreign partner means any partner of the partnership that is not a U.S. person within the meaning of section 7701(a)(30). Thus, a partner of the partnership is generally a foreign partner if the partner is a nonresident alien, foreign partnership (see § 1.1446–5 for rules that allow a lower-tier partnership to look through an upper-tier foreign partnership to the partners of such partnership for purposes of computing its 1446 tax), foreign corporation (which includes a foreign government pursuant to section 892(a)(3)), foreign estate or trust (see paragraph (c)(2) of this section for rules that instruct a partnership to consider the grantor or other owner of a trust under subpart E of subchapter J as the partner for purposes of computing the partnership's 1446 tax), as those terms are defined under section 7701 and the regulations thereunder, or a foreign organization described in section 501(c), or other foreign person. A person also is a foreign partner if the person is presumed to be a foreign person under paragraph (c)(3) of this section. For purposes of this section, a partner that is treated as a U.S. person for all income tax purposes (by election or otherwise, see e.g., sections 953(d) and 1504(d)) will not be a foreign partner, provided the partner has provided the partnership a valid Form W–9, ''Request for Taxpayer Identification Number and Certification,'' or the partnership uses other means to determine that the partner is not a foreign partner (see paragraph (c)(3) of this section). A partner that is treated as a U.S. person only for certain specified purposes is considered a foreign partner for purposes of section 1446, and a partnership must pay 1446 tax on the portion of ECTI allocable to that partner. For example, a partnership must generally pay 1446 tax on ECTI allocable to a foreign corporate partner that has made an election under section 897(i).

(2) *Submission of Forms W–8BEN, W–8IMY, W–8ECI, W–8EXP, and W–9*—(i) *In general.* Except as otherwise provided in this paragraph (c)(2) or paragraph (c)(3) of this section, a partnership must generally determine whether a partner is a foreign partner, and the partner's tax classification (*e.g.*, corporate or non-corporate), by obtaining a withholding certificate from the partner that is a Form W–8BEN, ''Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding,'' Form W–8IMY, ''Certificate of Foreign Intermediary, Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding,'' Form W–8ECI, ''Certificate of Foreign Person's Claim for Exemption from Withholding on Income Effectively Connected With the Conduct of a Trade or Business in the United States,'' Form W–8EXP, ''Certificate of Foreign Government or other Foreign Organization for United States Tax Withholding,'' or a Form W–9, as applicable, or an acceptable substitute form permitted under paragraph (c)(5) of this section. Generally, a foreign partner that is a nonresident alien, a foreign estate or trust (other than a grantor trust described in this paragraph (c)(2)), a foreign corporation, or a foreign government should provide a valid Form W–8BEN.

(ii) *Withholding certificate applicable to each type of partner.* A partner that submits a valid Form W–8 (*e.g.*, Form W–8BEN) for purposes of section 1441 or 1442 will generally satisfy the documentation requirements of this section provided that the submission of such form is not inconsistent with the rules of this paragraph (c)(2) or paragraph (c)(3) of this section. The following rules shall apply for purposes of this section.

(A) *U.S. person.* A partner that is a U.S. person (other than a grantor trust described in this paragraph (c)(2)), including a domestic partnership and domestic simple or complex trust (including an estate), shall provide a valid Form W–9.

(B) *Nonresident alien.* A Form W–8 (*e.g.*, Form W–8BEN) submitted by a nonresident alien for purposes of withholding under section 1441 will generally be accepted for purposes of section 1446. If no such form is submitted for purposes of section 1441, such nonresident alien shall submit Form W–8BEN for purposes of section 1446.

(C) *Foreign partnership.* A partner that is a foreign partnership generally shall provide a valid Form W–8IMY for purposes of section 1446. See § 1.1446–5 (permitting a lower-tier partnership to look through an upper-tier foreign partnership in certain circumstances when computing 1446 tax).

(D) *Disregarded entities.* An entity that is disregarded as an entity separate from its owner under § 301.7701–3 of this chapter (whether domestic or foreign) shall not submit a Form W–8 (*e.g.*, Form W–8BEN) or Form W–9. Instead, the owner of such entity for Federal tax purposes shall submit appropriate documentation to comply with this section. See §§ 301.7701–1 through 301.7701–3 of this chapter for determining the U.S. Federal tax classification of a partner.

(E) *Domestic and foreign grantor trusts.* To the extent that a grantor or other person is treated as the owner of any portion of a trust under subpart E of subchapter J of the Internal Revenue Code, such trust shall provide documentation under this paragraph (c)(2) to identify the trust as a grantor trust and provide documentation on behalf of the grantor or other person treated as the owner of all or a portion of such trust as required by this paragraph (c)(2). If such trust is a foreign

trust, the trust shall submit Form W–8IMY to the partnership identifying itself as a foreign grantor trust and shall provide such documentation (*e.g.,* Forms W–8BEN, W–8IMY, W–8ECI, W–8EXP, or W–9) and information pertaining to its grantor or other owner to the partnership that permits the partnership to reliably associate (within the meaning of § 1.1441–1(b)(2)(vii)) such portion of the trust's allocable share of partnership ECTI with the grantor or other person that is the owner of such portion of the trust. If such trust is a domestic trust, the trust shall furnish the partnership a statement under penalty of perjury that the trust is, in whole or in part, a domestic grantor trust and such statement shall identify that portion of the trust that is treated as owned by a grantor or another person under subpart E of subchapter J of the Internal Revenue Code. The trust shall also provide such documentation and information (*e.g.,* Forms W–8BEN, W–8IMY, W–8ECI, W–8EXP, or W–9) pertaining to its grantor or other owner(s) to the partnership that permits the partnership to reliably associate (within the meaning of § 1.1441–1(b)(2)(vii)) such portion of the trust's allocable share of partnership ECTI with the grantor or other person that is the owner of such portion of the trust.

(F) *Nominees.* Where a nominee holds an interest in a partnership on behalf of another person, the beneficial owner of the partnership interest, not the nominee, shall submit a Form W–8 (*e.g.,* Form W–8BEN) or Form W–9 to the partnership or nominee that is the withholding agent.

(G) *Foreign governments, foreign tax-exempt organizations and other foreign persons.* A Form W–8 (*e.g.,* Form W–8EXP) submitted by a partner that is a foreign government, foreign tax-exempt organization, or other foreign person for purposes of withholding under §§ 1441 through 1443 will also operate to establish the foreign status of such partner under this section. However, except as set forth in § 1.1446–3(c)(3) (regarding certain tax-exempt organizations described in section 501(c)), the submission of Form W–8EXP will have no effect on whether there is a 1446 tax due with respect to such partner's allocable share of partnership ECTI. For example, a partnership must still pay 1446 tax with respect to a foreign government partner's allocable share of ECTI because such partner is treated as a foreign corporation under section 892(a)(3). If no Form W–8 is submitted for purposes of withholding under sections 1441 through 1443, then such government, tax-exempt organization, or person must generally submit Form W–8BEN.

(H) *Foreign corporations, certain foreign trusts, and foreign estates.* Consistent with the rules of this paragraph (c)(2) and paragraph (c)(3) of this section, a foreign corporation, a foreign trust (other than a foreign grantor trust described in paragraph (c)(2)(ii)(E) of this section), or a foreign estate may generally submit any appropriate Form W–8 (*e.g.*, Form W–8BEN) to the partnership to establish its foreign status for purposes of section 1446.

(iii) *Effect of Forms W–8BEN, W–8IMY, W–8ECI, W–8EXP, W–9, and statement*—(A) *Partnership reliance on withholding certificate.* In general, for purposes of this section, a partnership may rely on a valid Form W–8 (*e.g.*, Form W–8BEN) or Form W–9, or statement described in this paragraph (c)(2) from a partner, beneficial owner, or grantor trust to determine whether that person, beneficial owner, or the owner of a grantor trust, is a non-foreign or foreign partner for purposes of computing 1446 tax, and if such person is a foreign partner, to determine whether or not such person is a corporation for U.S. tax purposes. The rules of paragraph (c)(3) of this section shall apply to a partnership that receives a Form W–8IMY from a foreign grantor trust or a statement described in this paragraph (c)(2) from a domestic grantor trust, but does not receive a Form W–8 (*e.g.*, Form W–8BEN) or Form W–9 identifying such grantor or other person. Further, a partnership may not rely on a Form W–8 or Form W–9, or statement described in this paragraph (c)(2), and such form or statement is therefore not valid for any installment period or Form 8804 filing date during which the partnership has actual knowledge or has reason to know that any information on the withholding certificate or statement is incorrect or unreliable and, if based on such knowledge or reason to know, the partnership should pay 1446 tax in an amount greater than would be the case if it relied on the certificate or statement.

(B) *Reason to know.* A partnership has reason to know that information on a withholding certificate or statement is incorrect or unreliable if its knowledge of relevant facts or statements contained on the form or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the claims made. See §§ 1.1441–1(e)(4)(viii) and 1.1441–7(b)(1) and (2).

(C) *Subsequent knowledge and impact on penalties.* If the partnership does not have actual knowledge or reason to know that a Form W–8BEN, Form W–8IMY, Form W–8ECI, Form W–8EXP, Form W–9, or statement received from a partner, beneficial owner, or grantor trust contains incorrect or unreliable information, but it subsequently determines that the certificate or statement contains incorrect or unreliable information, and, based on such knowledge the partnership should pay 1446 tax in an amount greater than would be the case if it relied on the certificate or statement, then the partnership will not be subject to penalties for its failure to pay the 1446 tax in reliance on such certificate or statement for any installment payment date prior to the date that the determination is made. See §§ 1.1446–1(c)(4) and 1.1446–3 concerning penalties for failure to pay the withholding tax when a partnership knows or has reason to know that a withholding certificate or statement is incorrect or unreliable.

(iv) *Requirements for certificates to be valid.* Except as otherwise provided in this paragraph (c), for purposes of this section, the validity of a Form W–9 shall be determined under section 3406 and § 31.3406(h)–3(e) of this chapter which establish when such form may be reasonably relied upon. A Form W–8BEN, Form W–8IMY, Form W–8ECI, or Form W–8EXP is only valid for purposes of this section if its validity period has not expired, the partner submitting the form has signed it under penalties of perjury, and it contains all the required information.

(A) *When period of validity expires.* For purposes of this section, a Form W–8BEN, Form W–8IMY, Form W–8ECI, or Form W–8EXP submitted by a partner shall be valid until the end of the period of validity determined for such form under § 1.1441–1(e). With respect to a foreign partnership submitting Form W–8IMY, the period of validity of such form shall be determined under § 1.1441–1(e) as if such foreign partnership submitted the form required of a nonwithholding foreign partnership. See § 1.1441–1(e)(4)(ii).

(B) *Required information for Forms W–8BEN, W–8IMY, W–8ECI, and W–8EXP.* Forms W–8BEN, W–8IMY, W–8ECI, and W–8EXP submitted under this section must contain the partner's name, permanent address and Taxpayer Identification Number (TIN), the country under the laws of which the partner is formed, incorporated or governed (if the person is not an individual), the classification of the partner for U.S. Federal tax purposes (*e.g.*, partnership, corporation), and any other information required to be

submitted by the forms or instructions for such form, as applicable.

(v) *Partner must provide new withholding certificate when there is a change in circumstances.* The principles of § 1.1441–1(e)(4)(ii)(D) shall apply when a change in circumstances has occurred (including situations where the status of a U.S. person changes) that requires a partner to provide a new withholding certificate.

(vi) *Partnership must retain withholding certificates.* A partnership or nominee who has responsibility for paying 1446 tax under this section or § 1.1446–4 must retain each withholding certificate, statement, and other information received from its direct and indirect partners for as long as it may be relevant to the determination of the withholding agent's 1446 tax liability under section 1461 and the regulations thereunder.

(3) *Presumptions in the absence of valid Form W–8BEN, Form W–8IMY, Form W–8ECI, Form W–8EXP, Form W–9, or statement.* Except as otherwise provided in this paragraph (c)(3), a partnership that does not receive a valid Form W–8BEN, Form W–8IMY, Form W–8ECI, Form W–8EXP, Form W–9, or statement required by paragraph (c)(2) of this section from a partner, beneficial owner, or grantor trust, or a partnership that receives a withholding certificate or statement but has actual knowledge or reason to know that the information on the certificate or statement is incorrect or unreliable, must presume that the partner is a foreign person. Except as provided in § 1.1446–3(a)(2) and § 1.1446–5(c)(2), a partnership that knows that a partner is an individual shall treat the partner as a nonresident alien. Except as provided in § 1.1446–3(a)(2) and § 1.1446–5(c)(2), a partnership that knows that a partner is an entity shall treat the partner as a corporation if the entity is a corporation as defined in § 301.7701–2(b)(8) of this chapter. See § 1.1446–3(a)(2) which prohibits a partnership in certain circumstances from considering preferential tax rates in computing its 1446 tax when the presumption and rules of this paragraph (c)(3) apply. In all other cases, the partnership shall treat the partner as either a nonresident alien or a foreign corporation, whichever classification results in a higher 1446 tax being due, and shall pay the 1446 tax in accordance with this presumption. Except as provided in § 1.1446–5(c)(2), the presumption set forth in this paragraph (c)(3) that a partner is a foreign person shall not apply to the extent that the partnership relies on other means to ascertain the non-foreign status of a partner and the partnership is correct in its determination that such partner is a U.S. person. A partnership is in no event required to rely upon other means to determine the non-foreign status of a partner and may demand that a partner furnish an acceptable certificate under this section. If a certificate is not provided in such circumstances, the partnership may presume that the partner is a foreign partner, and for purposes of sections 1461 through 1463, will be considered to have been required to pay 1446 tax on such partner's allocable share of partnership ECTI.

(4) *Consequences when partnership knows or has reason to know that Form W–8BEN, Form W–8IMY, Form W–8ECI, Form W–8EXP, or Form W–9 is incorrect or unreliable and does not withhold.* If a partnership has actual knowledge or has reason to know that a Form W–8BEN, Form W–8IMY, Form W–8ECI, Form W–8EXP, Form W–9, or statement required by paragraph (c)(2) of this section submitted by a partner, beneficial owner, or grantor trust contains incorrect or unreliable information (either because the certificate or statement when given to the partnership contained incorrect information or because there has been a change in facts that makes information on the certificate or statement incorrect), and the partnership pays less than the full amount of 1446 tax due on ECTI allocable to that partner, the partnership shall be fully liable under section 1461 and § 1.1461–3 (§ 1.1461–1 for publicly traded partnerships subject to § 1.1446–4) and § 1.1446–3, and for all applicable penalties and interest, for any failure to pay the 1446 tax for the period during which the partnership has such knowledge or reason to know that the certificate contained incorrect or unreliable information and for all subsequent installment periods. If a partner, beneficial owner, or grantor trust submits a new valid Form W–8BEN, Form W–8IMY, Form W–8ECI, Form W–8EXP, Form W–9, or statement, as applicable, the partnership may rely on that documentation when paying 1446 tax (or any installment of such tax) for any payment date that has not passed at the time such form is received.

(5) *Acceptable substitute form.* A partnership or withholding agent responsible for paying 1446 tax (or any installment of such tax) may substitute its own form for the official version of Form W–8 (*e.g.*, Form W–8BEN) that is recognized under this section to ascertain the identity of its partners, provided such form is consistent with § 1.1441–1(e)(4)(vi). All references under this section or §§ 1.1446–2 through 1.1446–6T to a Form W–8 (*e.g.*, Form W–8BEN, Form W–8IMY, Form W–8ECI, Form W–8EXP) shall include the acceptable substitute form recognized under this paragraph (c)(5).

§ 1.1446–2 Determining a partnership's effectively connected taxable income allocable to foreign partners under section 704.

(a) *In general.* A partnership's effectively connected taxable income (ECTI) is generally the partnership's taxable income as computed under section 703, with adjustments as provided in section 1446(c) and this section, and computed with consideration of only those partnership items which are effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States. For purposes of determining the section 1446 withholding tax (1446 tax) or any installment of such tax under § 1.1446–3, partnership ECTI allocable under section 704 to foreign partners is the sum of the allocable shares of ECTI of each of the partnership's foreign partners as determined under paragraph (b) of this section. See § 1.1446–6T (special rules permitting the partnership to consider partner-level deductions and losses to reduce the partnership's 1446 tax). The calculation of partnership ECTI allocable to foreign partners as set forth in paragraph (b) of this section and the partnership's withholding tax obligation are partnership-level computations solely for purposes of determining the 1446 tax. Therefore, any deduction that is not taken into account in calculating a partner's allocable share of partnership ECTI (*e.g.*, percentage depletion), but which is a deduction that under U.S. tax law the foreign partner is otherwise entitled to claim, can still be claimed by the foreign partner when computing its U.S. tax liability and filing its U.S. income tax return, subject to any restriction or limitation that otherwise may apply.

(b) *Computation*—(1) *In general.* A foreign partner's allocable share of partnership ECTI for the partnership's taxable year that is allocable under section 704 to a particular foreign partner is equal to that foreign partner's distributive share of partnership gross income and gain for the partnership's taxable year that is effectively connected and properly allocable to the partner under section 704 and the regulations thereunder, reduced by the foreign partner's distributive share of partnership deductions for the partnership taxable year that are connected with such income under section 873(a) or 882(c) and properly

allocable to the partner under section 704 and the regulations thereunder, in each case, after application of the rules of this section. See § 1.1446–6T (special rules permitting the partnership to consider partner-level deductions and losses to reduce the partnership's 1446 tax). For these purposes, a foreign partner's distributive share of effectively connected gross income and gain and the deductions connected with such income shall be computed by considering allocations that are respected under the rules of section 704 and § 1.704–1(b)(1), including special allocations in the partnership agreement (as defined in § 1.704–1(b)(2)(ii)(h)), and adjustments to the basis of partnership property described in section 743 pursuant to an election by the partnership under section 754 (see § 1.743–1(j)). The character of effectively connected partnership items (capital versus ordinary) shall be separately considered only to the extent set forth in paragraph (b)(3)(v) of this section and, when applicable, sections 1.1446–3(a)(2)(consideration of preferential rates when computing 1446 tax) and section 1.1446–6T (special rules permitting the partnership to consider partner-level deductions and losses to reduce the partnership's 1446 tax).

(2) *Income and gain rules.* For purposes of computing a foreign partner's allocable share of partnership ECTI under this paragraph (b), the following rules shall apply with respect to partnership income and gain.

(i) *Application of the principles of section 864.* The determination of whether a partnership's items of gross income are effectively connected shall be made by applying the principles of section 864 and the regulations thereunder.

(ii) *Income treated as effectively connected.* A partnership's items of gross income that are effectively connected include any income that is treated as effectively connected income, including partnership income subject to a partner's election under section 871(d) or section 882(d), any partnership income treated as effectively connected with the conduct of a U.S. trade or business pursuant to section 897, and any other items of partnership income treated as effectively connected under another provision of the Internal Revenue Code, without regard to whether those amounts are taxable to the partner. A partner that makes the election under section 871(d) or section 882(d) shall furnish to the partnership a statement that indicates that such election has been made. See § 1.871–10(d)(3). If a partnership receives a valid Form W–8ECI from a partner, the partner is deemed, for purposes of section 1446, to have effectively connected income subject to withholding under section 1446 to the extent of the items identified on the form.

(iii) *Exempt income.* A foreign partner's allocable share of partnership ECTI does not include income or gain exempt from U.S. tax by reason of a provision of the Internal Revenue Code. A foreign partner's allocable share of partnership ECTI also does not include income or gain exempt from U.S. tax by operation of any U.S. income tax treaty or reciprocal agreement. In the case of income excluded by reason of a treaty provision, such income must be derived by a resident of an applicable treaty jurisdiction, the resident must be the beneficial owner of the item, and all other requirements for benefits under the treaty must be satisfied. The partnership must have received from the partner a valid withholding certificate, that is, Form W–8BEN (see § 1.1446–1(c)(2)(iii) regarding when a Form W–8BEN is valid for purposes of this section), containing the information necessary to support the claim for treaty benefits required in the forms and instructions. In addition, for purposes of this section, the withholding certificate must contain the beneficial owner's taxpayer identification number.

(3) *Deductions and losses.* For purposes of computing a foreign partner's allocable share of partnership ECTI under this paragraph (b), the following rules shall apply with respect to deductions and losses.

(i) *Oil and gas interests.* The deduction for depletion with respect to oil and gas wells shall be allowed, but the amount of such deduction shall be determined without regard to sections 613 and 613A.

(ii) *Charitable contributions.* The deduction for charitable contributions provided in section 170 shall not be allowed.

(iii) *Net operating losses and other suspended or carried losses.* Except as provided in § 1.1446–6T, the net operating loss deduction of any foreign partner provided in section 172 shall not be taken into account. Further, except as provided in § 1.1446–6T, the partnership shall not take into account any suspended losses (*e.g.*, losses in excess of a partner's basis in the partnership, see section 704(d)) or any capital loss carrybacks or carryovers available to a foreign partner.

(iv) *Interest deductions.* The rules of this paragraph (b)(3)(iv) shall apply for purposes of determining the amount of interest expense that is allocable to income which is (or is treated as) effectively connected with the conduct of a trade or business for purposes of calculating a foreign partner's allocable share of partnership ECTI. In the case of a non-corporate foreign partner, the rules of § 1.861–9T(e)(7) shall apply. In the case of a corporate foreign partner, the rules of § 1.882–5 shall apply by treating the partnership as a foreign corporation and using the partner's pro-rata share of the partnership's assets and liabilities for these purposes. For these purposes, the rules governing elections under § 1.882–5(a)(7) shall be made at the partnership level.

(v) *Limitation on capital losses.* Losses from the sale or exchange of capital assets allocable under section 704 to a partner shall be allowed only to the extent of gains from the sale or exchange of capital assets allocable under section 704 to such partner.

(vi) *Other deductions.* No deduction shall be allowed for personal exemptions provided in section 151 or the additional itemized deductions for individuals provided in part VII of subchapter B of the Internal Revenue Code (section 211 and following).

(vii) *Limitations on deductions.* Except as provided in § 1.1446–6T and this paragraph (b)(3), any limitations on losses or deductions that apply at the partner level when determining ECTI allocable to a foreign partner shall not be taken into account.

(4) *Other rules*—(i) *Exclusion of items allocated to U.S. partners.* Except as provided in § 1.1446–5(e), in computing partnership ECTI, the partnership shall not take into account any item of income, gain, loss, or deduction to the extent allocable to any partner that is not a foreign partner, as that term is defined in § 1.1446–1(c).

(ii) *Partnership credits.* See § 1.1446–3(a) providing that the 1446 tax is computed without regard to a partner's distributive share of the partnership's tax credits.

(5) *Examples.* The following examples illustrate the application of this section. In considering the examples, disregard the potential application of § 1.1446–3(b)(2)(v)(F) (relating to the de minimis exception to paying 1446 tax). The examples are as follows:

Example 1. Limitation on capital losses. PRS partnership has two equal partners, A and B. A is a nonresident alien and B is a U.S. citizen. A provides PRS with a valid Form W–8BEN, and B provides PRS with a valid Form W–9. PRS has the following annualized tax items for the relevant installment period, all of which are effectively connected with its U.S. trade or business and are allocated equally between A and B: $100 of long-term capital gain, $400 of long-term capital loss, $300 of ordinary

income, and $100 of ordinary deductions. Assume that these allocations are respected under section 704(b) and the regulations thereunder. Accordingly, A's allocable share of PRS's effectively connected items includes $50 of long-term capital gain, $200 of long-term capital loss, $150 of ordinary income, and $50 of ordinary deductions. In determining A's allocable share of partnership ECTI, the amount of the long-term capital loss that may be taken into account pursuant to paragraph (b)(3)(v) of this section is limited to A's allocable share of gain from the sale or exchange of capital assets. Accordingly, A's share of partnership ECTI allocable under section 704 pursuant to § 1.1446–2 is $100 ($150 of ordinary income less $50 of ordinary deductions, plus $50 of capital gain less $50 of capital loss).

Example 2. Limitation on capital losses—special allocations. PRS partnership has two equal partners, A and B. A and B are both nonresident aliens. A and B each provide PRS with a valid Form W–8BEN. PRS has the following annualized tax items for the relevant installment period, all of which are effectively connected with its U.S. trade or business: $200 of long-term capital gain, $200 of long-term capital loss, and $400 of ordinary income. A and B have equal shares in the ordinary income, however, pursuant to the partnership agreement, capital gains and losses are subject to special allocations. The long-term capital gain is allocable to A, and the long-term capital loss is allocable to B. Assume that these allocations are respected under section 704(b) and the regulations thereunder. Pursuant to paragraph (b)(3)(v) of this section, A's allocable share of partnership ECTI under § 1.1446–2 is $400 (consisting of $200 of ordinary income and $200 of long-term capital gain), and B's allocable share of partnership ECTI is $200 (consisting of $200 of ordinary income).

Example 3. Withholding tax obligation where partner has net operating losses. PRS partnership has two equal partners, FC, a foreign corporation, and DC, a domestic corporation. FC and DC provide a valid Form W–8BEN and Form W–9, respectively, to PRS. Both FC and PRS are on a calendar taxable year. PRS is engaged in the conduct of a trade or business in the United States and for its first installment period during its taxable year has $100 of annualized ECTI that is allocable to FC. As of the beginning of the taxable year, FC had an unused effectively connected net operating loss carryover in the amount of $300. FC's net operating loss carryover is not taken into account in determining FC's allocable share of partnership ECTI under § 1.1446–2 and, absent the application of § 1.1446–6T (permitting a foreign partner to certify deductions and losses reasonably expected to be available to reduce the partner's U.S. income tax liability on the effectively connected income or gain allocable from the partnership), is not considered in computing the 1446 tax installment payment due on behalf of FC. Accordingly, PRS must pay 1446 tax with respect to the $100 of ECTI allocable to FC.

§ 1.1446–3 Time and manner of calculating and paying over the 1446 tax.

(a) *In general*—(1) *Calculating 1446 tax.* This section provides rules for calculating, reporting, and paying over the section 1446 withholding tax (1446 tax). A partnership's 1446 tax equals the amount determined under this section and shall be paid in installments during the partnership's taxable year (see paragraph (d)(1) of this section for installment payment due dates), with any remaining tax due paid with the partnership's annual return required to be filed pursuant to paragraph (d) of this section. For these purposes, a partnership shall not take into account either a partner's liability for any other tax imposed under any other provision of the Internal Revenue Code (*e.g.*, section 55 or 884) or a partner's distributive share of the partnership's tax credits when determining the amount of the partnership's 1446 tax.

(2) *Applicable percentage*—(i) *In general.* Except as provided in this paragraph (a)(2), in the case of a foreign partner that is a corporation for U.S. tax purposes, the applicable percentage is the highest rate of tax specified in section 11(b)(1) for such taxable year. Except as provided in this paragraph (a)(2) and § 1.1446–5, in the case of a foreign partner that is not a corporation for U.S. tax purposes (*e.g.,* a partnership, individual, trust or estate), the applicable percentage is the highest rate of tax specified in section 1.

(ii) *Special types of income or gain.* Except as otherwise provided, a partnership is permitted to consider as the applicable percentage under this paragraph (a)(2) the highest rate of tax applicable to a particular type of income or gain allocable to a partner (*e.g.,* long-term capital gain allocable to a non-corporate partner, unrecaptured section 1250 gain, collectibles gain under section 1(h)), to the extent of a partner's allocable share of such income or gain. Consideration of the highest rate of tax applicable to a particular type of income or gain under the previous sentence shall be made without regard to the amount of such partner's income. A partnership is not permitted to consider the highest rate of tax applicable to a particular type of income or gain under this paragraph (a)(2)(ii) if the application of the preferential rate depends upon the corporate or non-corporate status of the person reporting the income or gain and, either no documentation has been provided to the partnership under § 1.1446–1 to establish the corporate or non-corporate status of the partner required to pay tax on the income or gain, or the partnership is otherwise required to compute and pay 1446 tax on such portion of the income or gain using the highest applicable percentage under section 1446(b). See *e.g.,* §§ 1.1446–1(c)(3) (presumption of foreign status in the absence of documentation) and 1.1446–5(c)(2) (requirement to pay 1446 tax at higher of rates in section 1446(b) where a lower-tier partnership cannot reliably associate income with a partner of the upper-tier partnership).

(b) *Installment payments*—(1) *In general.* Except as provided in § 1.1446–4 for certain publicly traded partnerships, a partnership must pay its 1446 tax by making installment payments of the 1446 tax based on the amount of partnership ECTI allocable under section 704 to its foreign partners, without regard to whether the partnership makes any distributions to its partners during the partnership's taxable year. The amount of the installment payments is determined in accordance with this paragraph (b), and the tax must be paid at the times set forth in paragraph (d) of this section. Subject to paragraphs (b)(2)(v) and (b)(3)(ii) of this section, in computing its first installment of 1446 tax for a taxable year, a partnership must decide whether it will pay its 1446 tax for the entire taxable year by using the safe harbor set forth in paragraph (b)(3)(i) of this section, or by using one of several annualization methods available under paragraph (b)(2)(ii) of this section for computing partnership ECTI allocable to foreign partners. In the case of a partnership's underpayment of an installment of 1446 tax, the partnership shall be subject to an addition to the tax equal to the amount determined under section 6655, as modified by this section, as if such partnership were a corporation, as well as any other applicable interest and penalties. See § 1.1446–3(f). Section 6425 (permitting an adjustment for an overpayment of estimated tax by a corporation) shall not apply to a partnership's payment of its 1446 tax.

(2) *Calculation*—(i) *General application of the principles of section 6655.* Installment payments of 1446 tax required during the partnership's taxable year are based upon partnership ECTI for the portion of the partnership taxable year to which they relate, and, except as set forth in this paragraph (b)(2) or paragraph (b)(3) of this section, shall be calculated using the principles of section 6655. Under the principles of section 6655, the partnership's effectively connected items of income, gain, loss and deduction are annualized to determine each foreign partner's allocable share of partnership ECTI under § 1.1446–2. To the extent

applicable, § 1.1446–6T may be considered for purposes of this section to reduce the amount of the partner's allocable share of partnership ECTI to an amount that is subject to tax under section 1446. Each foreign partner's allocable share of partnership ECTI that is subject to tax under section 1446, or portion thereof, is then multiplied by the relevant applicable percentage for the type of income allocable to the foreign partner under paragraph (a)(2) of this section. The respective tax amounts are then added for each foreign partner. This computation will yield an annualized 1446 tax with respect to such partner. The installment of 1446 tax due with respect to a foreign partner's allocable share of partnership ECTI subject to tax under section 1446 equals the excess of the section 6655(e)(2)(B)(ii) percentage of the annualized 1446 tax for that partner (or, if applicable, the adjusted seasonal amount) for the relevant installment period, over the aggregate of any amounts paid under section 1446 with respect to that partner in prior installments during the partnership's taxable year. Therefore, the total amount of a partnership's 1446 tax installment payment is equal to the sum of the installment payments due for such period on behalf of all the partnership's foreign partners.

(ii) *Annualization methods.* A partnership that decides to annualize its income for the taxable year shall use one of the annualization methods set forth in section 6655(e) and the regulations thereunder, and as described in the forms and instructions for Form 8804, ''Annual Return for Partnership Withholding Tax (Section 1446),'' Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax,'' and Form 8813, ''Partnership Withholding Tax Payment Voucher.''

(iii) *Partner's estimated tax payments.* In computing its installment payments of 1446 tax, a partnership may not take into account a partner's estimated tax payments.

(iv) *Partner whose interest terminates during the partnership's taxable year.* If a partner's interest in the partnership terminates prior to the end of the partnership's taxable year, the partnership shall take into account the income that is allocable to the partner for the portion of the partnership taxable year that the person was a partner.

(v) *Exceptions and modifications to the application of the principles under section 6655.* To the extent not otherwise modified in §§ 1.1446–1 through 1.1446–7 or inconsistent with those rules, the principles of section 6655 apply to the calculation of the installment payments of 1446 tax made by a partnership as set forth in this paragraph (b)(2)(v).

(A) *Inapplicability of special rules for large corporations.* The principles of section 6655(d)(2), concerning large corporations (as defined in section 6655(g)(2)), shall not apply.

(B) *Inapplicability of special rules regarding early refunds.* The principles of section 6655(h), applicable to amounts excessively credited or refunded under section 6425, shall not apply. See paragraph (b)(1) of this section providing that section 6425 shall not apply for purposes of the 1446 tax. This paragraph (b)(2)(v)(B) shall apply to 1446 tax paid by a partnership or nominee, as well as to amounts that a partner is deemed to have paid for estimated tax purposes by reason of the partnership's or nominee's 1446 tax payments under § 1.1446–3(d)(1)(i).

(C) *Period of underpayment.* The period of the underpayment set forth in section 6655(b)(2) shall end on the earlier of the 15th day of the 4th month following the close of the partnership's taxable year (or, in the case of a partnership described in § 1.6081–5(a)(1) of this chapter, the 15th day of the 6th month following the close of the partnership's taxable year), or with respect to any portion of the underpayment, the date on which such portion is paid.

(D) *Other taxes.* Section 6655 shall be applied without regard to any references to alternative minimum taxable income and modified alternative minimum taxable income.

(E) *1446 tax treated as tax under section 11.* The principles of section 6655(g)(1) shall be applied to treat the 1446 tax as a tax imposed by section 11, and any partnership required to pay such tax shall be treated as a corporation.

(F) *Application of section 6655(f).* A partnership subject to section 1446 shall apply section 6655(f) after aggregating the 1446 tax due (or any installment of such tax) for all its foreign partners. See § 1.1446–6T for an exception to this rule when a nonresident alien partner certifies to the partnership that the partnership investment is the nonresident alien partner's only activity giving rise to effectively connected items.

(G) *Application of section 6655(i).* If a partnership has a taxable year of less than 12 months, the partnership is required to pay 1446 tax (including installments of such tax) in accordance with this section § 1.1446–3, if the partnership has ECTI allocable under section 704 to foreign partners. In such a case, the partnership shall adjust its installment payments of 1446 tax in a reasonable manner (*e.g.,* the annualized amounts of ECTI estimated to be allocable to a foreign partner, and the section 6655(e)(2)(B)(ii) percentage to be applied to each installment) to account for the short-taxable year. However, if the partnership's taxable year is a period of less than 4 months, the partnership shall not be required to make installment payments of 1446 tax, but will only be required to file Forms 8804 and 8805 in accordance with this section § 1.1446–3, and report and pay the appropriate 1446 tax for the short-taxable year.

(H) *Current year tax safe harbor.* The safe harbor set forth in section 6655(d)(1)(B)(i) shall apply to a partnership subject to section 1446.

(I) *Prior year tax safe harbor.* The safe harbor set forth in section 6655(d)(1)(B)(ii) shall not apply and instead the safe harbor set forth in paragraph (b)(3) of this section applies.

(3) *1446 tax safe harbor*—(i) *In general.* The addition to tax under section 6655 shall not apply to a partnership with respect to a current installment of 1446 tax if—

(A) The average of the amount of the current installment and prior installments during the taxable year is at least 25 percent of the total 1446 tax that would be payable on the amount of the partnership's ECTI allocable under section 704 to foreign partners (without regard to § 1.1446–6T) for the prior taxable year;

(B) The prior taxable year consisted of twelve months;

(C) The partnership timely files (including extensions) an information return under section 6031 for the prior year; and

(D) The amount of ECTI for the prior taxable year is not less than 50 percent of the ECTI shown on the annual return of section 1446 withholding tax that is (or will be) timely filed for the current year.

(ii) *Permission to change to standard annualization method.* Except as otherwise provided in this paragraph (b)(3)(ii), if a partnership decides to pay its 1446 tax for the first installment period based upon the safe harbor method set forth in paragraph (b)(3)(i), the partnership must use the safe harbor method for each installment payment made during the partnership's taxable year. Notwithstanding the previous sentence, if a partnership paying over 1446 tax during the taxable year pursuant to this paragraph (b)(3) determines during an installment period (based upon the standard option annualization method set forth in

section 6655(e) and the regulations thereunder, as modified by the forms and instructions to Forms 8804, 8805, and 8813) that it will not qualify for the safe harbor in this paragraph (b)(3) because the prior year's ECTI will not meet the 50-percent threshold in paragraph (b)(3)(i)(D) of this section, then the partnership is permitted, without being subject to the addition to the tax under section 6655 (as applied through this section), to pay over its 1446 tax for the period in which such determination is made, and all subsequent installment periods during the taxable year, using the standard option annualization method. A change pursuant to this paragraph shall be disclosed in a statement attached to the Form 8804 the partnership files for the taxable year and shall include information to allow the IRS to determine whether the change was appropriate.

(c) *Coordination with other withholding rules*—(1) *Fixed or determinable, annual or periodical income.* Fixed or determinable, annual or periodical income subject to tax under section 871(a) or section 881 is not subject to withholding under section 1446, and such income is subject to the withholding requirements of sections 1441 and 1442 and the regulations thereunder.

(2) *Real property gains*—(i) *Domestic partnerships.* Except as otherwise provided in this paragraph (c)(2), a domestic partnership that is otherwise subject to the withholding requirements of sections 1445 and 1446 will be subject to the payment and reporting requirements of section 1446 only and not section 1445(e)(1) and the regulations thereunder, with respect to partnership gain from the disposition of a U.S. real property interest (as defined in section 897(c)). A partnership that has complied with the requirements of section 1446 will be deemed to satisfy the withholding requirements of section 1445 and the regulations thereunder. However, a domestic partnership that would otherwise be exempt from section 1445 withholding by operation of a nonrecognition provision must continue to comply with the requirements of § 1.1445–5(b)(2). In the event that amounts are withheld under section 1445(e) at the time of the disposition of a U.S. real property interest, such amounts may be credited against the partnership's 1446 tax. A partnership that fails to comply fully with the requirements of section 1446 pursuant to this paragraph (c)(2) shall be liable for any unpaid 1446 tax and subject to any applicable addition to the tax, interest, and penalties under section 1446. See § 1.1446–4(f)(4) for rules coordinating the withholding liability of publicly traded partnerships under sections 1445 and 1446.

(ii) *Foreign partnerships.* A foreign partnership that is subject to withholding under section 1445(a) during its taxable year may credit the amount withheld under section 1445(a) against its section 1446 tax liability for that taxable year only to the extent such amount is allocable to foreign partners.

(3) *Coordination with section 1443.* A partnership that has ECTI allocable under section 704 to a foreign organization described in section 501(c) shall be required to pay 1446 tax on such ECTI only to the extent such ECTI is includible under section 512 and section 513 in computing the organization's unrelated business taxable income. The certificate procedure available under § 1.1441–9(b)(1) by which a partner may set forth the amounts it believes will and will not be includible in its computation of unrelated business taxable income under section 512 and section 513 shall also apply to a partner in a partnership subject to section 1446. Such certificate shall be made by a partner in the same manner as under § 1.1441–9(b)(2). A partnership that determines that the partner's certificate as to certain partnership items is unreliable or lacking must presume, consistent with § 1.1441–9(b)(3) (regarding amounts includible under section 512 in computing the organization's unrelated business taxable income), that such partnership items would be includible in computing the partner's UBTI.

(d) *Reporting and crediting the 1446 tax*—(1) *Reporting 1446 tax.* This paragraph (d) sets forth the rules for reporting and crediting the 1446 tax paid by a partnership. To the extent that 1446 tax is paid on ECTI allocable to a domestic trust (including a grantor or other person treated as an owner of a portion of such trust) or a grantor or other person treated as the owner of a portion of a foreign trust, the rules of this paragraph (d) applicable to a foreign trust or its beneficiaries shall be applied to such domestic or foreign trust and its beneficiaries or owners, as applicable, so that appropriate credit for the 1446 tax may be claimed by the trust, beneficiary, grantor, or other person.

(i) *Reporting of installment tax payments and notification to partners of installment tax payments.* Each partnership required to make an installment payment of 1446 tax must file Form 8813, ''Partnership Withholding Tax Payment Voucher (Section 1446),'' in accordance with the instructions to that form. Form 8813 is generally used to transmit an installment payment of 1446 tax to the IRS with respect to partnership ECTI estimated to be allocated to foreign partners. However, see § 1.1446–6T (relating to circumstances where a partnership must file Form 8813 when no payment is required under section 1446). Except as provided in this section, a partnership must notify each foreign partner of the 1446 tax paid on the partner's behalf when the partnership makes an installment payment of 1446 tax. The notice required to be given to a foreign partner under the previous sentence must be provided within 10 days of the installment payment due date, or, if paid later, the date such installment payment is made. A foreign partner generally may credit an installment of 1446 tax paid by the partnership on the partner's behalf against the partner's estimated tax that the partner must pay during the partner's own taxable year. See § 1.1446–5(b) (relating to tiered partnership structures). However, a foreign partner may not obtain an early refund of such amounts under the estimated tax rules. See § 1.1446–3(b)(2)(v)(B). See paragraph (d)(2) of this section for the amount of 1446 tax a partner may credit against its U.S. income tax liability. No particular form is required for a partnership's notification to a foreign partner, but each notification must include the partnership's name, the partnership's Taxpayer Identification Number (TIN), the partnership's address, the partner's name, the partner's TIN, the partner's address, the annualized ECTI estimated to be allocated to the foreign partner (or prior year's safe harbor amount, if applicable), and the amount of tax paid on behalf of the partner for both the current and any prior installment periods during the partnership's taxable year. Notwithstanding any other provision of this paragraph (d), a withholding agent is not required to notify a partner of an installment of 1446 tax paid on the partner's behalf, unless requested by the partner, if—

(A) The partnership's agent responsible for providing notice pursuant to this paragraph is the same person that acts as an agent of the foreign partner for purposes of filing the partner's U.S. Federal income tax return for the partner's taxable year that includes the installment payment date; or

(B) The partnership has at least 500 foreign partners and the total 1446 tax that the partnership determines will be required to be paid for the partnership taxable year on behalf of such partner (based on paragraph (b)(2)(ii) or (3) of

this section) with respect to the partner's allocable share of ECTI is less than $1,000.

(ii) *Payment due dates.* The 1446 tax is calculated based on partnership ECTI allocable under section 704 to foreign partners during the partnership's taxable year, as determined under section 706. Installment payments of the 1446 tax generally must be made during the partnership's taxable year in which such income is derived. A partnership must pay to the Internal Revenue Service a portion of its estimated annual 1446 tax in installments on or before the 15th day of the fourth, sixth, ninth, and twelfth months of the partnership's taxable year as provided in section 6655. Any additional amount determined to be due is to be paid with the filing of the annual return of tax required under paragraph (d)(1)(iii) of this section and clearly designated as for the prior taxable year. Form 8813 should not be submitted for a payment made under the preceding sentence.

(iii) *Annual return and notification to partners.* Every partnership (except a publicly traded partnership subject to § 1.1446–4) that has effectively connected gross income for the partnership's taxable year allocable under section 704 to one or more of its foreign partners (or is treated as having paid 1446 tax under § 1.1446–5(b)), must file Form 8804, ''Annual Return for Partnership Withholding Tax (Section 1446).'' Additionally, every partnership that is required to file Form 8804 also must file Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax,'' for each of its foreign partners on whose behalf it paid 1446 tax, and furnish Form 8804 and the Forms 8805 to the Internal Revenue Service and the respective Form 8805 to each of its partners. Notwithstanding the previous sentence, a partnership that considers a foreign partner's certificate under § 1.1446–6T when computing its 1446 tax on Form 8804 is required to furnish such partner and the Internal Revenue Service a Form 8805, even if the form submitted to the partner shows no payment of 1446 tax on behalf of the partner. Forms 8804 and 8805 are separate from Form 1065, ''U.S. Return of Partnership Income,'' and the attachments thereto, and are not to be filed as part of the partnership's Form 1065. A partnership must generally file Forms 8804 and 8805 on or before the due date for filing the partnership's Form 1065. See § 1.6031(a)–1(c) for rules concerning the due date of a partnership's Form 1065. However, with respect to partnerships described in § 1.6081–5(a)(1), Forms 8804 and 8805 are not due until the 15th day of the sixth month following the close of the partnership's taxable year.

(iv) *Information provided to beneficiaries of foreign trusts and estates.* A foreign trust or estate that is a partner in a partnership subject to withholding under section 1446 shall be provided Form 8805 by the partnership. The foreign trust or estate must provide to each of its beneficiaries a copy of the Form 8805 furnished by the partnership. In addition, the foreign trust or estate must provide a statement for each of its beneficiaries to inform each beneficiary of the amount of the credit that may be claimed under section 33 (as determined under this section) for the 1446 tax paid by the partnership. Until an official Internal Revenue Service form is available, the statement from a foreign trust or estate that is described in this paragraph (d)(1)(iv) shall contain the following information—

(A) Name, address, and TIN of the foreign trust or estate;

(B) Name, address, and TIN of the partnership;

(C) The amount of the partnership's ECTI allocated to the foreign trust or estate for the partnership taxable year (as shown on the Form 8805 provided to the trust or estate);

(D) The amount of 1446 tax paid by the partnership on behalf of the foreign trust or estate (as shown on Form 8805 to the trust or estate);

(E) Name, address, and TIN of the beneficiary of the foreign trust or estate;

(F) The amount of the partnership's ECTI allocated to the trust or estate for purposes of section 1446 that is to be included in the beneficiary's gross income; and

(G) The amount of 1446 tax paid by the partnership on behalf of the foreign trust or estate that the beneficiary is entitled to claim on its return as a credit under section 33.

(v) *Attachments required of foreign trusts and estates.* The statement furnished to each foreign beneficiary under this paragraph (d)(1) must also be attached to the foreign trust or estate's U.S. Federal income tax return filed for the taxable year that includes the installment periods to which the statement relates.

(vi) *Attachments required of beneficiaries of foreign trusts and estates.* The beneficiary of the foreign trust or estate must attach the statement provided by the trust or estate pursuant to paragraph (d)(1)(iv) of this section, along with a copy of the Form 8805 furnished by the partnership to such trust or estate, to its U.S. income tax return for the year in which it claims a credit for the 1446 tax. See § 1.1446–3(d)(2)(ii) for additional rules regarding a partner or beneficial owner claiming a credit for the 1446 tax.

(vii) *Information provided to beneficiaries of foreign trusts and estates that are partners in certain publicly traded partnerships.* A statement similar to the statement required by paragraph (d)(1)(iv) of this section shall be provided by trusts or estates that hold interests in publicly traded partnerships subject to § 1.1446–4.

(2) *Crediting 1446 tax against a partner's U.S. tax liability*—(i) *In general.* A partnership's payment of 1446 tax on the portion of ECTI allocable to a foreign partner generally relates to the partner's U.S. income tax liability for the partner's taxable year in which the partner is subject to U.S. tax on that income. Subject to paragraphs (d)(2)(ii) and (iii) of this section, a partner may claim as a credit under section 33 the 1446 tax paid by the partnership with respect to ECTI allocable to that partner. The partner may not claim an early refund of these amounts under the estimated tax rules. See paragraph (d)(1)(i) of this section regarding a partner's ability to credit an installment of 1446 tax paid on the partner's behalf against the partner's estimated tax payments due for the taxable year. See also § 1.1446–5(b) (relating to tiered partnership structures).

(ii) *Substantiation for purposes of claiming the credit under section 33.* A partner may credit the amount paid under section 1446 with respect to such partner against its U.S. income tax liability only if it attaches proof of payment to its U.S. income tax return for the partner's taxable year in which the items comprising such partner's allocable share of partnership ECTI are included in the partner's income. Except as provided in the next sentence, proof of payment consists of a copy of the Form 8805 the partnership provides to the partner (or in the case of a beneficiary of a foreign trust or estate, the statement required under paragraph (d)(1)(iv) or (vii) of this section to be provided by such trust or estate and a copy of the related Form 8805 furnished to such trust or estate), but only if the name and TIN on the Form 8805 (or the statement provided by a foreign trust or estate) match the name and TIN on the partner's U.S. tax return, and such form (or statement) identifies the partner (or beneficiary) as the person entitled to the credit under section 33. In the case of a partner of a publicly traded partnership that is subject to withholding on distributions under § 1.1446–4, proof of payment consists of

a copy of the Form 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' provided to the partner by the partnership.

(iii) *Special rules for apportioning the tax credit under section 33*—(A) *Foreign trusts and estates.* Section 1446 tax paid on the portion of ECTI allocable under section 704 to a foreign trust or estate that the foreign trust or estate may claim as a credit under section 33 shall bear the same ratio to the total 1446 tax paid on behalf of the trust or estate as the total ECTI allocable to such trust or estate and not distributed (or treated as distributed) to the beneficiaries of such trust or estate, and, accordingly not deducted under section 651 or section 661 in calculating the trust or estate's taxable income, bears to the total ECTI allocable to such trust or estate. The 1446 tax that a foreign trust or estate is not entitled to claim as a credit under this paragraph (d)(2) may be claimed as a credit by the beneficiary of such trust or estate that includes the partnership ECTI allocated to the trust or estate in gross income under section 652 or section 662 (whether distributed or deemed to be distributed and with the same character as effectively connected income as in the hands of the trust or estate). In the case of a foreign trust or estate with multiple beneficiaries, each beneficiary may claim a portion of the 1446 tax that may be claimed by all beneficiaries under the previous sentence as a credit in the same proportion as the amount of ECTI included in such beneficiary's gross income bears to the total amount of ECTI included by all beneficiaries. The trust or estate must provide each beneficiary with a copy of the Form 8805 provided to it by the partnership and prepare the statement required by paragraph (d)(1)(iv) of this section.

(B) *Use of domestic trusts to circumvent section 1446.* This paragraph (d)(2)(iii)(B) shall apply if a partnership knows or has reason to know that a foreign person holds its interest in the partnership through a domestic trust, and such domestic trust was formed or availed of with a principal purpose of avoiding the 1446 tax. The use of a domestic trust may have a principal purpose of avoiding the 1446 tax even though the tax avoidance purpose is outweighed by other purposes when taken together. In such case, a partnership is required to pay 1446 tax under this paragraph as if the domestic trust was a foreign trust for purposes of section 1446 and the regulations thereunder. Accordingly, all applicable additions to the tax, interest, and penalties shall apply to the partnership for its failure to pay 1446 tax under this paragraph (d)(2)(iii)(B), commencing with the installment period during which the partnership knows or has reason to know that this paragraph (d)(2)(iii)(B) applies. A publicly traded partnership within the meaning of § 1.1446–4 (or a nominee required to pay 1446 tax under § 1.1446–4) will not be considered to know or have reason to know a domestic trust is being used to avoid the 1446 tax under this paragraph (d)(2)(iii)(B), provided the interest held in such entity by the domestic trust is publicly traded.

(iv) *Refunds to withholding agent.* A withholding agent (*i.e.*, the partnership) may obtain a refund of the 1446 tax paid (or deemed paid under § 1.1446–5(b)) to the extent of the excess of the amount paid to the Internal Revenue Service by the partnership, over the partnership's section 1446 tax liability as determined by the sum of the total tax creditable to each partner indicated on all Forms 8805 for the taxable year. If a partnership issues Form 8805 to a partner, then the partnership may not claim a refund for any amount of tax shown on that form as paid on behalf of the partner. If a partnership incorrectly withholds upon a United States person under section 1446 of the Internal Revenue Code and issues a Form 8805 to that person, the partnership may not file for a refund of the amount incorrectly withheld. Instead, the United States person may file for a refund of that amount on its annual return. For rules concerning refunds to withholding agents who pay 1446 tax on distributions of effectively connected income or gain under § 1.1446–4 (*i.e.*, publicly traded partnerships or nominees), see § 1.1464–1.

(v) *1446 tax treated as cash distribution to partners.* Except as otherwise provided in this paragraph (d)(2)(v), a partnership's payment of 1446 tax on behalf of a foreign partner is treated under section 1446(d) and this section as a deemed distribution of money to the partner on the earliest of the day on which the partnership paid the tax, the last day of the partnership's taxable year for which the amount was paid, or the last day on which the partner owned an interest in the partnership during the taxable year for which the tax was paid. However, a deemed distribution of money under section 1446(d) resulting from a partnership's installment payment of 1446 tax on behalf of a partner is treated as an advance or drawing of money under § 1.731–1(a)(1)(ii) to the extent of the partner's distributive share of income for the partnership taxable year. The rule treating a deemed distribution as an advance or drawing of money under this paragraph (d)(2)(v) applies only for purposes of determining the tax results of the deemed distribution to the partner under sections 705, 731, and 733, and does not affect the date that the partnership is considered to have paid any installment of 1446 tax for purposes of section 6655 (as applied through this section) or the date a foreign partner is deemed to have paid estimated tax by reason of such installment payment. See paragraph (d)(1)(i) of this section (permitting a partner to credit 1446 tax paid on the partner's behalf against the partner's estimated tax obligation). An amount treated as an advance or drawing of money is taken into account at the end of the partnership taxable year or the last day during the partnership's taxable year on which the partner owned an interest in the partnership. Any 1446 tax paid after the close of the partnership's taxable year, including amounts paid with the filing of Form 8804, that are on account of partnership ECTI allocated to partners for the prior taxable year shall be treated under section 1446(d) and this section as a distribution from the partnership on the earlier of the last day of the partnership's prior taxable year for which the tax is paid, or the last day in such prior taxable year on which such foreign partner held an interest in the partnership.

(vi) *Examples.* The following examples illustrate the application of this section. In considering the examples, disregard the potential application of paragraph (b)(2)(v)(F) of this section (relating to the *de minimis* exception to paying 1446 tax). The examples are as follows:

Example 1. Simple trust that reports entire amount of ECTI. PRS is a partnership that has two partners, FT, a foreign trust, and A, a U.S. person. FT is a simple trust under section 651. FT and A each provide PRS with a valid Form W–8BEN and Form W–9, respectively. FT has one beneficiary, NRA, a nonresident alien. PRS and FT each maintain a calendar taxable year. PRS estimated for each installment period during the partnership's taxable year that FT would be allocated $100 of ECTI for the taxable year, and that all such ECTI would be ordinary in character. Assume that the allocation of the $100 would be respected under section 704(b) and the regulations thereunder. PRS pays installments of 1446 tax based upon its estimates and timely pays a total of $35 of 1446 tax over the course of the partnership's taxable year ($100 ECTI x .35). Assume that PRS' estimates of ECTI allocable to FT during the taxable year equal the actual amount of ECTI allocable to FT for the taxable year. Assume also that FT's only income for the taxable year is the $100 of income from PRS, and that, pursuant to the terms of the trust's governing instrument and local law, the $100

of ECTI is not included in FT's fiduciary accounting income and the deemed distribution of the $35 withholding tax paid under paragraph (d)(2)(v) of this section is not included in FT's fiduciary accounting income. Accordingly, the $100 of ECTI is not income required to be distributed by FT, and FT may not claim a deduction under section 651 for this amount. FT must report the $100 of ECTI in its gross income and may claim a credit under section 33 as determined under paragraph (d)(2)(iii) of this section of $35 for the 1446 tax paid by PRS. NRA is not required to include any of the ECTI in gross income and accordingly may not claim a credit for any amount of the $35 of 1446 tax PRS paid.

Example 2. Simple trust that distributes a portion of ECTI to the beneficiary. Assume the same facts as in *Example 1*, except that PRS distributes $60 to FT, which FT includes in its fiduciary accounting income under local law. FT will report the $100 of ECTI in its gross income and may claim a deduction for the $60 required to be distributed under section 651(a) to NRA. Pursuant to paragraph (d)(2)(iii) of this section, FT may claim a $14 credit under section 33 for the 1446 tax PRS paid ($40/$100 multiplied by $35). NRA is required to include the $60 of the ECTI in gross income under section 652 (as ECTI) and may claim a $21 credit under section 33 for the 1446 tax PRS paid ($35 less $14 or $60/$100 multiplied by $35).

Example 3. Complex trust that distributes entire ECTI to the beneficiary. Assume the same facts as in *Example 1*, except that FT is a complex trust under section 661. PRS distributes $60 to FT, which FT includes in its fiduciary accounting income. FT distributes the $60 of fiduciary accounting income to NRA and also properly distributes an additional $40 to NRA from FT's principal. FT will report the $100 of ECTI in its gross income and may deduct the $60 required to be distributed to NRA under section 661(a)(1) and may deduct the $40 distributed to NRA under section 661(a)(2). Pursuant to paragraph (d)(2)(iii) of this section, FT may not claim a credit under section 33 for any of the $35 of 1446 tax paid by PRS. NRA is required to include $100 of the ECTI in gross income under section 662 (as ECTI) and may claim a $35 credit under section 33 for the 1446 tax paid by PRS ($35 less $0).

(e) *Liability of partnership for failure to withhold*—(1) *In general.* Every partnership required to pay 1446 tax is made liable for that tax by section 1461. Therefore, a partnership that is required to pay 1446 tax but fails to do so, or pays less than the amount required under this section, is liable under section 1461 for the payment of the tax required to be withheld under chapter 3 of the Internal Revenue Code and the regulations thereunder unless, and to the extent, the partnership can demonstrate pursuant to paragraph (e)(2) of this section, to the satisfaction of the Commissioner or his delegate, that a foreign partner has paid the full amount of tax required to be paid by such partner to the Internal Revenue Service. See paragraph (e)(3) of this section and section 1463 regarding a partnership's liability for penalties and interest even though a foreign partner has satisfied the underlying tax liability. See also § 1.1461–3 for applicable penalties when a partnership fails to pay 1446 tax. See paragraph (b) of this section for an addition to the tax under section 6655 when there is an underpayment of 1446 tax.

(2) *Proof that tax liability has been satisfied and deemed payment of 1446 tax.* Proof of payment of tax may be established for purposes of paragraph (e)(1) of this section consistent with § 1.1445–1(e)(3). Under that standard, a partnership must provide sufficient information to the IRS to determine that the partner's tax liability was satisfied or established to be zero in accordance with the rules of this section. Under this section, a partnership's liability for 1446 tax shall be deemed to have been satisfied (deemed payment), to the extent of the 1446 tax due with respect to the ECTI allocable to a foreign partner, on the later of the date that such partner is considered to have paid all tax that is required to be shown on such partner's U.S. income tax return under section 6513(a) and (b)(2) (prescribing the date tax is considered paid for purposes of sections 6511(b)(2), (c), and 6512), or the last date for payment of the 1446 tax without extensions (the unextended due date for Form 8804). The deemed payment rule of this paragraph (e)(2) shall apply for purposes sections of 1446, 1461, and 1463, and any additions to the tax, interest, or penalties potentially applicable to such partnership under section 1446, including sections 6601, 6651, and 6655. Any deemed payment of 1446 tax under this paragraph (e)(2) shall not be treated as a deemed distribution under section 1446(d) and this section.

(3) *Liability for interest, penalties, and additions to the tax*—(i) *Partnership.* Notwithstanding paragraph (e)(2) of this section, a partnership that fails to pay 1446 tax is not relieved from liability under section 6655 (as applied through this section) or for interest under section 6601, when applicable. See § 1.1463–1. Such liability may exist even if there is no underlying tax liability due from a foreign partner on its allocable share of partnership ECTI. The addition to the tax under section 6655 or the interest charge under section 6601 that is required by those sections shall be imposed as set forth in those sections, as modified by this section. The section 6601 interest charge shall accrue beginning on the last date prescribed for payment of the 1446 tax due under section 1461 (which is the due date, without extensions, for filing Form 8804). The section 6601 interest charge shall stop accruing on the 1446 tax liability on the date, and to the extent, that the unpaid tax liability under section 1446 is satisfied (or is deemed satisfied under this paragraph (e)). Further, a partnership's liability under section 6655 (as applied through this section) for any underpaid installment payment shall accrue beginning on the relevant installment payment date, and shall stop accruing on the earlier of the date (and to the extent) that the 1446 tax liability is actually satisfied or the date prescribed in paragraph (b)(2)(v)(C) of this section. See paragraph (e)(4) of this section for examples illustrating that a partner's payment of estimated tax has no effect on the partnership's calculation of its addition to the tax under section 6655 and this section. See § 1.1461–3 for a list of the additions to tax, interest, and penalties that may apply to a partnership that fails to comply with section 1446. See § 1.1446–6T for exceptions to the application of the addition to the tax under section 6655 (as applied through this section) when a partnership reasonably relies on a foreign partner's certificate to reduce 1446 tax.

(ii) *Foreign partner.* A foreign partner is permitted to reduce any addition to the tax under section 6654 or section 6655 by the amount of any section 6655 addition to the tax paid by the partnership with respect to the partnership's failure to pay adequate installment payments of the 1446 tax on ECTI allocable to the foreign partner.

(4) *Examples.* The following examples illustrate the application of this section. In considering the examples, disregard the potential application of paragraph (b)(2)(v)(F) of this section (relating to the *de minimis* exception to paying 1446 tax). Further, in each of the examples where a partnership is deemed to have paid 1446 tax with respect to ECTI allocable to a partner, it is assumed that the partnership has presented to the IRS the appropriate information under paragraph (e)(2) of this section for the IRS to conclude that the deemed payment is appropriate. The examples are as follows:

Example 1. Foreign partnership fails to pay 1446 tax and sole foreign partner fails to pay all tax required to be shown on partner's U.S. income tax return.

(i) PRS is a foreign partnership engaged in a trade or business in the United States and has two equal partners, A, a U.S. person, and B, a nonresident alien. PRS is described in § 1.6081–5(a) (PRS keeps its books and records outside the United States and Puerto

Rico) and, therefore, is required to file Form 8804 by the 15th day of the 6th month following the close of its taxable year. Both partners and PRS are calendar year taxpayers. PRS has received a valid Form W–9 and W–8BEN from A and B, respectively, but has not received any other documents or certificates. B is engaged in multiple trades or businesses (including the PRS partnership) that give rise to effectively connected income. PRS will use an acceptable annualization method under this section for computing its 1446 tax.

(ii) In PRS's first year of operations (Year 1), PRS estimates for each installment period described in § 1.1446–3 that B will be allocated $100 of ordinary ECTI for the taxable year. Therefore, for each installment period PRS is required to pay one fourth of the tax on the annualized ECTI allocable to B, or $8.75 (.25 × ($100 × .35)). PRS fails to make any installment payments. PRS's operations actually result in $100 of ECTI allocated to B. Therefore, PRS was required to have paid 1446 tax of $35 on or before the due date, without extensions, for filing its Form 8804 which is June 15, Year 2 (the last date prescribed for payment of the 1446 tax). PRS does not file Forms 8804 or 8805.

(iii) B pays estimated taxes and makes the following payments on the following dates: June 15, Year 1—$20, September 15, Year 1—$15, and January 15, Year 2—$10. B's total estimated tax payments equal $45. B files its U.S. Federal income tax return timely on June 15, Year 2, and reports all effectively connected income required to be shown on its return. Assume that B's total correct tax liability as shown on the return is $50. B does not make a payment with its return and so B still owes $5 to the Internal Revenue Service (excluding any interest, penalties, and additions to the tax that may apply). Assume that B is not subject to an addition to the tax under section 6654.

(iv) Under the rules of paragraph (e)(2) of this section, for purposes of sections 1446, 1461, and 1463, PRS is not considered to have paid any 1446 tax because B has not paid all of B's U.S. income tax liability.

(v) Further, under the principles of section 6655 and the rules of § 1.1446–3(e), a partner's estimated tax payments will not affect the calculation of a partnership's addition to the tax. Accordingly, PRS will be liable under the principles of section 6655 and § 1.1446–3 for failing to withhold for each installment payment. The addition to the tax will accrue beginning with the due date of each installment payment on the $8.75 underpayment for each respective installment period and will continue to accrue until June 15, Year 2 (the date prescribed in paragraph (b)(2)(v)(C) of this section).

(vi) Further, beginning on June 15, Year 2 (the last date prescribed for payment of 1446 tax without extensions), PRS will be liable for interest under section 6601 with respect to the unpaid 1446 tax, $35. This interest will stop accruing on the earlier of the date that the 1446 tax is paid by PRS or is deemed paid under paragraph (e)(2) of this section by reason of B's payment of its full tax liability.

(vii) Further, beginning on June 15, Year 2 (the due date for filing Form 8804), PRS will be liable for the addition to the tax under section 6651(a)(1) for failing to file Form 8804. This addition to the tax accrues on the amount required to be shown as the 1446 tax liability on Form 8804, $35. This addition to the tax will accrue at the rate of 5 percent per month until the date that PRS files Form 8804 for Year 1, or the maximum accrual of the penalty (25 percent of the tax required to be shown on the return) under that section has been reached.

(viii) PRS may be liable for other penalties and additions to the tax for its failure to withhold or to furnish statements to its foreign partner B. See § 1.1461–3 for a list of the penalties that may apply.

Example 2. Foreign partnership fails to pay 1446 tax but sole foreign partner pays all tax required to be shown on the partner's U.S. income tax return. The facts are the same as *Example 1*, except that B pays $5 with the filing of B's return and has therefore paid all tax required to be shown on B's return within the meaning of paragraph (e)(2) of this section.

(i) For purposes of sections 1446, 1461, and 1463, PRS is deemed to have paid its 1446 tax liability under paragraph (e)(2) of this section as of the later of the date that B is considered to have paid its tax under section 6513(a) and (b)(2) (June 15, Year 2) and the last date for PRS to pay its 1446 tax without extensions (also June 15, Year 2). Therefore, PRS is deemed to have paid all of its 1446 tax liability as of June 15, Year 2. PRS has no continuing liability for 1446 tax under section 1461, however, additions to the tax, interest, and penalties may apply.

(ii) For purposes of section 6655 and § 1.1446–3, under paragraph (e)(2) PRS is deemed to have paid its 1446 tax on June 15, Year 2. Even if B had fully paid its tax liability as of March 15, Year 2, the rule in paragraph (e)(2) of this section would not deem PRS to have paid its 1446 tax until June 15, Year 2. As a result, B's estimated tax payments will have no effect on PRS's calculation of its addition to the tax. The addition to the tax under 6655 and § 1.1446–3 shall begin to accrue on each installment date with respect to the underpaid installment ($8.75), and will stop accruing on June 15, Year 2, the date prescribed in paragraph (b)(2)(v)(C) of this section.

(iii) Because PRS is deemed to have paid its full 1446 tax liability as of June 15, Year 2 (the last date prescribed for payment of 1446 tax without extensions), PRS is not subject to an interest charge under section 6601, or a failure to file penalty under section 6651 (see section 6651(b)(1)).

(iv) PRS may be liable for other penalties and additions to the tax for its failure to withhold or to furnish statements to its foreign partner B. See § 1.1461–3 for a list of the penalties that may apply.

(v) If PRS had several foreign partners, PRS would conduct the same analysis as set forth above with respect to each partner. That is, under paragraph (e) of this section, PRS may be deemed to have paid 1446 tax with respect to the ECTI allocable to some but not all of its foreign partners.

Example 3. Domestic partnership fails to pay 1446 tax but sole foreign partner fully pays all tax required to be shown on partner's U.S. income tax return. The facts are the same as *Example 2*, except that PRS is a domestic partnership whose last date prescribed for paying 1446 tax without extensions (*i.e.*, generally the unextended due date for Form 8804) is April 15, Year 2.

(i) For purposes of sections 1446, 1461, and 1463, PRS is deemed to have paid its 1446 tax liability on the later of the date that B is considered to have paid tax under section 6513(a) and (b)(2) (June 15, Year 2) and the last date for paying 1446 tax without extensions (*i.e.*, the unextended due date for Form 8804, April 15, Year 2). Accordingly, PRS is not considered to have fully paid its 1446 tax liability until June 15, Year 2. PRS has no continuing liability for 1446 tax under section 1461, however, additions to the tax, interest, and penalties may apply.

(ii) For purposes of section 6655 and § 1.1446–3, PRS is subject to an underpayment addition to the tax that accrues on the same amount as in *Example 1* and *Example 2* because PRS is not deemed to have paid 1446 tax under paragraph (e)(2) of this section until June 15, Year 2. The addition to the tax will stop accruing on the date prescribed in paragraph (b)(2)(v)(C) of this section (*i.e.*, April 15, Year 2, the due date, without extensions, for filing Form 8804).

(iii) For purposes of section 6601, as of the last date prescribed for paying 1446 tax without extensions (April 15, Year 2), PRS has not paid or been deemed to have paid any 1446 tax. Accordingly, the interest charge under section 6601 shall begin to accrue on April 15, Year 2, and shall accrue until the 1446 liability is paid or deemed to have been paid. In this case, the interest charge will accrue until June 15, Year 2, the date that PRS is deemed to have paid its 1446 tax under paragraph (e)(2) of this section.

(iv) For purposes of section 6651(a)(1), as of April 15, Year 2, PRS's amount required to be shown as tax on its Form 8804 is $35. This amount cannot be reduced under section 6651(b)(1) because PRS is not deemed to have paid 1446 tax under paragraph (e)(2) of this section until June 15, Year 2, a date falling after the last date for PRS to pay its 1446 tax, April 15, Year 2. Accordingly, the failure to file penalty will begin to accrue on April 15, Year 2 (filing due date for Form 8804), and shall stop accruing on the earlier of the date that PRS files Form 8804 or the maximum accrual of the penalty (25 percent of the amount required to be shown as tax on the return) is reached.

(v) PRS may be liable for other penalties and additions to the tax for its failure to withhold or to furnish statements to its foreign partner B. See § 1.1461–3 for a list of the penalties that may apply.

(f) *Effect of withholding on partner.* The payment of the 1446 tax by a partnership does not excuse a foreign partner to which a portion of ECTI is allocable from filing a U.S. tax or informational return, as appropriate, with respect to that income. Information concerning installment payments of 1446 tax paid during the partnership's taxable year on behalf of a foreign partner shall be provided to such foreign partner in accordance with

paragraph (d) of this section and such information may be taken into account by the foreign partner when computing the partner's estimated tax liability during the taxable year. Form 1040NR, ''U.S. Nonresident Alien Income Tax Return,'' Form 1065, ''U.S. Return of Partnership Income,'' Form 1120F, ''U.S. Income Tax Return of a Foreign Corporation,'' or such other return as appropriate, must be filed by the partner, and any tax due must be paid, by the filing deadline (including extensions) generally applicable to such person. Pursuant to paragraph (d) of this section, a partner may generally claim a credit under section 33 for its share of any 1446 tax paid by the partnership against the amount of income tax (or 1446 tax in the case of tiers of partnerships) as computed in such partner's return. See § 1.1446–3(e)(3)(ii) for rules permitting a partner to reduce its addition to tax under section 6654 or section 6655.

§ 1.1446–4 Publicly traded partnerships.

(a) *In general.* This section sets forth rules for applying the section 1446 withholding tax (1446 tax) to publicly traded partnerships. A publicly traded partnership (as defined in paragraph (b) of this section) that has effectively connected gross income, gain or loss must pay 1446 tax by withholding from distributions to a foreign partner. Publicly traded partnerships that withhold on distributions must pay over and report any 1446 tax as provided in paragraph (c) of this section, and generally are not to pay over and report the 1446 tax under the rules in § 1.1446–3. The amount of the withholding tax on distributions, other than distributions excluded under paragraph (f) of this section, that are made during any partnership taxable year, equals the applicable percentage (defined in paragraph (b)(2) of this section) of such distributions. For penalties and additions to the tax for failure to comply with this section, see §§ 1.1461–1 and 1.1461–3.

(b) *Definitions*—(1) *Publicly traded partnership.* For purposes of this section, the term publicly traded partnership has the same meaning as in section 7704 (including the regulations thereunder), but does not include a publicly traded partnership treated as a corporation under that section.

(2) *Applicable percentage.* For purposes of this section, applicable percentage shall have the meaning as set forth in § 1.1446–3(a)(2), except that the partnership or nominee required to pay 1446 tax may not consider a preferential rate in computing the 1446 tax due with respect to a partner.

(3) *Nominee.* For purposes of this section, the term nominee means a domestic person that holds an interest in a publicly traded partnership on behalf of a foreign person.

(4) *Qualified notice.* For purposes of this section, a qualified notice is a notice given by a publicly traded partnership regarding a distribution that is attributable to effectively connected income, gain or loss of the partnership, and in accordance with the notice requirements with respect to dividends described in 17 CFR 240.10b–17(b)(1) or (3) issued pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a). See paragraph (d) of this section regarding when a nominee is considered to have received a qualified notice.

(c) *Paying and reporting 1446 tax.* The withholding tax required under this section is to be paid pursuant to the rules and procedures of section 1461, §§ 1.1461–1, 1.1461–2, and 1.6302–2, as supplemented by the rules of this section. However, the reimbursement and set-off procedures set forth in § 1.1461–2 shall not apply. A withholding agent under this section must use Form 1042, ''Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,'' and Form 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' to report withholding from distributions under this section. See § 1.1461–1(b). Further, a withholding agent under this section may obtain a refund for 1446 tax paid in accordance with section 1464 and the regulations thereunder. See § 1.1446–3(d)(1)(iv) and (vii) (relating to a foreign trust or estate that holds an interest in a publicly traded partnership) and § 1.1446–5(d) (relating to a publicly traded partnership that is part of a tiered partnership structure) for additional guidance.

(d) *Rules for designation of nominees to withhold tax under section 1446.* A nominee that receives a distribution from a publicly traded partnership subject to withholding under this section, and which is to be paid to (or for the account of) any foreign person, may be treated as a withholding agent under this section. A nominee is treated as a withholding agent under this section only to the extent of the amount specified in the qualified notice (as defined in paragraph (b)(4) of this section) received by the nominee. A nominee is treated as receiving a qualified notice at the time such notice is published in accordance with 17 CFR 240.10b–17(b)(1) or (3). Where a nominee is designated as a withholding agent with respect to a foreign partner of the partnership, the obligation to withhold on distributions to such foreign partner in accordance with the rules of this section shall be imposed solely on the nominee. A nominee responsible for withholding under the rules of this section shall be subject to liability under sections 1461 and 6655, as well as all applicable penalties and interest, as if such nominee was a partnership responsible for withholding under this section.

(e) *Determining foreign status of partners.* The rules of § 1.1446–1 shall apply in determining whether a partner of a publicly traded partnership is a foreign partner for purposes of the 1446 tax. A partnership or nominee obligated to withhold under this section shall be entitled to rely on any of the forms acceptable under § 1.1446–1 received from persons on whose behalf it holds interests in the partnership to the same extent a partnership is entitled to rely on such forms under those rules.

(f) *Distributions subject to withholding*—(1) *In general.* Except as provided in this paragraph (f)(1), a publicly traded partnership must withhold at the applicable percentage with respect to any actual distribution made to a foreign partner. The amount of a distribution subject to 1446 tax includes the amount of any 1446 tax required to be withheld on the distribution. In the case of a partnership (upper-tier partnership) that receives a partnership distribution from another partnership in which it is a partner (lower-tier partnership) (*i.e.*, a tiered structure described in § 1.1446–5), any 1446 tax that was paid by the lower-tier partnership may be credited by the upper-tier partnership and shall be treated as a distribution under section 1446. For example, a foreign publicly traded partnership, UTP, owns an interest in domestic publicly traded partnership, LTP. LTP makes a distribution subject to section 1446 of $100 to UTP during its taxable year beginning January 1, 2005, and withholds 35 percent (the highest rate in section 1)($35) of that distribution under section 1446. UTP receives a net distribution of $65 which it immediately redistributes to its partners. UTP has a liability to pay 35 percent of the total actual and deemed distribution it makes to its foreign partners as a section 1446 withholding tax. UTP may credit the $35 withheld by LTP against this liability as if it were paid by UTP. See § 1.1462–1(b) and § 1.1446–5(b)(1). When UTP distributes the $65 it actually receives from LTP to its partners, UTP is treated for purposes of section 1446 as if it made a distribution of $100 to its partners ($65 actual distribution and $35 deemed distribution). UTP's partners (U.S. and

foreign) may claim a credit against their U.S. income tax liability for their allocable share of the $35 of 1446 tax paid on their behalf.

(2) *In-kind distributions.* If a publicly traded partnership distributes property other than money, the partnership shall not release the property until it has funds sufficient to enable the partnership to pay over in money the required 1446 tax.

(3) *Ordering rule relating to distributions.* Distributions from publicly traded partnerships are deemed to be paid out of the following types of income in the order indicated—

(i) Amounts attributable to income described in section 1441 or 1442 that are not effectively connected, without regard to whether such amounts are subject to withholding because of a treaty or statutory exemption;

(ii) Amounts effectively connected with a U.S. trade or business, but not subject to withholding under section 1446 (*e.g.*, amounts exempt by treaty);

(iii) Amounts subject to withholding under section 1446; and

(iv) Amounts not listed in paragraphs (f)(3)(i) through (iii) of this section.

(4) *Coordination with section 1445(e)(1).* Except as otherwise provided in this section, a publicly traded partnership that complies with the requirements of withholding under section 1446 and this section will be deemed to have satisfied the requirements of section 1445(e)(1) and the regulations thereunder. Notwithstanding the excluded amounts set forth in paragraph (f)(3) of this section, distributions subject to withholding at the applicable percentage shall include the following—

(i) Amounts subject to withholding under section 1445(e)(1) upon distribution pursuant to an election under § 1.1445–5(c)(3) of the regulations; and

(ii) Amounts not subject to withholding under section 1445 because the distributee is a partnership or is a foreign corporation that has made an election under section 897(i).

§ 1.1446–5 Tiered partnership structures.

(a) *In general.* The rules of this section shall apply in cases where a partnership (lower-tier partnership) that has effectively connected taxable income (ECTI), has a partner that is a partnership (upper-tier partnership). Except as provided in paragraph (e) of this section, if an upper-tier domestic partnership directly owns an interest in a lower-tier partnership, the lower-tier partnership is not required to pay the section 1446 withholding tax (1446 tax) with respect to the upper-tier partnership's allocable share of net income, regardless of whether the upper-tier domestic partnership's partners are foreign. Paragraph (b) of this section prescribes the reporting requirements for upper-tier and lower-tier partnerships subject to section 1446. Paragraph (c) of this section prescribes rules requiring a lower-tier partnership to look through an upper-tier foreign partnership to a partner of such upper-tier partnership to the extent it has sufficient documentation to determine the status of such partner and determine such partner's indirect share of the lower-tier partnership's effectively connected taxable income (ECTI). Paragraph (d) of this section prescribes rules applicable to a publicly traded partnership in a tiered partnership structure. Paragraph (e) of this section prescribes rules permitting a domestic upper-tier partnership to elect to apply the look through rules of paragraph (c) of this section. Paragraph (f) of this section sets forth examples illustrating the rules of this section.

(b) *Reporting requirements*—(1) *In general.* Notwithstanding paragraph (c) of this section, to the extent that an upper-tier partnership that is a foreign partnership is a partner in a lower-tier partnership, and the lower-tier partnership has paid 1446 tax (including installment payments of such tax) with respect to ECTI allocable to the upper-tier partnership, the lower-tier partnership shall comply with §§ 1.1446–1 through 1.1446–3 and provide the upper-tier partnership notice of such payments and a copy of the statements and forms filed with respect to the upper-tier partnership's interest in the lower-tier partnership (*e.g.*, Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax''). The upper-tier partnership may treat the 1446 tax (or any installment of such tax) paid by the lower-tier partnership on its behalf as a credit against its liability to pay 1446 tax (or any installment of such tax), as if the upper-tier partnership actually paid over the amounts at the time that the amounts were paid by the lower-tier partnership. See § 1.1462–1(b) and § 1.1446–3(d). To the extent required in § 1.1446–3(d)(1)(iii), the upper-tier partnership will file Form 8804, ''Annual Return for Partnership Withholding Tax (Section 1446),'' and Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax,'' for each of its foreign partners with respect to its 1446 tax obligation. To the extent the upper-tier partnership does not claim a refund of the 1446 tax it paid (or is considered to have paid), the upper-tier partnership will pass the credit for the 1446 tax paid to its partners on the Forms 8805 it issues. See § 1.1446–3(d). The rules of this paragraph (b) shall apply to an upper-tier and lower-tier partnership to the extent that an election has been made and consented to under paragraph (e) of this section.

(2) *Publicly traded partnerships.* In the case of an upper-tier foreign partnership that is a publicly traded partnership, the rules of § 1.1446–4(c) shall apply. See also paragraph (d) of this section.

(c) *Look through rules for foreign upper-tier partnerships.* For purposes of computing the 1446 tax obligation of a lower-tier partnership, if an upper-tier foreign partnership owns an interest in the lower-tier partnership, the upper-tier partnership's allocable share of ECTI from the lower-tier partnership shall be treated as allocable to a partner of the upper-tier partnership, to the extent of such partner's indirect share of such ECTI (as if such partner were a direct partner in the lower-tier partnership), if—

(1) The upper-tier foreign partnership furnishes the lower-tier partnership a valid Form W–8IMY, ''Certificate of Foreign Intermediary, Flow Through Entity, or Certain U.S. Branches for United States Tax Withholding,'' indicating that it is a look-through foreign partnership for purposes of section 1446; and

(2) The lower-tier partnership can reliably associate (within the meaning of § 1.1441–1(b)(2)(vii)) effectively connected partnership items allocable to the upper-tier partnership (and indirectly to such partner) with a Form W–8 (*e.g.*, Form W–8BEN), Form W–9, ''Request for Taxpayer Identification Number and Certification,'' or other form acceptable under § 1.1446–1, establishing the status of such partner provided by the upper-tier partnership. The principles of § 1.1441–1(b)(2)(vii) shall apply to determine whether a lower-tier partnership can reliably associate effectively connected partnership items allocable to the upper-tier partnership with a partner of the upper-tier partnership. To the extent the lower-tier partnership receives a valid Form W–8IMY from the upper-tier partnership but cannot reliably associate a portion of the upper-tier partnership's allocable share of effectively connected partnership items with a partner of such upper-tier partnership, then the lower-tier partnership shall pay 1446 tax on such portion at the higher of the applicable percentages in section 1446(b). See § 1.1446–3(a)(2) for the treatment of any income or gain

potentially subject to a preferential rate. If a lower-tier partnership has not received a valid Form W–8IMY from the upper-tier partnership, the lower-tier partnership shall withhold on the upper-tier partnership's entire allocable share of ECTI at the higher of the applicable percentages in section 1446(b). The look through regime set forth in this paragraph (c) is for purposes of computing the lower-tier partnership's 1446 tax obligation only and does not alter the persons considered to be partners in the lower-tier partnership for partnership reporting purposes (*e.g.*, issuing Form 8805, Schedule K–1).

(d) *Publicly traded partnerships*—(1) *Upper-tier publicly traded partnership.* The rules set forth in paragraph (c) shall not apply to look through an upper-tier partnership whose interests are publicly traded (as defined in § 1.1446–4(b)(1)).

(2) *Lower-tier publicly traded partnership.* The look through rules of paragraph (c) of this section shall apply, if the requirements of that paragraph are met, to a lower-tier partnership that is a publicly traded partnership within the meaning of § 1.1446–4(b)(1) only if the upper-tier partnership is not described in paragraph (d)(1) of this section. For example, a lower-tier publicly traded partnership (or nominee) shall look through an upper-tier foreign partnership (or domestic partnership to the extent an election is made and consented to under paragraph (e) of this section) when computing its 1446 tax liability, provided the upper-tier partnership is not a publicly traded partnership and the appropriate documentation needed to satisfy the standards set forth in § 1.1441–1(b)(2)(vii) and paragraph (c) of this section have been furnished.

(e) *Election by a domestic upper-tier partnership to apply look through rules*—(1) *In general.* Subject to the rules of this paragraph (e), a domestic partnership that is a partner in a lower-tier partnership may elect to apply the rules of this section 1.1446–5 and have the lower-tier partnership look through such upper-tier partnership to the partners of such domestic partnership for purposes of computing the lower-tier partnership's 1446 tax liability. A domestic partnership shall make this election by attaching to the Form W–9 submitted to the lower-tier partnership, a written statement and information (described in paragraph (e)(2) of this section) that identifies the upper-tier partnership as a domestic partnership and that states that such partnership is making the election under this paragraph (e). This paragraph (e)(1) shall not apply to a publicly traded partnership described in § 1.1446–4(b)(1). See paragraph (d)(1) of this section.

(2) *Information required for valid election statement.* In addition to the requirements of paragraphs (e)(1) and (3) of this section, the election statement submitted under this paragraph (e)(2) is not valid and cannot be accepted by the lower-tier partnership pursuant to paragraph (e)(3) of this section unless the upper-tier partnership attaches valid documentation pursuant to § 1.1446–1 (*e.g.*, Form W–8BEN) with respect to one or more of its foreign partners. The information and documentation submitted with the election must comply with the rules of this section to permit the lower-tier partnership to reliably associate (within the meaning of § 1.1441–1(b)(2)(vii)) at least a portion of the upper-tier partnership's allocable share of ECTI with one or more foreign partners of the upper-tier partnership. The election statement must identify the upper-tier partnership by name, address, and TIN, and specify the percentage interest the domestic partnership holds in the lower-tier partnership. The statement may also include such information the upper-tier partnership deems necessary to enable the lower-tier partnership to apply the provisions of this section. If at any time the upper-tier partnership determines that the information or documentation previously provided to the lower-tier partnership is no longer correct, the upper-tier partnership shall update such information and documentation. Except as provided in paragraph (e)(3) of this section, an election that is effective under this paragraph (e) shall apply for subsequent taxable years until such upper-tier partnership revokes the election in writing. A revocation under this section shall be effective for any installment due date arising more than 15 days subsequent to the date that the lower-tier partnership receives such revocation.

(3) *Consent of lower-tier partnership.* An election made under this paragraph (e) is not effective until the lower-tier partnership consents in writing to the upper-tier partnership that it agrees to apply the provisions of this section. A lower-tier partnership may not consent to an election submitted under this paragraph (e) for any installment date or Form 8804 filing date arising within 15 days of the lower-tier partnership's receipt of such election. The lower-tier partnership's written consent must specify the extent to which it will look through the upper-tier partnership in computing its 1446 tax (or any installment of such tax). To the extent that the lower-tier partnership does not consent to an election to apply the look through provisions of paragraph (c) of this section, the lower-tier partnership shall consider such portion of the upper-tier partnership's allocable share of ECTI as allocable to a domestic person for purposes of computing its 1446 tax obligation. A lower-tier partnership that has consented to an election under this paragraph (e) may revoke or modify its consent, in writing, at any time.

(f) *Examples.* The following examples illustrate the provisions of this section. In considering the examples, disregard the potential application of § 1.l446–3(b)(2)(v)(F) (relating to the *de minimis* exception to paying 1446 tax). The examples are as follows:

Example 1. Sufficient documentation—tiered partnership structure. (i) Nonresident alien (NRA) and foreign corporation (FC) are partners in PRS, a foreign partnership, and share profits and losses in PRS 70 and 30 percent, respectively. All of PRS's partnership items are allocated based upon each partner's respective ownership interest and it is assumed that these allocations are respected under section 704(b) and the regulations thereunder. NRA and FC each furnish PRS with a valid Form W–8BEN establishing themselves as a foreign individual and foreign corporation, respectively. PRS holds a 40 percent interest in the profits, losses and capital of LTP, a lower-tier partnership. NRA holds the remaining 60 percent interest in profits, losses and capital of LTP. All of LTP's partnership items are allocated based upon each partner's respective ownership interest and it is assumed that these allocations are respected under section 704(b) and the regulations thereunder. LTP has $100 of annualized ECTI for the relevant installment period. All of this income is ordinary income and there is no potential application of a preferential rate applicable percentage under § 1.1446–3(a)(2). Further, § 1.1446–6T does not apply. PRS has no income other than the income allocated from LTP. PRS provides LTP with a valid Form W–8IMY indicating that it is a foreign partnership and attaches the valid Form W–8BENs executed by NRA and FC, as well as a statement describing the allocation of PRS's effectively connected items among its partners. The information that PRS submits to LTP is sufficient to permit LTP to reliably associate (within the meaning of § 1.1441–1(b)(2)(vii)) PRS's allocable share of effectively connected items with NRA and FC pursuant to this section. Further, NRA provides a valid Form W–8BEN to LTP.

(ii) LTP must pay 1446 tax on the $60 allocable to its direct partner NRA using the applicable percentage for non-corporate partners (the highest rate in section 1).

(iii) With respect to the effectively connected partnership items that LTP can reliably associate with NRA through PRS (70 percent of PRS's 40 percent allocable share ($40), or $28), LTP will pay 1446 tax on NRA's allocable share of LTP's ECTI (as determined by looking through PRS) using

the applicable percentage for non-corporate partners (the highest rate in section 1).

(iv) With respect to the effectively connected partnership items that LTP can reliably associate with FC through PRS (30 percent of PRS's 40 percent allocable share ($40), or $12), LTP will pay 1446 tax on FC's allocable share of LTP's ECTI (as determined by looking through PRS) using the applicable percentage for corporate partners (the highest rate in section 11).

(v) LTP's payment of the 1446 tax is treated as a distribution to NRA and PRS, its direct partners, that those partners may credit against their respective tax obligations. PRS will report its 1446 tax obligation with respect to its direct foreign partners, NRA and FC, on the Form 8804 and Forms 8805 that it files with the Internal Revenue Service pursuant to paragraph (b) of this section and will credit the amount withheld by LTP on its Form 8804. This credit will satisfy PRS's 1446 tax liability as reported on the Form 8804 it files because PRS's only income is from LTP, and LTP paid 1446 tax with respect to all of PRS's allocable share in LTP by looking through to PRS's partners NRA and FC. Further, PRS will pass along the credit for the 1446 tax withheld by LTP to its partners, NRA and FC on the Form 8805 issued to each partner. The credit passed to each partner on Form 8805 will be treated as a distribution to the respective partners under section 1446(d).

Example 2. Insufficient documentation—tiered partnership structure. (i) LTP is a domestic partnership that has two equal partners A and PRS. A is a nonresident alien and PRS is a foreign partnership that has two equal foreign partners, C and D. Neither A nor PRS provides LTP with a valid Form W–8 or Form W–9. Neither C nor D provides PRS with a valid Form W–8 or Form W–9. Pursuant to § 1.1446–1(c)(3), LTP must presume that PRS is a foreign person subject to withholding under section 1446 at the higher of the highest rate under section 1 or section 11(b)(1). LTP has also not received any documentation with respect to A. LTP must presume that A is a foreign person, and, if LTP knows that A is an individual, compute and pay 1446 tax, subject to § 1.1446–3(a)(2), based on that knowledge.

(ii) Assume a change of facts where C provides a form W–8 (*e.g.*, Form W–8BEN) to PRS, and PRS in turn, furnishes that form to LTP along with its Form W–8IMY, and information regarding how effectively connected items are allocated to C and D. Based upon the additional facts, LTP can reliably associate one-half of PRS's allocable share of ECTI with documentation related with C. Therefore, under paragraph (c)(2) of this section, LTP will look through PRS to C when computing its 1446 tax to the extent of C's indirect share and will not look through with respect to the remainder of PRS's allocable share (D's indirect share).

§ 1.1446–6T Special rules to reduce a partnership's 1446 tax with respect to a foreign partner's allocable share of effectively connected taxable income (Temporary).

(a) *In general.* The rules of this section describe when a partnership required to pay withholding tax under section 1446 (1446 tax), or any installment of such tax, may consider certain partner-level deductions and losses in computing its 1446 tax obligation under § 1.1446–3, or otherwise may not be required to pay a *de-minimis* amount of 1446 tax with respect to a nonresident alien partner. A partnership determines the applicability of this section on a partner-by-partner basis for each installment period and when completing its Form 8804, ''Annual Return for Partnership Withholding Tax (Section 1446),'' and paying 1446 tax for the partnership taxable year. When applicable, the rules of this section permit a foreign partner to whom this section applies (within the meaning of paragraph (b) of this section) to furnish a certificate to the partnership that sets forth the deductions and losses that are connected with, or properly allocated and apportioned to, as the case may be, gross income that is effectively connected with the partner's U.S. trade or business and that such foreign partner reasonably expects to be available for the partner's taxable year to reduce the partner's U.S. income tax liability on the partner's allocable share of effectively connected income or gain from the partnership. The rules of this section also permit a partner to represent that the partner's investment in the partnership is (and will be) the partner's only investment or activity that will give rise to effectively connected items for the partner's taxable year. To apply the rules of this section, a partner must submit a new certificate for each partnership taxable year. Paragraph (c) of this section sets forth the deductions and losses that a partner may certify as reasonably expected to be available to such partner for the partner's taxable year, and sets forth rules regarding the partner's representation that the partnership investment is the partner's only activity giving rise to effectively connected items. Paragraph (c) of this section also sets forth requirements for a foreign partner's certificate to be valid. Paragraph (d) of this section provides rules regarding when a partnership may rely on and consider a foreign partner's certificate in computing its 1446 tax, and the effect of relying on such a certificate. Paragraph (d) of this section also provides rules regarding how a partnership must handle any certificate or updated certificate received pursuant to this section. Paragraph (e) of this section sets forth examples that illustrate the rules of this section.

(b) *Foreign partner to whom this section applies*—(1) *In general.* Subject to paragraph (b)(2) of this section, a foreign partner to whom this section applies is a foreign partner that has provided valid documentation to the partnership to whom a certificate is submitted under this section in accordance with § 1.1446–1, has timely filed or will timely file a Federal income tax return in the United States in each of the partner's preceding four taxable years and the partner's taxable year(s) during which the certificate under this section is considered, and has timely paid (or will timely pay) all tax shown on such returns. This section shall not apply to a partner in a publicly traded partnership subject to § 1.1446–4.

(2) *Special rules.* Notwithstanding paragraph (b)(1) of this section:

(i) In the case of a domestic or foreign partnership (upper-tier partnership) that is a partner in another partnership (lower-tier partnership), this section may apply to reduce or eliminate the 1446 tax (or any installment of such tax) of the lower-tier partnership with respect to a foreign partner of the upper-tier partnership only to the extent the provisions of § 1.1446–5 apply to look-through the upper-tier partnership to the foreign partner of such upper-tier partnership and the certificate described in paragraph (c) of this section is provided by such foreign partner to the upper-tier partnership and, in turn, provided to the lower-tier partnership with other appropriate documentation. See § 1.1446–5(c) and (e). Absent the application of § 1.1446–5(c), the upper-tier partnership may not submit a certificate of deductions and losses to the lower-tier partnership.

(ii) This section shall not apply to a partner that is a foreign estate.

(iii) This section shall not apply to a partner that is a domestic or foreign trust, except to the extent that such trust is owned by a grantor or other person under subpart E of subchapter J of the Internal Revenue Code, the documentation requirements of § 1.1446–1 have been met by the grantor or other owner of such trust, and the certificate described in paragraph (c) of this section is provided by the grantor or other owner of such trust to the partnership.

(c) *Certificate to reduce 1446 tax with respect to a foreign partner*—(1) *In general.* Subject to the rules of this section, a foreign partner may certify under paragraph (c)(1)(i) or (ii) of this section to a partnership for a partnership taxable year of such

partnership that it has deductions and losses that the partner reasonably expects to be available to reduce the partner's U.S. income tax liability on the partner's allocable share of effectively connected income or gain from the partnership. Among other requirements, exceptions, and limitations set forth in paragraphs (c)(1)(i), (ii), and (iii) of this section, the foreign partner must generally represent that such deductions and losses have been (or will be) reflected on a timely filed U.S. income tax return of the partner for a taxable year that ends prior to the installment due date or Form 8804 filing date (without regard to extensions) for the partnership taxable year for which the certificate is considered (*i.e.*, no anticipated deduction or loss with respect to the partner's current year operations may be considered). A partner may also certify pursuant to paragraph (c)(1)(iv) of this section that the partner's only investment or activity giving rise to effectively connected items for the partner's taxable year is (and will be) the partner's investment in the partnership. A foreign partner's certificate to a partnership under this section must be in accordance with the form and requirements set forth in paragraph (c)(2)(ii) of this section.

(i) *Deductions and losses from the partnership from prior taxable years.* Under this section, a partner may certify that it has deductions and losses (certified deductions and losses), other than charitable deductions, from the partnership that the partner reasonably expects to be available to reduce the partner's U.S. income tax liability on the partner's allocable share of effectively connected income or gain from the partnership for the partner's taxable year. The certified deductions and losses must be reflected on a Schedule K–1 issued (or to be issued) to the partner by the partnership for a prior partnership taxable year. A partner that has a loss that is set forth on a Schedule K–1 the partnership issued for a prior year, but is not reflected on any of the partner's prior year returns because the loss is suspended under section 704(d) and, therefore, not deductible, may certify such loss to the partnership. Further, the foreign partner must certify that the deductions and losses are connected with (or, in the case of a corporate partner, allocated and apportioned to) gross income which is effectively connected (or treated as effectively connected) with the conduct of the partner's trade or business in the United States. In addition, the certificate must contain the information and representations set forth in paragraph (c)(2)(ii) of this section.

(ii) *Deductions and losses from sources other than the partnership from prior taxable years.* Under this section, a foreign partner may certify that it has deductions and losses, other than charitable deductions, from sources other than the partnership that the partner reasonably expects to be available to reduce the partner's U.S. income tax liability on the partner's allocable share of effectively connected income or gain from the partnership for the taxable year. The foreign partner must certify that the deductions and losses are connected with (or, in the case of a corporate partner, allocated and apportioned to) gross income which is effectively connected (or treated as effectively connected) with the conduct of the partner's trade or business in the United States. To the extent the deductions and losses certified under this paragraph (c)(1)(ii) arise from the partner's investment in another partnership, such deductions and losses must be reflected on a Schedule K–1 issued (or to be issued) to the partner by such other partnership for a prior taxable year of such other partnership that ends prior to the installment due date or Form 8804 filing date (without regard to extensions) of the partnership for the partnership taxable year for which the certificate is considered. Further, the partner may not certify to the partnership a loss suspended under section 704(d) from such other partnership. In addition, the certificate must contain the information and representations set forth in paragraph (c)(2)(ii) of this section.

(iii) *Limit on the consideration of a partner's net operating loss deduction.* A partnership may not consider a partner's net operating loss deduction certified under this section in an amount greater than 90 percent of the partner's allocable share of ECTI.

(iv) *Certificate of nonresident alien partner that partnership investment is partner's only activity giving rise to effectively connected items.* Under this section, a nonresident alien partner whose only activity giving rise to effectively connected income, gain, deduction, or loss for the partner's taxable year is (and will be) the partner's investment in the partnership, may certify this fact to the partnership. Except as otherwise provided in this paragraph (c)(1)(iv), a certificate submitted under this paragraph is generally subject to all of the applicable requirements and rules of this section (*e.g.*, the partner's preceding four years U.S. income tax returns are (or will be) timely filed, a new certificate is submitted for each partnership year, the time requirements for submitting the certificate are met, the certificate is signed under penalties of perjury). A partnership that receives a certificate from a nonresident alien partner under this paragraph (c)(1)(iv) is not required to pay 1446 tax (or any installment of such tax) with respect to such partner if the partnership estimates that the annualized (or, in the case of a partnership completing its Form 8804, the actual) 1446 tax due with respect to such partner is less than $1,000. For purposes of computing the annualized or actual 1446 tax due with respect to such partner under the previous sentence, the partnership may not consider any of the partner's deductions and losses certified under paragraph (c)(1)(i) or (ii) of this section. In addition to the requirements of paragraph (c)(2) of this section, a nonresident alien partner must notify the partnership in writing and revoke its certificate submitted under this paragraph (c)(1)(iv) within 10 days of the date that the partner invests, or otherwise engages in, an activity that may give rise to effectively connected income, gain, deduction, or loss for the partner's taxable year. A partnership may reasonably rely on a partner's statement under the rules of paragraph (d) of this section and generally will be relieved of an addition to the tax under section 6655 as applied through this section, however, the partnership shall remain liable for the 1446 tax (or any installment of such tax), and any applicable additions to the tax (other than the addition to the tax under section 6655 as applied through this section), interest, and penalties under such paragraph, if the partner's certificate is later determined to be defective. The IRS may determine under the rules of this section, in its sole discretion, that the partner's certificate is defective within the meaning of paragraph (c)(3) of this section and notify the partnership in accordance with the rules of this section.

(2) *Time and form of certification*—(i) *Time for certification provided to partnership*—(A) *First certificate submitted for a partnership's taxable year.* Provided the other requirements of this section are met, the first certificate a foreign partner furnishes with respect to a partnership's taxable year shall not be relied upon for any installment due date, or Form 8804 filing due date (without regard to extensions), arising within 30 days of the date that the partnership receives such certificate. For example, a calendar year domestic partnership must generally receive a

certificate under this section from a foreign partner on or before March 16th for the partnership to consider it for its first installment due date of 1446 tax on April 15th. If the foreign partner's first certificate for the partnership's current taxable year is received on April 10th, the partnership may not consider such certificate until the partnership's second installment due date of June 15th. See § 1.1446–3 for 1446 tax installment due dates. See also paragraph (e) of this section for examples illustrating the rules of this paragraph (c)(2).

(B) *Updated certificates and status updates*—(*1*) *Foreign partner's prior year tax returns not yet filed.* If a foreign partner's U.S. Federal income tax return for a preceding taxable year has not been filed at the time that the partner submits its first certificate under this paragraph (c) to the partnership for a partnership taxable year, the partner shall specify this fact, set forth the filing due date for such return to the partnership in accordance with paragraph (c)(2)(ii) of this section, and submit an updated certificate in accordance with this paragraph (c) no later than 10 days after the date that the partner timely files its U.S. Federal income tax return for any such taxable year. If a prior year return has not been filed under the previous sentence, the partner shall provide the partnership a status update with respect to any unfiled prior year return, which must be received by the partnership at least 10 days prior to the partnership's final installment due date. The status update must be submitted under penalties of perjury and shall set forth the filing due date for any unfiled return identified in the first certificate and indicate whether the partner's first certificate submitted for the taxable year may continue to be considered. A status update shall apply only with respect to the timely filing of a partner's prior year tax returns. If the partnership does not receive an updated certificate (that includes the information required by this paragraph (c) for a status update) or a status update from the partner at least 10 days prior to the partnership's final installment due date, the partnership shall disregard the partner's certificate for the fourth installment period and when completing its Form 8804 for the taxable year and no additional certificate may be submitted or substituted for such disregarded certificate. Notwithstanding the previous sentence, if the partner can meet the requirements of this section for the next year, the partner may submit a certificate under this section.

(*2*) Other circumstances requiring a foreign partner to submit an updated certificate. Notwithstanding paragraph (c)(2)(i)(B)(*1*) of this section, if at any time the partner estimates that it reasonably expects to have available deductions and losses in an amount less than the corresponding amounts set forth on the most recent certificate furnished to the partnership for the partnership taxable year, then, within 10 days of such determination, the foreign partner shall submit an updated certificate under this paragraph (c) to the partnership. Similarly, if at any time the partner determines that its certificate is incorrect, other than by reason of the preceding sentence (*e.g.*, the character of a certified loss is capital rather than ordinary), then such partner shall update its certificate within 10 days of such determination.

(*3*) *Form and content of updated certificate.* The updated certificate required by this paragraph (c)(2)(i) must be submitted in the same form as the original certificate (described in paragraph (c)(2)(ii) of this section), and must include a caption at the top of the certificate, in lieu of the caption required by paragraph (c)(2)(ii), that states ''UPDATED CERTIFICATE OF PARTNER-LEVEL ITEMS UNDER TEMP. REG. § 1.1446–6T TO REDUCE SECTION 1446 WITHHOLDING.'' Further, the partner must attach a copy of the certificate that is being updated (superseded certificate) that was previously submitted for the same partnership taxable year.

(*4*) *When a partnership may consider an updated certificate.* A partnership may only consider an updated certificate that meets all the requirements of this paragraph (c) that it receives at least 10 days prior to an installment due date in the same partnership taxable year for which the superseded certificate was provided, or at least 10 days prior to the due date of its Form 8804 (without regard to extensions) to be filed for the year the superseded certificate was provided. An updated certificate that may be considered under the previous sentence supersedes all prior certificates submitted by the foreign partner for the same partnership taxable year, beginning with the installment period or Form 8804 filing date for which the partnership may consider the updated certificate. See § 1.1446–6T(e) *Example 2.*

(ii) *Form of certification.* No particular form is required for the partner's certificate of deductions and losses to the partnership, but the partner's certificate must have a caption at the top of the page that reads: ''CERTIFICATE OF PARTNER-LEVEL ITEMS UNDER TEMP. REG. § 1.1446–6T TO REDUCE SECTION 1446 WITHHOLDING.'' Further, the certificate must include:

(A) The partner's name, address, Taxpayer Identification Number (TIN), and the date of the certification;

(B) The partnership's name, address, and TIN;

(C) The partnership taxable year for which the certificate is submitted;

(D) A representation that the partner is described in paragraph (b) of this section, and that the deductions and losses set forth in the certificate are described in paragraph (c)(1) of this section;

(E) The amount of the deductions and losses described in paragraph (c)(1) and, if applicable, the character of such deductions and losses (*e.g.*, capital or ordinary), as well as any particular deductions and losses that are subject to limitation or otherwise warrant special consideration (*e.g.*, suspended passive activity losses under section 469, suspended losses under section 704(d)), that the partner reasonably expects to be available to reduce the partner's U.S. income tax liability on the partner's allocable share of effectively connected income or gain from the partnership for the partner's taxable year in which such income or gain is includible in gross income;

(F) A representation that the deductions and losses described in paragraph (c)(1) and set forth in the certificate have been reflected on a timely filed U.S. income tax return, consistent with sections 874 and 882 of the Internal Revenue Code and the regulations thereunder (and such other provisions that impose requirements for the use of such deductions and losses);

(G) A representation that the deductions and losses described in paragraph (c)(1) and set forth in the certificate have not been set forth in a certificate provided to another partnership for the same taxable year for the purpose of reducing withholding under this section;

(H) A representation that the partner has timely filed, or will timely file its U.S. Federal income tax return for each of the preceding four taxable years and the partner's taxable year during which the certificate is considered, and has timely paid (or will timely pay) all tax shown on such returns as required under paragraph (b) of this section. The partner shall specify any taxable year for which a U.S. income tax return has not been filed as of the time of submission of the certificate, set forth the filing due date for such return, and represent that the partner will comply with the provisions of this paragraph (c) for providing an updated certificate or

status update with respect to the filing of any such return;

(I) A representation that all of the deductions and losses described in paragraph (c)(1) (other than losses suspended under section 704(d)) and set forth in the certificate are (or will be) reflected on an income tax return of the partner that is filed (or will be filed) with respect to a taxable year of the partner that ends prior to the installment due date or Form 8804 filing due date (without regard to extensions) for the partnership taxable year for which such certificate will be considered;

(J) A representation that such deductions and losses described in paragraph (c)(1) and set forth in such certificate have not been disallowed by the IRS as part of a proposed adjustment described in § 601.103(b) of this chapter (relating to examination and determination of tax liability) or § 601.105(b) of this chapter (relating to examination of returns);

(K) A representation, when applicable (see paragraph (c)(1)(iv) of this section), that the partner's only activity that gives rise to effectively connected income, gain, deduction, or loss is (and will be) during the partner's taxable year the partner's investment in the partnership;

(L) The following statement: ''Consent is hereby given to disclosures of return and return information by the Internal Revenue Service pertaining to the validity of this certificate to the partnership or other withholding agent to which this certificate is submitted for the purpose of administering section 1446.'' If a representative of the partner signs and dates the certificate under paragraph (c)(2)(ii)(M) of this section, a power of attorney specifically authorizing the agent to make the representation contained in this paragraph (c)(2)(ii)(L) must be attached to the certificate; and

(M) The signature of the partner, or its authorized representative, under penalties of perjury, and the date that the certificate was signed.

(3) *Notification to partnership when a partner's certificate cannot be relied upon.* Subject to paragraphs (c)(2), (c)(5), and (d)(2) of this section, a partnership may generally rely on a partner's certificate of available deductions and losses provided that the partnership does not have actual knowledge or reason to know that the certificate is defective within the meaning of this paragraph (c)(3). However, a partnership may not rely on a partner's certificate if the IRS determines, in its sole discretion, whether upon audit or otherwise, that a certificate submitted by a partner is defective, or that it lacks sufficient information to determine if the certificate is defective after written request to the partner for verification of the statements on the certificate. For example, a foreign partner's certificate is defective and, therefore, invalid if the IRS determines that the foreign partner has not timely filed a U.S. income tax return for a taxable year that the partner represented was or would be timely filed. See paragraph (e) *Example 3* of this section. If the IRS determines under this paragraph (c) that a certificate is defective (or lacks information sufficient to make this determination) and notifies the partnership in writing, the partnership may not rely on any certificate submitted by the partner for the partnership taxable year to which the defective certificate relates (or any subsequent partnership taxable year), until the IRS notifies the partnership again in writing and revokes or modifies the original notice. A partner's certificate of available deductions and losses is defective if—

(i) The partner is not described in paragraph (b) of this section;

(ii) The deductions and losses set forth in such certificate are not described in paragraph (c)(1) of this section;

(iii) The timing requirements for submitting certificates (including updated certificates and status updates) under paragraph (c)(2) of this section, or the requirements for submitting such updated certificates or status updates under such paragraph, are not observed;

(iv) The certificate does not include all of the information required by paragraph (c)(2)(ii) (*e.g.*, the partner's TIN is not set forth on such certificate);

(v) Any representation set forth in such certificate is incorrect (*e.g.*, a partner's prior year return certified to have been timely filed was not timely filed, or, where applicable, that the partner is invested in or otherwise engaged in an activity (other than its investment in the partnership) that may give rise to effectively connected items); or

(vi) The actual deductions and losses available to the partner are less than the deductions and losses last certified to the partnership for the partnership taxable year and considered by the partnership.

(4) *Partner to receive copy of notice.* If the IRS notifies a partnership or withholding agent under this section that a certificate of a foreign partner is defective, the IRS shall also send a copy of such notice to the partner's address as shown on the certificate. The partnership shall promptly furnish the foreign partner whose certificate is the subject of the notice the copy of the notice received from the IRS.

(5) *Partner's certificate valid only for partnership taxable year for which submitted.* A partnership may only consider a certificate submitted under this paragraph (c) for the partnership taxable year for which the certificate is submitted, as set forth on the certificate. Therefore, for each year a partner wants the provisions of this section to apply, the partner must submit a new first certificate (as described in this paragraph (c)) for that year.

(d) *Effect of certificate of deductions and losses on partners and partnership*—(1) *Effect on partner*—(i) *No effect on substantive tax liability of foreign partner.* A foreign partner's submission of a certificate under this section to reduce or eliminate the partnership's 1446 tax (or any installment of such tax) with respect to ECTI allocable to such partner has no effect on the partner's substantive tax liability on the partner's allocable share of effectively connected income or gain from the partnership. Further, the submission of a certificate under this section does not constitute an acceptance by the IRS of the amount or character of the deductions or losses certified.

(ii) *No effect on partner's estimated tax obligations.* A foreign partner that certifies deductions and losses to a partnership under this section is not relieved of any estimated tax obligation otherwise applicable to such partner with respect to income or gain allocated from the partnership.

(2) *Effect on partnership*—(i) *Reasonable reliance to relieve partnership from addition to the tax under section 6655.* Subject to § 1.1446–2 and the rules of this section (*e.g.*, paragraph (c)(1)(iii) of this section), a partnership receiving a certificate (including an updated certificate or status update) of deductions and losses from a partner under this section may reasonably rely on such certificate (to the extent of the certified deductions and losses or other representations set forth in the certificate) for such time during which it has no actual knowledge or reason to know that the certificate is defective (within the meaning of paragraph (c)(3) of this section). To the extent a partnership has reasonably relied on a certificate under the preceding sentence, the partnership shall not be liable for any addition to the tax under section 6655 (as applied through § 1.1446–3) for any period during which the partnership reasonably relied on such certificate, even if either it is later determined that the partner's certificate is defective or

the partner submits an updated certificate under paragraph (c)(2) of this section that increases the 1446 tax due with respect to such partner. A partnership will not be considered to have actual knowledge or reason to know that a certificate is defective if the partnership receives an updated certificate that, pursuant to paragraph (c)(2)(i)(B)(*4*) of this section, the partnership cannot reasonably rely upon for an installment due date or Form 8804 filing date because it was received less than 10 days before such date. See paragraph (e) *Example 2* of this section.

(ii) *Filing requirement.* A partnership that relies in whole or in part on a partner's certificate pursuant to this section must file Form 8813, ''Partnership Withholding Tax Payment Voucher (Section 1446)'' or Forms 8804, ''Annual Return for Partnership Withholding Tax (Section 1446)'' and 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax,'' whichever is applicable, for the period for which the certificate is considered, even if no 1446 tax (or an installment of such tax) is due with respect to such foreign partner. The partnership must also attach a copy of such certificate, and the partnership's computation of 1446 tax due with respect to such partner, to both the Form 8813 and Form 8805, filed with the IRS for any period for which such certificate is considered in computing the partnership's 1446 tax (or any installment of such tax). See § 1.1446–3(d)(1)(iii) requiring the partnership to provide Form 8805 to such foreign partner even if no 1446 tax is paid on behalf of the partner.

(iii) *Continuing liability for withholding tax under section 1461 and for applicable interest and penalties.* Except as provided in paragraph (d)(2)(i) of this section and this paragraph (d)(2)(iii), a partnership is not relieved from liability for the 1446 tax under section 1461 or for any applicable addition to the tax, interest, or penalties if the partnership or the IRS, in its sole discretion, determines that a partner's certificate is defective (within the meaning of paragraph (c)(3) of this section), or the partner submits an updated certificate under paragraph (c)(2) of this section that increases the 1446 tax due with respect to such partner. If a certificate is determined to be defective for a reason other than the amount or character of the deductions and losses set forth on such certificate (*e.g.*, partner failed to timely file a U.S. income tax return), then the partnership shall be liable for the full 1446 tax under section 1461 (or any installment of such tax) due with respect to such partner, without regard to the certificate. However, see § 1.1446–3(e) which deems a partnership to have paid 1446 tax with respect to ECTI allocable to a partner in certain circumstances. Further, if the partnership or the IRS, in its sole discretion, determines that a certificate is defective because the actual deductions and losses available to the partner are less than the amount certified to the partnership (other than when it is determined that the partner certified the same deduction or loss to more than one partnership), or that the character of the certified deductions and losses is erroneous, then the partnership shall be liable for 1446 tax under section 1461 (or any installment of such tax) with respect to such partner only to the extent it considers the certified deductions and losses in an amount greater than the amount determined to be actually available to the partner and permitted to be used under § 1.1446–1 through § 1.1446–6T, or to the extent that a mistake in the character of the deductions and losses results in an increase in the 1446 tax due with respect to such partner. See paragraph (e) *Example 4* of this section. Although a partnership is generally liable for the 1446 tax, any addition to the tax, interest, and penalties under this paragraph (d)(2), the partnership may be relieved of some penalties in certain circumstances. See §§ 301.6651–(1)(c) and 301.6724–1 of this chapter. See also paragraph (e) *Example 3* of this section.

(iv) *Partner's certified deductions and losses to offset foreign partner's annualized allocable share of partnership ECTI.* For purposes of section 1446, when considering a foreign partner's certificate submitted under this section in computing the 1446 tax due (or any installment of such tax) with respect to the foreign partner, a partnership shall first annualize the partner's allocable share of the partnership's effectively connected items of income, gain, deduction, and loss before considering the partner's certified deductions and losses.

(e) *Examples.* The following examples illustrate the application of this section. In considering the examples, disregard the potential application of § 1.1446–3(b)(2)(v)(F) (relating to the *de minimis* exception to paying 1446 tax) and paragraph (c)(1)(iv) of this section (relating to a foreign partner whose sole investment generating effectively connected income or gain is the partnership), and assume, where necessary, that the election to apply the temporary regulations is made. The examples are as follows:

Example 1. General application of the rules of § 1.1446–6T. NRA, a nonresident alien, and B, a U.S. person form a partnership, PRS, to conduct a trade or business in the United States. NRA and B are equal partners under the partnership agreement and the partnership, NRA, and B all maintain a calendar taxable year. NRA and B provide PRS with a valid Form W–8BEN and Form W–9, respectively. Prior to the formation of PRS, NRA had neither invested in, nor been considered to be engaged in a U.S. trade or business. In each of years 1, 2, and 3, PRS incurs a $1,000 net loss from operations which is allocated equally to NRA and B. Assume the net loss is not a passive activity loss within the meaning of section 469, is comprised entirely of ordinary items and, with respect to NRA, is an effectively connected net loss. Further, assume that NRA has timely filed U.S. Federal income tax returns for each of the first three years reflecting the losses allocated from PRS, as reflected on the Schedule K–1 issued to NRA for each of those years.

(i) With respect to Year 4, NRA may not submit a certificate under paragraph (c) of this section to PRS because NRA has not and will not have timely filed a U.S. Federal income tax return for the preceding four years. That is, during Year 4, NRA can only certify that it has or will timely file its U.S. Federal income tax returns for the preceding three years (Years 1 through 3) and the current year, Year 4. Therefore, with respect to Year 4, PRS may not use the procedures in this section to reduce its withholding tax.

(ii) Assume that in Year 4, PRS has a net income of $1,000 from its U.S. business operations and that all of such income is comprised of ordinary items. NRA's allocable share of this income is $500 and such income is effectively connected income. PRS satisfies its 1446 tax obligations for Year 4.

(iii) During Year 5, PRS uses an acceptable annualization method under § 1.1446–3 and estimates for its first installment period that it will earn $4,000 of taxable income for the taxable year. Assume that all of this income is ordinary in character and is allocable to NRA and B equally. NRA's allocable share of $2,000 is NRA's share of partnership ECTI. NRA has not yet filed its income tax return for Year 4, although NRA has received the Schedule K–1 issued by PRS pertaining to Year 4. On or before March 16th (at least 30 days prior to the first installment date) of Year 5, PRS receives a certificate described in this section from NRA which certifies that NRA reasonably expects to have available ordinary losses of $1,000 ($500 loss in each of Years 1, 2, and 3 less $500 of income in Year 4). Further, NRA makes all of the statements and representations required for the certificate to be valid.

(iv) With respect to Year 5, and based upon paragraph (b)(1) of this section, NRA can include Year 4 (NRA's preceding taxable year) as one of the preceding four years that it has timely filed or will timely file its U.S. Federal income tax return (and timely paid or will timely pay all tax shown on such returns). Therefore, provided PRS has no actual knowledge or reason to know the certificate is defective, PRS may reasonably rely on NRA's certificate. Accordingly, PRS

may consider NRA's certificate to reduce the amount that would otherwise be required to be paid on NRA's behalf under section 1446. Specifically, the $1,000 of net losses that have been reflected on Schedule K–1s issued to NRA that are available to reduce NRA's U.S. income tax on NRA's allocable share of effectively connected income or gain allocable from PRS may be used to reduce the $2,000 of ECTI estimated to be allocable to NRA. As a result, PRS must pay 1446 tax on only $1,000 of NRA's allocable share of partnership ECTI for the first installment period in Year 5. PRS must pay 1446 tax of $87.50 for its first installment period with respect to the ECTI allocable to NRA ($1,000 (net ECTI after considering certified losses) x .35 (withholding tax rate) x .25 (§ 6655(e)(2)(B) percentage for first installment)). Pursuant to paragraph (d)(2) of this section, PRS must also attach NRA's certificate and PRS's computation of its 1446 tax obligation with respect to NRA to its Form 8813, ''Partnership Withholding Tax Payment Voucher (Section 1446),'' filed for the first installment period. Under paragraph (c)(2)(i)(B), NRA is required to update its certified available losses on or before the 10th day after NRA files its U.S. Federal income tax return for Year 4, even if the updated certificate results in no change to the deductions and losses certified.

(v) The result in this example is the same even if NRA had not yet received a Schedule K–1 from PRS for Year 4. In such case, NRA is still permitted to certify the losses that it reasonably expects to be available for Year 5, and certify that it will timely file its U.S. Federal income tax return for Year 4 and Year 5 (and timely pay all U.S. income tax due).

Example 2. Updated certificate submitted for losses. On January 1, 2005, NRA, a foreign individual, and B, a U.S. individual, form a domestic partnership, PRS, to conduct a business in the United States, with NRA and B as equal partners in PRS. NRA and B provide a valid Form W–8BEN and Form W–9, respectively, to PRS. NRA, B, and PRS all maintain a calendar taxable year. For the preceding seven calendar taxable years (1998–2004), NRA has been engaged in a U.S. trade or business through its investment in another partnership, XYZ, and timely filed its Form 1040NR U.S. Federal income tax return reporting its share of XYZ's activity for each of years 1998–2003 (and timely paid all tax shown on such returns). NRA also timely files its income tax return for the 2004 taxable year (and timely pays all tax shown on such return) on June 8, 2005 (due date June 15, 2005). During the taxable years 1998–2004, NRA's only activity generating effectively connected items was its investment in XYZ. Assume that the losses that XYZ allocated to NRA are not considered passive activity losses to NRA within the meaning of section 469. The XYZ partnership liquidated and ceased doing business on December 31, 2004. Assume that PRS uses an acceptable annualization method under § 1.1446–3 for purposes of section 1446.

(i) On or before March 16, 2005, NRA provides and PRS receives a valid certificate under this section in which NRA certifies that it reasonably expects to have available effectively connected net operating losses in the amount of $5,000. Among other statements made in accordance with paragraph (c) of this section, NRA represents that it has not filed its 2004 U.S. income tax return, but will timely file such return (and timely pay all tax shown on such return). PRS reasonably relies on such certificate within the meaning of paragraph (d) of this section. For its first installment period in 2005, PRS estimates that it will earn taxable income of $10,000 for the year which will be allocated equally to NRA and B (NRA's allocable share of $5,000 is considered NRA's share of partnership ECTI). Assume that all of this income is ordinary in character.

(ii) Under these facts, PRS may consider NRA's certified available losses when computing its 1446 tax obligation for the first installment period. PRS is limited under paragraph (c)(1)(iii) of this section and may consider only $4,500 of NRA's certified net operating loss. After consideration of the certified loss, PRS owes 1446 tax in the amount of $43.75 for the first installment period ($5,000 estimated allocable ECTI less $4,500 (certified loss as limited under paragraph (c)(1)(iii)) x .35 (1446 tax applicable percentage) x .25 (section 6655(e)(2)(B) percentage for first installment period). Pursuant to paragraph (d)(2) of this section, PRS must file Form 8813 with respect to NRA, and attach to the form a copy of NRA's certificate and PRS's computation of its 1446 tax obligation.

(iii) Assume that PRS's estimates of its net income allocable to NRA for the second and third installment periods are the same as for the first installment period (*i.e.*, NRA's allocable share of annualized ECTI is $5,000), and that on June 10, 2005, PRS receives an updated certificate under this section from NRA that certifies that NRA reasonably expects to have only $4,000 of losses available to reduce NRA's income tax liability on NRA's allocable share of the effectively connected income or gain from PRS. NRA provided this certificate within 10 days of filing its U.S. Federal income tax return for the 2004 taxable year, as required by paragraph (c) of this section. However, PRS received the updated certificate less than 10 days before its second installment due date (June 15, 2005) and, under paragraph (c)(2)(i)(B) of this section, is not permitted to reasonably rely on the updated certificate for the second installment period. Notwithstanding that the updated certificate indicates to PRS that NRA's certified losses are less than the $5,000 set forth on NRA's first certificate, under paragraph (d)(2) of this section, PRS will not be considered to have actual knowledge or reason to know that the first certificate is defective for the second installment period. Provided the updated certificate is otherwise valid, it may be relied upon for the third installment period (due date September 15, 2005).

(iv) Under paragraph (d) of this section, PRS may reasonably rely on all or a portion of NRA's first certificate for the second installment period. That is, PRS may consider all $4,500 of NRA's certified losses, as limited by paragraph (c)(1)(iii) of this section, or some lesser amount (*e.g.*, only $4,000) for the second installment period. Further, if PRS considers NRA's first certificate for the second installment period, PRS must file Form 8813 and attach the certificate it reasonably relied upon for the second installment period. Assume that PRS considers $4,500 of the net operating losses for the second installment period, as limited by paragraph (c)(1)(iii) of this section, and therefore makes a 1446 tax payment of $43.75 on behalf of NRA.

(v) Under paragraph (d) of this section, PRS is not relieved from its liability for 1446 tax under section 1461 when it accepts a certificate of losses from a foreign partner and it is later determined that the certificate is defective, or the partner updates its certificate and represents losses in an amount less than previously certified. Under the principles of section 6655 (as applied through § 1.1446–3), PRS is required to have paid in 75 percent of the annualized 1446 tax on or before the third installment payment date (section 6655(e)(2)(B) percentage for third installment period). Under paragraph (c)(2)(i)(B) of this section, because NRA's updated certificate is valid for the third installment period, if PRS considers any certificate for that period it must consider the updated certificate. Assuming PRS considers NRA's updated certificate for the third installment period, PRS must have paid a total of $262.50 with respect to the ECTI estimated to be allocable to NRA as of the third installment due date ($1,000 (ECTI subject to 1446 tax after considering the $4,000 of certified losses on the updated certificate) x .35 (withholding tax rate) x .75 (section 6655(e)(2)(B) percentage for the third installment period)). After considering PRS's payments of 1446 tax for the first and second installment periods, PRS is required to pay $175 for the third installment period ($262.50 less previous payments totaling $87.50).

(vi) Under paragraph (d) of this section, PRS is not liable for the addition to the tax under section 6655 (as applied through § 1.1446–3) for the first or second installment period because PRS reasonably relied on NRA's certificate of losses during those periods.

Example 3. IRS determines in subsequent taxable year that partner's certificate is defective because partner failed to timely file an income tax return. NRA, a foreign individual, and B, are the only partners in PRS, a domestic partnership that conducts a trade or business in the United States. Each partner provides appropriate documentation under § 1.1446–1 (*e.g.*, Form W–8BEN, Form W–9) to establish the partner's status for purposes of section 1446. Both partners and the partnership maintain a calendar taxable year. NRA timely submits a certificate under this section to PRS to be considered for PRS's first installment period in the 2005 taxable year. The certificate sets forth that NRA reasonably expects to have $5,000 of an effectively connected net operating loss available to offset effectively connected income or gain allocable from PRS for the 2005 taxable year. No part of this loss is a passive activity loss within the meaning of section 469. NRA is eligible to submit this certificate under paragraph (b) of this section

and the certificate complies with all necessary requirements set forth in this section. PRS estimates for each installment period that NRA's allocable share of ECTI will be $5,000. Further, PRS's actual operating results for the year result in $5,000 of ECTI allocable to NRA.

(i) PRS reasonably relies on (within the meaning of paragraph (d)(2) of this section) NRA's certificate when computing each installment payment during the 2005 taxable year and its 1446 tax on Form 8804, and appropriately considers the limitation set forth in paragraph (c)(1)(iii) of this section. As a result, PRS paid a total of $175 of 1446 tax on behalf of NRA for the taxable year ($5,000 allocable share of ECTI—$4,500 losses permitted to be considered under paragraph (c)(1)(iii) of this section x .35 applicable percentage). As required under paragraph (d) of this section, PRS attached the certificate it relied upon and its calculation of 1446 tax for each period to the Form 8813 or Form 8805 it filed for such period with the IRS.

(ii) Assume that NRA timely submits a certificate under this section to be considered for PRS's first installment due date of the 2006 taxable year (due date April 17, 2006). The certificate represents that NRA reasonably expects to have $5,000 of an effectively connected net operating loss available to offset effectively connected income or gain allocated from PRS for the 2006 taxable year. No part of this loss is a passive activity loss within the meaning of section 469. Further, the certificate contains all of the necessary representations required under this section. For the first installment period of 2006, PRS estimates that NRA's allocable share of partnership ECTI is $5,000. Assume all of the estimated ECTI is ordinary in character and, pursuant to paragraph (d)(2) of this section, PRS reasonably relies on NRA's certificate for the first installment period and appropriately determines that it is required to make an installment payment of 1446 tax on behalf of NRA in the amount of $43.75 ($5,000 estimated allocable ECTI less $4,500 (certified loss as limited under paragraph (c)(1)(iii) of this section) x .35 (1446 tax applicable percentage) x .25 (section 6655(e)(2)(B) percentage for first installment period). PRS makes the $43.75 installment payment of 1446 tax with the Form 8813 it files for the first installment period, and complies with paragraph (d)(2) of this section and attaches NRA's certificate and PRS's computation of 1446 tax to its Form 8813.

(iii) Assume that the IRS notifies the partnership on June 1, 2006, pursuant to paragraph (c)(3) of this section, that NRA's certificate for PRS's 2005 taxable year is defective because NRA failed to timely file its U.S. Federal income tax return for one of the taxable years that NRA represented was (or would be) timely filed (*e.g.*, 2001, 2002, 2003, or 2004). The IRS notice states that PRS is not to rely on any certificate that NRA has submitted for the 2006 taxable year.

(iv) Under paragraph (d)(2)(iii) of this section, PRS is not relieved from its liability for 1446 tax under section 1461 when it accepts a certificate of losses from a foreign partner and it is later determined that the certificate is defective. Because NRA's certificate was determined to be defective for a reason other than the amount or character of the certified deductions and losses, PRS is fully liable for the 1446 tax due with respect to NRA's allocable share of partnership ECTI for the 2005 taxable year without regard to the certificate. The total 1446 tax due for 2005 is $1,750 ($5,000 ECTI x .35) and PRS has paid $175 of this liability. Therefore, PRS owes $1,575 of 1446 tax. However, PRS may be deemed to have paid the outstanding 1446 tax due if NRA has paid all of its tax. See § 1.1446–3(e).

(v) Because PRS neither had actual knowledge nor reason to know that the certificate submitted by NRA was defective, PRS reasonably relied on NRA's certificate for the 2005 taxable year under paragraph (d)(2) of this section. Therefore, PRS is not liable for an underpayment addition to the tax under the principles of section 6655 (as applied through § 1.1446–3) for any installment period during the 2005 taxable year.

(vi) However, PRS is generally liable for interest under section 6601 and for the failure to pay penalty under section 6651(a)(2) on the $1,575 of 1446 tax due for the 2005 taxable year from April 17, 2006 (last date prescribed for payment of 1446 tax), to the date that the partnership pays the 1446 tax or is deemed to have paid such tax under § 1.1446–3(e).

(vii) With respect to the 2006 taxable year, PRS reasonably relied on NRA's certificate when computing its first installment payment for the 2006 taxable year (due on April 17, 2006). Therefore, PRS will not be liable for the underpayment addition to the tax under section 6655 (as applied through § 1.1446–3) for the first installment period in 2006. However, because PRS was notified on June 1, 2006, to disregard any certificate received from NRA for the 2006 taxable year, PRS may not rely on NRA's certificate (or any new certificate provided by NRA) when PRS computes its second installment payment of 1446 tax due on June 15, 2006. PRS is not permitted to consider any certificate submitted by NRA under this section until the IRS notifies the partnership again in writing and revokes or modifies the original notice.

Example 4. IRS determines in subsequent taxable year that partner's certificate is defective because partner's actual losses are less than amount certified and considered by the partnership. Assume the same facts as in *Example 3*, except that the IRS does not determine that NRA's certificate for 2005 was defective because NRA failed to timely file a U.S. income tax return for a prior year. Rather, the IRS determines that NRA's certificate was defective for the 2005 taxable year because NRA's actual available net operating loss for the taxable year was $1,000, not the $5,000 amount that was certified. In *Example 3*, pursuant to paragraph (c)(1)(iii) of this section, PRS considered $4,500 of the certified loss in each installment period and when completing Form 8804.

(*i*) Under paragraph (d)(2)(iii) of this section, PRS is not relieved from its liability for 1446 tax under section 1461 when it accepts a certificate of losses from a foreign partner and it is later determined that the certificate is defective. However, when the IRS determines that a partner's certificate is defective because of the amount or character of the certified deductions and losses set forth on such certificate, the partnership is only liable for the 1446 tax, interest, and penalties to the extent it considered the certified deductions and losses on such certificate when computing its 1446 tax (or any installment of such tax) in an amount greater than the partner's actual available losses. Here, PRS considered the certified deductions and losses in the amount of $4,500. It was later determined that NRA only had $1,000 of actual losses. Accordingly, PRS is liable for the 1446 tax due with respect to the portion of the overstated losses that it considered when computing its 1446 tax. The remaining 1446 tax due for 2005 is $1,225 ($3,500 of excess losses considered x .35). However, PRS may be deemed to have paid the $1,225 of 1446 tax under § 1.1446–3(e) if NRA has paid all of NRA's U.S. income tax.

(ii) If PRS had considered only $1,000 of NRA's certified net operating loss when computing and paying its 1446 tax during the 2005 taxable year then, under paragraph (d)(2)(iii) of this section, PRS would not be liable for 1446 tax because it did not consider the certified deductions and losses in an amount greater than the amount determined to be actually available to the partner.

Example 5. Partner with different taxable year than partnership. PRS partnership has two equal partners, FC, a foreign corporation, and DC, a domestic corporation. PRS conducts a trade or business in the United States and generates effectively connected income. FC maintains a June 30 fiscal taxable year end, while DC and PRS maintain a calendar taxable year end. FC and DC provide a valid Form W–8BEN and Form W–9, respectively, to PRS. PRS uses an acceptable annualization method under § 1.1446–3 in computing its 1446 tax. FC and DC are the only persons that have ever been partners in PRS. For its 2000 through 2004 taxable years, PRS issued Schedule K–1s to each of its partners. In the aggregate, the Schedule K–1s passed through $100 of net ordinary loss to each partner. For its 2005 taxable year, PRS issued Schedule K–1s to its partners passing through $150 of ordinary loss to each partner. All of the losses passed through on the Schedule K–1s are effectively connected to PRS's and FC's trade or business in the United States.

(i) Assume that all the requirements of this section have been met to permit FC to certify losses to the partnership for the partnership's 2006 taxable year. Further, assume that FC's only source of effectively connected income, gain, deduction, or loss is the activity of PRS.

(ii) For PRS's first installment period in 2006, FC may only certify deductions and losses under this section in the amount of $100 (the losses as reflected on the Schedule K–1s issued for PRS's 2000–2004 taxable years). Under section 706, the taxable income of a partner shall include the income, gain, loss, deduction, or credit of the partnership for the partnership taxable year ending within or with the taxable year of the partner.

PRS's 2005 calendar taxable year ends during FC's fiscal taxable year ending June 30, 2006. Therefore, under paragraph (c)(1) of this section, as of March 18, 2006 (the last date FC may submit its first certificate under paragraph (c) to have it considered for PRS's first installment due date of April 17, 2006), the losses passed through from PRS for the 2000–2004 partnership taxable years will be the only losses that FC can represent will be reflected on an FC U.S. income tax return filed for a taxable year ending prior to such installment due date.

(iii) The result in (ii) is the same for the second installment period, the due date of which is June 15, 2006.

(iv) FC may submit an updated certificate under this section after June 30, 2006, that includes the 2005 Schedule K–1 loss in the amount of $150. PRS may consider such an updated certificate for its third installment period (due date September 15, 2006), provided the updated certificate is received in accordance with paragraph (c) of this section, by September 5, 2006.

Example 6. Failure to provide status update with respect to prior year unfiled returns. PRS partnership has two equal partners, FC, a foreign corporation, and DC, a domestic corporation. Both partners and PRS maintain calendar taxable years. PRS is engaged in a trade or business in the United States. FC and DC provide Form W–8BEN and Form W–9, respectively, to establish each partner's status for purposes of section 1446. Assume all partnership items allocated from the partnership arise from the partnership's trade or business in the United States and, therefore, FC's allocable share of these items is considered effectively connected.

(i) Assume FC is eligible to submit a certificate under this section and submits a certificate at least 30 days prior to PRS's first installment due date. FC represents that it has or will timely filed an income tax return in the United States in each of the preceding four taxable years (and has timely paid or will timely pay all tax shown on such returns). FC specifies that it has not filed its U.S. income tax return for the immediately preceding taxable year. FC also represents that it will timely file its U.S. income tax return for the partner taxable year during which the certificate is considered (and will timely pay all tax shown on such return). All other requirements under paragraph (c) of this section are met for FC's certificate to be valid.

(ii) Provided that PRS does not possess actual knowledge or reason to know that FC's certificate is defective, and an updated certificate is not provided to PRS, under paragraph (d) of this section, PRS may reasonably rely on FC's certificate for its first, second, and third installment payments.

(iii) If FC does not submit either an updated certificate or a status update as required by paragraph (c) of this section with respect to the filing of the previous year's income tax return by December 5th of PRS's current taxable year, PRS must disregard FC's certificate when computing its fourth installment payment of 1446 tax and when completing its Form 8804 for the taxable year. Further, even if the status update with respect to the preceding year's return is provided, PRS may only rely on the certificate provided the status update does not contradict the certificate and such update indicates that the preceding year's return may still be, and will be, timely filed.

(f) *Effective dates.* The rules of this section are applicable for partnership taxable years beginning after May 18, 2005. However, a partnership may elect to apply all of the provisions of the temporary regulations to partnership taxable years beginning after December 31, 2004, provided the partnership also elects under § 1.1446–7 to apply §§ 1.1446–1 through 1.1446–5 to partnership taxable years beginning after December 31, 2004. A partnership shall make the election under this section by complying with the provisions of this section and attaching a statement to the Form 8804 annual return filed for the taxable year in which the regulation provisions first apply, that indicates that the partnership is making the election under this section and § 1.1446–7.

§ 1.1446–7 Effective dates.

Sections 1.1446–1 through 1.1446–5 shall apply to partnership taxable years beginning after May 18, 2005. However, a partnership may elect to apply all of the provisions of §§ 1.1446–1 through 1.1446–5 to partnership taxable years beginning after December 31, 2004. A partnership shall make the election under this section by complying with the provisions of §§ 1.1446–1 through § 1.1446–5 and attaching a statement to the Form 8804 or Form 1042 annual return, filed for the taxable year in which the regulation provisions first apply, that indicates that the partnership is making the election under this section.

■ **Par. 5.** Section 1.1461–1 is amended as follows:

■ 1. Paragraph (a)(1) is amended by adding three sentences at the end of the paragraph.

■ 2. The second sentence of paragraph (c)(1)(i) is removed and two sentences are added in its place.

■ 3. Paragraph (c)(1)(ii)(A)(*8*) is redesignated as paragraph (c)(1)(ii)(A)(*9*), and a new paragraph (c)(1)(ii)(A)(*8*) is added.

■ 4. The first sentence of paragraph (c)(2)(i) is removed and two sentences are added in its place.

■ 5. The first sentence of paragraph (c)(3) is removed and two sentences are added in its place.

■ 6. Paragraph (i) is revised.

The additions and revisions read as follows:

§ 1.1461–1 Payment and returns of tax withheld.

(a) * * *

(1) * * * With respect to withholding under section 1446, this section shall only apply to publicly traded partnerships. See § 1.1461–3 for penalties applicable to partnerships that fail to withhold under section 1446 on effectively connected taxable income allocable to foreign partners. The previous two sentences shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 apply by reason of an election under § 1.1446–7.

* * * * *

(c) * * *

(1) * * *

(i) * * * Notwithstanding the preceding sentence, any person that withholds or is required to withhold an amount under sections 1441, 1442, 1443, or § 1.1446–4(a) (applicable to publicly traded partnerships required to pay tax under section 1446 on distributions) must file a Form 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' for the payment withheld upon whether or not that person is engaged in a trade or business and whether or not the payment is an amount subject to reporting. The reference in the previous sentence to withholding under § 1.1446–4 shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 apply by reason of an election under § 1.1446–7. * * *

(ii) * * *

(A) * * *

(*8*) A partner receiving a distribution from a publicly traded partnership subject to withholding under section 1446 and § 1.1446–4 on distributions of effectively connected income. This paragraph (c)(1)(ii)(A)(*8*) shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 apply by reason of an election under § 1.1446–7.

* * * * *

(2) *Amounts subject to reporting*—(i) *In general.* Subject to the exceptions described in paragraph (c)(2)(ii) of this section, amounts subject to reporting on Form 1042–S are amounts paid to a foreign payee or partner (including persons presumed to be foreign) that are amounts subject to withholding as defined in § 1.1441–2(a) or § 1.1446–4(a) (addressing publicly traded partnerships required to pay withholding tax under section 1446 on distributions of

effectively connected income). The reference in the previous sentence to withholding under § 1.1446–4 shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 apply by reason of an election under § 1.1446–7. * * *

* * * * *

(3) *Required information.* The information required to be furnished under this paragraph (c)(3) shall be based upon the information provided by or on behalf of the recipient of an amount subject to reporting (as corrected and supplemented based on the withholding agent's actual knowledge) or the presumption rules of §§ 1.1441–1(b)(3), 1.1441–4(a), 1.1441–5(d) and (e), 1.1441–9(b)(3), 1.1446–1(c)(3) (as applied to publicly traded partnerships required to pay tax under section 1446 on distributions of effectively connected income) or 1.6049–5(d). The reference in the previous sentence to presumption rules applicable to withholding under section 1446 shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 apply by reason of an election under § 1.1446–7. * * *

(i) *Effective date.* Unless otherwise provided in this section, this section shall apply to returns required for payments made after December 31, 2000.

■ **Par. 6.** Section 1.1461–2 is amended by:

■ 1. Removing the first sentence of paragraph (a)(1) and adding two sentences in its place.

■ 2. Revising paragraphs (b) and (d).

The revisions and addition read as follows:

§ 1.1461–2 Adjustments for overwithholding or underwithholding of tax.

(a) *Adjustments of overwithheld tax*—(1) *In general.* Except for partnerships or nominees required to withhold under section 1446, a withholding agent that has overwithheld under chapter 3 of the Internal Revenue Code, and made a deposit of the tax as provided in § 1.6302–2(a) may adjust the overwithheld amount either pursuant to the reimbursement procedure described in paragraph (a)(2) of this section or pursuant to the set-off procedure described in paragraph (a)(3) of this section. References in the previous sentence excepting from this section certain partnerships withholding under section 1446 shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 apply by reason of an election under § 1.1446–7. * * *

* * * * *

(b) *Withholding of additional tax when underwithholding occurs.* A withholding agent may withhold from future payments (or distributions of effectively connected income under section 1446) made to a beneficial owner the tax that should have been withheld from previous payments (or distributions subject to section 1446) to such beneficial owner under chapter 3 of the Internal Revenue Code. In the alternative, the withholding agent may satisfy the tax from property that it holds in custody for the beneficial owner or property over which it has control. Such additional withholding or satisfaction of the tax owed may only be made before the date that the Form 1042 is required to be filed (not including extensions) for the calendar year in which the underwithholding occurred. See § 1.6302–2 for making deposits of tax or § 1.1461–1(a) for making payment of the balance due for a calendar year. See also §§ 1.1461–1, 1.1461–3, and 1.1446–1 through 1.1446–7 for rules relating to withholding under section 1446. References in this paragraph (b) to withholding under section 1446 shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 apply by reason of an election under § 1.1446–7.

* * * * *

(d) *Effective date.* Unless otherwise provided in this section, this section applies to payments made after December 31, 2000.

■ **Par. 7.** Section 1.1461–3 is added to read as follows.

§ 1.1461–3 Withholding under section 1446.

For rules relating to the withholding tax liability of a partnership or nominee under section 1446, see §§ 1.1446–1 through 1.1446–7. For interest, penalties, and additions to the tax for failure to timely pay the tax required to be paid under section 1446, see sections 6601, 6651, 6655 (in the case of publicly traded partnerships, see section 6656), 6672, and 7202 and the regulations under those sections. For additional penalties and additions to the tax for failure to comply with the regulations under section 1446, see sections 6651, 6662, 6663, 6721, 6722, 6723, 6724(c), 7201, 7203, and the regulations under those sections. This section shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 apply by reason of an election under § 1.1446–7.

■ **Par. 8.** Section 1.1462–1 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.1462–1 Withheld tax as credit to recipient of income.

* * * * *

(b) *Amounts paid to persons who are not the beneficial owner.* Amounts withheld at source under chapter 3 of the Internal Revenue Code on payments to (or effectively connected taxable income allocable to) a fiduciary, partnership, or intermediary are deemed to have been paid by the taxpayer ultimately liable for the tax upon such income. Thus, for example, if a beneficiary of a trust is subject to the taxes imposed by section 1, 2, 3, or 11 upon any portion of the income received from a foreign trust, the part of any amount withheld at source which is properly allocable to the income so taxed to such beneficiary shall be credited against the amount of the income tax computed upon the beneficiary's return, and any excess shall be refunded. See § 1.1446–3 for examples applying this rule in the context of a partnership interest held by a foreign trust or estate. Further, if a partnership withholds an amount under chapter 3 of the Internal Revenue Code with respect to the allocable share of a partner that is a partnership (upper-tier partnership) or with respect to the allocable share of partners in an upper-tier partnership, such amount is deemed to have been withheld by the upper-tier partnership. See § 1.1446–5 for rules applicable to tiered partnership structures. References in this paragraph (b) to withholding under section 1446 shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 apply by reason of an election under § 1.1446–7.

(c) *Effective date.* Unless otherwise provided in this section, this section applies to payments made after December 31, 2000.

■ **Par. 9.** Section 1.1463–1 is amended by:

■ 1. Adding two sentences at the end of paragraph (a).

■ 2. Revising paragraph (b).

The addition and revision read as follows:

§ 1.1463–1 Tax paid by recipient of income.

(a) * * * See § 1.1446–3(e) and (f) for application of the rule of this paragraph (a), and for additional rules, where the withholding tax was required to be paid under section 1446. The previous

sentence shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 apply by reason of an election under § 1.1446–7.

(b) *Effective date.* Unless otherwise provided in this section, this section applies to failures to withhold occurring after December 31, 2000.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 10.** The authority for 26 CFR part 301 continues to read, in part, as follows:

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

■ **Par. 11.** Section 301.6109–1 is amended as follows:

■ 1. In paragraph (b)(2)(vi), remove the word ''and''.

■ 2. In paragraph (b)(2)(vii), remove the period at the end of the paragraph and add ''; and'' in its place.

■ 3. Paragraph (b)(2)(viii) is added.

■ 4. In paragraph (c), the first three sentences are revised and a sentence is added at the end of the paragraph.

The amendments and additions read as follows:

§ 301.6109–1 Identifying numbers.

* * * * *

(b) * * *

(2) * * *

(viii) A foreign person that furnishes a withholding certificate described in § 1.1446–1(c)(2) or (3) of this chapter or whose taxpayer identification number is required to be furnished on any return, statement, or other document as required by the income tax regulations under section 1446. This paragraph (b)(2)(viii) shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 of this chapter apply by reason of an election under § 1.1446–7 of this chapter.

(c) *Requirement to furnish another's number.* Every person required under this title to make a return, statement, or other document must furnish such taxpayer identifying numbers of other U.S. persons and foreign persons that are described in paragraph (b)(2)(i), (ii), (iii), (vi), (vii), or (viii) of this section as required by the forms and the accompanying instructions. The taxpayer identifying number of any person furnishing a withholding certificate referred to in paragraph (b)(2)(vi) or (viii) of this section shall also be furnished if it is actually known to the person making a return, statement, or other document described in this paragraph (c). If the person making the return, statement, or other document does not know the taxpayer identifying number of the other person, and such other person is one that is described in paragraph (b)(2)(i), (ii), (iii), (vi), (vii), or (viii) of this section, such person must request the other person's number. * * * References in this paragraph (c) to paragraph (b)(2)(viii) of this section shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 of this chapter apply by reason of an election under § 1.1446–7 of this chapter.

* * * * *

■ **Par. 12.** In § 301.6721–1, paragraph (g)(4) is revised to read as follows:

§ 301.6721–1 Failure to file correct information returns.

* * * * *

(g) * * *

(4) *Other items.* The term *information return* also includes any form, statement, or schedule required to be filed with the Internal Revenue Service with respect to any amount from which tax is required to be deducted and withheld under chapter 3 of the Internal Revenue Code (or from which tax would be required to be so deducted and withheld but for an exemption under the Internal Revenue Code or any treaty obligation of the United States), generally Forms 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' and 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax.'' The provisions of this paragraph (g)(4) referring to Form 8805, shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 of this chapter apply by reason of an election under § 1.1446–7 of this chapter.

PART 602—OMB CONTROL NUMBERS UNDER PAPERWORK REDUCTION ACT

■ **Par. 13.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 14.** In § 602.101, paragraph (b) is amended by adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
1.1446–1	1545–1852
1.1446–3	1545–1852
1.1446–4	1545–1852
1.1446–5	1545–1852
1.1446–6T	1545–1934

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: May 3, 2005.

Eric Solomon,

Acting Assistant Secretary of the Treasury.

[FR Doc. 05–9424 Filed 5–13–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–108524–00]

RIN 1545–BD80

Section 1446 Regulations; Withholding on Effectively-Connected Taxable Income Allocable to Foreign Partners

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking, notice of proposed rulemaking by cross reference to temporary regulations and notice of public hearing.

SUMMARY: The IRS is proposing to issue regulations under section 1446 of the Internal Revenue Code relating to the circumstances under which a partnership may take partner-level deductions and losses into account in computing its withholding tax obligation with respect to a foreign partner's allocable share of effectively connected taxable income. The text of the temporary regulations published elsewhere in this issue of the **Federal Register** also serves as the text of these proposed regulations. In addition, the proposed regulations amend regulations under sections 1464, 6071, 6091, 6151, 6302, 6402, 6414, and 6722 to implement the section 1446 regime. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments and requests to comment at the public hearing scheduled for October 3, 2005, must be received by August 16, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–108524–00), 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–108524–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20044. Alternatively, taxpayers may submit comments electronically via either the IRS Internet site at *www.irs.gov/regs* or the Federal eRulemaking Portal at *www.regulations.gov* (IRS and REG–108524–00). The public hearing will be held in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC on October 3, 2005.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Ronald M. Gootzeit, at (202) 622–3860 or to be placed on the attendance list for the hearing, Jacqueline Turner at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington DC 20224. Comments on the collections of information should be received by July 18, 2005. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in this proposed regulation are in § 1.1446–6T. This information is required to determine the extent to which a partnership is required to pay a withholding tax under section 1446 with respect to its effectively connected taxable income allocable to a foreign partner. The reporting requirement in § 1.1446–6T is voluntary. The likely respondents include individuals, businesses or other for profit institutions, and small businesses or organizations.

Estimated total annual reporting burden: 2,500 hours.

Estimated average annual burden hours per respondent: .5 hours.

Estimated number of respondents: 5,000.

Estimated annual frequency of responses: on occasion and annually.

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

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.

Background

Temporary regulations published elsewhere in this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 1446. The text of those regulations also serves as the text of the proposed regulations pertaining to section 1446 that are included in this document. The preamble to the temporary regulations explains the amendments to section 1446. The proposed regulations also amend the Income Tax and Procedure and Administration Regulations (26 CFR Parts 1 and 301) relating to sections 1464, 6071, 6091, 6151, 6302, 6402, 6414, and 6722. The amendments to these sections are necessary to coordinate the sections with the final section 1446 regulations issued elsewhere in this issue of the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 533(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collections of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that only a limited number of small entities are impacted by these collections and the burden associated with such collections is .5 hours. Moreover, the information collection in § 1.1446–6T is voluntary. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business

Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. The Treasury Department and IRS request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 3, 2005, beginning at 10 a.m. in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. All visitors must enter at the Constitution Avenue entrance and present photo identification to enter the building. 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 placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by August 16, 2005. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of 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 these proposed regulations is David J. Sotos, formerly of the Office of the Associate Chief Counsel (International). However, other personnel from the Treasury Department and IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

§ 1.1446–6 also issued under 26 U.S.C. 1446(f). * * *

Par. 2. Section 1.1446–6 is added to read as follows:

§ 1.1446–6 Special rules to reduce a partnership's 1446 tax with respect to a foreign partner's allocable share of effectively connected taxable income.

[The text of this proposed section is the same as the text of § 1.1446–6T published elsewhere in this issue of the **Federal Register**].

Par. 3. In § 1.1464–1, paragraph (a) is amended by adding three sentences at the end of the paragraph to read as follows:

§ 1.1464–1 Refunds or credits.

(a) * * * With respect to section 1446, this section shall only apply to a publicly traded partnership described in § 1.1446–4. See § 1.1446–3(d)(2)(iv) for rules permitting a withholding agent to obtain a refund of tax paid under section 1446. The previous two sentences shall apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Par. 4. In § 1.6071–1, paragraph (c)(15) is revised to read as follows:

§ 1.6071–1 Time for filing returns and other documents.

* * * * *

(c) * * *

(15) For provisions relating to the time for filing an annual information return on Form 1042–S or Form 8805 of the tax withheld under chapter 3 of the Internal Revenue Code (relating to withholding of tax on nonresident aliens and foreign corporations and tax-free covenant bonds), see § 1.1461–1(c) and § 1.1446–3(d). The references in the previous sentence to Form 8805 and § 1.1446–3(d) shall apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Par. 5. In § 1.6091–1, paragraph (b)(17) is added to read as follows:

§ 1.6091–1 Place for filing returns or other documents.

* * * * *

(b) * * *

(17) For the place for filing information returns on Form 8805 with respect to certain amounts paid on behalf of foreign partners, see the instructions to the form.

* * * * *

Par. 6. In § 1.6151–1, paragraph (d)(2) is revised to read as follows:

§ 1.6151–1 Time and place for paying tax shown on returns.

* * * * *

(d) * * *

(2) For provisions relating to the use of such financial institutions for the deposit of taxes required to be withheld under chapter 3 of the Internal Revenue Code on nonresident aliens and foreign corporations and tax-free covenant bonds, see § 1.6302–2. With respect to section 1446, the previous sentence shall apply only to a publicly traded partnership described in § 1.1446–4. This paragraph shall apply to publicly traded partnerships described in the previous sentence only for partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Par. 7. In § 1.6302–2, paragraphs (a)(1)(i) and (a)(2) are revised to read as follows:

§ 1.6302–2 Use of Government depositaries for payment of tax withheld on nonresident aliens and foreign corporations.

(a) * * *

(1) * * *

(i) *Monthly deposits.* Except as provided in paragraphs (a)(1)(ii) and (iv) of this section, every withholding agent who, pursuant to chapter 3 of the Internal Revenue Code, has accumulated at the close of any calendar month beginning on or after January 1, 1973, an aggregate amount of undeposited taxes of $200 or more shall deposit such aggregate amount with an authorized financial institution (see paragraph (b)(1)(ii) of this section) within 15 days after the close of such calendar month. However, the preceding sentence shall not apply if the withholding agent has made a deposit of taxes pursuant to paragraph (a)(1)(ii) of this section with respect to a quarter monthly period which occurred during such month. With respect to section 1446, this section shall only apply to a publicly traded partnership described in § 1.1446–4. The previous sentence shall apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

(2) *Cross reference.* For rules relating to the adjustment of deposits, see § 1.1461–2(b) and § 1.6414–1. For rules requiring payment of any undeposited tax, see § 1.1461–1.

* * * * *

Par. 8. Section 1.6414–1 is amended by:

1. Adding three sentences at the end of the undesignated text following paragraph (a)(2).

2. Revising the third sentence of paragraph (b).

The addition and revision read as follows:

§ 1.6414–1 Credit or refund of tax withheld on nonresident aliens and foreign corporations.

(a) * * * With respect to the payment of withholding tax under section 1446, this section shall only apply to a publicly traded partnership described in § 1.1446–4. See § 1.1446–3(d)(2)(iv) for rules regarding refunds to a withholding agent under section 1446. The previous two sentences shall apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

(b) * * * The amount so claimed as a credit may be applied, to the extent it has not been applied under paragraph (b) of § 1.1461–2, by the withholding agent to reduce the amount of a payment or deposit of tax required by § 1.1461–1 or paragraph (a) of § 1.6302–2 for any payment period occurring in the calendar year following the calendar year of overwithholding. * * *

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 9. The authority for 26 CFR part 301 continues to read, in part, as follows:

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

Par. 10. In § 301.6302–1, paragraph (b)(2) is revised to read as follows:

§ 301.6302–1 Mode or time of collection of taxes.

* * * * *

(b) * * *

(2) For provisions relating to the use of Federal Reserve banks or authorized commercial banks in depositing the tax required to be withheld under chapter 3 of the Internal Revenue Code on nonresident aliens and foreign corporations and tax-free covenant bonds, see § 1.6302–2 of this chapter. The previous sentence shall include payment of withholding tax under section 1446 and § 1.1446–4. References in this paragraph (b)(2) to payment of withholding tax under section 1446, shall apply to partnership taxable years beginning after the date these regulations are published in the **Federal Register**.

Par. 11. In § 301.6402–3, the second and third sentences of paragraph (e) are revised, and a sentence is added at the end of the paragraph to read as follows:

§ 301.6402–3 Special rules applicable to income tax.

* * * * *

(e) * * * Also, if the overpayment of tax resulted from the withholding of tax at source under chapter 3 of the Internal Revenue Code, a copy of the Form 1042–S, Form 8805, or other statement (see § 1.1446–3(d)(2)) required to be provided to the beneficial owner or partner pursuant to § 1.1461–1(c)(1)(i) or § 1.1446–3(d) of this chapter must be attached to the return. For purposes of claiming a refund, the Form 1042–S, Form 8805, or other statement must include the taxpayer identification number of the beneficial owner or partner even if not otherwise required. * * * References in this paragraph to Form 8805 or other statements required under § 1.1446–3(d)(2) shall apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

Par. 12. In § 301.6722–1, paragraph (d)(3) is revised to read as follows:

§ 301.6722–1 Failure to furnish correct payee statements.

* * * * *

(d) * * *

(3) *Other items.* The term *payee statement* also includes any form, statement, or schedule required to be furnished to the recipient of any amount from which tax is required to be deducted and withheld under chapter 3 of the Internal Revenue Code (or from which tax would be required to be so deducted and withheld but for an exemption under the Internal Revenue Code or any treaty obligation of the United States), generally the recipient copy of Form 1042–S or Form 8805. The reference in the previous sentence to Form 8805 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–9423 Filed 5–13–05; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
May 18, 2005

Part IV

Department of Housing and Urban Development

24 CFR Part 115
Certification and Funding of State and Local Fair Housing Enforcement Agencies; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 115

[Docket No. FR–4748–P–01; HUD–2005–007]

RIN 2529–AA90

Certification and Funding of State and Local Fair Housing Enforcement Agencies

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises and updates HUD's regulation implementing section 810(f) of the federal Fair Housing Act. This regulation establishes the criteria for certification and decertification of state and local fair housing laws that are substantially equivalent to the federal Fair Housing Act. This regulation also revises the funding criteria for agencies participating in the Fair Housing Assistance Program (FHAP).

DATES: *Comment Due Date:* July 18, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Interested persons may also submit comments electronically through either:

- The Federal electronic rulemaking portal at: *http://www.regulations.gov;* or
- The HUD electronic Web site at: *http://www.epa.gov/feddocket.* Follow the link entitled ''View Open HUD Dockets.'' Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Copies are also available for inspection and downloading at *http://www.epa.gov/feddocket.*

FOR FURTHER INFORMATION CONTACT: Myron P. Newry or Kenneth J. Carroll, FHIP/FHAP Support Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Room 5224, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–2215 (this is not a toll free number). Hearing- or speech-impaired persons may contact the FHIP/FHAP Support Division toll-free by calling (800) 290–1617, or the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Fair Housing Act (42 U.S.C. 3601–3619) (the Act) provides that whenever a complaint alleges a discriminatory housing practice arising in the jurisdiction of a state or local agency that has been certified by the Secretary of HUD under section 810(f) of the Act, HUD shall refer the complaint to that state or local agency. HUD has implemented section 810(f) at subpart B of 24 CFR part 115, which establishes the criteria the Secretary will utilize in certifying state and local fair housing enforcement agencies.

Section 817 of the Act provides that the Secretary may reimburse state and local fair housing enforcement agencies that assist the Secretary in enforcing the Act. HUD has implemented section 817 at subpart C of 24 CFR part 115, which sets forth the requirements for participation in the FHAP. Through the FHAP, HUD provides assistance and reimbursement to certified state and local fair housing enforcement agencies. The assistance is designed to provide support for capacity building, complaint processing, training, technical assistance, data and information systems, partnerships, and other approved fair housing projects.

On August 7, 1996, HUD published a final rule, streamlining its regulations governing the certification and funding of state and local fair housing enforcement. The major revision in the rule included a consolidation of parts 111 and 115. Prior to the consolidation, 24 CFR part 111 set forth the requirements for participation in the FHAP. The consolidation permitted HUD to provide all necessary requirements for substantial equivalency certification and FHAP participation in a single part.

This proposed rule represents another revision to 24 CFR part 115. The proposed rule will further clarify numerous issues related to substantial equivalency certification and the FHAP.

II. Changes to Subpart A of 24 CFR Part 115

The following sections of subpart A (the 100 series) of 24 CFR part 115 are proposed to be revised.

Section 115.100 has been changed in the following ways. First, definitions for ''the Department,'' ''final administrative disposition,'' ''fair housing law or law,'' ''government technical representative,'' ''government technical monitor,'' ''interim agency,'' ''ordinance,'' ''FHEO regional director,'' ''FHEO Regional Office,'' ''statute,'' and ''testing'' have been added to the list of definitions. Second, the term ''interim agency'' has been distinguished from the term ''certified agency''. The term ''certified agency'' was defined in the 1996 rule to include agencies with certification and interim certification. Now, when referring to agencies with interim certification, the term ''interim agency'' will be used.

Section 115.101. In contrast to the 1996 rule, revised § 115.101 specifically sets forth the duties delegated to the FHEO regional director.

Section 115.102. The 1996 rule required the Assistant Secretary for Fair Housing and Equal Opportunity to solicit public comment before granting certification. The rule now states that the Assistant Secretary shall publish annually a notice that identifies all agencies that received interim certification during the prior year. The new approach will assure that HUD publishes notification and receives and responds to comments well before an agency's interim agreement has expired so the certification process will happen in a timely manner.

III. Changes to Subpart B of 24 CFR Part 115

The following sections of subpart B (the 200 series) of 24 CFR part 115 are proposed to be reorganized and revised.

Section 115.200 has been revised to more clearly set forth the purposes of subpart B.

The title of § 115.201 has been changed from ''Basis of determination'' to ''The two phases of substantial equivalency certification.'' This section more clearly identifies that the first phase of substantial equivalency certification requires an adequacy of law determination and that the second phase of substantial equivalency certification requires an adequacy of performance determination.

Section 115.202 entitled ''Criteria for adequacy of law'' has been slightly modified. This section has been redesignated § 115.204. This section now prohibits the agency's law from placing excessive burdens on the ''aggrieved person'' (the term ''complainant'' was used in the 1996 rule). This section clarifies that if an agency's law offers an administrative hearing, the agency must also provide parties an election option substantially equivalent to the provisions of section 812 of the Act. In addition, this section provides that ''The state or local law may assure that no prohibition of

discrimination because of familial status applies to housing for older persons as described in 24 CFR part 100, subpart E.'' There was a similar provision in the 1996 regulation. However, the former provision required that the housing for older persons be ''substantially the same'' as that described in 24 CFR part 100, subpart E. The language ''substantially the same'' was removed to avoid a seemingly minor difference in state and federal definitions of housing for older persons resulting in a housing provider believing that it could legally discriminate against families with children if state law allowed it but federal law did not. Finally, this section now provides that if a state or local law is different than the Act in a way that does not diminish coverage of the Act, including but not limited, to the protection of additional prohibited bases, then the state or local law may still be found substantially equivalent (the Department does not provide reimbursement for complaints based solely on prohibited bases that are not covered by the Act).

Section 115.203 has been changed in several ways. This section has been redesignated § 115.206. The title of the section has been changed from ''Performance standards'' to ''Performance assessments, performance standards.'' The section was reorganized to make it easier to follow. The first two sections were added. They deal with the frequency of performance assessments during interim certification and certification. A provision was added stating that in conducting performance assessments, the FHEO regional office shall consider whether or not the agency is in compliance with § 115.306 (Requirements for participation in the FHAP), § 115.307 (Reporting and recordkeeping requirements), § 115.308 (Subcontracting under the FHAP), § 115.309 (FHAP and the First Amendment) and § 115.310 (Testing).

In the revised rule, performance standards were numbered (*e.g.*, ''Performance Standard 1''). Under Performance Standard 1, the requirement for the agency to make a determination of reasonable cause or no reasonable cause within 100 days unless it is impracticable to do so was added. The term ''administratively disposes'' was changed to ''final administrative disposition''. ''Final administrative disposition'' is defined in the definition section of the proposed rule. A performance standard was added stating that administrative closures should only be utilized in limited and appropriate circumstances. Performance Standard 3 requires that during the period beginning with the filing of the complaint and ending with the filing of a charge or dismissal, the agency will, to the extent feasible, attempt to conciliate the complaint. In Performance Standard 5, the proposed rule requires that, during the performance assessment, HUD shall identify the number of complaints that proceed to administrative hearing and the result. In addition, HUD shall identify the number of complaints that proceed to judicial proceedings and the result. Additionally, under Performance Standard 5, HUD shall review the adequacy of the relief sought and obtained in light of the issues raised by the complaint. Performance Standard 7 was added, which requires an agency to demonstrate that it receives and processes a reasonable number of complaints cognizable under both the federal Fair Housing Act and the agency's fair housing law. HUD will determine what a reasonable number of complaints is, based on factors that include, but are not limited to, the population of the jurisdiction that the agency serves, the length of time that the agency has participated in the FHAP, and the number of complaints that the agency has received and processed in the past. If an agency does not receive and process a reasonable number of complaints during any year of participation in the FHAP, then the FHEO regional director may put the agency on a Performance Improvement Plan (PIP). Performance Standard 8 was added, which places an affirmative duty on agencies to report to HUD on the final status of complaints following reasonable cause findings. Finally, Performance Standard 9 was added, which requires the agency to conform its performance to the provisions of any written agreements executed by the agency and the Department related to interim certification or certification, including but not limited to the interim agreement or Memorandum of Understanding (MOU).

Section 115.204 has been redesignated § 115.207. The title of the section has been changed from ''Consequences of certification'' to ''Consequences of interim certification and certification.'' A sentence has been added stating that HUD shall make referrals to interim certified and certified local agencies in accordance with this section even when the local agency is located in a state with an interim certified or certified state agency.

Section 115.205 has been redesignated § 115.209. The term ''FHEO Field Office'' in this section has been changed to ''FHEO regional office.''

Section 115.206 has been redesignated § 115.202. The title of the section has been changed from ''Request for certification'' to ''Request for interim certification.'' The section now specifies that a request must include all laws referenced in the jurisdiction's fair housing law. Subsections (3), (4), and (5) have been eliminated. There is no longer a requirement for the request and supporting materials to be kept available for public examination and copying at the HUD Field Office in whose jurisdiction the state or local jurisdiction seeking certification is located. However, § 115.202 now states that the Assistant Secretary may send a copy of the request and supporting materials to the appropriate FHEO regional director so that regional staff has documents available in case the Assistant Secretary requests assistance from regional staff.

A provision has also been added providing that upon receipt of a request, HUD will analyze the agency's fair housing law to determine whether it meets the criteria identified in § 115.204. Finally, a provision has been added stating that HUD shall review a request for interim certification from a local agency located in a state with an interim certified or certified substantially equivalent state agency if the local agency certifies that the state law does not prohibit the local agency from administering and enforcing a fair housing law within the locality.

Section 115.207 has been changed in several ways. This section has been redesignated § 115.203. The title of the section has been changed from ''Procedure for interim certification'' to ''Interim certification procedures.'' A provision has been added stating that ''All regulations, rules, directives, and/or opinions of the state attorney general or the jurisdiction's chief legal officer that are necessary for the law to be substantially equivalent on its face must be enacted and effective before the Assistant Secretary will offer the agency an interim agreement.'' The Performance Improvement Plan (PIP) provision of this section was eliminated and has been added to a later section. In addition, the term ''all appropriate signatories'' has been defined in the proposed rule. ''All appropriate signatories'' includes the Assistant Secretary, the FHEO regional director, and the state or local official having principal responsibility for the administration of the state or local fair housing law.

Sections 115.208, 115.209, 115.211, and 115.212 have been incorporated into two new sections: ''Performance deficiency procedures; Suspension;

Withdrawal'' (which is § 115.210) and ''Changes limiting effectiveness of agency's law; Corrective actions; Suspension; Withdrawal; Consequences of repeal; Changes not limiting effectiveness'' (which is § 115.211). Section 115.210 sets forth performance deficiency procedures for both interim certified and certified agencies.

Section 115.210 gives the FHEO regional directors the authority to recommend technical assistance, offer a PIP and suspend an agency's interim certification or certification. Giving the authority to offer a PIP and suspend the agency's interim certification or certification to the regional directors is a change in the rule. The change was made because regional directors have first hand knowledge of interim and certified agency performance since they and their staffs work with the agencies on a frequent basis, conduct performance assessments of the agencies and review agency cases for FHAP payment. Under the proposed rule, the authority to withdraw an agency's interim certification or certification remains with the Assistant Secretary. Section 115.211 sets forth procedures HUD will follow when there are changes limiting the effectiveness of an interim certified and certified agency's law.

Section 115.210 has been revised. This section has been redesignated § 115.205. The title of the section has been changed from ''Procedure for certification'' to ''Certification procedures.'' The Performance Improvement Plan (PIP) provision of this section was eliminated and has been added to a later section.

Two new sections have been added to subpart B of 24 CFR part 115. Section 115.208 is now titled ''Procedures for renewal of certification.'' This section sets forth the procedures HUD may utilize when renewing the certification of an agency due to the expiration of the agency's MOU. Section 115.212 is now titled ''Request after withdrawal.'' This section enumerates procedures HUD may utilize when an agency's interim certification or certification is withdrawn and the agency requests interim certification or certification again.

IV. Changes to Subpart C of 24 CFR Part 115

The following sections of subpart C (the 300 series) of 24 CFR part 115 are proposed to be revised.

Section 115.301 now provides a general statement indicating that all FHAP funding is subject to congressional appropriation.

Section 115.302 has been revised to state that when the fixed annual amount of capacity building funds will not adequately compensate an agency in its first year of participation in the FHAP due to the large number of fair housing complaints, HUD may provide the agency additional funds. This section has also been revised to more clearly state that in the second and third year of the agency's participation in the FHAP, HUD may permit the agency to receive contributions funds under § 115.303 rather than capacity building funds under this section.

Section 115.304 has been revised in several ways. The four contributions fund categories are now identified in this section: Complaint processing funds, training funds, administrative cost funds and partnership funds.

Section 115.304(b)(1) now provides that the funding cycle for complaint processing funds will be identified in the cooperative agreement between HUD and the agency. In the prior version of this section, the funding cycle for complaint processing funds was identified as ''Normally * * * the previous year's funding cycle.''

Section 115.304(b)(2) has been revised to provide that the amount of funding for agencies that are new to contributions funding will be based on the number of complaints acceptably processed during the preceding 12-month period. The prior version of this section stated that ''Funding for agencies in their fourth year of participation in the FHAP will be based on the number of complaints acceptably processed by the agency during the agency's third year of participation in the FHAP.'' The section was changed because the previous version failed to account for agencies that began receiving contributions prior to the end of their third year of participation in the FHAP. This section also now provides that the FHEO regional office will determine whether or not cases are ''acceptably processed'' based on requirements enumerated in the Cooperative Agreement and its attachments/appendices, performance standards set forth in Section 115.206, and provisions of the interim agreement or MOU.

The new rule includes § 115.304(d). This subsection sets forth the purpose of partnership funds and the basic requirements for obtaining partnership funds.

In the 1996 rule, § 115.305 dealt with special enforcement effort (SEE) funds. The SEE funds section has been eliminated in the proposed rule. HUD is conducting research to determine the adequacy of our current reimbursement payment schedule to agencies that investigate and process HUD complaints.

The section of the proposed rule dealing with the purpose and requirements of training funds, now located at § 115.305 has been revised. The revised version specifically states that agencies that receive capacity building funds are eligible to receive training funds. In addition, HUD's National Fair Housing Training Academy is identified in the proposed rule.

Section 115.306, which now sets forth requirements for participation in the FHAP, has been revised. The section states that the FHEO regional office will review the agency's compliance with the requirements of this section when it conducts on-site performance assessments in accordance with § 115.206. The section now includes the requirement that an agency that participates in the FHAP must use the Department's official complaint data information system and must input all relevant data and information into the system in a timely manner. This section has also been revised to clarify the requirement that an agency must spend at least 20 percent of its total annual budget on fair housing activities. Revised § 115.306(5) states ''[i]f an agency that participates in the FHAP has civil rights responsibilities above and beyond the administration of a fair housing law (*e.g.*, administration of a fair employment law), the agency must annually provide a certification to HUD stating that it spends at least 20 percent of its total annual budget on fair housing activities. The term 'total annual budget' as used in this subsection means the entire budget assigned by the jurisdiction to the agency for carrying out all of the agency's civil rights responsibilities.''

Sections 115.308 (Standards for FHAP program review) and 115.311 (Corrective and remedial action) from the 1996 rules have been eliminated. However, the substance of these sections has been incorporated into § 115.306.

Section 115.310 under the 1996 rule (Subcontracting under the FHAP) is now § 115.308. Two requirements have been added to this section. First, the agency must certify in writing that any subcontractor that receives FHAP funding is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal debarment or agency. Second, the agency must certify in writing that any subcontractor that receives FHAP funding uses electronic information technology that is

accessible in accordance with section 508(a)(1) of the Rehabilitation Act Amendments of 1998 (29 U.S.C. 794d).

Two new sections have been added to subpart C. Section 115.309, titled FHAP and the First Amendment, provides that no funding made available under the FHAP may be used to investigate or prosecute any activity that may be protected by the First Amendment of the United States Constitution. Section 115.310 provides requirements for fair housing testing activities funded under the FHAP.

V. Feedback Sought from the Public

In addition to reviewing and providing feedback on the entire proposed rule, HUD seeks comment from the public on three issues in particular:

First, HUD recognizes that a lack of fair housing complaints received and processed by an interim or a certified agency does not necessarily mean that there is community-wide compliance with the Federal Fair Housing Act or substantially equivalent fair housing laws. Such inaction may just as likely be an indication that the agency is not adequately educating the public on fair housing rights and responsibilities. In an effort to address non-performance, Performance Standard 7, located in § 115.206 of this proposed rule, sets forth new procedures HUD will utilize when an agency fails to receive and process a reasonable number of complaints during a year of FHAP participation. Following publication of the final rule, HUD will issue guidance on the reasonable numbers of complaints that agencies should receive and process, based on factors that include, but are not limited to, the population of the jurisdiction the agency serves and the length of time the agency has participated in the FHAP. HUD requests that FHAP agencies of varying sizes comment on what reasonable complaint numbers would be, based on these factors.

Second, HUD seeks comment on the appropriateness of enumerating timeframes that interim and certified agencies must comply with in sending out letters notifying parties of a failure to meet the 100-day (completion of investigation) or the one-year (final administrative disposition) requirements. HUD also seeks feedback on what a reasonable amount of time for interim or certified agencies to issue the letters would be, following the realization that meeting the 100-day or one year timeframe is impracticable.

Third, the proposed rule maintains the same standards as the 1996 rule in regards to administrative cost funds. The number of cases an agency must acceptably process in order to obtain 10 percent of the agency's total FHAP payment amount for the preceding year remains 100. HUD seeks guidance from the public on whether this is still a reasonable number of cases.

Findings and Certifications

Paperwork Reduction Act

The proposed new information collection requirements contained in §§ 115.202, and 115.307, have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Information on the estimated public reporting burden is provided in the following table:

Reference	Number of respondents	Frequency of response	Estimated average response time	Estimated annual burden
Request to Establish Substantial Equivalency	40	4	40	6400
Reporting and Complaint Processing	103	60	2	12,360
Totals	143	64	42	18,760

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(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 agency's estimate of the burden of the proposed collection of information;

(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 collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Under the provisions of 5 CFR 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, any comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR–4748–P–01) and must be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Facsimile: (202) 395–6974; and Surrell Silverman, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5241, Washington, DC 20410–2000.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the

Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Environmental Impact

In accordance with HUD environmental procedures at 24 CFR 50.19(c)(3), HUD approval of this rule that regulates the certification and funding of state and local fair housing enforcement agencies is categorically excluded from the environmental assessment of the National Environmental Policy Act and is not subject to the federal laws and authorities cited in 24 CFR 50.4.

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would revise and make clarifying changes related to substantial equivalency certification and the FHAP. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Number is 14.401.

List of Subjects in 24 CFR Part 115

Administrative practice and procedure, Aged, Fair housing, Grant programs-housing and community development, Individuals with disabilities, Intergovernmental relations, Mortgages, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD proposes to revise 24 CFR part 115 as follows:

PART 115—CERTIFICATION AND FUNDING OF STATE AND LOCAL FAIR HOUSING ENFORCEMENT AGENCIES

Subpart A—General

Sec.

115.100 Definitions.
115.101 Program administration.
115.102 Public notices.

Subpart B—Certification of Substantially Equivalent Agencies

115.200 Purpose.
115.201 The two phases of substantial equivalency certification.
115.202 Request for interim certification.
115.203 Interim certification procedures.
115.204 Criteria for adequacy of law.
115.205 Certification procedures.
115.206 Performance assessments; Performance standards.
115.207 Consequences of interim certification and certification.
115.208 Procedures for renewal of certification.
115.209 Technical assistance.
115.210 Performance deficiency procedures; Suspension; Withdrawal.
115.211 Changes limiting effectiveness of agency's law; Corrective actions; Suspension; Withdrawal; Consequences of repeal; Changes not limiting effectiveness.
115.212 Request after withdrawal.

Subpart C—Fair Housing Assistance Program

115.300 Purpose.
115.301 Agency eligibility criteria; Funding availability.
115.302 Capacity building funds.
115.303 Eligible activities for capacity building funds.
115.304 Agencies eligible for contributions funds.
115.305 Training funds.
115.306 Requirements for participation in the FHAP; Corrective and remedial action for failing to comply with requirements.
115.307 Reporting and recordkeeping requirements.
115.308 Subcontracting under the FHAP.
115.309 FHAP and the First Amendment.
115.310 Testing.

Authority: 42 U.S.C. 3601–19; 42 U.S.C. 3535(d).

Subpart A—General

§ 115.100 Definitions.

(a) The terms ''*Fair Housing Act*'', ''*HUD*'' and ''*the Department*'', as used in this part, are defined in 24 CFR 5.100.

(b) The terms ''*aggrieved person*'', ''*complainant*'', ''*conciliation*'', ''*conciliation agreement*'', ''*discriminatory housing practice*'', ''*dwelling*'', ''*handicap*'', ''*person*'', ''*respondent*'', ''*secretary*'', and ''*state*'', as used in this part, are defined in Section 802 of the Fair Housing Act (42 U.S.C. 3600–3620).

(c) Other definitions. The following definitions also apply to this part:

Act means the Fair Housing Act, as defined in 24 CFR 5.100.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Certified Agency is an agency that has been granted certification by the Assistant Secretary for Fair Housing and Equal Opportunity, in accordance with the requirements of this part.

Cooperative Agreement is the instrument HUD will use to provide funds. The Cooperative Agreement includes attachments and/or appendices establishing requirements relating to the operation and performance of the agency.

Cooperative Agreement Officer (CAO) is the administrator of the funds awarded pursuant to this part and is a regional director of the Office of Fair Housing and Equal Opportunity.

Dual-Filed Complaint means a housing discrimination complaint that has been filed with both HUD and the agency that has been granted interim certification or certification by the Assistant Secretary for Fair Housing and Equal Opportunity.

FHAP means the Fair Housing Assistance Program.

FHEO means HUD's Office of Fair Housing and Equal Opportunity.

FHEO Regional Director means a regional director of the Office of Fair Housing and Equal Opportunity.

Fair Housing Law or *Law* refers to both state fair housing laws and local fair housing laws.

Final Administrative Disposition means an agency's completion of a case following a reasonable cause finding, including but not limited to an agency-approved settlement or a final, administrative decision issued by commissioners, hearing officers or administrative law judges. Final administrative disposition does not include dispositions in judicial proceedings resulting from election or appeal.

Government Technical Monitor (GTM) means the HUD staff person who has been designated to provide technical and financial oversight and evaluation of the FHAP grantee's performance.

Government Technical Representative (GTR) means the HUD staff person who is responsible for the technical

administration of the FHAP grant, the evaluation of performance under the FHAP grant, the acceptance of technical reports or projects, the approval of payments, and other such specific responsibilities as may be stipulated in the FHAP grant.

Impracticable, as used in this part, is when complaint processing is delayed by circumstances beyond the control of the interim or certified agency. Those situations include, but are not limited to, complaints involving complex issues requiring extensive investigations, complaints involving new and complicated areas of law that need to be analyzed, and where a witness is discovered late in the investigation and needs to be interviewed.

Interim Agency is an agency that has been granted interim certification by the Assistant Secretary for Fair Housing and Equal Opportunity.

Ordinance, as used in this part, means a law enacted by the legislative body of a municipality.

Statute, as used in this part, means a law enacted by the legislative body of a state.

Testing refers to the use of an individual or individuals (''testers'') who, without a bona fide intent to rent or purchase a house, apartment, or other dwelling, pose as prospective renters or purchasers for the purpose of gathering information that may indicate whether a housing provider is complying with fair housing laws.

§ 115.101 Program administration.

(a) Authority and responsibility. The Secretary has delegated the authority and responsibility for administering this part to the Assistant Secretary.

(b) Delegation of Authority. The Assistant Secretary retains the right to make final decisions concerning the granting and withdrawal of substantial equivalency interim certification and certification. The Assistant Secretary delegates the authority and responsibility for administering the remainder of this part to the FHEO regional director. This includes assessing the performance of interim and certified agencies as described in § 115.206. This also includes the offering of a Performance Improvement Plan (PIP) as described in § 115.210 and the suspension of interim certification or certification due to performance deficiencies as described in § 115.210.

§ 115.102 Public notices.

(a) Periodically, the Assistant Secretary will publish the following public notices in the **Federal Register:**

(1) A list of all interim and certified agencies; and

(2) A list of agencies to which a withdrawal of interim certification or certification has been proposed.

(b) On an annual basis, the Assistant Secretary shall publish in the **Federal Register** a notice that identifies all agencies that have received interim certification during the prior year. The notice will invite the public to comment on the state and local laws of the new interim agencies, as well as on the performance of the agencies in enforcing their laws. All comments will be considered before a final decision on certification is made.

Subpart B—Certification of Substantially Equivalent Agencies

§ 115.200 Purpose.

This subpart implements section 810(f) of the Fair Housing Act. The purpose of this subpart is to set forth:

(a) The basis for agency interim certification and certification;

(b) Procedures by which a determination is made to grant interim certification or certification;

(c) How the Department will evaluate the performance of an interim and certified agency;

(d) Procedures that the Department will utilize when an interim or certified agency performs deficiently;

(e) Procedures that the Department will utilize when there are changes limiting the effectiveness of an interim or certified agency's law;

(f) Procedures for renewal of certification; and

(g) Procedures when an agency requests interim certification or certification after a withdrawal.

§ 115.201 The two phases of substantial equivalency certification.

Substantial equivalency certification is granted if the Department determines that a state or local agency enforces a law that is substantially equivalent to the Fair Housing Act with regard to substantive rights, procedures, remedies and the availability of judicial review. The Department has developed a two-phase process of substantial equivalency certification.

(a) *Adequacy of Law:* In the first phase, the Department's Assistant Secretary for Fair Housing and Equal Opportunity will determine whether, on its face, the fair housing law that the agency administers provides rights, procedures, remedies, and the availability of judicial review that are substantially equivalent to those provided in the federal Fair Housing Act. An agency must obtain interim certification prior to obtaining certification.

(b) *Adequacy of Performance:* In the second phase, the Department's Assistant Secretary for Fair Housing and Equal Opportunity will determine whether, in operation, the fair housing law that the agency administers provides rights, procedures, remedies and the availability of judicial review that are substantially equivalent to those provided in the federal Fair Housing Act. An affirmative conclusion will result in the Department offering the agency certification.

§ 115.202 Request for interim certification.

(a) A request for interim certification under this subpart shall be filed with the Assistant Secretary by the state or local official having principal responsibility for the administration of the state or local fair housing law. The request shall be supported by the text of the jurisdiction's fair housing law, the law creating and empowering the agency, all laws referenced in the jurisdiction's fair housing law, any regulations and directives issued under the law, and any formal opinions of the State Attorney General or the chief legal officer of the jurisdiction that pertain to the jurisdiction's fair housing law. A request shall also include organizational information of the agency responsible for administering and enforcing the law.

(b) The request and supporting materials shall be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. The Assistant Secretary shall forward a copy of the request and supporting materials to the appropriate FHEO regional director. A copy of the request and supporting materials will be kept available for public examination and copying at:

(1) The office of the Assistant Secretary; and

(2) The office of the state or local agency charged with administration and enforcement of the state or local fair housing law.

(c) Upon receipt of a request, HUD will analyze the agency's fair housing law to determine whether it meets the criteria identified in § 115.204.

(d) HUD shall review a request for interim certification from a local agency located in a state with interim certified or certified substantially equivalent state agency. However, in the request for interim certification, the local agency must certify that the substantially equivalent state law does not prohibit the local agency from administering and enforcing a fair housing law within the locality.

§ 115.203 Interim certification procedures.

(a) Upon receipt of a request for interim certification filed under § 115.202, the Assistant Secretary may request further information necessary for a determination to be made under this section. The Assistant Secretary may consider the relative priority given to fair housing administration, as compared to the agency's other duties and responsibilities, as well as the compatibility or potential conflict of fair housing objectives with these other duties and responsibilities.

(b) If the Assistant Secretary determines, after application of the criteria set forth in § 115.204, that the state or local law, on its face, provides substantive rights, procedures, remedies, and judicial review procedures for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the Assistant Secretary may offer to enter into an Agreement for the Interim Referral of Complaints and Other Utilization of Services (interim agreement). The interim agreement will outline the procedures and authorities upon which the interim certification is based.

(c) Such interim agreement, after it is signed by all appropriate signatories, will result in the agency receiving interim certification. Appropriate signatories include the Assistant Secretary, the FHEO regional director and the state or local official having principal responsibility for the administration of the state or local fair housing law.

(d) Interim agreements shall be for a term of no more than three years.

(e) All regulations, rules, directives, and/or opinions of the State Attorney General or the jurisdiction's chief legal officer that are necessary for the law to be substantially equivalent on its face must be enacted and effective in order for the Assistant Secretary to offer the agency an interim agreement.

(f) Interim certification required prior to certification. An agency is required to obtain interim certification prior to obtaining certification.

§ 115.204 Criteria for adequacy of law.

(a) In order for a determination to be made that a state or local fair housing agency administers a law, which, on its face, provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the law must:

(1) Provide for an administrative enforcement body to receive and process complaints and provide that:

(i) Complaints must be in writing;

(ii) Upon the filing of a complaint, the agency shall serve notice upon the complainant acknowledging the filing and advising the complainant of the time limits and choice of forums provided under the law;

(iii) Upon the filing of a complaint, the agency shall promptly serve notice on the respondent or person charged with the commission of a discriminatory housing practice advising of his or her procedural rights and obligations under the statute or ordinance, together with a copy of the complaint;

(iv) A respondent may file an answer to a complaint.

(2) Delegate to the administrative enforcement body comprehensive authority, including subpoena power, to investigate the allegations of complaints, and power to conciliate complaints, and require that:

(i) The agency commences proceedings with respect to the complaint before the end of the 30th day after receipt of the complaint;

(ii) The agency investigate the allegations of the complaint and complete the investigation within the time-frame established by section 810(a)(1)(B)(iv) of the Act or comply with the notification requirements of section 810(a)(1)(C) of the Act;

(iii) The agency make final administrative disposition of a complaint within one year of the date of receipt of a complaint, unless it is impracticable to do so. If the agency is unable to do so, it shall notify the parties, in writing, of the reasons for not doing so;

(iv) Any conciliation agreement arising out of conciliation efforts by the agency shall be an agreement between the respondent, the complainant, and the agency and shall require the approval of the agency;

(v) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the agency determines that disclosure is not required to further the purpose of the law.

(3) Not place excessive burdens on the aggrieved person that might discourage the filing of complaints, such as:

(i) A provision that a complaint must be filed within any period of time less than 180 days after an alleged discriminatory practice has occurred or terminated;

(ii) Anti-testing provisions;

(iii) Provisions that could subject an aggrieved person to costs, criminal penalties or fees in connection with the filing of complaints.

(4) Not contain exemptions that substantially reduce the coverage of housing accommodations as compared to section 803 of the Act.

(5) Provide the same protections as those afforded by sections 804, 805, 806, and 818 of the Act, consistent with HUD's implementing regulations found at 24 CFR part 100.

(b) In addition to the factors described in paragraph (a) of this section, the provisions of the state or local law must afford administrative and judicial protection and enforcement of the rights embodied in the law.

(1) The agency must have the authority to:

(i) Grant or seek prompt judicial action for appropriate temporary or preliminary relief pending final disposition of a complaint if such action is necessary to carry out the purposes of the law;

(ii) Issue and seek enforceable subpoenas;

(iii) Grant actual damages in an administrative proceeding or provide adjudication in court at agency expense to allow the award of actual damages to an aggrieved person;

(iv) Grant injunctive or other equitable relief, or be specifically authorized to seek such relief in a court of competent jurisdiction;

(v) Provide an administrative proceeding in which a civil penalty may be assessed or provide adjudication in court, at agency expense, allowing the assessment of punitive damages against the respondent.

(2) If an agency's law offers an administrative hearing, the agency must also provide parties an election option substantially equivalent to the election provisions of section 812 of the Act.

(3) Agency actions must be subject to judicial review upon application by any party aggrieved by a final agency order.

(4) Judicial review of a final agency order must be in a court with authority to:

(i) Grant to the petitioner, or to any other party, such temporary relief, restraining order, or other order as the court determines is just and proper;

(ii) Affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceeding; and

(iii) Enforce the order to the extent that the order is affirmed or modified.

(c) The requirement that the state or local law prohibit discrimination on the basis of familial status does not require that the state or local law limit the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(d) The state or local law may assure that no prohibition of discrimination because of familial status applies to

housing for older persons as described in 24 CFR part 100, subpart E.

(e) A determination of the adequacy of a state or local fair housing law ''on its face'' is intended to focus on the meaning and intent of the text of the law, as distinguished from the effectiveness of its administration. Accordingly, this determination is not limited to an analysis of the literal text of the law. Regulations, directives, rules of procedure, judicial decisions, or interpretations of the fair housing law by competent authorities will be considered in making this determination.

(f) A law will be found inadequate ''on its face'' if it permits any of the agency's decision-making authority to be contracted out or delegated to a non-governmental authority. For the purposes of this paragraph, ''decision making authority'' includes but is not limited to:

(1) Acceptance of a complaint;

(2) Approval of a conciliation agreement;

(3) Dismissal of a complaint;

(4) Any action specified in §§ 115.204(a)(2)(iii) or 115.204(b)(1); and

(5) Any decision-making regarding whether a particular matter will or will not be pursued.

(g) The state or local law must provide for civil enforcement of the law by an aggrieved person by the commencement of an action in an appropriate court at least one year after the occurrence or termination of an alleged discriminatory housing practice. The court must be empowered to:

(1) Award the plaintiff actual and punitive damages;

(2) Grant as relief, as it deems appropriate, any temporary or permanent injunction, temporary restraining order or other order; and

(3) Allow reasonable attorney's fees and costs.

(h) If a state or local law is different than the Act in a way that does not diminish coverage of the Act, including but not limited to the protection of additional prohibited bases, then the state or local law may still be found substantially equivalent.

§ 115.205 Certification procedures.

(a) Certification.

(1) If the Assistant Secretary determines, after application of criteria set forth in §§ 115.204, 115.206 and this section, that the state or local law, both ''on its face'' and ''in operation,'' provides substantive rights, procedures, remedies, and judicial review procedures for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the Assistant Secretary may enter into a Memorandum of Understanding (MOU) with the agency.

(2) The MOU is a written agreement providing for the referral of complaints to the agency and for communication procedures between the agency and HUD that are adequate to permit the Assistant Secretary to monitor the agency's continuing substantial equivalency certification.

(3) The MOU, after it is signed by all appropriate signatories, may authorize an agency to be a certified agency for a period of not more than five years. Appropriate signatories include the Assistant Secretary, the FHEO regional director and the authorized employee(s) of the agency.

(b) In order to receive certification, during the 60 days prior to the expiration of the agency's interim agreement, the agency must certify to the Assistant Secretary that the state or local fair housing law, ''on its face'', continues to be substantially equivalent to the Act (*i.e.*, there have been no amendments to the state or local fair housing law, adoption of rules or procedures concerning the fair housing law, or judicial or other authoritative interpretations of the fair housing law that limit the effectiveness of the agency's fair housing law).

§ 115.206 Performance assessments; performance standards.

(a) *Frequency of on-site performance assessment during interim certification:* The Assistant Secretary, through the appropriate FHEO regional office, may conduct an on-site performance assessment not later than six months after the execution of the interim agreement. An on-site performance assessment may also be conducted during the six months immediately prior to the expiration of the interim agreement. HUD has the discretion to conduct additional performance assessments during the period of interim certification, as it deems necessary.

(b) *Frequency of on-site performance assessment during certification:* During certification, the Assistant Secretary through the FHEO regional office, may conduct on-site performance assessments every 24 months. HUD has the discretion to conduct additional performance assessments during the period of certification, as it deems necessary.

(c) In conducting the performance assessment, the FHEO regional office shall determine whether the agency engages in timely, comprehensive and thorough fair housing complaint investigation, conciliation and enforcement activities. In the performance assessment report, the FHEO regional office may recommend to the Assistant Secretary whether the agency should continue to be interim certified or certified. In conducting the performance assessment, the FHEO regional office shall also determine whether the agency is in compliance with the requirements for participation in the FHAP enumerated in §§ 115.306, 115.307, 115.308, 115.309, and 115.310 of this part. In the performance assessment report, the FHEO regional office shall identify whether the agency meets the requirements of §§ 115.306, 115.307, 115.308, 115.309, and 115.310 of this part, and therefore, should continue receiving funding under the FHAP.

(d) At a minimum, the performance assessment will consider the following to determine the effectiveness of an agency's fair housing complaint processing, consistent with such guidance as may be issued by HUD:

(1) The agency's case processing procedures;

(2) The thoroughness of the agency's case processing;

(3) A review of cause and no cause determinations for quality of investigations and consistency with appropriate standards;

(4) A review of conciliation agreements and other settlements;

(5) A review of the agency's administrative closures; and

(6) A review of the agency's enforcement procedures, including administrative hearings and judicial proceedings.

(e) *Performance standards:* HUD shall utilize the following performance standards while conducting performance assessments. If an agency does not meet one or more performance standard(s), HUD shall utilize the performance deficiency procedures enumerated in § 115.210.

(1) Performance Standard 1: Commence complaint proceedings, carry forward such proceedings, complete investigations, issue determinations and make final administrative dispositions in a timely manner. To meet this standard, the performance assessment will consider the timeliness of the agency's actions with respect to its complaint processing, including, but not limited to:

(i) Whether the agency began its processing of fair housing complaints within 30 days of receipt;

(ii) Whether the agency completes the investigative activities with respect to a complaint within 100 days from the date of receipt or, if it is impracticable

to do so, notifies the parties in writing of the reason(s) for the delay;

(iii) Whether the agency makes a determination of reasonable cause or no reasonable cause with respect to a complaint within 100 days from the date of receipt or, if it is impracticable to do so, notifies the parties in writing of the reason(s) for the delay;

(iv) Whether the agency makes a final administrative disposition of a complaint within one year from the date of receipt or, if it is impracticable to do so, notifies the parties in writing of the reason(s) for the delay; and

(v) Whether the agency completed the investigation of the complaint and prepared a complete, final investigative report.

(2) Performance Standard 2: Administrative closures are only utilized in limited and appropriate circumstances. Administrative closures should be distinguished from a closure on the merits and may not be used instead of making a recommendation or determination of reasonable or no reasonable cause. HUD will provide further guidance to interim and certified agencies on the appropriate circumstances for administrative closures.

(3) Performance Standard 3: During the period beginning with the filing of a complaint and ending with filing of a charge or dismissal, the agency will, to the extent feasible, attempt to conciliate the complaint. After a charge has been issued, the agency will, to the extent feasible, continue to attempt conciliation until a hearing or a judicial proceeding has begun.

(4) Performance Standard 4: The agency conducts compliance reviews of settlements, conciliation agreements, and orders resolving discriminatory housing practices. The performance assessment shall include, but not be limited to:

(i) An assessment of the agency's procedures for conducting compliance reviews; and

(ii) Terms and conditions of agreements and orders issued.

(5) Performance Standard 5: The agency must consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of discriminatory practices. The performance assessment shall include, but not be limited to:

(i) An assessment of the agency's use of its authority to seek actual damages, as appropriate;

(ii) An assessment of the agency's use of its authority to seek and assess civil penalties or punitive damages, as appropriate;

(iii) An assessment of the types of relief sought by the agency with consideration for the inclusion of affirmative provisions designed to protect the public interest;

(iv) A review of all types of relief obtained;

(v) A review of the adequacy of the relief sought and obtained in light of the issues raised by the complaint;

(vi) The number of complaints closed with relief and the number closed without relief;

(vii) The number of complaints that proceed to administrative hearing and the result; and

(viii) The number of complaints that proceed to judicial proceedings and the result.

(6) Performance Standard 6: The agency must consistently and affirmatively seek to eliminate all prohibited practices under its fair housing law. An assessment under this standard will include, but not be limited to, an identification of the education and outreach efforts of the agency.

(7) Performance Standard 7: The agency must demonstrate that it receives and processes a reasonable number of complaints cognizable under both the federal Fair Housing Act and the agency's fair housing statute or ordinance. The reasonable number will be determined by HUD and based on all relevant circumstances including, but not limited to, the population of the jurisdiction that the agency serves, the length of time that the agency has participated in the FHAP and the number of complaints that the agency has received and processed in the past. If an agency fails to receive and process a reasonable number of complaints during a year of FHAP participation, then the FHEO regional director may offer the agency a Performance Improvement Plan (PIP), as described in § 115.210(a)(2). The PIP will set forth the number of complaints the agency must process during subsequent years of FHAP participation. After issuing the PIP, the FHEO regional office will provide the agency technical assistance on ways to increase awareness of fair housing rights and responsibilities in the jurisdiction.

(8) Performance Standard 8: The agency must report to HUD on the final status of all dual-filed complaints where a determination of reasonable cause was made. The report must identify, at a minimum, how complaints were resolved (*e.g.*, settlement, judicial proceedings, or administrative hearing), when they were resolved, the forum in which they were resolved and types and amounts of relief obtained.

(9) Performance Standard 9: The agency must conform its performance to the provisions of any written agreements executed by the agency and the Department related to substantial equivalency certification, including but not limited to, the interim agreement or MOU.

§ 115.207 Consequences of interim certification and certification.

(a) Whenever a complaint received by the Assistant Secretary alleges violations of a fair housing law administered by an agency that has been interim certified or certified as substantially equivalent, the complaint will be referred to the agency, and no further action shall be taken by the Assistant Secretary with respect to such complaint except as provided for by the Act, this part, 24 CFR part 103, subpart C, and any written agreements executed by the Agency and the Assistant Secretary. HUD shall make referrals to interim certified and certified local agencies in accordance with this section even when the local agency is located in a state with an interim certified or certified state agency.

(b) If HUD determines that a complaint has not been processed in a timely manner in accordance with the performance standards set forth in § 115.206, HUD may reactivate the complaint, conduct its own investigation and conciliation efforts, and make a determination consistent with 24 CFR part 103.

(c) Notwithstanding paragraph (a) of this section, whenever the Assistant Secretary has reason to believe that a complaint demonstrates a basis for the commencement of proceedings against any respondent under section 814(a) of the Act or for proceedings by any governmental licensing or supervisory authorities, the Assistant Secretary shall transmit the information upon which such belief is based to the Attorney General, federal financial regulatory agencies, other federal agencies, or other appropriate governmental licensing or supervisory authorities.

§ 115.208 Procedures for renewal of certification.

(a) If the Assistant Secretary affirmatively concludes that the agency's law and performance have complied with the requirements of this part in each of the five years of certification, the Assistant Secretary may renew the certification of the agency.

(b) In determining whether to renew the certification of an agency, the Assistant Secretary's review may include, but is not limited to:

(1) Performance assessments of the agency conducted by the Department during the five years of certification;

(2) The agency's own certification that the state or local fair housing law continues to be substantially equivalent both ''on its face'' and ''in operation;'' (*i.e.*, there have been no amendments to the state or local fair housing law, adoption of rules or procedures concerning the fair housing law, or judicial or other authoritative interpretations of the fair housing law that limit the effectiveness of the agency's fair housing law); and

(3) Any and all public comments regarding the relevant state and local law and the performance of the agency in enforcing the law.

(c) If the Assistant Secretary decides to renew an agency's certification, the Assistant Secretary will offer the agency either a new MOU or an Addendum to the Memorandum of Understanding (addendum). The new MOU or addendum will extend and update the MOU between HUD and the agency.

(d) The new MOU or addendum, when signed by all appropriate signatories, will result in the agency's certification being renewed for five years from the date on which the previous MOU was to expire. Appropriate signatories include the Assistant Secretary, the FHEO regional director and the authorized employee(s) of the agency.

(e) The provisions of this section may be applied to an agency that has an expired MOU or an expired addendum.

§ 115.209 Technical assistance.

(a) The Assistant Secretary, through the FHEO regional office, may provide technical assistance to the interim and certified agencies at any time. The agency may request such technical assistance or the FHEO regional office may determine the necessity for technical assistance and require the agency's cooperation and participation.

(b) The Assistant Secretary, through FHEO headquarters or regional staff, will require that the agency participate in training conferences and seminars that will enhance the agency's ability to process complaints alleging discriminatory housing practices.

§ 115.210 Performance deficiency procedures; Suspension; Withdrawal.

(a) HUD may utilize the following performance deficiency procedures if it determines at any time that the agency does not meet one or more of the performance standards enumerated in § 115.206. The performance deficiency procedures may be applied to agencies with either interim certification or certification. If an agency fails to meet performance standard 7, HUD may bypass the technical assistance performance deficiency procedure and proceed to the PIP.

(1) *Technical assistance:* After discovering the deficiency, the FHEO regional office should immediately inform the agency and provide the agency with technical assistance.

(2) *Performance improvement plan:* If, following technical assistance, the agency does not bring its performance into compliance with § 115.206 within a time period identified by the FHEO regional director, the FHEO regional director may offer the agency a PIP.

(i) The PIP will outline the agency's performance deficiencies, identify the necessary corrective actions, and include a timetable for completion.

(ii) If the agency receives a PIP, funding under the FHAP may be suspended for the duration of the PIP.

(iii) Once the agency has implemented the corrective actions to eliminate the deficiencies, and such corrective actions are accepted by the FHEO regional director, funding may be restored.

(iv) The FHEO regional office may provide the agency with technical assistance during the period of the PIP, if appropriate.

(b) *Suspension:* If the agency does not agree to implement the PIP or does not implement the corrective actions identified in the PIP within the time allotted, then the FHEO regional director may suspend the agency's interim certification or certification.

(1) The FHEO regional director shall notify the agency in writing of the specific reasons for the suspension and provide the agency with an opportunity to respond within 30 days.

(2) Suspension shall not exceed 180 days.

(3) During the period of suspension, HUD will not refer complaints to the agency.

(4) If an agency is suspended, the FHEO regional office may elect not to provide payment for complaints processed within that period of time unless and until the Assistant Secretary determines that the agency is fully in compliance with § 115.206.

(5) HUD may provide the agency with technical assistance during the period of suspension, if appropriate.

(6) No more than 60 days prior to the end of suspension, the FHEO regional office shall conduct a performance assessment of the agency.

(c) *Withdrawal:* If, following the performance assessment conducted at the end of suspension, the Assistant Secretary determines that the agency has not corrected the deficiencies, the Assistant Secretary may propose to withdraw the interim certification or certification of the agency.

(1) The Assistant Secretary shall proceed with withdrawal unless the agency provides information or documentation that establishes that the agency's administration of its law meets all of the substantial equivalency certification criteria set forth in 24 CFR Part 115.

(2) The Assistant Secretary shall inform the agency in writing of the reasons for the withdrawal.

§ 115.211 Changes limiting effectiveness of agency's law; Corrective actions; Suspension; Withdrawal; Consequences of repeal; Changes not limiting effectiveness.

(a) *Changes limiting effectiveness of agency's law.*

(1) If a state or local fair housing law that HUD has previously deemed substantially equivalent to the Act is amended; or rules or procedures concerning the fair housing law are adopted; or judicial or other authoritative interpretations of the fair housing law are issued, the interim certified or certified agency must inform the Assistant Secretary of such amendment, adoption, or interpretation within 60 days of its discovery.

(2) The requirements of this section shall apply equally to the amendment, adoption, or interpretation of any related law that bears on any aspect of the effectiveness of the agency's fair housing law.

(3) The Assistant Secretary may conduct a review to determine if the amendment, adoption, or interpretation limits the effectiveness of the interim agency's fair housing law.

(b) *Corrective actions.*

(1) If the review indicates that the agency's law no longer meets the criteria identified in § 115.204, the Assistant Secretary will so notify the agency in writing. Following notification, HUD may take appropriate actions, including, but not limited to any or all of the following:

(i) Declining to refer some or all complaints to the agency unless and until the fair housing law meets the criteria identified in § 115.204;

(ii) Electing not to provide payment for complaints processed by the agency unless and until the fair housing law meets the criteria identified in § 115.204;

(iii) Providing technical assistance and/or guidance to the agency to assist the agency in curing deficiencies in its fair housing law.

(2) *Suspension based on changes in the law:* If the corrective actions

identified in subsection (b)(1)(i)–(iii) above fail to bring the state or local fair housing law back into compliance with the criteria identified in § 115.204 within the time-frame identified in HUD's notification to the agency, the Assistant Secretary may suspend the agency's interim certification or certification based on changes in the law or a related law.

(i) The Assistant Secretary will notify the agency in writing of the specific reasons for the suspension and provide the agency with an opportunity to respond within 30 days.

(ii) During the period of suspension, the Assistant Secretary has the discretion to not refer some or all complaints to the agency unless and until the agency's law meets the criteria identified in § 115.204.

(iii) During suspension, HUD may elect not to provide payment for complaints processed unless and until the agency's law meets the criteria identified in § 115.204.

(iv) During the period of suspension, if the fair housing law is brought back into compliance with the criteria identified in § 115.204, and the Assistant Secretary determines that the fair housing law remains substantially equivalent to the Act, the Assistant Secretary will rescind the suspension and reinstate the agency's interim certification or certification.

(3) *Withdrawal based on changes in the law:* If the Assistant Secretary determines that the agency has not brought its law back into compliance with the criteria identified in § 115.204 during the period of suspension, the Assistant Secretary may propose to withdraw the agency's interim certification or certification.

(i) The Assistant Secretary will proceed with withdrawal unless the agency provides information or documentation that establishes that the agency's current law meets the criteria of substantial equivalency certification identified in § 115.204.

(ii) The Assistant Secretary will inform the agency in writing of the reasons for the withdrawal.

(c) If, following notification from HUD that its fair housing law no longer meets the criteria identified in § 115.204, an interim certified or certified agency unequivocally expresses to HUD that its fair housing law will not be brought back into compliance, the Assistant Secretary may forgo suspension and proceed directly to withdrawal of the agency's interim certification or certification.

(d) *Consequences of repeal:* If a state or local fair housing law that HUD has previously deemed substantially equivalent to the Act is repealed, in whole or in part, or a related law that bears on any aspect of the effectiveness of the agency's fair housing law is repealed, in whole or in part, the Assistant Secretary may immediately withdraw the agency's interim certification or certification.

(e) *Changes not limiting effectiveness:* Nothing in this section is meant to limit the Assistant Secretary's authority to determine that a change to a fair housing law does not jeopardize the substantial equivalency interim certification or certification of an agency.

(1) Under such circumstances, the Assistant Secretary may proceed in maintaining its existing relationship with the agency, as set forth in the interim agreement or MOU.

(2) Alternatively, the Assistant Secretary may decide not to refer certain types of complaints to the agency. The Assistant Secretary may elect not to provide payment for these complaints and may require the agency to refer such complaints to the Department for investigation, conciliation and enforcement activities.

(3) When the Assistant Secretary determines that a change to a fair housing law does not jeopardize an agency's substantial equivalency certification, the Assistant Secretary need not proceed to suspension or withdrawal if the change is not reversed.

§ 115.212 Request after withdrawal.

(a) An agency that has had its interim certification or certification withdrawn, either voluntarily or by the Department, may request substantial equivalency interim certification or certification.

(b) The request shall be filed in accordance with section 202 of this part.

(c) The Assistant Secretary shall determine whether the state or local law, on its face, provides substantive rights, procedures, remedies, and judicial review procedures for alleged discriminatory housing practices that are substantially equivalent to those provided in the Federal Fair Housing Act. To meet this standard, the state or local law must meet the criteria enumerated in section 204 of this part.

(d) Additionally, if the agency had documented performance deficiencies that contributed to the past withdrawal, then the Department shall consider the agency's performance and any steps the agency has taken to correct performance deficiencies and to prevent them from reoccurring in determining whether to grant interim certification or certification. The review of the agency's performance shall include HUD conducting a performance assessment in accordance with section 206 of this part.

Subpart C—Fair Housing Assistance Program

§ 115.300 Purpose.

The purpose of the Fair Housing Assistance Program (FHAP) is to provide assistance and reimbursement to state and local fair housing enforcement agencies. The intent of this funding program is to build a coordinated intergovernmental enforcement effort to further fair housing and to encourage the agencies to assume a greater share of the responsibility for the administration and enforcement of fair housing laws.

The financial assistance is designed to provide support for:

(a) The processing of dual filed complaints;

(b) Training under the Fair Housing Act and the agencies' fair housing law;

(c) The provision of technical assistance;

(d) The creation and maintenance of data and information systems; and

(e) The development and enhancement of fair housing education and outreach projects, special fair housing enforcement efforts, fair housing partnership initiatives, and other fair housing projects.

§ 115.301 Agency eligibility criteria; funding availability.

An agency with certification or interim certification under subpart B of this part, and which has entered into a MOU or interim agreement, is eligible to participate in the FHAP. All FHAP funding is subject to congressional appropriation.

§ 115.302 Capacity building funds.

(a) Capacity building (CB) funds are funds that HUD may provide to an agency with interim certification.

(b) CB funds will be provided in a fixed annual amount to be utilized for the eligible activities established pursuant § 115.303. When the fixed annual amount will not adequately compensate an agency in its first year of participation in the FHAP due to the large number of fair housing complaints that the agency reasonably anticipates processing, HUD may provide the agency additional funds.

(c) HUD may provide capacity building funds during an agency's first three years of participation in the FHAP. However, in the second and third year of the agency's participation in the FHAP, HUD has the option to permit the agency to receive contribution funds under § 115.303, instead of CB funds.

(d) In order to receive CB funding, agencies must submit a statement of work prior to the signing of the cooperative agreement. The statement of work must identify:

(1) The objectives and activities to be carried out with the CB funds received;

(2) A plan for training all of the agency's employees involved in the administration of the agency's fair housing law;

(3) A statement of the agency's intention to participate in HUD-sponsored training in accordance with the training requirements set out in the cooperative agreement;

(4) A description of the agency's complaint processing data and information, or alternatively, whether the agency plans to use CB funds to purchase and install a data system;

(5) A description of any other fair housing activities that the agency will undertake with its CB funds. All such activities must address matters affecting fair housing enforcement that are cognizable under the Fair Housing Act. Any activities that do not address the implementation of the agency's fair housing law, and that are therefore not cognizable under the Fair Housing Act, will be disapproved.

§ 115.303 Eligible activities for capacity building funds.

The primary purposes of capacity building funding are to provide for complaint activities and to support activities that produce increased awareness of fair housing rights and remedies. All such activities must support the agency's administration and enforcement of its fair housing law and address matters affecting fair housing that are cognizable under the Fair Housing Act.

§ 115.304 Agencies eligible for contributions funds.

(a) An agency that has received CB funds for one to three consecutive years may be eligible for contributions funding. Contributions funding consists of four categories:

(1) Complaint processing (CP) funds;

(2) Training funds (§ 115.305 of this part sets forth the requirements for training funds).

(3) Administrative cost (AC) funds;

(4) Partnership (P) funds; and

(b) CP funds.

(1) Agencies receiving CP funds will receive such support based solely on the number of complaints processed by the agency and accepted for payment by the FHEO regional director during a consecutive, specifically identified, 12-month period. The 12-month period will be identified in the cooperative agreement between HUD and the agency. The FHEO regional office shall determine whether or not cases are acceptably processed based on requirements enumerated in the Cooperative Agreement and its attachments/appendices, performance standards set forth in 24 CFR 115.206 and provisions of the interim agreement or MOU.

(2) The amount of funding to agencies that are new to contributions funding will be based on the number of complaints acceptably processed by the agency during the specifically identified 12-month period preceding the signing of the cooperative agreement.

(c) *AC funds.*

(1) Agencies that acceptably process 100 or more cases will receive no less than 10 percent of the agency's total FHAP payment amount for the preceding year, in addition to CP funds, contingent on fiscal year appropriations. Agencies that acceptably process fewer than 100 cases will receive a flat rate contingent on fiscal year appropriations.

(2) Agencies will be required to provide HUD with a statement of how they intend to use the AC funds. HUD may require that some or all AC funding be directed to activities designed to create, modify, or improve local, regional, or national information systems concerning fair housing matters (including the purchase of state of the art computer systems, obtaining and maintaining internet access, etc.).

(d) *P funds.* The purpose of P funds is for an agency participating in the FHAP to utilize the services of individuals and/or public, private, for profit, not-for-profit organizations that have expertise needed to effectively carry out the provisions of the agency's fair housing law. P funds are fixed amounts and shall be allocated based on the FHAP appropriation. Agencies must consult with the CAO and GTR in identifying appropriate usage of P funds for the geographical area that the agency services. Some examples of proper P fund usage include, but are not limited to:

(1) Contracting with qualified organizations to conduct fair housing testing in appropriate cases;

(2) Hiring experienced, temporary staff to assist in the investigation of complex or aged cases;

(3) Partnering with grassroots, faith-based or other community based organizations to conduct education and outreach to people of different backgrounds on how to live together peacefully in the same housing complex, neighborhood or community;

(4) Contracting with individuals outside the agency who have special expertise needed for the investigation of fair housing cases (*e.g.*, architects for design and construction cases or qualified individuals from colleges and universities for the development of data and statistical analyses).

§ 115.305 Training funds.

(a) All agencies, including agencies that receive capacity building funds, are eligible to receive training funds. Training funds are fixed amounts based on the number of agency employees to be trained. Training funds shall be allocated based on the FHAP appropriation. Training funds may be used only for HUD-approved or HUD-sponsored training. Agency initiated training or other formalized training may be included in this category. However, such training must first be approved by the CAO and the GTR. Specifics on the amount of training funds that an agency will receive and, if applicable, amounts that may be deducted, will be set out in the cooperative agreement each year.

(b) Each agency must send staff to mandatory FHAP training sponsored by HUD, including, but not necessarily limited to, the National Fair Housing Training Academy. If the agency does not participate in the mandatory HUD-sponsored training, training funds will be deducted from the agency's overall training amount. All staff of the agency responsible for the administration and enforcement of the fair housing law must participate in HUD-approved or HUD-sponsored training each year.

§ 115.306 Requirements for participation in the FHAP; Corrective and remedial action for failing to comply with requirements.

(a) Agencies that participate in the FHAP must meet the requirements enumerated in this section. The FHEO regional office shall review the agency's compliance with the requirements of this section when it conducts on-site performance assessments in accordance with § 115.206. The requirements for participation in the FHAP are as follows:

(1) The agency must conform to all reporting and record maintenance requirements set forth in § 115.307 as well as any additional reporting and record maintenance requirements identified by the Assistant Secretary.

(2) The agency must agree to on-site technical assistance and guidance and implementation of corrective actions set out by the Department in response to deficiencies found during the technical assistance or performance assessment evaluations of the agencies operations.

(3) The agency must use the Department's official complaint data

information system and must input all relevant data and information into the system in a timely manner.

(4) The agency must agree to implement and adhere to policies and procedures (as the agency's laws allow) provided to the agency by the Assistant Secretary, including but not limited to guidance on investigative techniques, case file preparation and organization, and implementation of data elements for complaint tracking.

(5) If an agency that participates in the FHAP has civil rights responsibilities above and beyond the administration of a fair housing law (*e.g.*, administration of a fair employment law), the agency must annually provide a certification to HUD stating that it spends at least twenty (20) percent of its total annual budget on fair housing activities. The term ''total annual budget'' as used in this subsection means the entire budget assigned by the jurisdiction to the agency for carrying out all of the agency's civil rights responsibilities but does not include FHAP funds.

(6) The agency may not co-mingle FHAP funds with other funds. FHAP funds must be segregated from the agency's and the state or local government's other funds and must be used for the purpose that HUD provided the funds.

(7) An agency may not unilaterally reduce the level of financial resources currently committed to fair housing activities (budget and staff reductions or other actions outside the control of the agency will not, alone, result in a negative determination for the agency's participation in the FHAP).

(8) The agency must comply with the provisions, certifications and assurances required in any and all written agreements executed by the agency and the Department related to participation in the FHAP, including but not limited to the Cooperative Agreement.

(9) The agency must draw down its funds in a timely manner.

(10) The agency must be audited and receive copies of the audit reports in accordance with applicable rules and regulations of the state and local government in which it is located.

(11) The agency must participate in all required training, as described in § 115.305 (b).

(12) If the agency subcontracts any activity for which the subcontractor will receive FHAP funds, the agency must conform to the subcontracting requirements of § 115.308.

(13) If the agency receives a complaint that may implicate the First Amendment of the United States Constitution, then the agency must conform to the requirements of § 115.309.

(14) If the agency utilizes FHAP funds to conduct fair housing testing, then the agency must conform to the requirements of § 115.310.

(b) *Corrective and remedial action for failing to comply with requirements:* The agency's refusal to provide information, assist in implementation, or carry out the requirements of this section may result in the denial or interruption of its receipt of FHAP funds. Prior to denying or interrupting an agency's receipt of FHAP funds, HUD will put the agency on notice of its intent to deny or interrupt. HUD will identify its rationale for the denial or interruption and provide the agency an opportunity to respond within a reasonable period of time. If, within the time period requested, the agency does not provide information or documentation indicating that the requirement(s) enumerated in this section is/are met, HUD may proceed with the denial or interruption of FHAP funds. If, at any time following the denial or interruption, HUD learns that the agency meets the requirements enumerated in this section, HUD may opt to reinstate the agency's receipt of FHAP funds.

§ 115.307 Reporting and record keeping requirements.

(a) The agency shall establish and maintain records demonstrating:

(1) Its financial administration of FHAP funds; and

(2) Its performance under the FHAP.

(b) The agency will provide to the FHEO regional director reports maintained pursuant to paragraph (a) of this section. The agency will provide reports to the FHEO regional director in accordance with the frequency and content requirements identified in the cooperative agreement. In addition, the agency will provide reports on the final status of complaints following reasonable cause findings, in accordance with Performance Standard 8 identified in § 115.206.

(c) The agency will permit reasonable public access to its records consistent with the jurisdiction's requirements for release of information. Documents relevant to the agency's participation in the FHAP must be made available at the agency's office during normal working hours (except that documents with respect to ongoing fair housing complaint investigations are exempt from public review consistent with federal and/or state law).

(d) The Secretary, Inspector General of HUD, and the Comptroller General of the United States or any of their duly authorized representatives, shall have access to all pertinent books, accounts, reports, files, and other payments for surveys, audits, examinations, excerpts, and transcripts as they related to the agency's participation in FHAP.

(e) All files will be kept in such fashion as to permit audits under applicable Office and Management and Budget circulars, procurement regulations and guidelines and the Single Audit requirements for state and local agencies.

§ 115.308 Subcontracting under the FHAP.

If an agency subcontracts to a public or private organization any activity for which the organization will receive FHAP funds, the agency must ensure and certify in writing that the organization is:

(a) Using services, facilities and electronic information technologies that are accessible in accordance with the Americans with Disability Act (ADA) (42 U.S.C. 12101), Section 504 of the 1973 Rehabilitation Act (29 U.S.C. 701), and Section 508(a)(1) of the Rehabilitation Act amendments of 1998;

(b) Complying with the standards of Section 3 of the Housing and Urban Development Act of 1968 (42 U.S.C. 1441);

(c) Affirmatively furthering fair housing in the provision of housing and housing-related services; and

(d) Not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal debarment or agency.

§ 115.309 FHAP and the First Amendment.

None of the funding made available under the FHAP may be used to investigate or prosecute any activity engaged in by one or more persons, including the filing or maintaining of a non-frivolous legal action, that may be protected by the First Amendment of the United States Constitution. HUD guidance is available that sets forth the procedures HUD will follow when it is asked to accept and dual-file a case that may implicate the First Amendment of the United States Constitution.

§ 115.310 Testing.

The following requirements apply to testing activities funded under the FHAP:

(a) The testing must be done in accordance with a HUD-approved testing methodology;

(b) Testers must not have prior felony convictions or convictions of any crimes involving fraud or perjury.

(c) Testers must receive training or be experienced in testing procedures and techniques.

(d) Testers and the organizations conducting tests, and the employees and agents of these organizations may not:

(1) Have an economic interest in the outcome of the test, without prejudice to the right of any person or entity to recover damages for any cognizable injury;

(2) Be a relative or acquaintance of any party in a case;

(3) Have had any employment or other affiliation, within five years, with the person or organization to be tested; or

(4) Be a competitor of the person or organization to be tested in the listing, rental, sale, or financing of real estate.

Dated: March 21, 2005.

Carolyn Peoples,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 05–9830 Filed 5–17–05; 8:45 am]

BILLING CODE 4210–28–P

Federal Register

Wednesday,
May 18, 2005

Part V

The President

Proclamation 7901—Peace Officers Memorial Day and Police Week, 2005

Proclamation 7902—National Defense Transportation Day and National Transportation Week, 2005

Federal Register
Vol. 70, No. 95
Wednesday, May 18, 2005

Presidential Documents

Title 3—

The President

Proclamation 7901 of May 13, 2005

Peace Officers Memorial Day and Police Week, 2005

By the President of the United States of America

A Proclamation

Across our Nation, the courageous men and women who protect our communities wear the uniform and badge with pride as they safeguard our families, homes, and communities. On Peace Officers Memorial Day and Police Week, we honor the memory of those heroes who have fallen in the line of duty and recognize all those who put themselves at risk in the fight against crime, violence, and terrorism.

More than 800,000 men and women serve as officers of the law in the United States. They serve in varying capacities, including as U.S. Marshals, county sheriffs, deputies, State patrolmen, municipal police, and Federal agents. They share the fundamental qualities of discipline, integrity, and courage. Since our Nation's founding, peace officers have upheld the rule of law and defended the innocent, and we are grateful to them and their families for all they do to strengthen our communities.

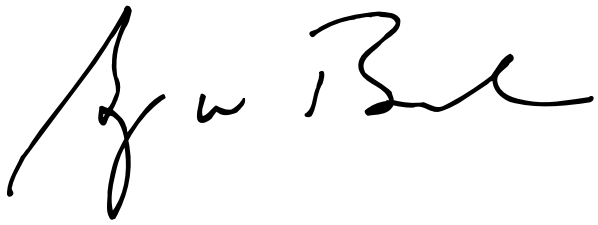
On Peace Officers Memorial Day, we pause to remember those who have made the ultimate sacrifice. These brave men and women accepted the responsibilities of a noble calling and were willing to face danger for our safety. By having their names engraved into the National Law Enforcement Officers Memorial in Washington, D.C., and praying for their families, we honor the memory of these fallen heroes and show the respect of a grateful Nation.

During Police Week and throughout the year, I urge all Americans to support law enforcement officers in the fight against crime. Every citizen can assist his or her local police force to help make our communities safer. Successful Citizen Corps programs like Neighborhood Watch and Volunteers in Police Service are making a difference in the lives of others, one heart and one neighborhood at a time. Information about these and other volunteer programs can be obtained by visiting the Citizen Corps website at citizencorps.gov. By working together, we can continue to build a safer America.

By a joint resolution approved October 1, 1962, as amended, (76 Stat. 676), the Congress has authorized and requested the President to designate May 15 of each year as ''Peace Officers Memorial Day'' and the week in which it falls as ''Police Week,'' and by Public Law 103–322, as amended, (36 U.S.C. 136), has directed that the flag be flown at half-staff on Peace Officers Memorial Day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 15, 2005, as Peace Officers Memorial Day and May 15 through May 21, 2005, as Police Week. I call on all Americans to observe these events with appropriate ceremonies and activities. I also call on Governors of the United States and the Commonwealth of Puerto Rico, as well as appropriate officials of all units of government, to direct that the flag be flown at half-staff on Peace Officers Memorial Day. I further encourage all Americans to display the flag at half-staff from their homes and businesses on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of May, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 05–10057
Filed 5–17–05; 8:58 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7902 of May 13, 2005

National Defense Transportation Day and National Transportation Week, 2005

By the President of the United States of America

A Proclamation

We rely on the men and women of our transportation industry to ensure efficient, secure, and reliable travel for our citizens and to keep our economy growing. On National Defense Transportation Day and during National Transportation Week, we recognize those who maintain and support our transportation system.

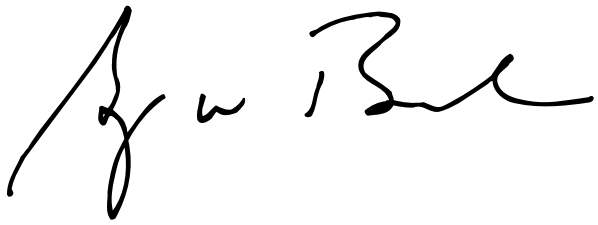
Our transportation system is vital to our national security. It is used to deploy troops around the world and to deliver crucial equipment and supplies in the field. Each day Americans also rely on our transportation system to reach their travel destinations and to transport billions of tons of freight across our country. My Administration has taken important steps to protect our Nation's bridges, tunnels, highways, waterways, rail lines, pipelines, and airports to help keep our citizens safe and our economy running smoothly.

Transportation professionals keep our country moving and support our citizens as they conduct business, tour our great Nation, and reunite with family and friends. The strong work ethic and professionalism of transportation employees help increase efficiency and production across our Nation and advance American prosperity. Their efforts reflect the values that make our country strong and help ensure that our transportation infrastructure will continue to benefit Americans for generations to come.

To recognize the men and women who work in the transportation industry and who contribute to our Nation's well-being and defense, the Congress, by joint resolution approved May 16, 1957, as amended (36 U.S.C. 120), has designated the third Friday in May each year as ''National Defense Transportation Day,'' and, by joint resolution approved May 14, 1962, as amended (36 U.S.C. 133), declared that the week during which that Friday falls be designated as ''National Transportation Week.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Friday, May 20, 2005, as National Defense Transportation Day and May 15 through May 21, 2005, as National Transportation Week. I encourage all Americans to learn how our modern transportation system contributes to the security of our citizens and the prosperity of our country and to celebrate these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of May, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 05–10058
Filed 5–17–05; 8:58 am]
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Federal Register

Wednesday,
May 18, 2005

Part VI

The President

Notice of May 17, 2005—Continuation of the National Emergency With Respect to Burma

Federal Register
Vol. 70, No. 95
Wednesday, May 18, 2005

Presidential Documents

Title 3—

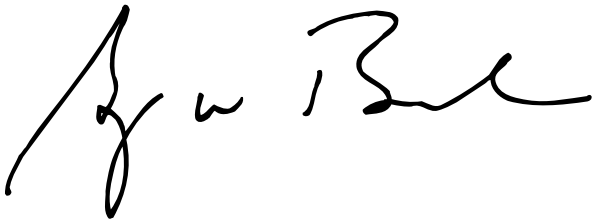
The President

Notice of May 17, 2005

Continuation of the National Emergency With Respect to Burma

On May 20, 1997, the President issued Executive Order 13047, certifying to the Congress under section 570(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Public Law 104–208), that the Government of Burma has committed large-scale repression of the democratic opposition in Burma after September 30, 1996, thereby invoking the prohibition on new investment in Burma by United States persons contained in that section. The President also declared a national emergency to deal with the threat posed to the national security and foreign policy of the United States by the actions and policies of the Government of Burma, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq*. On July 28, 2003, I issued Executive Order 13310 taking additional steps with respect to that national emergency by putting in place an import ban required by the Burmese Freedom and Democracy Act of 2003 and prohibiting exports of financial services to Burma and the dealing in property in which certain designated Burmese persons have an interest.

Because the actions and policies of the Government of Burma continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on May 20, 1997, and the measures adopted on that date to deal with that emergency must continue in effect beyond May 20, 2005. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Burma. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
May 17, 2005.

[FR Doc. 05–10089
Filed 5–17–05; 11:29 am]
Billing code 3195–01–P

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